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6 SOLAREGE TECHNOLOGIES, INC.

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 EASTERN DIVISION
11

12 CHERYL SAUER, individually, and on
behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 SOLAREGE TECHNOLOGIES, INC., and
16 DOES 1-10 Inclusive,

17 Defendants.
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27
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Case No.

**DEFENDANT SOLAREGE
TECHNOLOGIES, INC.'S NOTICE
OF REMOVAL**

DEFENDANT SOLAREEDGE TECHNOLOGIES, INC.'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendant SolarEdge Technologies, Inc. ("SolarEdge") hereby gives notice of removal of this action, captioned *Cheryl Sauer v. SolarEdge Technologies, Inc.*, Case No. CIV SB 2211712, from the San Bernardino County Superior Court to the United States District Court for the Central District of California. Pursuant to 28 U.S.C. § 1446(a), SolarEdge provides the following statement of the grounds for removal:

BACKGROUND

1. On June 9, 2022, Plaintiff Cheryl Sauer, individually, and on behalf of all others similarly situated, filed a Complaint in the San Bernardino County Superior Court against SolarEdge. A copy of the Complaint is attached hereto as **Exhibit 1**. The matter was given Case No. CIV SB 2211712 and assigned to Judge David Cohn in Department S-26. On or about June 23, 2022, the Superior Court issued an Initial Case Management Conference Order. A true and correct copy of that Order is attached hereto as **Exhibit 2**. On August 9, 2022, Plaintiff served SolarEdge with the summons and Complaint. A copy of the notice of service is attached hereto as **Exhibit 3**. Attached as **Exhibit 4** are the remainder of the pleadings, process, and orders that have been filed in this matter, including the summons, case cover sheet, and other forms and notices.

2. Other than the pleadings and order described above, no other process, pleadings, or orders have been filed or served in conjunction with the state court proceeding.

3. This case is a putative civil class action based on what Plaintiff contends is SolarEdge's alleged failure to disclose that purchasers of its solar power systems with free system monitoring functions would be responsible for paying labor costs associated with updating or replacing components of the modems in the event that cellular data service providers (e.g., Verizon) decided to discontinue data service on their 3G cellular networks. Based on the allegations in the Complaint and on behalf of herself and the putative class members, Plaintiff seeks damages, restitution and disgorgement, injunctive relief, and attorneys' fees, interest, and costs.

4. SolarEdge denies liability on all claims alleged in this action, denies that class certification is proper, and reserves all rights in these regards. By filing this Notice of Removal,

SolarEdge does not waive any defense that may be available to it and reserves all such defenses. However, for the purposes of removal only and as set forth below, SolarEdge submits that this Court has subject matter jurisdiction over the claims alleged in this action pursuant to the Class Action Fairness Act (“CAFA”) because this is a putative class action in which: (a) there are 100 or more members in Plaintiff's proposed class; (b) at least some members of the proposed classes, including Plaintiff, have a different citizenship from one or more defendants; (c) the claims of the proposed class members, in the aggregate, exceed the sum or value of \$5,000,000, exclusive of interest and costs; and (d) no exceptions to CAFA apply. If any question arises as to the propriety of the removal to this Court, SolarEdge requests the opportunity to present a brief and oral argument in support of its position that this case has been properly removed.

VENUE AND JURISDICTION

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 84(a), 1391, 1441(a), and 1446(a) because the San Bernardino County Superior Court, where the Complaint was filed, is a state court within the Eastern Division of the Central District of California.

6. This Court has subject matter jurisdiction under CAFA because (1) the total number of putative class members exceeds 100; (2) there is diversity of citizenship between Plaintiff and Defendant; (3) the amount in controversy exceeds \$5,000,000, exclusive of interests and costs; and (4) all other requirements for removal have been satisfied. *See* 28 U.S.C. §§ 1332(d), 1446, 1453; *see also Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014) (explaining that “CAFA's provisions should be read broadly, with a strong preference that interstate class actions should be heard in federal court if properly removed by any defendant” (internal quotation omitted)).

I. PLAINTIFFS’ PROPOSED CLASS CONSISTS OF MORE THAN 100 MEMBERS.

7. For CAFA jurisdiction to exist, the number of putative class members in all proposed plaintiff classes must equal or exceed one hundred. 28 U.S.C. § 1332(d)(5)(B).

8. The Complaint identifies two proposed classes: (1) “All consumers, who, between the applicable statute of limitations and the present, purchased Defendant’s Solar System and had to pay labor costs to replace a modem component for the solar panels of their solar system”; and

(2) “All consumers, who, between the applicable statute of limitations and the present, purchased Defendant’s Solar System and had to pay labor costs to replace the modem component for both the solar panels and the battery backup of their Solar System.” Compl. ¶¶ 34-35. Plaintiff alleges that these proposed classes “are composed of thousands of persons.” Compl. ¶ 40.

II. THERE IS DIVERSITY OF CITIZENSHIP BETWEEN PLAINTIFF AND DEFENDANT.

9. The diversity requirement is satisfied where, as here, “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

A. Plaintiff is a Citizen of California.

10. On information and belief, Plaintiff Cheryl Sauer is domiciled in and therefore a citizen of California. Compl. ¶ 7; *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (“a person's state citizenship is . . . determined by her state of domicile”); *see also Ehrman v. Cox Commc’ns, Inc.*, 932 F.3d 1223, 1227 (9th Cir. 2019) (in notice of removal, “a defendant’s allegations of citizenship may be based solely on information and belief”); *Carolina Cas. Ins. Co. v. Team Equip., Inc.*, 741 F.3d 1082, 1086 (9th Cir. 2014) (permitting pleading of citizenship on information and belief).

B. Defendant Is a Citizen of Delaware and Israel.

11. For purposes of diversity jurisdiction, a corporation is “a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). A corporation's “principal place of business” is “the place where a corporation's officers direct, control, and coordinate the corporation's activities” or its “nerve center,” and “in practice it should normally be the place where the corporation maintains its headquarters.” *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010); *Davis v. HSBC Bank Nevada, N.A.*, 557 F.3d 1026, 1029 (9th Cir. 2009); *Portillo v. Chipotle Mexican Grill, Inc.*, 2018 WL 637386, at *1 (C.D. Cal. Jan. 31, 2018). In determining citizenship for purposes of diversity jurisdiction, “the citizenship of defendants sued under fictitious names shall be disregarded.” 28 U.S.C. § 1332(b)(1).

12. SolarEdge, the only Defendant sued under a real name and identified in the Complaint, is a Delaware corporation with its principal place of business in Herzliya, Israel. Declaration of Peter Mathews ¶ 2.¹ Therefore, SolarEdge is a citizen of Delaware and Israel. *Strotek Corp. v. Air Transp. Ass’n of Am.*, 300 F.3d 1129, 1132 (9th Cir. 2002) (a corporation’s citizenship is determined by its principal place of business and state of incorporation, notwithstanding a “plaintiff’s mistaken allegations” regarding the corporation’s citizenship); *Grant v. Seterus, Inc.*, 2018 WL 3203419, at *2 (C.D. Cal. June 28, 2018) (“a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business” (quoting 28 U.S.C. § 1332(c)(1))).

10 **III. THE AMOUNT IN CONTROVERSY EXCEEDS \$5,000,000.**

13. In determining the amount in controversy, the court must “accept[] the allegations contained in the complaint as true and assumes the jury will return a verdict in the plaintiff’s favor on every claim.” *Henry v. Cent. Freight Lines, Inc.*, 692 F. App’x 806, 807 (9th Cir. 2017); *Cain v. Hartford Life & Accident Ins. Co.*, 890 F. Supp. 2d 1246, 1249 (C.D. Cal. 2012). “[A] defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin*, 574 U.S. at 89. “[W]hen a defendant seeks federal-court adjudication, the defendant’s amount-in-controversy allegation should be accepted when not contested by the plaintiff or questioned by the court.” *Id.* at 87. “The amount in controversy may include damages (compensatory, punitive, or otherwise) and the cost of complying with an injunction, as well as attorneys’ fees awarded under fee shifting statutes.” *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 416 (9th Cir. 2018) (internal quotation marks and citation omitted). For purposes of determining whether the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, the claims of individual class members are aggregated. 28 U.S.C. § 1332(d)(6).

14. Here, Plaintiff seeks to represent two separate classes of plaintiffs and seeks compensatory, punitive, and statutory damages on behalf of each class. Compl. ¶¶ 33-42, 81. The

¹ The Complaint incorrectly alleges that SolarEdge is headquartered in Milpitas, California. Compl. ¶ 8. *See* Decl. of Peter Mathews ¶ 2.

Complaint alleges that both “proposed classes are composed of thousands of persons,” each of whom is entitled to damages under the legal theories asserted in the Complaint. *Id.* ¶¶ 40-46. Plaintiff further seeks “disgorgement and restitution to Plaintiff and all Class Members of Defendant’s revenues associated with their false advertising,” Compl. ¶ 61, as well as injunctive relief that includes a “corrective advertising” campaign regarding the conduct alleged in the Complaint. Compl. ¶¶ 79, 81.

15. In total, Plaintiff seeks:

- a. “An order certifying the Class and appointing Plaintiff as Representative of the Class”;
- b. “an order certifying [Plaintiff’s] counsel as Class Counsel”;
- c. “an order requiring Defendants, at their own cost, to notify all Class Members of the unlawful and deceptive conduct herein”;
- d. “an order requiring Defendants to engage in corrective advertising regarding the conduct discussed [in the Complaint]”;
- e. “actual damages suffered by Plaintiff and Class Members as applicable from being induced to call Defendants under false pretenses”;
- f. “punitive damages, as allowable, in an amount determined by the Court or jury”;
- g. “any and all statutory enhanced damages”;
- h. “all reasonable and necessary attorneys’ fees and costs provided by statute, common law or the Court’s inherent power”;
- i. “pre- and post-judgment interest”; and
- j. “all other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.”

Id. ¶ 81.

16. Based on these allegations, it is clear that the amount in controversy in this putative class action exceeds the \$5,000,000 threshold for CAFA jurisdiction. Here, despite bringing claims only under California law, Plaintiff apparently seeks to represent a nationwide class of consumers² who purchased solar power units from SolarEdge, and seeks relief including “disgorgement and restitution” of all SolarEdge’s “revenues associated with their false advertising” and injunctive relief that includes a “corrective advertising” campaign. Compl. ¶¶ 34, 35, 61. There are significantly greater than 50,000 SolarEdge systems in the United States. Although the cost to

² SolarEdge, which is headquartered in Herzliya, Israel and incorporated in Delaware, reserves the right to challenge the ability of non-California plaintiffs to bring claims against it under California law.

1 replace the modem in a SolarEdge system can vary depending on the configuration, the average
 2 price of a replacement modem (excluding installation costs) is approximately \$160. *See* Decl. of
 3 Peter Mathews ¶ 3. Thus, the amount allegedly in controversy here easily exceeds the \$5,000,000
 4 threshold (i.e., \$160 x 50,000 = \$8,000,000). Moreover, while the nature of Plaintiff’s requested
 5 injunctive relief is not entirely clear, the costs to SolarEdge of engaging in a “corrective
 6 advertising” campaign would be substantial.

7 **IV. ALL OTHER REMOVAL REQUIREMENTS ARE SATISFIED.**

8 **A. The Notice of Removal Is Timely.**

9 17. This Notice of Removal is timely filed. Defendant was served in this matter on
 10 August 9, 2022 and filed this Notice of Removal within thirty days of the issuance of the summons.
 11 *See* 28 U.S.C. § 1446(b)(1); Ex. 2.

12 **B. No CAFA Exceptions Apply.**

13 18. CAFA contains certain jurisdictional exceptions, none of which apply to this case.

14 19. The “Local Controversy Exception” does not apply to the present case because
 15 SolarEdge is not a citizen of California, the state in which the action was originally filed. *See* 28
 16 U.S.C. § 1332(d)(4)(A)(i)(II)(cc).

17 20. The “Home State Exception” also does not apply to the present case because
 18 SolarEdge, the sole and primary named defendant, is not a citizen of California, the state in which
 19 the action was originally filed. *See* 28 U.S.C. § 1332(d)(4)(B).

20 21. Accordingly, all of the requirements for federal jurisdiction under 28 U.S.C. §
 21 1332(d) are satisfied, and removal of this action is proper under 28 U.S.C. §§ 1441, 1446, and
 22 1453.

23 **C. Notice of Removal**

24 22. Pursuant to 28 U.S.C. § 1446(d), SolarEdge will give written notice of the filing of
 25 this Notice of Removal to all adverse parties of record in this matter, and will file a copy of this
 26 Notice with the clerk of the state court.

CONCLUSION

WHEREFORE, SolarEdge hereby removes this action from the San Bernardino County Superior Court to the United States District Court for the Central District of California.

Dated: September 8, 2022

Respectfully submitted,

/s/ Matthew Powers

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EXHIBIT 1

ORIGINAL

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Attorneys for Plaintiff, CHERYL SAUER

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 09 2022

BY  **DEPUTY**

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO
UNLIMITED JURISDICTION

CHERYL SAUER, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

SOLAREGE TECHNOLOGIES, INC.,
and DOES 1-10 Inclusive,

Defendants.

Case No.

CIV SB 2211712

CLASS ACTION COMPLAINT

- (1) Violation of False Advertising Law (Cal. Business & Professions Code §§ 17500 *et seq.*);
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*);

Jury Trial Demanded

BY FAX

RECEIVED
JUN 09 2022
SUPERIOR COURT OF CALIFORNIA
CLERK OF COURT
SACRAMENTO COUNTY

1 Plaintiff CHERYL SAUER ("Plaintiff"), individually and on behalf of all others similarly
2 situated, alleges as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against SOLAREEDGE
5 TECHNOLOGIES, INC. (hereinafter "Defendant") to stop Defendant's practice of falsely
6 advertising and selling solar power system monitoring services, and to obtain redress for a class
7 of consumers ("Class Members") who were misled by Defendant within the applicable statute
8 of limitations period.

9 2. Defendant advertised to consumers that its solar power systems were
10 accompanied by a system monitoring plan that was free of charge.

11 3. Plaintiff and other consumers similarly situated were exposed to these
12 advertisements.

13 4. Defendant misrepresented and falsely advertised and represented to Plaintiff and
14 others similarly situated by failing to disclose in either their advertisements or the contract itself
15 that Defendant would require Plaintiff and others similarly situated to pay for the labor to
16 replace certain components of the monitoring system.

17 5. Defendants' misrepresentations to Plaintiff and others similarly situated induced
18 them to purchase Defendant's products.

19 6. Defendants took advantage of Plaintiff and similarly situated consumers unfairly
20 and unlawfully.

21 **THE PARTIES**

22 7. Plaintiff CHERYL SAUER is a citizen and resident of the State of California,
23 County of San Bernardino.

24 8. Defendant SOLAREEDGE TECHNOLOGIES, INC., ("Defendant") is a
25 corporation that does business in California, including within San Bernardino County, and is
26 incorporated in Delaware and headquartered in Milpitas, California.

27 9. Plaintiff alleges, on information and belief, that Defendant's marketing
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1 campaign, as pertains to this matter, was created by Defendant and was disseminated throughout
2 California.

3 10. Plaintiff is informed and believes, and thereon alleges, that at all time relevant,
4 Defendant's sales of products and services are governed by the controlling law in the state in
5 which they do business and from which the sales of products and services, and the allegedly
6 unlawful acts occurred, which is California.

7 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
8 acts and omissions alleged herein were performed by, or is attributable to, Defendant and/or its
9 employees, agents, and/or third parties acting on their behalf, each acting as the agent for the
10 other, with legal authority to act on the other's behalf. The acts of any and all of Defendant's
11 employees, agents, and/or third parties acting on its behalf, were in accordance with, and
12 represent, the official policy of Defendant.

13 12. Plaintiff is informed and believes, and thereon alleges, that said Defendant is in
14 some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
15 occurrences, and transactions of each and all their employees, agents, and/or third parties acting
16 on their behalf, in proximately causing the damages herein alleged.

17 13. At all relevant times, Defendant ratified each and every act or omission
18 complained of herein. At all relevant times, Defendant aided and abetted the acts and omissions
19 as alleged herein.

20 **PLAINTIFF'S FACTS**

21 14. In or around January of 2020, Plaintiff had a solar system she purchased from
22 Defendant installed at her home.

23 15. At the time of purchase, Defendant represented to Plaintiff that the purchase of
24 her solar system would include unlimited free system monitoring.

25 16. On or around January 27, 2022, Defendant sent Plaintiff an email informing her
26 that the modem component of the solar system was being discontinued by its provider, and that
27 if the modem was not replaced Plaintiff would no longer have access to the free system
28

1 monitoring.

2 17. Defendant required Plaintiff to pay for the labor cost of replacing the modem.

3 18. Moreover, Plaintiff was required to replace not one, but two modems. The first
4 modem was to monitor the solar panels themselves, and the second modem was to monitor the
5 battery backup system.

6 19. As such, Plaintiff has incurred labor costs to replace two modems in order to
7 maintain her system monitoring plan, despite Defendant's representations that the system
8 monitoring plan was at no extra cost to Plaintiff.

9 20. Defendant does not inform consumers, including Plaintiff, that in order to utilize
10 the free unlimited monitoring plan, consumers, including Plaintiff, will have to incur labor costs
11 to replace components of the system.

12 21. Defendant's knowledge of the fact that Plaintiff and similarly situated consumers
13 could not reap the benefits of the free unlimited monitoring plan is demonstrated by the fact that
14 when Defendant informed Plaintiff that she would lose access to her system monitoring
15 functions if she did not replace the modem components.

16 22. Defendant omitted from their advertisements and contracts that consumers who
17 purchased a solar system will not be eligible for the free unlimited monitoring plan as
18 represented.

19 23. Plaintiff had no reasonable way of knowing that Defendant would require her to
20 pay for the labor to replace certain parts of the system in order to continue to use her system
21 monitoring functions. Thus, Plaintiff had no reasonable opportunity to find out that Defendant
22 would not honor its free unlimited system monitoring plan.

23 24. Defendant was aware that Plaintiff could not have reasonably known that it
24 would not honor the free unlimited system monitoring plan.

25 25. Had Plaintiff known that Defendant would not honor the free unlimited system
26 monitoring plan, Plaintiff would not have purchased the solar system from Defendant, or would
27 have paid less for the solar system.

1 26. Plaintiff was significantly upset by Defendant's refusal to honor their free
2 unlimited system monitoring plan.

3 27. Such sales tactics employed by Defendant rely on falsities and have a tendency
4 to mislead and deceive a reasonable consumer.

5 28. Plaintiff is informed, believes, and thereupon alleges that such representations
6 were part of a common scheme to mislead consumers and incentivize them to purchase products
7 from Defendant.

8 29. Plaintiff reasonably believed and relied upon Defendant's representations in their
9 advertisement.

10 30. Plaintiff materially changed her position in reliance on Defendant's
11 representations and was harmed thereby.

12 31. Had Defendant properly marketed, advertised, and represented that it would not
13 honor its unlimited free system monitoring plan stated in their advertisements, Plaintiff would
14 not have purchased the solar system or any similarly advertised product.

15 32. Defendants benefited from falsely advertising and representing the costs of their
16 products and services. Defendants benefited on the loss to Plaintiff and provided nothing of
17 benefit to Plaintiff in exchange.

18
19 **CLASS ACTION ALLEGATIONS**

20 33. Plaintiff brings this action, on behalf of herself and all others similarly situated,
21 and thus, seeks class certification under California Code of Civil Procedure Rule 382, et seq.
22 and Cal. Civil Code § 1781, et seq.

23 34. The class Plaintiff seeks to represent (the "Class") is defined as follows:

24 All consumers, who, between the applicable statute of limitations
25 and the present, purchased Defendant's Solar System and had to
26 pay labor costs to replace a modem component for the solar panels
 of their Solar System.

27 35. Plaintiff also brings this action on behalf of a subclass (the "Subclass") defined
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1 as follows:

2 All consumers, who, between the applicable statute of
3 limitations and the present, purchased Defendant's Solar System
4 and had to pay labor costs to replace the modem component for
both the solar panels and the battery backup of their Solar
System.

5 36. The Class and the Subclass will hereinafter be collectively referred to as "the
6 Classes."

7 37. As used herein, the term "Class Members" shall mean and refer to the members
8 of the Classes described above.

9 38. Excluded from the Classes are Defendant, its affiliates, employees, agents, and
10 attorneys, and the Court.

11 39. Plaintiff reserves the right to amend the Classes, and to add additional subclasses,
12 if discovery and further investigation reveals such action is warranted.

13 40. Upon information and belief, the proposed classes are composed of thousands of
14 persons. The members of the classes are so numerous that joinder of all members would be
15 unfeasible and impractical.

16 41. No violations alleged in this complaint are contingent on any individualized
17 interaction of any kind between class members and Defendant.

18 42. Rather, all claims in this matter arise from the identical, false, affirmative written
19 statements that Defendant would provide its free unlimited system monitoring to the Class
20 Members, when in fact, such representations were false.

21 43. There are common questions of law and fact as to the Class Members that
22 predominate over questions affecting only individual members, including but not limited to:

23 (a) Whether Defendant engaged in unlawful, unfair, or deceptive business
24 practices in advertising its free unlimited system monitoring with its
25 products to Plaintiff and other Class Members with no intention of
26 honoring them;

27 (b) Whether Defendant made misrepresentations with respect to its free
28

unlimited system monitoring;

(c) Whether Defendant profited from this advertisement;

(d) Whether Defendant violated California Bus. & Prof. Code § 17200, *et seq.* California Bus. & Prof. Code § 17500, *et seq.*, California Civ. Code § 1750, *et seq.*, California Civ. Code § 1790, *et seq.*, and 15 U.S.C. § 2310, *et seq.*;

(e) Whether Plaintiff and Class Members are entitled to equitable and/or injunctive relief;

(f) Whether Defendant's unlawful, unfair, and/or deceptive practices harmed Plaintiff and Class Members; and

(g) The method of calculation and extent of damages for Plaintiff and Class Members.

44. Plaintiff is a member of the class she seeks to represent

45. The claims of Plaintiff are not only typical of all class members, they are identical.

46. All claims of Plaintiff and the class are based on the exact same legal theories.

47. Plaintiff has no interest antagonistic to, or in conflict with, the class.

48. Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member, because Plaintiff was induced by Defendant's advertisement during the Class Period. Defendant's unlawful, unfair and/or fraudulent actions concerns the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff's claims are typical of all Class Members as demonstrated herein.

49. Plaintiff will thoroughly and adequately protect the interests of the class, having retained qualified and competent legal counsel to represent himself and the class.

50. Common questions will predominate, and there will be no unusual manageability issues.

FIRST CAUSE OF ACTION

Violation of the California False Advertising Act

(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)

51. Plaintiff incorporates by reference each allegation set forth above.

52. Pursuant to California Business and Professions Code section 17500, *et seq.*, it is unlawful to engage in advertising “which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading...or...to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised.”

53. California Business and Professions Code section 17500, *et seq.*’s prohibition against false advertising extends to the use of false or misleading written statements.

54. Defendants misled consumers by making misrepresentations and untrue statements about its free unlimited system monitoring, namely, Defendant made consumers believe that Defendant would provide system monitoring forever at no additional cost to consumers, when in fact Defendant would require that consumers pay labor costs for replacing components of the solar system necessary for the system monitoring function.

55. Defendant knew that its representations and omissions were untrue and misleading, and deliberately made the aforementioned representations and omissions in order to deceive reasonable consumers like Plaintiff and other Class Members.

56. As a direct and proximate result of Defendant’s misleading and false advertising, Plaintiff and the other Class Members have suffered injury in fact. Plaintiff reasonably relied upon Defendant’s representations regarding the free unlimited system monitoring for Defendant’s products. In reasonable reliance on Defendant’s false advertisements, Plaintiff and other Class Members purchased Solar Systems from Defendant believing that they would receive free system monitoring forever. However, Defendant did not inform Class Members it would require them to pay for the labor to replace necessary components of the system for

1 system monitoring, such as modems.

2 57. Plaintiff alleges that these false and misleading written representations made by
3 Defendant constitute a “scheme with the intent not to sell that personal property or those
4 services, professional or otherwise, so advertised at the price stated therein, or as so advertised.”

5 58. Defendant advertised to Plaintiff and other putative class members, through
6 written representations and omissions made by Defendant and their employees.

7 59. Defendant knew that it would not provide Plaintiff and Class Members with the
8 free unlimited system monitoring as advertised.

9 60. Thus, Defendant knowingly lied to Plaintiff and other putative class members in
10 order to induce them to purchase the Solar Systems from Defendants.

11 61. The misleading and false advertising described herein presents a continuing
12 threat to Plaintiff and the Class Members in that Defendant persist and continue to engage in
13 these practices, and will not cease doing so unless and until forced to do so by this Court.
14 Defendant’s conduct will continue to cause irreparable injury to consumers unless enjoined or
15 restrained. Plaintiff is entitled to preliminary and permanent injunctive relief ordering
16 Defendant to cease their false advertising, as well as disgorgement and restitution to Plaintiff
17 and all Class Members of Defendant’s revenues associated with their false advertising, or such
18 portion of those revenues as the Court may find equitable.

19 20 **SECOND CAUSE OF ACTION**

21 **Violation of Unfair Competition Law**

22 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

23 62. Plaintiff incorporates by reference each allegation set forth above.

24 63. Actions for relief under the unfair competition law may be based on any business
25 act or practice that is within the broad definition of the UCL. Such violations of the UCL occur
26 as a result of unlawful, unfair or fraudulent business acts and practices. A plaintiff is required
27 to provide evidence of a causal connection between a defendant's business practices and the
28

1 alleged harm--that is, evidence that the defendant's conduct caused or was likely to cause
 2 substantial injury. It is insufficient for a plaintiff to show merely that the defendant's conduct
 3 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory definition of
 4 unfair competition covers any single act of misconduct, as well as ongoing misconduct.

6 UNFAIR

7 64. California Business & Professions Code § 17200 prohibits any "unfair ...
 8 business act or practice." Defendant's acts, omissions, misrepresentations, and practices as
 9 alleged herein also constitute "unfair" business acts and practices within the meaning of the
 10 UCL in that its conduct is substantially injurious to consumers, offends public policy, and is
 11 immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any
 12 alleged benefits attributable to such conduct. There were reasonably available alternatives to
 13 further Defendant's legitimate business interests, other than the conduct described herein.
 14 Plaintiff reserves the right to allege further conduct which constitutes other unfair business acts
 15 or practices. Such conduct is ongoing and continues to this date.

16 65. In order to satisfy the "unfair" prong of the UCL, a consumer must show that the
 17 injury: (1) is substantial; (2) is not outweighed by any countervailing benefits to consumers or
 18 competition; and, (3) is not one that consumers themselves could reasonably have avoided.

19 66. Here, Defendant's conduct has caused and continues to cause substantial injury
 20 to Plaintiff and members of the Classes. Plaintiff and members of the Classes have suffered
 21 injury in fact due to Defendant's decision to mislead consumers. Moreover, Plaintiff and
 22 members of the Classes have incurred out of pocket labor expenses in order to maintain their
 23 system monitoring functions. Thus, Defendant's conduct has caused substantial injury to
 24 Plaintiff and the members of the Class.

25 67. Moreover, Defendant's conduct as alleged herein solely benefits Defendant
 26 while providing no benefit of any kind to any consumer. Such deception utilized by Defendant
 27 convinced Plaintiff and members of the Classes that Defendant would provide them with
 28

1 unlimited system monitoring and that Plaintiff and members of the Classes would not have to
 2 pay to continue using these services. In fact, Defendant knew it would require Plaintiff and
 3 members of the Classes to pay labor costs to maintain the system monitoring functions, and thus
 4 unfairly profited. Thus, the injury suffered by Plaintiff and the members of the Class are not
 5 outweighed by any countervailing benefits to consumers.

6 68. Finally, the injury suffered by Plaintiff and members of the Classes is not an
 7 injury that these consumers could reasonably have avoided. After Defendant falsely represented
 8 the free unlimited system monitoring, consumers changed their position by purchasing the Solar
 9 System, thus causing them to suffer injury in fact. Defendant failed to take reasonable steps to
 10 inform Plaintiff and class members that the advertisement was false. As such, Defendant took
 11 advantage of Defendant's position of perceived power in order to deceive Plaintiff and the
 12 Classes. Therefore, the injury suffered by Plaintiff and members of the Classes is not an injury
 13 which these consumers could reasonably have avoided.

14 69. Thus, Defendant's conduct has violated the "unfair" prong of California Business
 15 & Professions Code § 17200.

17 FRAUDULENT

18 70. California Business & Professions Code § 17200 prohibits any "fraudulent ...
 19 business act or practice." In order to prevail under the "fraudulent" prong of the UCL, a
 20 consumer must allege that the fraudulent business practice was likely to deceive members of
 21 the public.

22 71. The test for "fraud" as contemplated by California Business and Professions
 23 Code § 17200 is whether the public is likely to be deceived. Unlike common law fraud, a §
 24 17200 violation can be established even if no one was actually deceived, relied upon the
 25 fraudulent practice, or sustained any damage.

26 72. Here, not only were Plaintiff and members of the Classes likely to be deceived,
 27 but these consumers were actually deceived by Defendant. Such deception is evidenced by the
 28

1 fact that Defendant did not provide Plaintiff and members of the Classes with free unlimited
2 system monitoring. Plaintiff's reliance upon Defendant's deceptive statements is reasonable
3 due to the unequal bargaining powers of Defendant against Plaintiff. For the same reason, it is
4 likely that Defendant's fraudulent business practice would deceive other members of the public.

5 73. As explained above, Defendant deceived Plaintiff and other Class Members by
6 representing that the system monitoring services would accompany the Solar System free of
7 charge, when in fact Plaintiff and other Class Members would have to incur labor costs in order
8 to replace components of the Solar System and maintain their system monitoring services.

9 74. Thus, Defendant's conduct has violated the "fraudulent" prong of California
10 Business & Professions Code § 17200.

11
12 **UNLAWFUL**

13 75. California Business and Professions Code Section 17200, et seq. prohibits "any
14 unlawful...business act or practice."

15 76. As explained above, Defendant deceived Plaintiff and other Class Members by
16 falsely representing its free unlimited system monitoring plan.

17 77. Defendants used false advertising, marketing, and misrepresentations to induce
18 Plaintiff and Class Members to purchase Solar Systems from Defendant, in violation of
19 California Business and Professions Code Section 17500, et seq. Had Defendant not falsely
20 advertised, marketed, or misrepresented the free unlimited system monitoring plan for its
21 products, Plaintiff and Class Members would not have purchased the Solar Systems from
22 Defendant. Defendant's conduct therefore caused and continues to cause economic harm to
23 Plaintiff and Class Members.

24 78. These representations by Defendant are therefore an "unlawful" business
25 practice or act under Business and Professions Code Section 17200 *et seq.*

26 79. Defendant has thus engaged in unlawful, unfair, and fraudulent business acts
27 entitling Plaintiff and Class Members to judgment and equitable relief against Defendant, as set
28

1 forth in the Prayer for Relief. Additionally, pursuant to Business and Professions Code
 2 section 17203, Plaintiff and Class Members seek an order requiring Defendant to immediately
 3 cease such acts of unlawful, unfair, and fraudulent business practices and requiring Defendant
 4 to correct its actions.

6 MISCELLANEOUS

7 80. Plaintiff and Class Members allege that they have fully complied with all
 8 contractual and other legal obligations and fully complied with all conditions precedent to
 9 bringing this action or all such obligations or conditions are excused.

11 PRAYER FOR RELIEF

12 81. Plaintiff, on behalf of himself and the Class, requests the following relief:

- 13 (a) An order certifying the Class and appointing Plaintiff as Representative
 14 of the Class;
- 15 (b) An order certifying the undersigned counsel as Class Counsel;
- 16 (c) An order requiring Defendants, at their own cost, to notify all Class
 17 Members of the unlawful and deceptive conduct herein;
- 18 (d) An order requiring Defendants to engage in corrective advertising
 19 regarding the conduct discussed above;
- 20 (e) Actual damages suffered by Plaintiff and Class Members as applicable
 21 from being induced to call Defendants under false pretenses;
- 22 (f) Punitive damages, as allowable, in an amount determined by the Court or
 23 jury;
- 24 (g) Any and all statutory enhanced damages;
- 25 (h) All reasonable and necessary attorneys' fees and costs provided by
 26 statute, common law or the Court's inherent power;
- 27 (i) Pre- and post-judgment interest; and

(j) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

REQUEST FOR JURY TRIAL

82. Plaintiff requests a trial by jury as to all claims so triable.

Dated: June 9, 2022

Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN , PC

By: Todd M. Friedman
TODD M. FRIEDMAN, ESQ.

RECEIVED
JUN 09 2022
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

EXHIBIT 2

1 Superior Court of California
2 County of San Bernardino
3 247 W. Third Street, Dept. S-26
4 San Bernardino, CA 92415-0210

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 23 2022

BY Cuahtemoc Nunez
CUAUHTEMOC NUNEZ, DEPUTY

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT

11 CHERYL SAUER

) Case No.: CIVSB 2211712

13 vs.
14

15
16 SOLAREEDGE TECHNOLOGIES

INITIAL CASE MANAGEMENT
CONFERENCE ORDER

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21
22 This case is assigned for all purposes to Judge David Cohn in the Complex
23 Litigation Program, Department S-26, located at the San Bernardino Justice Center, 247
24 West Third Street, San Bernardino, California, 92415-0210. Telephone numbers for
25 Department S-26 are (909) 521-3519 (Judicial Assistant) and (909) 708-8866 (Court
26 Attendant).
27
28

SERVICE OF THIS ORDER

Plaintiffs' counsel is ordered to serve this Order on counsel for each defendant, or, if counsel is not known, on each defendant within five days of the date of this Order. If the complaint has not been served as the date of this Order, counsel for plaintiff is to serve the summons and complaint along with this Order within ten days of the date of this Order. Failure to serve this order may result in the imposition of monetary sanctions.

THE INITIAL CASE MANAGEMENT CONFERENCE

An initial Case Management Conference (CMC) is scheduled for SEP 08 2022 at 9:00 a.m. Counsel may attend the initial CMC either in person or remotely, via CourtCall. Contact CourtCall at (888) 882-6878 (www.CourtCall.com) to schedule your appearance. Audio or video appearances are available. CourtCall may be used for all CMCs, motions, and other hearings. In person attendance is not required at the initial CMC or at subsequent conferences or motions unless specifically ordered by the court.

Counsel for all parties are ordered to attend the initial CMC. If there are defendants who have not yet made a general or special appearance, those parties who are presently before the court may jointly request a continuance of the initial CMC to allow additional time for such non-appearing defendants to make their general or special appearances. Such a request should be made by submitting a Stipulation and Proposed Order to the Court, filed directly in Department S-26 (not in the clerk's office), no later than five court days before the scheduled hearing.

RESPONSIVE PLEADINGS

Unless otherwise agreed by the parties, responsive pleadings are due as provided by statute There is no stay on the pleadings or motions pending the initial

1 CMC. If, however, counsel agree to stay formal proceedings to facilitate settlement
 2 discussions or for other reasons, each defendant is directed to file either a Notice of
 3 General Appearance or a Notice of Special Appearance (if counsel intends to challenge
 4 personal jurisdiction). The notices are for purposes of identification of counsel and
 5 preparation of a service list. The filing of a Notice of General Appearance is without
 6 prejudice to any substantive or procedural challenges to the complaint (including subject
 7 matter jurisdiction), without prejudice to any denial or affirmative defense, and without
 8 prejudice to the filing of any cross-complaint. The filing of a Notice of Special
 9 Appearance is without prejudice to any challenge to the court's exercise of personal
 10 jurisdiction.
 11
 12

13 DISCOVERY

14 Unless all counsel agree otherwise, discovery is stayed pending the initial CMC.
 15 If the parties agree to conduct discovery in advance of the initial CMC, commencement
 16 of discovery is governed by statute.
 17

18 AGENDA FOR THE INITIAL CASE MANAGEMENT CONFERENCE

19 Counsel for all parties are ordered to meet and confer in person no *later* than
 20 fourteen days before the initial CMC to discuss the subjects listed below. Counsel
 21 must be fully prepared to discuss these subjects with the court:
 22

- 23 1. Any issues of recusal or disqualification;
- 24 2. Any potentially dispositive or important threshold issues of law or fact that, if
 25 considered by the court, may simplify or further resolution of the case;
- 26 3. Appropriate mechanisms for Alternative Dispute Resolution;
 27
 28

4. A plan for the preservation of evidence and a uniform system for the identification of documents to be used throughout the course of this litigation, including discovery and trial;
5. A discovery plan for the disclosure and production of documents and other discovery, including whether the court should order automatic disclosures, patterned on Federal Rule of Civil Procedure 26(a) or otherwise;
6. Whether it is advisable to conduct discovery in phases so that information needed to conduct meaningful ADR is obtained early in the case;
7. Any issues involving the protection of evidence and confidentiality;
8. The use and selection of an electronic service provider;
9. The handling of any potential publicity issues;
10. Any other issues counsel deem appropriate to address with the court.

THE JOINT REPORT

Counsel are ordered to meet and confer, in person or by telephone or video conference, and to prepare a joint report for the initial cmc, to be filed directly in department s-26 (not in the clerk's office), no later than four court days before the conference date. Separate reports from each party are not allowed. Judicial council form CMC statements are not allowed.

The joint report must include the following:

1. Whether the case should or should not be treated as complex;
2. Whether additional parties are likely to be added and a proposed date by which all parties must be served;

- 1 3. A service list (the service list should identify all primary and secondary counsel,
2 firm names, addresses, telephone numbers, email addresses, and fax numbers
3 for all counsel.)
- 4 4. Whether the court should issue an order requiring electronic service. Counsel
5 should advise the court regarding any preferred web-based electronic service
6 provider;
- 7 5. Whether any issues of jurisdiction or venue exist that might affect this court's
8 ability to proceed with this case.
- 9 6. Whether there are applicable arbitration agreements, and the parties' views on
10 their enforceability;
- 11 7. A list of all related litigation pending in this or other courts (state and federal), a
12 brief description of any such litigation, including the name of the judge assigned
13 to the case, and a statement whether any additional related litigation is
14 anticipated;
- 15 8. A description of the major factual and legal issues in the case. The parties
16 should address any contracts, statutes, or regulations on which claims or
17 defenses are based, or which will require interpretation in adjudicating the claims
18 and defenses;
- 19 9. The parties' tentative views on an ADR mechanism and how such mechanism
20 might be integrated into the course of the litigation;
- 21 10. A discovery plan, including the time needed to conduct discovery and whether
22 discovery should be conducted in phases or limited (and, if so, the order of
23 phasing or types of limitations). With respect to the discovery of electronically
24 stored information (ESI), the plan should include:
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- a. Identification of the Information Management Systems used by the parties;
 - b. The location and custodians of information that is likely to be subject to production (including the identification of network and email servers and hard-drives maintained by custodians);
 - c. The types of ESI that will be requested and produced, e.g. data files, emails, etc.;
 - d. The format in which ESI will be produced;
 - e. Appropriate search criteria for focused requests.
 - f. A statement whether the parties will allow their respective IT consultants or employees to participate directly in the meet and confer process.
11. Whether the parties will stipulate that discovery stays or other stays entered by the court for case management purposes will be excluded in determining the statutory period for bringing the case to trial under Code of Civil Procedure Section 583.310 (the Five Year Rule).
12. Recommended dates and times for the following:
- a. The next CMC (absent special circumstances, the court typically schedules the next CMC approximately six to eight months out);
 - b. A schedule for any contemplated ADR;
 - c. A filing deadline (and proposed briefing schedule) for any anticipated non-discovery motions.
 - d. With respect to class actions, the parties' tentative views on an appropriate deadline for a class certification motion to be filed.

1 To the extent the parties are unable to agree on any matter to be addressed in
 2 the Joint Report, the positions of each party or of various parties should be set forth
 3 separately. The parties are encouraged to propose, either jointly or separately, any
 4 approaches to case management that they believe will promote the fair and efficient
 5 handling of this case.

6 Any stipulations to continue conferences or other hearings throughout this
 7 litigation must be filed with the court directly in Department S-26 (not in the Clerk's
 8 office), no later than five court days before the conference or hearing date.

9 **JOINT REPORTS FOR SUBSEQUENT CONFERENCES**

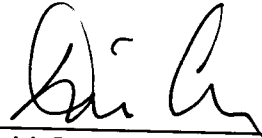
10 Counsel must submit a joint report for each conference after the initial CMC. The
 11 report should address how the case has moved forward since the last conference, what
 12 needs to be accomplished in the future, and how the court can assist the parties move
 13 the case towards resolution. As with the initial report, subsequent reports are to be filed
 14 directly in department S-26 (not in the clerk's office), no later than four court days before
 15 the conference date.

16 **INFORMAL DISCOVERY CONFERENCES**

17 Motions concerning discovery cannot be filed without first requesting an informal
 18 discovery conference (IDC) with the court. Making a request for an IDC automatically
 19 stays the deadline for filing any such motion. IDCs are conducted by remote video
 20 conference, using Zoom. If counsel's computer (or other device) does not have
 21 camera capability, an audio-only option is available. Video appearance at the IDC,
 22 however, is encouraged. In-person attendance at the IDC is permissible only if all
 23 counsel are appearing in person. The Court will provide a link to join the remote
 24 conference at the appointed time. Please provide Department S-26's Judicial Assistant

1 ((909) 521-3519) or Court Attendant ((909) 708-8866) with an e-mail address. No
2 briefing is allowed for the IDC, but counsel (either jointly or separately) should lodge
3 (not file) a one page statement of the issues in dispute in Department S-26 no later than
4 the day before the IDC.

5
6
7 Dated: 6/23, 2022.

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11 _____
12 David Cohn,
13 Judge of the Superior Court
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [California Consumer Claims 'Free' SolarEdge Monitoring System Came with Added Labor Costs](#)
