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Plaintiffs STEVE R. ROJAS and ANDREA N.
ROJAS, on behalf of themselves and all others
similarly situated

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEVE R. ROJAS and ANDREA N.
ROJAS, on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

BOSCH SOLAR ENERGY
CORPORATION; and DOES 1-20,
inclusive,

Defendants.

Case No. 5:18-cv-5841-BLF

**THIRD AMENDED COMPLAINT FOR
DAMAGES**

DEMAND FOR JURY TRIAL

CLASS ACTION

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1 Plaintiffs STEVE R. ROJAS and ANDREA N. ROJAS (“Plaintiffs” or “Rojas”), on
2 behalf of themselves and all others similarly situated, allege as follows:

3 **I. INTRODUCTION**

4 1. This case arises out of the manufacture and sale of Bosch Solar photovoltaic
5 modules. All of the solar panels that are the subject of this lawsuit were either manufactured by
6 Bosch Solar or were manufactured at the request of Bosch Solar by third-party companies and
7 sold under the Bosch Solar name by Defendant Bosch Solar Energy Corporation (“Bosch Solar”).

8 2. The Bosch Solar panels that are the subject of this lawsuit are the Bosch Solar
9 modules c-Si M 60 NA30119 (also referred to as “NA30119 Panels”).

10 3. All of the Bosch Solar NA30119 Panels were constructed using the same materials
11 and manufactured to the same specifications. The defects in the panels are universal and common
12 to all Class Member panels.

13 4. There is no way to repair the defects in the Bosch Solar panels and restore their
14 promised and warranted functionality. The only means of addressing the defects in the Bosch
15 Solar panels is to remove and replace them with other panels.

16 5. Bosch Solar no longer manufactures solar panels and has exited the solar business.
17 Bosch Solar maintains no inventory of comparable non defective panels.

18 **A. Bosch Solar c-Si M 60 NA30119 Modules**

19 6. The total number of Bosch Solar c-Si M 60 NA30119 modules involved in this
20 case is approximately 44,500. Of these 44,500 Bosch Solar c-Si M 60 NA30119 Panels, 28,000
21 are roof-mounted. The remainder of approximately 16,500 Bosch Solar c-Si M 60 NA30119
22 Panels are ground-mounted.

23 7. The Bosch Solar c-Si M 60 NA30119 Panels suffer from two fatal defects. The
24 first defect relates to defective solder joints. The second defect relates to a defective backsheet.

25 8. Both defects reduce power output and create unreasonable fire and safety risks.

26 9. On April 13, 2017, twenty-eight thousand (28,000) *roof-mounted* c-Si M 60
27 NA30119 Panels became the subject of a voluntary recall between Bosch Solar and the United
28 States Consumer Product Safety Commission (“CPSC”) as discussed more fully herein below.

1 These panels are referred to as the “Recalled Panels.” For purposes of the recall, Bosch Solar
2 arbitrarily distinguished between roof-mounted and ground-mounted panels. Bosch Solar omitted
3 approximately 16,500 ground-mounted c-Si M 60 NA30119 modules from the recall.

4 10. Whether roof-mounted or ground-mounted, all c-Si M 60 NA30119 Panels are
5 defective and all 44,500 panels pose a serious fire and safety risk to all consumer and commercial
6 end users of these panels because there are defects in solder joints that generate excessive heat.
7 This excessive heat poses a known safety risk, admitted by Bosch, in that the heat can ignite
8 roofing materials, or any cellulose materials or debris below or near ground-mounted
9 installations.

10 11. While Bosch Solar concedes that the roof-mounted panels can ignite roofing
11 materials and potentially injure inhabitants, it incorrectly contends that overheating solder joints
12 do not pose a safety risk in ground-mounted installations. In seeking CPSC’s approval of the
13 exclusion of ground-mounted panels from the recall, Bosch’s representative stated that **“even if**
14 **grass or some other material on the ground were to ignite, the damage would be solely to**
15 **property and not persons, who could run or walk away from any fire...”**

16 12. The recent Carr, Paradise and Tubbs wildfires near Redding, in Paradise,
17 California, and in Sonoma County, respectively, reveal the devastation that can result from
18 wildfires caused by the proximity of electrical equipment to dry grass and brush. Each of these
19 fires are alleged to have been caused, in part, by sparks from poorly maintained electrical
20 equipment and wires. The potential of the defective ground-mounted panels to ignite surrounding
21 grass or brush due to the generation of excessive heat poses a serious risk of a similar costly and
22 deadly chain of events.

23 13. The Carr Fire resulted in \$1.5 billion of insurance losses and \$158.7 million
24 dollars of suppression costs. A total of 1,079 residences, 22 commercial structures and 503
25 outbuildings were completely destroyed. Many more buildings were damaged. Three firefighters
26 and five civilians were killed.

27 14. The Paradise Fire, a/k/a the Camp Fire, was the costliest global disaster for 2018,
28 according to the Los Angeles Times. Total damages were an estimated 16.5 billion

1 dollars. Eight-five (85) civilians died in the fire. A total of 18,804 structures were completely
2 destroyed and 564 structures were damaged.

3 15. The 2017 “Tubbs Fire” in Sonoma County was caused by a private electrical
4 system “adjacent” to a residence, according to the official CalFire investigation. The Tubbs Fire
5 resulted in \$1.2 billion of damage in the City of Santa Rosa alone, as well as \$100 million of
6 suppression costs. Twenty-two (22) people are believed to have died as a result of the Tubbs
7 Fire.

8 16. As more fully described hereinafter, although Bosch Solar did implement a recall
9 notice plan, which Bosch Solar convinced the CPSC to accept, the plan itself was a sham in that it
10 failed to notify the vast majority of the end users of the 28,000 roof-mounted Recalled Panels.

11 17. Bosch Solar represented to the CPSC that the consumers of the Recalled Panels
12 could be notified *directly*; but in fact, Bosch Solar did not do so. As a result, the majority of the
13 Recalled Panels remain installed and the safety risks caused by the defects remain unabated.

14 18. Plaintiffs seek recovery on behalf of themselves and all owners and end-users of
15 all 44,500 c-Si M 60 NA30119 Panels, for breach of the warranty and violations of the Magnuson
16 Moss Warranty Act. Plaintiffs also seek recovery and injunctive relief for violation of consumer
17 protection statutes for unfair, unlawful, deceptive and fraudulent business practices for a
18 California class only.

19 **B. Backsheet Delamination Defect**

20 19. In addition to the defective solder joints that led to Bosch Solar initiating the
21 voluntary recall with the CPSC, all c-Si M 60 NA30119 Panels suffer from an additional
22 undisclosed defect. As more fully discussed below, the Bosch Solar modules have a defective
23 backsheet. The backsheet is a plastic sheet that is necessary to encapsulate and protect the
24 module from moisture penetration. The backsheets installed on all Bosch Solar c-Si M 60
25 NA30119 Panels are defective in that they have delaminated, cracked and degraded.

26 20. Similar to the defective solder joints precipitating the recall, the cracking and
27 failing backsheets are not repairable, and the panels must be removed and replaced.

28 Both the solder defect and the backsheet defect have resulted in a breach of the Bosch Solar

Product and Performance Warranty, and pose fire and safety risks to the end-user.

C. **Bosch Solar Panels With the “Standard Test Conditions” Requirement to Prove a Warranty Claim**

21. The second category of relief for which Plaintiffs seek recovery relates to an unconscionable and fraudulent provision universally included as part of the “Warranty Claim Verification and Procedure” in all Bosch Solar express warranties for all solar panels manufactured and sold under the name Bosch. These solar panels include, but are not limited to all Bosch Solar Crystalline Series Modules listed as part of the Warranty Appendix to the Bosch Solar Limited Warranty for photovoltaic modules and are as follows:

“Warranty Appendix: List of Covered Bosch Solar Crystalline Series Modules

c-Si M 60 -16

c-Si M 60 NA30117

c-Si M 60 NA42117

c-Si M 60 NA44117

c-Si M 60 NA30119

c-Si P 72 NA21126”

A copy of the Bosch Solar Limited Warranty is attached hereto and marked **Exhibit A**. The Warranty is also referred to as the Bosch Solar “Express Warranty.” The dates and volume of production of these panels are unknown and will be established through discovery.

22. As more fully discussed herein below, Bosch Solar seeks to enforce an unconscionable warranty provision that requires that all end-users who submit a warranty claim must independently prove, at the end user’s cost, that “the performance of the Module no longer meets the minimum performance warranted by Bosch.” The Bosch Solar Express Warranty requires that all modules that are the subject of a performance warranty claim shall be measured under “standard test conditions.” Unbeknownst to end users of Bosch Solar panels, the “standard test conditions,” to which Bosch Solar requires adherence to assert a warranty claim, are enormously costly and technically complex and must be performed in the controlled environment of a solar laboratory utilizing sophisticated equipment and machinery. The cost of such testing

1 likely exceeds the entire cost of the solar array itself, thus creating and unconscionable barrier to
2 legitimate warranty claims.

3 23. This misleading and underhanded Standard Test Conditions (“STC”) warranty
4 provision is hidden and intentionally deceptive. It shifts the entire burden of proving a defect or
5 performance claim, and the cost thereof, to the consumer.

6 24. By analogy to the world of automobile repair, where a car owner is to assert a
7 warranty claim, rather than the manufacturer inspecting and diagnosing the problem, the car
8 owner would have to hire an expert to perform the tests and secure the equipment to diagnose the
9 vehicle pursuant to the manufacturer’s specifications. The costs of performing the tests would
10 likely exceed the value of the car, for which the consumer is not reimbursed even if the consumer
11 proves the defect. Further, if the manufacturer chooses to perform separate diagnostic tests, then
12 the manufacturer would be entitled to reimbursement of the entire cost of conducting such tests
13 from the party submitting the warranty claim.

14 25. The Paragraph 24 analogy fairly describes the hidden and deliberately deceptive
15 impact of the “Bosch Solar Warranty Claim Procedure.” The Bosch Solar warranty suppression
16 and cost shifting scheme was fraudulently concealed from the consumers by Bosch Solar and is
17 unconscionable and unenforceable.

18 26. The STC warranty provision causes the limited remedy to fail of its essential
19 purpose because a claimant cannot perfect the STC requirements and therefore be entitled to the
20 remedy of panel replacement or refund. Plaintiffs are entitled to all consequential damages,
21 including but not limited to, labor to remove and replace the panels, the cost of new panels and
22 the difference of value between the power production promised and the power actually received.

23 27. As to the c-Si M 60 NA30119 class, Plaintiffs seek all consequential damages
24 including the cost of new panels, labor to install and value of lost power.

25 28. As to the end users of all other of Bosch Solar Crystalline panels as set forth in
26 paragraphs 2 and 21 herein, Plaintiffs seek recovery for injunctive relief pursuant to consumer
27 protection statutes to enjoin Bosch Solar from enforcing the warranty claim “standard test
28 conditions” requirement. Plaintiffs further seek injunctive relief to compel Bosch, and not the

warranty claimant, to pay for and perform for inspection and testing of all panels subject to warranty claims.

II. PARTIES AND VENUE

29. Defendant Bosch Solar is a corporation organized and existing under the laws of the State of Michigan since December 2010, which maintains executive offices at 38000 Hills Tech Drive, Farmington, Michigan. Bosch Solar has been registered to transact business in California since January 2011, with a principal place of business in California located at 4009 Miranda Avenue, Palo Alto, California 94304.

30. Bosch Solar was incorporated on December 29, 2010, following the conversion on December 23, 2010, of Bosch Solar Energy Corp., a Delaware corporation that maintained a principal place of business in California at 4009 Miranda Avenue in Palo Alto, into Bosch Solar Energy Corp., the existing Michigan corporation.

31. Although Bosch Solar has officially reported a business address at various Michigan locations since its incorporation, Information Updates filed annually with the State of Michigan for the years during which the Bosch Solar panel warranties were issued list the business address of all of Bosch's officers and directors as 2988 Campus Drive, San Mateo, California, demonstrating that the operational and *de facto* headquarters of Bosch Solar Energy Corporation were always located in California during the period relevant to the complaint.

32. Plaintiffs Steve R. Rojas and Andrea N. Rojas reside at 29294 Juniper Avenue, Moreno Valley, California. On or about October 28, 2012, Plaintiffs entered into a Prepaid Solar Power Agreement with Kilowatt Systems, LLC ("Kilowatt") to acquire and use forty-two (42) Bosch Solar c-Si M 60 NA30119 Panels at a cost of Twenty-Five Thousand Three Hundred Thirty-Nine and 22/Dollars (\$25,339.22). Kilowatt was the initial purchaser of these 42 panels and initially held title to the Panels. The Bosch Solar warranties alleged herein were part of the "basis of the bargain" of the purchase of the 42 Panels by Kilowatt, and Kilowatt also relied upon the existence of the warranty in entering the transaction, as otherwise, Kilowatt would not have entered into the Prepaid Solar Power Agreement with Plaintiffs. Plaintiffs have always been intended beneficiaries of the warranty provided in conjunction with the purchase of the Panels by

1 Kilowatt, as Plaintiffs have been the “end-users” of the panels as defined by the Bosch Solar
 2 Express Warranty. Subsequently, Plaintiffs obtained title for these panels from Kilowatt and
 3 became the end users of the forty-two (42) Bosch Solar panels installed on their property. As
 4 such, they also qualify as intended beneficiaries by virtue of the status as subsequent owners. See
 5 paragraphs 209 to 214 for further explanation.

6 33. Plaintiffs are unaware of the true names and capacities of the Defendants sued
 7 herein as DOES 1 through 20, and therefore sue these Defendants by such fictitious names.
 8 Plaintiffs will amend this complaint to allege their true names and capacities when they are
 9 ascertained. Plaintiffs are informed and believe that each of the fictitiously named Defendants is
 10 responsible in some manner for the occurrences herein alleged and that the damages suffered by
 11 Plaintiffs and the Class, were proximately caused by their conduct.

12 34. Plaintiffs are informed and believe that all Defendants, including the fictitious
 13 DOE Defendants 1 through 20, were at all relevant times acting as actual or ostensible agents,
 14 conspirators, partners, joint venturers or employees of all other Defendants and that all acts
 15 alleged herein occurred within the course and scope of that agency, employment, partnership, or
 16 enterprise, and with the express or implied permission, knowledge, consent, authorization and
 17 ratification of their Co-Defendants.

18 35. This Court has jurisdiction over this action pursuant to the Class Action Fairness
 19 Act, 28 U.S.C. § 1332(d), because this is a class action in which (1) there are at least 100 class
 20 members in the proposed class; (2) the combined claims of the proposed class members exceed
 21 Five Million and 00/100 Dollars (\$5,000,000.00) exclusive of interest and costs; and (3) there is
 22 minimal diversity as Plaintiffs and certain members of the proposed class are citizens of the State
 23 of California and Defendant is a citizen of Michigan.

24 36. This Court has personal jurisdiction over Bosch Solar pursuant to 28 U.S.C. §
 25 1391(a)(1) because its principal place of business in California is located in Palo Alto. Bosch
 26 Solar has purposefully availed itself of the privilege of conducting business activities in the State
 27 of California by selling and warranting solar panels and has maintained systematic and
 28 continuous business contacts within the State of California, thus rendering the exercise of

jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

37. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)(1), (c)(2) & (d) because Defendant's principal place of business is located in Palo Alto, California.

III. FACTUAL ALLEGATIONS

A. The Benefit of the Bargain of the Bosch Solar Warranty

38. Purchasing a Bosch Solar panel system represents a multi-decade investment. The decision to install a Bosch Solar system was a major financial commitment and investment for Plaintiffs and all class members.

39. Plaintiffs, and all class members, made the commitment to invest in a Bosch Solar system based upon three fundamental warranty promises from Bosch: 1) that the panels would be free from defects in material and workmanship; 2) that the panels would perform for 20-25 years; and 3) that the panels would be safe. All three of these promises have been broken.

40. Plaintiffs Steve and Andrea Rojas paid Twenty-Five Thousand Three Hundred Thirty-Nine and 22/Dollars (\$25,339.22) for their Bosh solar system. The purchase amount was one of the most significant and largest financial commitments made by Plaintiffs in the course of their thirty-six year marriage.

41. Approaching the age of retirement, Plaintiffs, like all class members, were attempting to reduce their future electric bills as part of their financial planning.

42. Investment in a solar power system required that the Plaintiffs pay "upfront" for electricity that the Bosch Solar promised would be generated for the next 25 years.

43. No one would pay for electricity in advance were it not for the fact that the warranty period substantially exceeds the time it would take to receive the return on their investment. Generally, it takes between 5 and 10 years for the upfront investment to be returned through savings on electric bills.

44. The return on that investment is directly related to the amount of electricity the Bosch Solar energy system generates year after year. If the panels are defective or prematurely fail, the solar system degrades and the value from the solar system is lost.

45. Kilowatt , and other companies that purchase the Panels and enter into Prepaid

Power Purchase agreements with end-users also understand the warranties alleged herein to form part of the basis of the bargain, and rely upon the existence of the warranty, in entering such contracts with end-users, so that the continued supply of power, as provided by the Prepaid Power Purchase agreement, can be maintained, and so that defective or underperforming panels may be replaced. Indeed, the agreement between Kilowatt and Sullivan defines the “Consumer” as the “homeowner...who owns (or own) a Host Site.”

46. Moreover, Bosch Solar intended the warranties to be part of the basis of the bargain. The warranties themselves have a listing of the model numbers to which they apply, including the model number used and now owned by Plaintiffs. Moreover, Bosch Solar manifested its understanding and intent that the warranties were part of the basis of the bargain, by responding to Plaintiffs’ warranty claim, including the written agreement (never performed by Bosch Solar or Baker to replace the plaintiffs Panels, even though they were not part of the recall.

IV. THE WARRANTY

47. The Bosch Solar Limited Warranty for photovoltaic modules provides, in part, as follows:

“Limited Warranty for photovoltaic modules

Bosch Solar Energy Corp. provides a product warranty and a performance warranty for its photovoltaic modules (hereinafter “Module” or “Modules”) listed is [sic] the Appendix. The product warranty (the “Product Warranty”) covers the material and workmanship of the Modules (see section A below). The performance warranty (the “Performance Warranty”) covers loss of performance (degradation) and minimum output of the Modules (see section B below).

A: Product Warranty

Bosch Solar Energy Corp. warrants to the Consumer (defined below) that the Module is free of defects in material and workmanship for a period of ten (10) years from the date of delivery, subject to the Warranty Conditions. The Consumer is the final customer or end-user that properly places the Modules into operation for the first time. The date of delivery as used in this Limited Warranty shall be the earlier of (i) the date of installation by the Consumer, or (ii) ninety (90) days after delivery of the Module by Bosch Solar Energy Corp. to the Consumer.

B: Performance Warranty

Bosch Solar Energy Corp. warrants to the Consumer that the Module will:

- a) within a period of ten years from the date of delivery provide at least 90%; and
- b) within a period of 25 years from the date of delivery provide at least 80%

of the minimum performance set forth in the data sheet (defined as the lower sorting limit of the respective module power class less the power measurement tolerance).

C: Warranty Conditions**1. General**

- 1.1 These Warranties are granted to the Consumer or shall transfer from the Consumer to subsequent buyers / end users for the remainder of the warranty period, provided the subsequent buyers / end users can show that the Modules have not been modified or relocated from their originally installed location.

2. Disclaimers/Liability Limitations

- 2.3 These Warranties are exclusive and in lieu of all other express and implied Warranties whatsoever, including but not limited to the implied Warranties of merchantability and fitness for particular purpose. The liability of Bosch Solar Energy Corp. under these Warranties shall not exceed the purchase price paid by the Consumer for the Module(s), and under no circumstances shall Bosch Solar Energy Corp. or any of its affiliates, be liable to the Consumer or any other third party for any consequential, incidental, indirect, commercial (loss of use, revenue, profits, or down time) or punitive damages whatsoever.

- 2.4 The sole obligation of Bosch Solar Energy Corp. under these warranties shall be, at its sole discretion, to (i) replace the Module with a functional module of the same type, (ii) remedy the defects, or (iii) refund the unamortized portion of the purchase price of the Module. In the event that the type of Module is no longer available at the time of the warranty claim, Bosch Solar Energy Corp. may replace such Module with another type of solar Module (different size, shape, color and/or capacity).

1 **3. Warranty Claim Verification and Procedure**

2 3.2 All warranty claims must be accompanied by (i) the original bill of
3 sale for the Module, and (ii) proof that (a) there is a defect in the
4 materials and/or workmanship of the Module, or (b) the
5 performance of the Module no longer meets the minimum
6 performance warranted by Bosch Solar Energy Corp.

7 3.3 Bosch Solar Energy Corp. or its authorized representative(s)
8 reserve the right to verify the claim that the performance of the
9 Module no longer meets the minimum performance warranted
10 under the Performance Warranty.

11 Module Performance shall be measured by Bosch Solar Energy
12 Corp. under standard test conditions (25° C cell temperature,
13 irradiation 1000 W/m² and spectrum AM 1.5). Output will be
14 measured in each case at the ends of the pre-assembled connector
15 on the rear of the module. The Consumer is responsible for
16 maintaining the standard test conditions while producing evidence
17 that the performance has fallen below the guaranteed minimum
18 performance.

19 3.4 Claims submitted under these warranties must be submitted within
20 three (3) months of the occurrence of an event placing the
21 Consumer on notice that a claim under one of the warranties has or
22 may have arisen. The burden of showing compliance with this
23 time limitation lies with the Consumer. Claims not submitted
24 within this period will not be considered.

25 3.5 All disputes arising from this warranty shall be governed by the
26 laws of the State of Michigan and conflict of law rules shall not
27 apply.”

28 48. In order to entice consumers and end-users to purchase or use the Bosch Solar
system, Bosch Solar provided a product warranty and a performance warranty. Under the product
warranty, Bosch Solar Energy Corp. warrants to the consumer or subsequent owner and end-user
that the panels would be “free from defects in materials and workmanship” as part of its 10 year
“Product Warranty.”

 49. Bosch Solar also promised as part of its “performance warranty” that the panels
would not lose more than 10% to 20% of their power output capacity over the first 25 years.
Bosch Solar guaranteed that their panels would produce electricity at 80% - 90% of their power
output rating for 25 years. In the absence of the warranties, Plaintiffs, and all class members

1 would not have purchased the Bosch Solar panels.

2 **V. THE RECALLED MODULES**

3 **A. The Bosch Solar Recall and Product Safety Recall Notice**

4 50. On April 3, 2017, in conjunction with the CPSC, Bosch Solar Services recalled
5 approximately 28,000 solar panels “due to fire hazard.”

6 51. **Total Number of Products Involved.** According to information obtained by
7 Plaintiffs’ counsel through the Freedom of Information Act (“FOIA”) approximately 44,500
8 Bosch Solar modules were manufactured with the defect, 28,000 of which have been recalled are
9 the subject of this lawsuit.

10 52. **Dates of Manufacture and Sale.** The Bosch Solar c-Si M 60 NA30119 Panels
11 were manufactured between September 15, 2011 and March 31, 2012 and were sold in the United
12 States beginning October 2011 and continuing through May 2013 and possibly beyond, according
13 to proof.

14 53. The Bosch Solar Product Safety Recall Notice reads as follows:

15 **“Why is Bosch Solar Services replacing the modules?**

16 Bosch Solar observed that a small number of c-Si M 60 NA30119
17 modules exhibited what appeared to be heat marks near some solder
18 joints. Bosch Solar then conducted a detailed technical review to
19 determine the cause of the marks. Through this analysis, Bosch Solar
20 determined that where electrical contacts to the solder had degraded,
21 the resulting contact resistance could result in heat. If the heat were
22 great enough, and if the mounting structure or embedding material
23 were flammable, Bosch Solar determined that it was theoretically
24 possible for a fire to result. Although no such fires have been
25 reported, Bosch Solar commenced this recall to ensure the quality of
26 its products and the safety of its customers.”

27 54. According to the CPSC “Recall Handbook,” the objectives of a recall are:

28 a. to locate all defective products as quickly as possible;

- b. to remove defective products from the distribution chain and from the possession of consumers; and
- c. to communicate accurate and understandable information in a timely manner to the public about the product defect, the hazard, and the corrective action. Companies should design all informational material to motivate retailers and media to get the word out and consumers to act on the recall.” (Recall Handbook published by the Consumer Product Safety Commission (March 2012)).

55. The Recall Handbook further states:

“A company that undertakes a recall should develop a comprehensive plan that reaches throughout the entire distribution chain to consumers who have the product. The company must design each communication to reach affected consumers, motivate people to respond to the recall and take the action requested by the company.” (Recall Handbook published by the Consumer Product Safety Commission (March 2012)).

56. **Failed Recall Notice Plan.** The recall notice plan implemented by Bosch Solar accomplished no direct notice to the end-user. The notice plan involved little more than Bosch Solar sending a letter to its forty-two (42) distributors requesting their distributors to contact installers who sold Bosch Solar panels to end-users, and then, provide Bosch Solar with the names and contact information of persons to whom they had sold the Bosch Solar NA30119 Panels.

57. This attenuated notice plan was therefore fully contingent on the willingness of distributors to expend their own time and resources to contact the contractors to whom they sold the panels. The cooperation of the distributors, even for the limited task of sending a letter to their customers, who were the contractor/installers and not the end-users, was entirely voluntary. Nothing under the rules of the CPSC mandated the cooperation of the distributors.

1 58. Making it even less likely that the distributors would voluntarily implement the
2 Bosch Solar notice plan was the fact that Bosch Solar refused to pay the distributors or installers
3 for the considerable time and expense they would be required to expend in order to send letters to
4 their installer customers.

5 59. Nowhere does the notice program indicate that Bosch Solar had access to the
6 addresses of any end-users. Yet Bosch Solar successfully argued to the CPSC that "...because
7 *these consumers can be identified, direct communications with the consumers makes press*
8 *releases, point of sale posters, and other indirect means of communication unnecessary.*"
9 (November 3, 2016 letter from Bosch Solar counsel Creighton R. Magid to Sheela Kadambi,
10 Compliance Officer, Defect Investigations Division, Office of Compliance and Field Operations,
11 U.S. Consumer Product Safety Commission.)

12 60. In fact, consumers could not be identified by Bosch Solar without a more
13 extensive and expensive notice program. Bosch Solar did not achieve "direct communication"
14 with its end-users.

15 61. According to recall reports submitted by Bosch Solar to the CPSC regarding the
16 impact of the recall notice plan, a sum total of reported responses to the Bosch Solar noticed
17 program consisted of 13 phone calls and 13 emails and no response letters. It is unknown what
18 entities generated these responses.

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62. The following Corrective Action Plan Summary, prepared by the CPSC indicates that Bosch Solar “notified their dealers about the recall,” not consumers and end-users.

Corrective Action Plan Summary

DATE	FIRM AND PRODUCT	ALLEGED HAZARD	CORRECTION NARRATIVE
May 17, 2017	Bosch Solar Energy Corporation 2988 Campus Drive Suite 100 San Mateo, CA 94403 Bosch Solar Roof-Mounted Solar Panels, model number: c-Si M 60 NA30119	Fire Hazard	The firm notified their dealers about the recall. They will offer all their consumers a free replacement. They conducted a Joint PR with the Commission.

63. The Bosch Solar CPSC recall notice program was ineffectual and inconsistent with commonly accepted practices for achieving direct notice to consumers.

B. All Bosch Solar c-Si M 60 NA30119 Panels Are Defective, Dangerous and Must Be Replaced

64. The fact that Bosch Solar entered into a voluntary recall program with the CPSC does not alter the admission by Bosch Solar that the panels are defective and present a serious fire and safety risk to end-users.

65. Nor does the recall excuse Bosch Solar from performing its obligations pursuant to the Express Warranty which provides “...that the modules are free from defects in materials and workmanship for a period of ten (10) years from the date of delivery...” The recall is an admission by Bosch Solar that the c-Si M 60 NA30119 Panels are defective and that Bosch Solar has breached the Express Warranty.

66. All Bosch Solar c-Si M 60 NA30119 Panels, whether roof-mounted or ground-mounted must be removed and replaced pursuant to the terms and conditions of the Bosch Solar Express Warranty.

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1 C. **Bosch's Refusal To Pay The Reasonable Expenses of Inspecting Recalled,**
2 **Defective and Underperforming Panels**

3 67. Bosch Solar has also failed to design or implement an adequate replacement
4 protocol, in that, in the limited number of instances where the Recalled Panels have been located
5 and identified, Bosch Solar fails to replace the panels or there are substantial and unjustified
6 delays in doing so. This occurs because Bosch Solar failed to hire a competent administrator to
7 implement the recall or to secure an adequate number of solar contractors to actually remove and
8 replace the Bosch Solar panels.

9 68. In addition, Bosch Solar refuses to hire and pay solar contractors to ascend roofs to
10 confirm the presence of the Recalled Panels. Bosch Solar also refuses to pay end-users for the
11 inspection related costs to determine if a person has the Recalled Panels or other Bosch Solar
12 Crystalline series modules that are underperforming or defective. This imposes an unreasonable
13 burden of identifying the panels upon the end-user as a condition for securing the benefits of the
14 warranty or the recall and forces the end-user to incur substantial expense that should be paid by
15 Bosch.

16 69. This is true because it is unsafe for an end user/customer to climb a ladder, often
17 15 to 25 feet high, to photograph and identify panels.

18 70. In addition, the module number can only be found on a label located on the back
19 side of the panel. This requires that each and every panel be removed from its brackets on the
20 roof in order to see the identifying label. It also requires the cable which conducts high powered
21 and dangerous electricity to be detached because the panel cannot otherwise be turned over to see
22 the label.

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The photograph below depicts a label on the back side of a panel from the Rojas solar array.



Label on the back side of a panel reflecting the Bosch Solar serial number identified as “c-Si M 60 NA30119”

71. Both the Bosch Solar recall notice plan and the warranty procedure not only put the burden and risk of identifying the Recalled Panels on the homeowner, it instructs or encourages the homeowner to summon the installers of the Bosch Solar panels, who may or may not still be in business, to perform the costly and time consuming task of identifying the panels. Bosch Solar will not pay installers for the expensive task of identifying its panels.

72. The same is true for panels subject to a warranty claim. Bosch Solar will not pay for a qualified solar contractor to conduct an inspection made necessary by the defective and unsafe panels. In this way, Bosch Solar unfairly, unlawfully and fraudulently shifts the burden of warranty inspections to the consumers.

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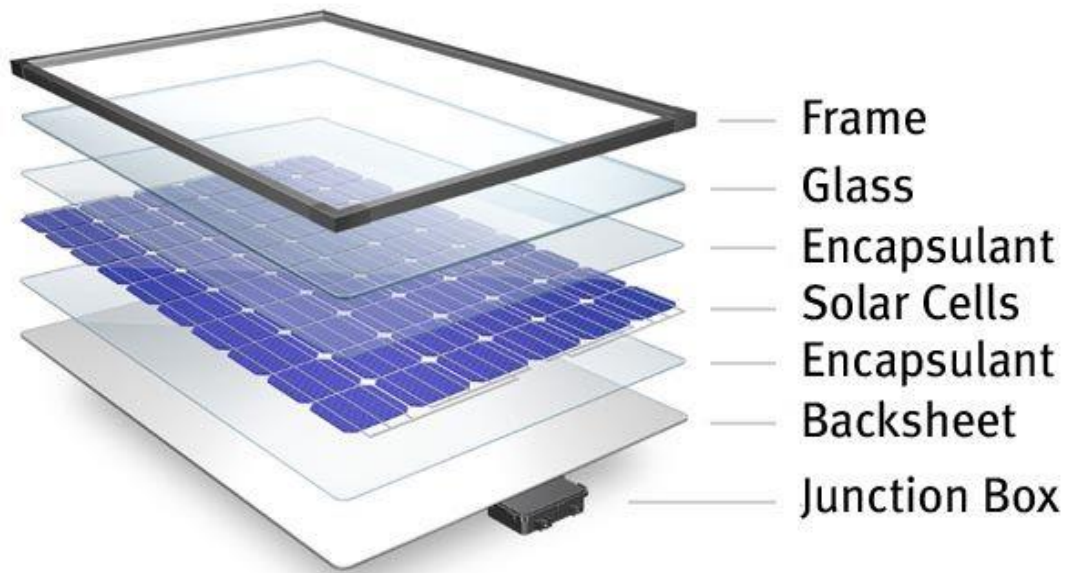
VI. THE BOSCH SOLAR WARRANTY DEPRIVED PLAINTIFFS AND THE CLASS OF THE BENEFIT OF THE BARGAIN

A. The Backsheet Delamination Defect

73. The second Bosch Solar panel defect, common to all Bosch Solar Panels, purchased by Plaintiffs and the Class, is known as delamination.

74. A solar panel consists of several layers of material that is vacuum sealed in order to prevent water and air from coming in contact with the cells which generate electricity, a condition essential to the successful operation of the panel.

75. The layers of the Bosch Solar panels are depicted below:



76. The Bosch Solar panels consist of five layers: glass, the plastic coating encapsulant (commonly known as EVA), solar cells, backsheet, and the back EVA plastic coating encapsulant.

77. Delamination is the detachment of the laminated components of a solar panel. Delamination occurs when the bond between the plastics on the back side of the panel separate. In the case of the Bosch Solar c-Si M 60 NA30119 Panels, the delamination causes the backsheet to flex and crack.

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78. The photographs below depict panels from the Rojas solar array.

Delaminated and Cracked Backsheet
in Bosch Solar c-Si M 60 NA30119 Module at the Rojas Property



Cracked Backsheet Running the Length of the
Bosch Solar c-Si M 60 NA30119 Module at the Rojas Property



BOSCH

Bosch Solar Module c-Si M60 NA30119

Power
Power sorting: 245 WP
Maximum system voltage -0/+4.99 WP
(related to standard test conditions (STC)) 600 V
1000W/m², AM 1.5, 25 °C, ±3% measuring tolerance

Structural Load 50lb/ft²

Series Fuse 17 A

Manufactured for Bosch Solar Energy AG

WARNING: Risk of electrical shock! Modules produce electricity when exposed to sunlight! Before installing, operating and servicing this unit, please read the manual and operating manual. DC ACFT system is designed for maximum safety. The system is under load during transport. Failure to comply with these instructions will void the warranty. CHARGE: No Use Removable Parts, except: Modules, Mounting, etc. serviced by trained personnel. For field connections, see 1.1. Safety notes (UL) provided with the system.

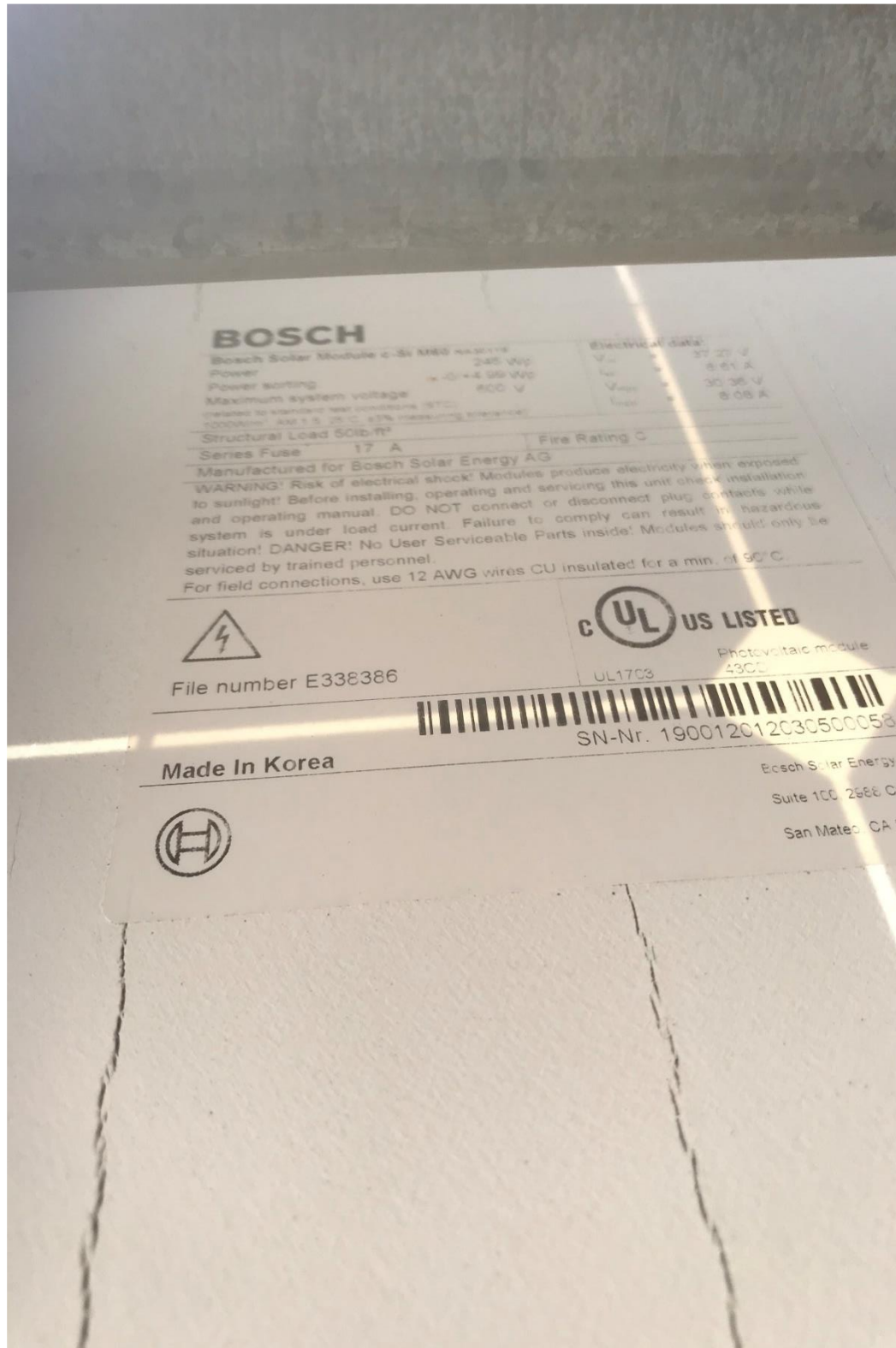
Fire Rating C

Electrical

V_{oc} =
I_{sc} =
V_{mp} =
I_{mp} =

UL US LISTED

Cracked Backsheet Running the Length of the
Bosch Solar c-Si M 60 NA30119 Module at the Rojas Property



1 79. Delamination destroys the safe and effective functionality of the solar panel
 2 because it allows air and moisture to creep inside of the panel in between the layers of the
 3 components of the solar panels. It is undisputed among the solar industry experts that solar
 4 panels must remain hermetically sealed to properly function. The symptoms of delamination in
 5 the Bosch Solar panels are bubbles and cracks on the backsheet.

6 80. Ultimately, the delamination is due to weakening chemical adhesion of the layers
 7 of the panel which degrade the capacity of the cell to produce electricity.

8 81. Delamination is obvious to solar panel experts but Plaintiffs and average
 9 consumers are not aware how to identify delamination or of its significance.

10 82. Delamination is a condition that is continuous and progressive. Over time,
 11 delamination and the associated bubbling and cracking of the backsheet become larger and more
 12 propagated on the Bosch Solar panels. The delamination cannot be arrested or repaired. The
 13 power production of the Bosch Solar panel will decrease in direct correlation to the increasing
 14 delamination. This condition will inevitably cause corrosion, degradation of power, safety risks
 15 and imminent failure. The consequences of delamination are undisputed among experts in the
 16 solar industry.

17 83. The delamination failures are systemic throughout Plaintiffs' solar system and are
 18 caused by a common and universal defect in the Bosch Solar panels. An inspection of Plaintiffs'
 19 property on Wednesday, December 19, 2018 revealed that approximately 30 of Plaintiffs' 42
 20 panels have experienced delamination and cracking in the backsheet.

21 84. All of the Bosch Solar NA30119 Panels have either experienced delamination
 22 failure or will experience delamination failure before the end of their useful life. The
 23 delamination has caused or will cause the panels to perform under the minimum requirements
 24 within their useful and warranted life.

25 **B. Safety Risk and Fire Hazard of Delamination**

26 85. Delamination causes serious safety and fire hazards. Delamination causes
 27 moisture, water and air to come in contact with the wires that conduct electricity. When moisture
 28 enters the panel from the edges of the module, it causes electrical hazards. Delamination can

1 cause the electric current to leak to the frame.

2 86. Leaking electric current to the frame can be significant enough to “energize” the
3 frame and cause it to conduct electricity. In this event, there is a shock hazard and imminent risk
4 of electrocution to anyone who comes in contact with the solar panel.

5 87. If the back side of the panel delaminates, bare wires conducting electricity are
6 exposed to the elements and are a dangerous safety risk. These panels must be inspected by
7 experts, not Class Members.

8 **C. Arc Fault Failure**

9 88. In addition, delamination can cause the electric current to “arc”. This condition is
10 known as an “arc fault failure”. Arc fault failures can generate temperatures in excess of 2000° -
11 3000°F.

12 89. An “arc fault” is a high power discharge of electricity between two or more
13 conductors. This discharge translates into heat and can trigger an electrical fire. A common
14 cause of arc faults includes faulty connections due to corrosion. Delamination is known to cause
15 corrosion in the electrical circuitry of solar panels. Corrosion causes gaps or breaks in the
16 electrical circuitry. Arc faults occur when the electrical current jumps the gap in the circuitry
17 conductors. Because of the delamination on Plaintiffs’ and Class Member’s panels, the
18 conductors have been corroded and damaged and create an imminent safety risk and fire hazard to
19 roofing materials on roof-mounted arrays.

20 90. Furthermore, because dry cellulose materials such as grass, leaves, weeds and
21 twigs are often in contact with or in close proximity with the surface of solar panels, this
22 inevitably and commonly creates a serious risk of fire and must be eliminated. This condition
23 also creates a serious safety risk to anyone near the panel. Bosch Solar has failed to warn end
24 users of the serious and dangerous risks.

25 **D. Failure To Adequately Test Before Sale**

26 91. This systemic delamination and poor solder joints are a result of, among other
27 things, Bosch’s failure to adequately test its solar panels for long-term performance.

28 92. Bosch Solar has universally represented and warranted that its panels will produce

1 a minimum of 80% of the maximum output power stated in its specification for 25 years.

2 93. This representation is without adequate technical support because it was never
3 based upon a testing sample that would justify and support its unfounded power output promises.
4 In the absence of that promise, Plaintiffs and the Class, would never have purchased the panels.

5 **VII. THE UNCONSCIOUSABILITY OF THE WARRANTY CLAIM VERIFICATION**
6 **AND PROCEDURE**

7 94. The Warranty Appendix consists of a list of covered Bosch Solar Crystalline
8 Series Modules Series Modules as set forth in paragraph 3.5 of the Warranty.

9 95. The Bosch Solar Warranty Claim Verification and Procedure which applies to all
10 modules listed in the Warranty Appendix is procedurally and substantively unconscionable.

11 96. The exclusions, and Warranty Claim Verification and Procedure in the Bosch
12 Solar warranty were not bargained. The Bosch Solar Express Warranty is a contract of adhesion.

13 97. The terms and conditions required by Bosch Solar to submit and perfect a claim
14 that the performance of the module no longer meets the minimum performance warranted by
15 Bosch Solar are oppressive.

16 98. The Warranty Claim Verification and Procedure is incomprehensible to any
17 consumer and requires the expertise of a solar engineer to understand and implement.

18 99. No part of the warranty explains what the consumer has to undertake in order to
19 submit a warranty claim that the module no longer meets the minimum performance.

20 100. Bosch Solar reserves the right to verify the claim that the performance of the
21 module no longer meets the minimum performance. In doing so Bosch Solar states the following:

22 “Bosch Solar Energy Corp. or is authorized representative(s) reserve the
23 right to verify the claim that the performance of the module no longer
24 meets the minimum performance warrantee under the performance
25 warranty.”

26 “Module performance shall be measured by Bosch Solar Energy Corp.
27 Under standard test conditions (25° C cell temperature, irradiation 1000
28 W/m² and spectrum AM 1.5). Output will be measured in each case at the
ends of the pre-assembled connector on the rear of the module.”

101. Initially, the above language states that if a consumer makes a claim that the performance of the module no longer meets the minimum performance warranty, Bosch Solar reserves the right to test the panels “under standard test conditions...” In other words, if a claim is made Bosch Solar may perform tests on the panels “under standard tests conditions.”

102. Then Bosch Solar employs language that reverses the burden of the cost and responsibility for performing the “standard test conditions” on the modules to the consumer.

103. The warranty states:

“The consumer is responsible for maintaining the standard test conditions while producing evidence that the performance has fallen below the guaranteed minimum performance.”

104. By this language, Bosch Solar is requiring the consumer, who makes a claim that the module no longer meets minimum performance, to test the modules to “standard test conditions.”

105. Nowhere in the Bosch Solar warranty does Bosch Solar explain how the “standard test conditions” are to be performed or what steps the consumer would have to undertake in order to test panels.

106. When the warranty refers to “standard test conditions” the only modifying language is as follows:

“(25C cell temperature, irradiation 1000 W/M² and spectrum AM 1.5).”

107. This language in the first instance is fundamentally ambiguous. In addition, the language is highly technical in nature and is incomprehensible to anyone other than a solar expert.

108. In fact, it is impossible for even an expert to maintain “standard test conditions” while testing the output performance of the modules, unless the modules are tested in a certified and accredited laboratory capable of performing the test in a controlled laboratory environment.

109. The consumer cannot perform the requirements of the “standard test conditions” unless the panels are: 1) removed from their property; 2) packaged to manufacturers specifications to avoid damage; 3) shipped to an accredited laboratory; 4) tested with the oversight of a solar engineer expert; 5) repackaged; and 6) shipped back to the end users property and reinstalled by qualified experts.

110. The Warranty is silent to the question of how and when Bosch Solar would test the panels should it exercise its “reserved” right to do so.

111. The “standard test conditions” can only be found in:

- 1) IEC 60904–1, photovoltaic devices – part 1: Measurement of photovoltaic current and voltage characteristics. IEC stands for International ElectroTechnical Commission, and
- 2) ASTM E927-10 Standard Specification for Solar Simulation for Photovoltaic Testing. The American Society for Testing and Materials (ASTM).

112. These standards articulate the guidelines for how to conduct performance tests to the “standard test conditions” required by the Warranty. These standards were not mentioned in the Warranty.

113. The standard test conditions are designed to test the performance of PV modules and specifies a cell temperature of 25° C and irradiance of 1000 W/M² with an air mass of 1.5 (AM1.5) spectrum. These correspond to the irradiance and spectrum of sunlight incident on a clear day upon a sun-facing 37°- tilted surface with the sun at an angle of 41.81° above the horizon.

114. This condition approximately represents solar noon near the spring and autumn equinox in the continental United States with the surface of the cell aimed directly at the sun. However, these conditions are rarely encountered in the real world. STC-based performance measurements are applied in what is commonly referred to as solar flash testing which manufacturers conduct in a laboratory controlled environment during the manufacturing process.

115. Under STC conditions, the cells are maintained at 77°F (25° C).

116. The normal operating cell temperature which is typically found in a solar array is 113°F (45° C). PV modules in the field operate over a wide range of temperatures, irradiance, and spectrum. It is therefore impossible to conduct testing as required by the Bosch Solar warranty at the site of the installation. All such testing, by definition, is required by the standard, and in turn the Bosch Solar Warranty, to be performed in the laboratory under a scientifically controlled environment and with highly sophisticated equipment.

117. Maintaining “standard test conditions” is impossible on the site of any solar array, and is only achievable in a laboratory environment.

118. To adhere to the “standard test conditions,” the consumer would be required to have the expertise of knowing what laboratory would have the necessary equipment in order to perform the tests.

119. The appliance used for measuring the output performance conformity of a solar PV module is called a flash test machine or solar simulator.

120. During a flash test the PV module is exposed to a short (1 MS 230 MS), bright (100 mW per sq. cm) flash of light from a xenon filled arc lamp. The output spectrum of this lamp is as close to the spectrum of the sun as possible. The output is collected by a computer and the data is compared to an exactly calibrated reference solar module.

121. The reference data is geared to the power output calibrated to standard solar irradiation. The results of the flash test are compared to the manufacturer’s specifications.

122. In short, in order to perform testing to these standard test conditions, a laboratory is required to have a solar simulator, a \$75,000.00 - \$100,000.00 price of equipment, a reference PV module and a computer for collecting data. Ultimately the test compares the data from the reference PV module to the data from the newly manufactured modules.

123. It is impossible for a consumer to understand the complexity of the standard test conditions which the Bosch Solar warranty mandates adherence to in order to verify a warranty claim that the performance of the module no longer met the minimum performance warranted by Bosch.

124. It is not feasible or reasonable for a consumer or solar contractor to acquire the equipment or knowledge to perform the task as required under the standard test conditions.

125. The total cost of testing Plaintiffs’ array can range from \$15,000.00 to \$30,000.00 and may exceed the cost of purchasing and installing the Bosch Solar array or a new array altogether.

126. No consumer could have understood that the Bosch Solar warranty, should they assert a claim for performance degradation, would require the consumer to spend an amount that

1 could approach the entire value of the array.

2 127. The Bosch Solar “standard testing conditions” are impossible to adhere to in order
3 to pursue a performance claim under the Bosch Solar warranty.

4 128. Bosch’s attempt to allocate the cost and burden of proving a warranty claim to the
5 end-user or final customer has no social or principled purpose other than to secretly shift the risk
6 of the failures of the panels back to the consumer, notwithstanding Bosch’s 25-year performance
7 warranty, the fundamental reason for purchasing the panels.

8 129. The impact of the “standard testing conditions” warranty provision is unreasonably
9 one sided.

10 130. The Bosch Solar warranty reallocates the risk of the bargain in an objectively
11 unreasonable and completely unexpected manner. This is true because the cost of asserting a
12 warranty claim exceeds the value of the remedy. Moreover, Bosch Solar has erected other
13 artificial barriers to impede the consumer’s ability to assert a claim, such as the 90-day notice
14 clause; Bosch Solar can assert that provision to avoid payment of a claim and most consumers
15 will be unaware that such a notice clause is enforceable only if Bosch Solar is prejudiced by the
16 late notice.

17 131. The hidden extraordinary costs of proving a warranty claim surprised and shocked
18 Plaintiffs in that their Bosch Solar system is only five years old and has failed. Plaintiffs have
19 made inquiries about the requirements of the Warranty Claim Procedure and the requirement of
20 testing their panels to “standard test conditions.” The cost of doing so is so expensive that it
21 would likely be more than the cost of replacing their entire Bosch Solar array. The remedies of
22 the Bosch Solar Limited Warranty fail of their essential purpose. The system also presents fire
23 and safety risks which Bosch Solar has publicly admitted. Plaintiffs should not be forced to run
24 for their lives—as Bosch Solar callously suggests—if their system catches fire.

25 132. When Plaintiffs’ Bosch Solar array was first installed, they had virtually no
26 electric bills. In the year 2017, their electric bill jumped to nearly \$3,000.00. The bill for 2017
27 was received in April, 2018 and Plaintiffs were therefore unaware of an increase in their 2017
28 electricity bill until April, 2018. Even with the increased bill Plaintiffs are unaware of the cause

1 of the decreased power production without the advice of an expert which Bosch Solar refuses to
 2 provide. See also paragraphs 203 to 208 regarding estoppel to assert statute of limitations. In
 3 2017 alone, Plaintiffs have lost approximately \$200.00-\$250.00 a month because of the breaches
 4 of warranty. Because the panels are defective, and since Bosch Solar has refused to repair or
 5 replace the panels, Plaintiffs have incurred higher electrical bills than they otherwise would have
 6 with functioning panels. Plaintiffs will continue to incur higher electrical bills unless and until
 7 Bosch Solar repairs or replaces the solar panels.

8 133. Plaintiffs relied on the representations of Sullivan regarding the reliability,
 9 durability and terms of the long-term warranty of Bosch Solar which was held out as a reputable
 10 and trustworthy company and would not have otherwise entered into the transaction.

11 134. The unconscionability of the warranty extends to all of the purported limitations
 12 and exclusions including, but not limited to 1) the “standard test conditions” provision; 2) the
 13 limitations of liability to the purchase price; 3) the refusal to pay consequential damages; 4) the
 14 refusal to pay for loss of use; 5) the refusal to pay punitive damages even in the case of fraud; and
 15 6) the purported 90-day notice period. .

16 135. Given the complexity of the terms of the Bosch Solar warranty and Bosch’s failure
 17 to direct its customers’ attention to the limitations of the warranty and the warranty claim
 18 procedure, the burden is on Bosch Solar to show that the consumers who purchased its panels had
 19 knowledge of the highly unusual and unconscionable terms contained in the warranty.

20 136. Plaintiffs and the class request that the court find as a matter of law that all the
 21 Disclaimers/Limitations of liability and the Warranty Claim Procedure are unconscionable.
 22 Plaintiffs, and the class, request that the Court enforce the 10-year product warranty and the 25-
 23 year performance warranty but sever the limitations of liability and Warranty Claim Verification
 24 and Procedure.

25 137. Further evidence that the Bosch Solar limitations in the warranty are procedurally
 26 and substantively unconscionable are the final three provisions of the warranty. First of all, the
 27 warranty asserts at paragraph 3.3 that if the testing performed by the consumer demonstrates that
 28

1 the modules meet the minimum performance warranted, that Bosch Solar “shall be entitled to
2 reimbursement of the cost of conducting such tasks from the party submitting the warranty
3 claim.” How and when such tests would be accomplished is never mentioned in the Warranty.

4 138. Because testing modules to the standard test conditions is extraordinarily
5 expensive, for a consumer to be billed by Bosch Solar for the cost of Bosch’s test after having
6 already incurred the extreme expense of performing their own test is additional evidence of
7 unconscionability.

8 139. Notwithstanding the requirement of the standard test conditions that the panels be
9 removed from the installation and tested in a laboratory environment, the Bosch Solar warranty
10 states at paragraph 2.1 under “Disclaimers/Liability Limitations” that if diminished performance
11 is caused by “removal and/or reinstallation of modules (not in compliance with current
12 installation manual)” then Bosch Solar would have no responsibility to perform under the
13 warranty - again an unconscionable limitation because to maintain the standard test conditions,
14 the panels have to be removed and reinstalled which would allow Bosch Solar to invoke this
15 limitation and deny any warranty claim.

16 140. Bosch Solar then attempts to enforce an unconscionably short notice provision.
17 Paragraph 3.4 states:

18 “Claims submitted under these warranties must be submitted within
19 three (3) months of the occurrence of an event placing the Consumer
20 on notice that a claim under one of the warranties has or may have
21 arisen. The burden of showing compliance with this time limitation
22 lies with the Consumer. Claims not submitted within this period will
23 not be considered.”

24 141. Given the complexity, cost and impossibility of adhering to the “standard test
25 conditions” a 90-day notice period is unconscionable.

26 142. Nonetheless, Plaintiffs serendipitously complied with the 90 days of their learning
27 that their ground-mounted panels were potentially defective. Moreover, even if Bosch Solar were
28 to contend the 90-day period had not been met, such a provision is only enforceable in the event
of prejudice, and there is no basis on which Bosch Solar could claim prejudice here.

143. Lastly, Bosch Solar asserts that the warranty shall be governed by the laws of the

1 State of Michigan and that “conflict of laws rules shall not apply,” again, unenforceable and
 2 unconscionable provisions.

3 **VIII. SULLIVAN WAS BOSCH’S AGENT**

4 144. At all times relevant herein, end-users of the solar panels relied on installers of
 5 solar panels to advise them concerning the advantages of purchasing solar panels generally and of
 6 the unique benefits of products produced by particular manufacturers, such as Bosch.
 7 Accordingly, Bosch Solar knew that if it wanted end-users to select Bosch Solar panels it had first
 8 to convince installers that they should recommend Bosch Solar panels rather than solar panels
 9 manufactured by others.

10 145. The Bosch Solar distributors sold the panels to solar *contractors*. In most instances, as
 11 here, only the solar contractors had direct contract with the end-users of the panels, namely the individuals
 12 or entities that paid the contractors for the cost of the panels and the cost of installation. The Bosch Solar
 13 business model required that installers make representations on behalf of Bosch Solar regarding the Bosch
 14 Solar Warranty and quality of the modules.

15 146. Bosch’s marketing plan for the solar panels relied almost exclusively on installers
 16 like Sullivan to promote its products and recommend the Solar Panels to end-users as they did
 17 with Plaintiffs. Bosch Solar authorized and expected installers to make representations to
 18 potential Bosch Solar customers regarding the durability and economic benefits of its solar panels
 19 and that they would satisfactorily perform for 25 years and that end-users would have warranty
 20 protection for 25 years as set forth below.

21 147. According to representations made by Bosch Solar to the Consumer Product
 22 Safety Commission pursuant to its recall, the subject Bosch Solar panels “were sold exclusively
 23 to dealers/installers[.]” Bosch Solar proposed to send recall notices via “dealer letters” to its
 24 dealers rather than to the public or end users as part of its recall “notice” program.

25 148. Per documents submitted by Bosch Solar to the CPSC in the recall, Sullivan
 26 Electric was the second largest authorized dealer of the Bosch Solar Model #c-Si M 60 NA30119
 27 panels in California (narrowly behind the largest Bosch Solar dealer). Sullivan purchased and
 28

1 installed the NA30119 Bosch Solar panels for many homes. According to documents filed by
 2 Bosch Solar with the CPSC, Sullivan purchased and installed nearly 1,000 of said panels for roof
 3 top installations alone. As the second largest Bosch Solar dealer in California, Sullivan was
 4 knowledgeable and had significant expertise about the features of the Bosch Solar panels, and
 5 specifically general terms of the warranty that covered the panels.

6 149. Sullivan is a substantial solar contractor in California with multiple offices.
 7 Sullivan Solar Electric have been licensed by the State of California to install solar systems for
 8 many years. In recent years, Sullivan has installed over 8,000 solar systems, primarily on
 9 residential properties much like Plaintiffs' property.

10 150. Sullivan installed Plaintiffs' Bosch Solar system.

11 151. Because Bosch Solar sold its panels "exclusively to dealers/installers," and not
 12 directly to end users, Bosch Solar relied on Sullivan and its other dealers/installers to sell the
 13 panels to consumers and to relay the general terms of its warranty to the consumers.
 14

15 152. Sullivan was in fact an authorized dealer and preferred vendor of the Bosch Solar
 16 NA 30119 panels.

17 153. The only means by which Bosch Solar communicated information about its
 18 NA30119 panels to Plaintiffs was through Sullivan Electric.

19 154. Bosch, intentionally or by want of ordinary care, caused or allowed Plaintiffs to
 20 believe that Sullivan possessed the authority to represent to Plaintiffs the terms of the written
 21 warranty herein.
 22

23 155. Bosch Solar knew that Sullivan was an important California dealer of its panels
 24 and authorized Sullivan to sell its panels and educate consumers and end users about the terms of
 25 the warranty in order to sell its product.

26 **IX. PLAINTIFFS' INDIVIDUAL ALLEGATIONS**

27 **A. Rojas Facts**

28 156. For many years, Plaintiffs Steve R. Rojas and Andrea N. Rojas had been interested

1 in solar power as a way to reduce their electric bills and to save money.

2 157. Mr. Rojas learned of Sullivan Electric in an article in the local newspaper, The
3 Press Enterprise. Rojas contacted Sullivan Electric to inquire about purchasing a solar power
4 system.

5 158. During October 2012, Mr. Rojas made arrangements with Sullivan Electric come
6 to his home, inspect the property and discuss how a solar array could be purchased and installed.
7 On October 23, 2012 Hans Berg, an employee of Sullivan Electric, met Plaintiff Steve Rojas at
8 his residence. Mr. Berg was a salesman and solar engineer for Sullivan and was knowledgeable
9 about Bosch Solar NA30119 panels. Mr. Berg spent approximately two hours with Plaintiffs at
10 their home.

11 159. Mr. Berg conducted an inspection of the Rojas premises and property. He also
12 examined prior electrical bills of the Rojas's to determine what size of solar array would be
13 necessary to eliminate or substantially reduce the Rojas's electrical bill. Mr. Berg informed Mr.
14 Rojas that he would gather the necessary information and design a ground-mounted solar system
15 and call him back with a quote for the cost of the system.

16 160. On October 28, 2012, five days after meeting with Plaintiffs, Mr. Berg called Mr.
17 Rojas to discuss the information and data he had put together for a ground-mounted array to be
18 installed on the Rojas property and convey the terms of the warranty

19 161. During the October 28, 2012 telephone conversation, Mr. Berg advised Mr. Rojas
20 that the "best deal" would be to enter into a "prepaid lease." At that time Mr. Berg informed Mr.
21 Rojas that they would be installing Bosch Solar panels. Mr. Berg had considerable solar expertise
22 and was very knowledgeable about the Bosch Solar panels recommended to Plaintiffs.

23 162. There were no choices or alternatives regarding what panels Sullivan was going to
24 install on the property. Plaintiffs were simply informed that Bosch Solar panels would be used
25 for their solar array.

26 163. On October 28, 2012, Mr. Berg advised Mr. Rojas that the Bosch Solar panels
27 were of the "highest quality" and a "premium" product. Mr. Rojas was familiar with the Bosch
28 Solar name as a manufacturer of tools and appliances. At the time Mr. Rojas held the Bosch

1 Solar name and reputation in high regard and did not consider asking for a different model brand.

2 164. During the October 28, 2012 phone call, Mr. Berg told Mr. Rojas that the panels
3 would be backed by a Bosch Solar warranty and explained the essential terms of the warranty.
4 Mr. Berg said the panels were guaranteed to be “free from defects.”

5 165. Mr. Berg also said that the panels would lose approximately 1% of their power
6 output capacity each year but they were guaranteed to produce 90% of the promised power for the
7 first 10 years and then 80% for the duration of the warranty.

8 166. Mr. Berg also told Mr. Rojas that if anything went wrong with the panels that
9 Bosch Solar would repair or replace the panels. For Mr. Rojas, the assurance of a Bosch Solar
10 warranty was critical to his decision to continue with the transaction.

11 167. In fact, Mr. Berg’s assurances made to Plaintiffs regarding the substance of the
12 Bosch Solar Limited Warranty were accurate and precisely mirrored the written language of the
13 Bosch Solar Express Limited Warranty.

14 **B. The Warranty Was Not Delivered**

15 168. Mr. Berg did not deliver a copy of the Bosch Solar Limited Warranty to Plaintiffs.

16 169. The Bosch Solar Express Warranty was never delivered to Plaintiffs Steve R.
17 Rojas and Andrea N. Rojas. Plaintiffs allege, on information and belief that Bosch Solar did not
18 deliver written warranties to the Plaintiff Class and had no system in place to ensure reliable
19 delivery of the warranty.

20 170. Plaintiffs have never had access to the applicable Bosch Solar Express Warranty,
21 in effect at the time of their purchase of the Bosch Solar panels, until this lawsuit was initiated,
22 when Plaintiffs’ counsel obtained a copy of what is believed to be the warranty applicable to the
23 c-Si M 60 NA30119 modules. Bosch’s intent to provide a warranty as part of the basis of the
24 bargain is shown by the warranty itself, which lists the series of panels intended to be covered by
25 the warranty. The warranty provides:

26 “Bosch Solar Energy Corp. provides a product warranty and a
27 performance warranty for its photo-voltaic modules (hereinafter
28 "Module" or "Modules") listed is the Appendix.

In turn, the Appendix provides:

Warranty Appendix: List of Covered Bosch Solar Crystalline Series Modules

c-Si M 60 -16

c-Si M 60 NA30117

c-Si M 60 NA42117

c-Si M 60 NA44117

c-Si M 60 NA30119

c-Si P 72 NA21126

(emphasis added)

C. There Was No Market Alternative For Plaintiff

171. Bosch's written warranty is a standardized, pre-printed form drafted by Bosch. No negotiation occurred between Bosch Solar and Plaintiffs regarding the contents of the written warranty. Bosch Solar does not negotiate the contents of the written warranty with installers, consumers or end users.

172. Plaintiffs were first-time consumers and users of solar energy and had no knowledge or expertise in the solar energy industry. Due to Bosch's failure to provide a copy of the written warranty, the limitations and unconscionable terms were unknown to Plaintiffs until long after their purchase. The terms relating to the standard test conditions were not seen by Plaintiffs. Even if they had, the conditions are not explained in the written warranty in plain language that the average consumer could understand.

173. Plaintiffs were unaware of any need to investigate market alternatives because they were unaware of the unconscionable warranty claim procedure and other unconscionable terms.

174. Plaintiffs did not have any opportunity to review or reject the unconscionable terms in the written warranty. As a result, Plaintiffs were surprised, shocked and humiliated once they actually saw the terms of the written warranty, and never had an opportunity to reject the solar panels. As a result, Plaintiffs had no reasonably available sources of supply from which to obtain their solar panels free of the unconscionable terms and did not have any reason or incentive to seek out market alternatives because Plaintiffs were unaware of the existence of the

1 unconscionable terms. Even if the consumer were able to review the warranty before purchase,
2 however, the true meaning and onerous effect of the STC provision would not be readily apparent
3 or understood by any consumer.

4 175. Plaintiffs did not become aware of the existence of the unconscionable terms until
5 after this case was filed. Removing the panels to avoid the unconscionable terms was not
6 possible as their solar panels were installed and connected to the electrical grid for over five
7 years. For example, as part of the recall process, Bosch Solar wrote a letter to the Consumer
8 Product Safety Commission stating “the complexity of the task” as follows:

9 [[R]eplacing solar panels] is very different from that involving, say,
10 toasters, in which a replacement product may simply be shipped to the
11 customer; an entire system, connected to the electric grid, has to be
replaced.

12 176. The assertion of the market alternative defense to the claim of unconscionability
13 presupposes that the claimant saw the warranty terms and could reject the product before installed
14 or return the product after installed. Neither condition existed in Plaintiffs’ case. Plaintiffs had
15 not seen the warranty before installation, and removal of the panels after installing was
16 unrealistic, impractical, if not impossible.

17 177. Plaintiffs were informed by Sullivan that Bosch Solar panels were to be installed
18 on their property and no market alternatives were known to Plaintiffs or suggested to Plaintiffs by
19 Sullivan. Hans Berg told Steve Rojas that “We will be installing ‘Bosch’ panels on your roof.”
20 Plaintiffs effectively had no choice but to accept from Sullivan the Bosch Solar panels Sullivan
21 informed Plaintiffs that it would be installing on their property.

22 **D. Plaintiffs Provided Notice of Their Warranty Claim to Bosch Solar**

23 178. After Plaintiff Steve Rojas became aware of the Bosch’s recall, Mr. Rojas
24 contacted Sullivan Electric in mid-September 2017, to inquire whether Sullivan was aware of the
25 recall. He spoke with Scott Barber, Quality Control Technician, and was advised by Mr. Barber
26 that Sullivan was unaware of the Bosch Solar recall.

27 179. On September 25, 2017, Scott Barber advised Mr. Rojas that he had been in
28 contact with Spruce Financial, sometimes referred to as Kilowatt, who initially sold the power to

1 Mr. Rojas. At that time, Spruce Financial was also unaware of the Bosch Solar recall. Mr.
2 Barber indicated that he would research the question of whether Mr. Rojas's panels were part of
3 the recall.

4 180. On September 26, 2017, Mr. Barber was informed by Sharonda Grimes at Spruce
5 Financial that they were researching whether Mr. Rojas's panels were registered for the recall.

6 181. Based upon their communications with Sullivan and Spruce, Plaintiffs understand
7 that Sullivan and Spruce were in communication with Bosch Solar on Plaintiffs' behalf regarding
8 Plaintiffs' desire to have their panels replaced. Over the course of October 2017, neither Mr.
9 Barber nor Ms. Grimes provided Mr. Rojas of any developments with regard to their contact with
10 Bosch Solar regarding Mr. Rojas's panels.

11 182. Concerned about the delays, Mr. Rojas researched the Bosch Solar website and
12 located a phone number for the recall advice. On November 1, 2017, Mr. Rojas contacted Bosch
13 Solar by telephone.

14 183. Mr. Rojas immediately informed Bosch Solar that his panels were ground-
15 mounted and not part of the recall. Bosch Solar verbally confirmed that his panels were not
16 included in the recall. He explained that although his panels were ground-mounted, he believed
17 they were the same as the roof mounted panels and that and according to the recall, the panels
18 were defective and a fire hazard. Mr. Rojas also advised Bosch Solar that the power output of the
19 panels was variable and seemed to be underperforming. Mr. Rojas told Bosch Solar that he was
20 making a claim and that he wanted all of his panels replaced.

21 184. Fully aware that Mr. Rojas's ground-mounted panels were excluded from the
22 recall, Bosch Solar then informed Mr. Rojas that they would process his claim. Bosch Solar
23 instructed Mr. Rojas to send photographs to confirm the model number and that his claim would
24 be processed. On the same date, November 1, 2017, Bosch Solar emailed Mr. Rojas a form letter
25 requesting: 1) copy of Invoice or Bill of Sale from Original Installer; 2) Telephoto pictures of
26 your photovoltaic system, one per roof where modules are mounted. Mr. Rojas provided Bosch
27 Solar with the requested photographs and information.

28 185. Immediately after receiving Bosch's request for proof of ownership, Mr. Rojas

1 contacted Sullivan asking for the Bill of Sale or the Interconnector Agreement. Mr. Barber
2 informed Mr. Rojas that he would search his records and forward a copy to Mr. Rojas and Bosch.

3 186. On the same day, November 1, 2017, Mr. Rojas took a photo of his ground-
4 mounted Bosch Solar array and a photo of the label on the backside of the panel which confirmed
5 that the panels were the NA30119 model and emailed the photos to Bosch.

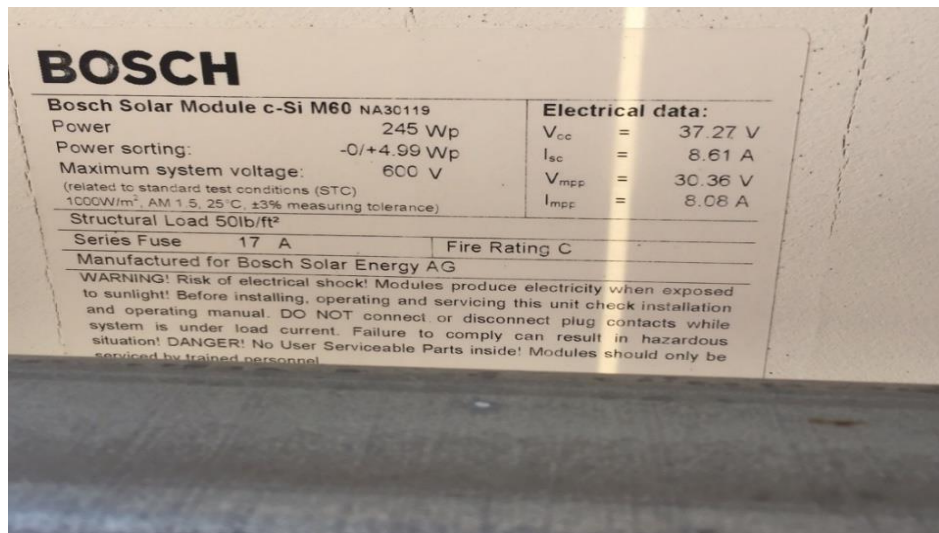
6 Mr. Rojas's November 1, 2017 email is inserted below.

7
8 **From:** Steve Rojas <srrojas@aol.com>

Date: November 1, 2017 at 1:36:16 PM PDT

To: Bosch Solar Replacement Service <boschsolar.services@us.bosch.com>

Subject: Re: Bosch Solar Module Replacement Program



187. On November 3, 2017 Mr. Rojas received a letter from Bosch Solar confirming that it would replace his array. This letter followed his conversation with Bosch Solar that his ground-mounted array was not part of the recalled panels confirmed by the photographs he provided to Bosch. The November 3, 2017 Bosch Solar correspondence is attached as **Exhibit B**.

188. The November 3, 2017 Bosch Solar form letter incorrectly refers to Mr. Rojas's array as being "roof mounted."

189. Upon seeing that misstatement, Mr. Rojas immediately called Bosch Solar and explained that the letter incorrectly referred to it as "roof mounted." He was told by the Bosch Solar representative to ignore the reference to roof mounted, that Bosch Solar was aware his array was ground-mounted and not part of the recall, that the letter was a form letter. He was informed by Bosch Solar that his claim had been approved and that his entire array would be replaced.

190. Bosch Solar never amended its recall filings to include ground-mounted panels.

191. The Bosch Solar November 3, 2017 letter also informed Mr. Rojas that he would be contacted by a Bosch Solar approved installer to replace his panels.

192. On November 28, 2017, Mr. Rojas spoke with Thom Brodie of Baker Electric Solar, the Bosch Solar approved solar installer. Mr. Brodie informed Mr. Rojas that it would be Sullivan Electric, his original installer, that would inspect and replace his system.

193. Unbeknownst to Plaintiffs, Plaintiffs now suspect that a dispute arose between Sullivan and Bosch. Bosch Solar was apparently trying to force Sullivan, the original installer of the Rojas's system, to replace the system instead of Bosch. This legal maneuvering apparently lead to an additional six months delay without activity. During that time, Mr. Rojas contacted Baker Electric for an explanation. He was informed that Baker Electric, as Bosch's representative, had tried without success, to have Sullivan to replace his system.

194. Finally, on May 31, 2018, seven months after Bosch Solar agreed to replace the Rojas's system, Thom Brodie of Baker Electric emailed Mr. Rojas expressing his appreciation for Mr. Rojas's "patience," scheduled a survey of his property for June 6, 2018 and enclosed a "Baker-Bosch Solar Construction Contract for Sullivan Customers," for the full replacement of the Rojas's panels. A copy of Mr. Brodie's email is attached as **Exhibit C**. A copy of the

1 “Baker-Bosch” contract is attached as **Exhibit D**. The contract makes no mention of the recall
2 and is a separate agreement wherein Bosch Solar hired Baker to replace the defective panels on
3 the Rojas’ property.

4 195. The May 31, 2018 letter set June 6, 2018 as an inspection date to survey the Rojas
5 property. On June 6, 2018 survey was conducted by Baker Electric.

6 196. Baker Electric observed that the panels were ground-mounted (as Rojas had
7 already advised Bosch) and Baker Electric informed Mr. Rojas that at least 10 of his panels were
8 not functioning. Prior to this inspection, Plaintiffs had no information regarding why their panels
9 seemed to be underperforming. Mr. Rojas signed the contract to replace all of the Bosch Solar
10 panels and emailed the executed copy to Baker on June 6, 2018. Weeks passed.

11 197. Four months passed with no progress. Mr. Rojas complained to Baker Electric
12 that they had broken their agreement to replace his panels.

13 198. Then on August 31, 2018 Bosch Solar advised Plaintiffs by email that the panels
14 were owned by a third party and that their qualified installer would contact them about replacing
15 the modules as soon as “practicable.” Another month passed with no progress.

16 199. Finally, ten months after Bosch Solar agreed to accept the Rojas’s claim to replace
17 his ground-mounted system, with Bosch Solar having reneged on its promise to replace the
18 Rojas’s system, Mr. Rojas sent Bosch Solar his September 24, 2018 CLRA Notice and Breach of
19 Warranty Notice and filed suit.

20 200. Plaintiffs have complied with the contractual notice provisions of the Bosch Solar
21 Limited Warranty as alleged above. In the alternative, Bosch Solar has waived any such technical
22 non-compliance. Bosch Solar knew of defects in this model of panel generally and received
23 actual notice that Plaintiffs’ panels in particular were defective and underperforming. Bosch Solar
24 received actual notice that the transaction with Plaintiffs was troublesome and that Plaintiffs
25 wished to have their panels replaced. Plaintiffs communicated with Bosch Solar directly and
26 indirectly regarding the replacement of the panels for approximately one year between
27 September, 2017 and August 31, 2018. During this one year, Plaintiffs provided to Bosch Solar
28 all documents and information requested by Bosch. At times, including in early November 2017,

1 Bosch Solar promised to replace the panels, but ultimately failed to keep its promise. On August
 2 31, 2018, after nearly a year, Bosch Solar advised Plaintiffs that it would not be replacing the
 3 panels for an indefinite period of time. At that time, Bosch Solar provided no indication of when
 4 the panels might be replaced. Bosch Solar had approximately a one year period in which it had
 5 an opportunity to cure and failed to avail itself of the opportunity to cure.

6 201. Kilowatt, and other companies that purchase the Panels and enter into Prepaid
 7 Power Purchase agreements with end-users also understand the warranties alleged herein to form
 8 part of the basis of the bargain, and rely upon the existence of the warranty, in entering such
 9 contracts with end-users, so that the continued supply of power, as provided by the Prepaid Power
 10 Purchase agreement, can be maintained, and so that defective or underperforming panels may be
 11 replaced.

12 202. Although Plaintiffs paid nearly \$3,000.00 for electricity in 2017, that information
 13 was not made available to Plaintiffs until March, 2018 because Southern Edison bills on an
 14 annual basis for properties which contain solar arrays.

15 **X. STATUTE OF LIMITATIONS ISSUES**

16 **A. The Latent Defects Are Not Discoverable by the Consumer**

17 203. The Bosch Solar Express Warranty explicitly extends to future performance of the
 18 Bosch Solar panels. Pursuant to Cal. Com. Code § 2725(1), the cause of action accrues when the
 19 breach is or should have been discovered.

20 204. The defects in the Bosch Solar panels are latent and not discoverable until the final
 21 customer or end-user becomes aware of a defect or substantial reduction in power. Even when
 22 there is a degradation in power output, substantial time will pass between the failure or loss of
 23 power and discovery thereof. When customers have made inquiries or warranty claims to Bosch,
 24 Bosch Solar intentionally withheld information about the cause of the panel failure and loss of
 25 power from Plaintiffs and class members and the fire and safety risks associated therewith. In
 26 order to assert a warranty claim, Bosch Solar requires end users to prove their warranty claim on
 27 a panel by panel basis. The failure of a given panel does not inform the end user that other panels
 28 have failed. In fact, the process of assessing and proving performance reduction is so complex

1 that it is far beyond the knowledge and comprehension of the end users of Bosch Solar panels.
2 In this context, end-users rarely have awareness of whether they have a claim; whether it relates
3 to one or more panels or some other part of their solar system and how to go about researching a
4 potential problem. This is particularly true because Bosch Solar refuses to assist with the
5 investigation of legitimate warranty claims, leaving the consumer to fend for themselves
6 regarding highly technical and potentially dangerous equipment.

7 205. The defect does not become apparent until a sufficient number of Bosch Solar
8 panels have had a degradation of power or failed, resulting in a loss of power and significant
9 increase in utility bills. Even when such failures occur, it is difficult for members of the Class to
10 determine the actual cause of the failure or if one or more panels caused the power loss. In
11 addition, as with Plaintiffs further delays in discovery result from the fact that electricity bills are
12 often sent out annually when solar systems are in place. Accordingly, Plaintiffs did not and
13 members of the Class do not become aware of the potential claims or breaches of warranty
14 alleged herein until the defects in the Bosch Solar panels become manifest and the property owner
15 does sufficient investigation and becomes educated about complex electrical issues necessitating
16 solar expert advice in order to identify the source and scope of the problem. No statute of
17 limitation has run as against Plaintiffs.

18 206. For the reasons addressed above, Bosch Solar was under a continuous duty to
19 disclose to distributors, sellers, installers and end-users, including Plaintiffs and the Class, the
20 defect, the safety issues related thereto, and the existence of numerous returns of product related
21 to the defect.

22 207. Despite this duty and the Notice of Product Recall, Bosch Solar has not
23 implemented an adequate notice program to inform end-users of the defect. The Bosch Solar
24 Recall Notice is misleading and inaccurate and fails in substantial part to notify end users of the
25 defect.

26 208. As a result, members of the Class are unable to assert claims against Bosch Solar
27 until they became aware of the failure of the Bosch Solar Panels and its cause. Accordingly,
28 Bosch Solar is estopped to rely on any statutes of limitation in defense of this action.

1 The recall notice was not posted by Bosch Solar until April 13, 2017. The recall purports not to
 2 include Plaintiffs' panels because they are ground-mounted. Plaintiffs did not learn of the recall until
 3 several months after the notice of the recall was published. Plaintiffs did not learn that virtually all of their
 4 c-Si M 60 NA30119 Panels suffer from a backsheet delamination defect until so advised by a solar
 5 engineer on or about December 19, 2018.

6 **B. Plaintiffs Are the Beneficiaries of the Bosch Solar Limited Warranty**

7
 8 209. Plaintiffs' ground-mounted Bosch Solar array remains in its originally installed
 9 location at Plaintiffs' residence located at 29294 Juniper Avenue, Moreno Valley, California. The
 10 array was installed by Sullivan on or about March, 2013 and has "not been modified or relocated
 11 from their originally installed location."

12 210. Plaintiffs have always been the "end-users" of the Bosch Solar panels. The panels
 13 were installed on Plaintiffs' property as required by a "Prepaid Solar Power Agreement" dated
 14 October 28, 2012 with which Plaintiffs entered with Kilowatt.

15 211. On October 18, 2018, for valuable consideration, Kilowatt transferred all rights,
 16 title and interests that it had in the Bosch Solar array installed on Plaintiffs' property to Plaintiffs.

17 212. In addition to being the original end-users of the Bosch Solar array, Plaintiffs are
 18 the subsequent buyers and owners of the 42 c-Si M 60 NA30119 Panels originally installed on
 19 their residential property in 2013.

20 213. Plaintiffs were always the intended beneficiaries of the Bosch Solar Express
 21 Warranty whether as end-user or third-party beneficiaries, and, following their purchase of the
 22 panels, as subsequent buyers.

23 214. Defendant Bosch Solar issued the warranty and extended the warranty to Plaintiffs
 24 and the class.

25 215. The holding of *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S.
 26 Ct. 1773 (2017) does not apply in the class action context. Among others, the California Federal
 27 District Court case of *In Re Morning Song Bird Food Litigation*, No. 12CV01592, 2018 WL
 28 1382746, at *5 (S.D. CA March 19, 2018), provides that "claims of unnamed class members are

irrelevant to the question of specific jurisdiction” and that the court “declines to extend the holding of Bristol-Myers to this case involving a class action.”

XI. CLASS ALLEGATIONS

216. The Class which Plaintiffs seek to represent is as follows.

All persons or entities in the United States who are the current owners of Bosch c-Si M 60 NA30119 solar modules or the current owners of premises on which Bosch c-Si M 60 NA30119 solar modules are installed.

217. Plaintiffs reserve the right to modify or amend the Class definition, as appropriate.

218. Among other things, individual and representative Plaintiffs bring this lawsuit as a class action, on behalf of themselves and all others similarly situated, in part, pursuant to CCP § 382.

219. Under CCP § 382 a class action is proper where the Class is ascertainable, there is a well-defined community of interest among class members, the question is one of a common or general interest or the parties are numerous and it is impracticable to bring them all before the court.

220. Certification of Plaintiffs’ claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis and because this case meets the requirements of and CCP § 382.

221. **Numerosity.** The members of the Class are so numerous that individual joinder of all the members is impracticable. Plaintiffs are informed and believe, and thereon allege, that there are at least thousands of purchasers who have been damaged by the conduct alleged herein.

222. **Commonality and Predominance.** This action involves common questions of law and fact which predominate over any questions affecting individual class members including, without limitation, the following:

- a. Whether Defendant Bosch Solar violated California’s Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.*, by, among other things, engaging in unfair, unlawful, or fraudulent practices;
- b. Whether Defendant Bosch Solar violated California’s Consumer

1 Legal Remedies Act, Civ. Code §1750 *et seq.*, by falsely
 2 advertising the Solar Panels were of a certain quality when in fact,
 3 they were not;

4 c. Whether Defendant Bosch Solar breached its express warranties to
 5 Plaintiffs and the Class;

6 d. Whether Plaintiffs and the Class are entitled to compensatory
 7 damages, and the amount of such damages;

8 e. Whether Defendants should be declared financially responsible for
 9 the costs and expenses of removal and replacement of all solar
 10 panels as well as compensation for the lost energy generation
 11 capacity of the solar panels;

12 f. Whether the Bosch Solar Limited Warranty failed of its essential
 13 purpose; and

14 g. Whether the Disclaimers and Liability Limitations are
 15 unconscionable and should be severed from the Limited Warranty.

16 223. **Typicality.** Plaintiffs' claims are typical of the claims of the Class because
 17 Plaintiffs, like all members of the Class, have been damaged by Defendants' unlawful conduct, in
 18 that Plaintiffs will incur the cost of removing and replacing the defective Bosch Solar Panels, and
 19 have and will incur the increased costs of electricity resulting from the loss of electricity
 20 generation during the period between the failures and replacement. The factual basis and causes
 21 of action for Plaintiffs' claims are common to all members of the Class and represent a common
 22 course of misconduct resulting in injury to all Class members.

23 224. **Adequacy of Representation.** Plaintiffs are an adequate representative of the
 24 Class because their interests do not conflict with the interests of the Class and they have retained
 25 counsel competent and experienced in complex class action litigation and who specialize in class
 26 actions involving defective construction products. Plaintiffs intend to prosecute this action
 27 vigorously and the interests of the Class will be fairly and adequately protected by Plaintiffs and
 28 their counsel.

1 225. **Superiority.** A class action is superior to all other available means for the fair and
2 efficient adjudication of this controversy in that:

- 3 a. The prosecution of separate actions by individual members of the
4 Class would create a foreseeable risk of inconsistent or varying
5 adjudications which would establish incompatible results and
6 standards for Defendants;
- 7 b. Adjudications with respect to individual members of the Class
8 would, as a practical matter, be dispositive of the interests of the
9 other members not parties to the individual adjudications or would
10 substantially impair or impede their ability to protect their own
11 separate interests;
- 12 c. Class action treatment avoids the waste and duplication inherent in
13 potentially thousands of individual actions, and conserves the
14 resources of the courts; and
- 15 d. The claims of individual class members are not large when
16 compared to the cost required to litigate such claims. The
17 individual Class members' claims are on average approximately
18 Twenty-Five Thousand Dollars (\$25,000.00). Given the high cost
19 of litigation, it would be impracticable for the members of the
20 Class to seek individual redress for Defendant's wrongful conduct.
21 The class action device provides the benefits of single
22 adjudication, economies of scale, and comprehensive supervision
23 by a single court. The case presents no significant management
24 difficulties which outweigh these benefits.
- 25 e. Furthermore, the Bosch Solar Recall Notice plan is entirely
26 inadequate and underfunded. It therefore failed of its essential
27 purpose to locate the defective panels. Then, after the Bosch Solar
28 Recall Notice was sent out, Bosch Solar failed to put in place a

1 replacement program that would reasonably implement the recall.

2 As a result, the recall was a sham and neither located, inspected or
3 replaced the defective and dangerous panels which were the
4 subject and purpose of the recall.

- 5 f. The Bosch Solar Recall Notice, at the minimum defines a class of
6 end users and end users of at least 28,000 defective Bosch Solar
7 panels. The class action procedure is necessary to assert the claims
8 that are the basis of the recall in that the recall class was never
9 provided adequate notice of the recall and the recall remedy of
10 replacing the panels was never implemented.

11 **XII. DAMAGE**

12 226. As a result of the facts alleged herein, Plaintiffs and the Class have been damaged
13 in an amount equal to the cost to remove and replace their solar systems and the difference in
14 value between the solar panels had they been as represented by Bosch Solar and the value of the
15 Bosch Solar panels as actually delivered by Bosch. In addition, Plaintiffs and the Class have been
16 or will be compelled to incur cost and expense to, *inter alia*, investigate the reasons for the failure
17 of their Bosch Solar panels, remove and replace the Bosch Solar panels, and pay increased
18 electricity costs resulting from the loss of electricity generated by the Bosch Solar panels. These
19 amounts include sums necessary to repair damage to the roof which occurs because the mounts
20 for the Bosch Solar panels must be removed, as well as the cost of building permits and the cost
21 to replace the inverters for the solar system.

22 **FIRST CLAIM FOR RELIEF**

23 **(For Breach of Express Warranty)**

24 **(Common Law of Arizona, California, Hawaii, Missouri, North Carolina)**

25 227. Plaintiffs incorporate by reference each allegation set forth in the preceding
26 paragraphs.

27 228. Plaintiffs are direct beneficiaries to the Bosch Solar Express Warranty in that by its
28 express terms, the warranty is extended to “final customers or end-users” of the solar panels. The

1 warranty drafted by Bosch Solar does not condition warranty benefits on the purported purchase
2 of the solar panels nor on purported ownership of the panels. Plaintiffs are final customers and
3 end-users of the solar panels in that the acquisition of the solar panels was initiated by Plaintiffs.

4 229. Plaintiffs paid in full, up front, to facilitate the transaction, the solar panels were
5 originally intended to be and were installed on Plaintiffs' property and Plaintiffs were intended to
6 consume and did consume the power generated by the solar panels.

7 230. In the alternative, if Plaintiffs are construed not to be the direct beneficiaries of the
8 Bosch Solar Express Warranty, then Plaintiffs are intended third party beneficiaries of the Bosch
9 Solar Express Warranty. The intent to benefit Plaintiffs appears from the face of the warranty,
10 which indicates that it benefits "consumers", "final customers", "end-users" and "subsequent
11 buyers". Plaintiffs are consumers, final customers, end-users and subsequent buyers. Nothing in
12 the warranty conditions benefits on being an "owner" or "purchaser" of the panels.

13 231. The Bosch Solar Express Warranty was drafted solely by Bosch Solar and
14 ambiguity in its terms, if any, are to be construed against Bosch.

15 232. The warranty was made expressly for the benefit of persons, like Plaintiffs, who
16 (a) initiated the transaction; (b) made the choice to go forward with the installation; (c) paid the
17 purchase price in full upfront; (d) allowed the panels to be installed on their property; (e) actually
18 consume the power produced; (f) suffer the loss when the panels do not produce the promised
19 power; and (g) face the safety risk when defective panels are unsafe.

20 233. The benefit to persons like Plaintiffs is a motivating factor for the existence of the
21 warranty because the warranty entices Plaintiffs to enter into these substantial financial
22 transactions and without persons like Plaintiffs deciding to install solar panels on their property,
23 there is no transaction at all.

24 234. Plaintiffs are a member of a class that is specifically referred to in the warranty
25 (i.e., consumers, final customers, end-users and/or subsequent buyers) and are identifiable.
26 Bosch Solar extends the warranty knowing that its solar panels will be used by homeowners with
27 whom it does not have a direct relationship and the warranty is not intended for the benefit of
28 intermediaries.

1 235. As relevant, Plaintiffs refer to the specific factual allegations supporting each
2 element of the claim alleged herein.

3 236. Bosch Solar made the written express warranties described herein. Those
4 warranties were part of the basis of the bargain, and the purchasers relied upon such warranties.

5 237. Bosch Solar is not entitled to enforce the Warranty Disclaimers and Liability
6 Limitations described herein because they are unconscionable and violate the provisions of
7 applicable law. This includes, but is not limited to, the purported requirement that warranty
8 claimants are required to incur extraordinary costs for expert testing in order to submit a warranty
9 claim and that warranty claimants will be liable to Bosch Solar for Bosch's testing expenses if
10 Bosch Solar determines that, in its view, the warranty claim was without merit. This violates the
11 Magnuson-Moss Warranty Act in that pursuant to 15 U.S.C. § 2304(b)(1), a warrantor is
12 prohibited from imposing any duty on a consumer as a condition of securing a remedy other than
13 a duty of notification and is unconscionable.

14 238. On November 1, 2017 Plaintiffs provided direct notice to Bosch Solar of its
15 warranty claims for both the product and performance warranties.

16 239. Bosch Solar has breached the Product Warranty because the panels have solder
17 joint and delamination defects, as alleged above. Bosch Solar has admitted that the solder joint
18 defect causes a fire hazard and safety risk. The delamination defect also causes a fire and safety
19 risk. The defects adversely affect the function of the panels and expose Plaintiffs to an admitted
20 fire hazard, which creates the risk of potentially catastrophic and/or deadly fire.

21 240. Bosch Solar has breached the Performance Warranty because Plaintiffs have
22 experienced a degradation of power below the output promised by Bosch. Bosch Solar has
23 further breached the Performance Warranty because implicit in the power output promise is that
24 such power output will be generated safely.

25 241. Bosch Solar has admitted that the panels present a fire hazard and Plaintiffs cannot
26 be reasonably expected to face the risk of a potentially catastrophic and/or deadly fire in the
27 course of generating the promised power output.

28

1 242. Because the Bosch Solar panels either have failed or are certain to fail within their
2 expected useful life, Bosch Solar has breached both the Product Warranty and the Performance
3 Warranties contained in the Warranty.

4 243. Bosch Solar has failed to remedy the breach of the Warranty for either Plaintiffs or
5 the Classes. Bosch Solar had ample opportunity to cure after Plaintiffs provided notice of their
6 claim. Plaintiffs' defective and unsafe NA30119 solar panels remain installed on Plaintiffs'
7 property after Bosch Solar reneged on its promise to replace Plaintiffs' panels thereby breaching
8 the warranty.

9 244. Although Plaintiffs do not believe that notice to Bosch Solar of its warranty claim
10 and breaches of warranty are required under applicable law, Plaintiffs have notified Bosch Solar
11 of its breaches of the warranty. As set forth in detail in paragraphs 178 to 200, Plaintiffs notified
12 Bosch Solar directly of its claim within 90 days of learning that their ground-mounted panels
13 suffered on November 1, 2017 from a defect. Bosch Solar was given ample opportunity to cure
14 the defect and, in fact, agreed to do so.

15 245. On August 31, 2018, ten months after Plaintiffs patiently waited for Bosch Solar to
16 cure the defect, Bosch Solar reneged on its promise to replace Plaintiffs' solar array and Plaintiffs
17 filed suit.

18 246. The Limited Warranty does not require Plaintiffs to file a lawsuit within 90 days,
19 rather a claim purportedly should be submitted within 90 days of some set of undefined events
20 that would ostensibly place Plaintiffs on notice of a potential claim.

21 247. Plaintiffs have complied with the 90-day notice provisions. Plaintiffs provided
22 Bosch Solar with timely notice of its warranty claim within 90 days of being made aware of the
23 defect through the recall. Until Bosch Solar disclosed the defect in its recall, Plaintiffs had no
24 knowledge that the panels suffered from a defect.

25 248. In addition, the purported 90-day notice provision should be excused for all class
26 members, including Plaintiffs, as Bosch Solar did not deliver the warranty to consumers, end
27 users or subsequent owners. Plaintiff and class members who have no knowledge of the 90-day
28 claim provision cannot be held to compliance to an unreasonably short claim deadline about

1 which they have no knowledge. Moreover, conditions such as the notice condition are not
2 enforceable in the absence of prejudice.

3 249. Approximately a year passed from when Plaintiffs contacted Bosch Solar and the
4 filing of this litigation. During this time, Bosch Solar has had further opportunity to cure the
5 defects and has not availed itself of the opportunity. Although Bosch Solar made promises to
6 replace the panels, Bosch Solar did not keep its promises. Further delay in replacing the unsafe
7 and underperforming panels would be unreasonable and dangerous.

8 250. Furthermore, Bosch Solar is estopped from asserting the 90-day claim notice
9 provision as it withheld information of the defect from consumers, end users and subsequent
10 owners and failed to provide any reasonably notice of the defect that would inform or notify a
11 person of any obligation to assert a claim.

12 251. Further notice to Bosch Solar of its breach of the Warranty would be futile because
13 Bosch Solar is aware of and has acknowledged the defects in the Bosch Solar panels and has
14 recalled the Bosch Solar panels. The only remedy to Plaintiffs and the Class is the replacement of
15 all Bosch Solar panels with other suitable panels and to compensate Plaintiffs and the Class for
16 the difference between the power output guaranteed by the Performance Warranty and the power
17 output actually received as well as all consequential damages including labor and disposal.

18 252. As set forth above, the purported exclusions and limitations in the warranty are
19 contrary to the reasonable expectations of the consumer, and also are unconscionable. Therefore,
20 the Court should sever such exclusions and limitations from the warranty as unenforceable and
21 enforce the remainder of the Warranty.

22 253. Furthermore, the limited warranty remedies have failed their essential purpose
23 because the contractual remedy as interpreted by Bosch Solar is insufficient to make Plaintiffs or
24 Class members whole and because Bosch Solar has failed and/or has refused to adequately
25 provide sufficient remedies within a reasonable time. Accordingly, Plaintiffs and Class members
26 should not be limited in their remedies and seek all remedies allowed by law.

27
28

255. Plaintiffs incorporate by reference each allegation set forth in the preceding paragraphs.

257. The Bosch Solar panels are a consumer product as defined in 15 U.S.C. § 2301(1).

259. Bosch Solar is a supplier and warrantor as defined in 15 U.S.C. § 2301(4) and (5).

261. As alleged previously, Bosch Solar has breached the Warranty.

263. Plaintiffs have provided Bosch Solar with notice of breach of the Warranty and a reasonable opportunity to cure the breach. In addition, the Notice that Plaintiff afforded Bosch Solar on September 24, 2018 on behalf of the Consumer Subclasses of its breach of the Warranty

provided Bosch Solar with a reasonable opportunity to remedy the breach as to ground-mounted end users. This is true because to provide Bosch Solar with a longer time to cure would be futile as Bosch Solar had no intention of replacing ground-mounted panels and publicly so stated in its recall notice. Bosch Solar has failed to remedy the breach of its obligations to the Class or Subclasses under the Warranty.

264. In addition, further notice to Bosch Solar of its breach of the Warranty would be futile because Bosch Solar is aware of and has acknowledged the defects in the Bosch Solar panels and has recalled the Bosch Solar panels.

265. Bosch Solar cannot provide to Plaintiffs and the Consumer Subclasses any remedy other than replacement of the Bosch Solar panels with other panels and to compensate Plaintiffs and the Class for the difference between the power output guaranteed by the Performance Warranty and the power output actually received.

266. As a result of Bosch's breach of the Warranty, Plaintiffs and the Consumer Subclasses have been damaged in an amount to be proven at trial, including consequential damages.

267. Bosch Solar has violated the Magnuson-Moss Warranty Act in that pursuant to 15 U.S.C. § 2304(b)(1), in that a warrantor is prohibited from imposing any duty on a consumer as a condition of securing a remedy other than a duty of notification and is unconscionable.

THIRD CLAIM FOR RELIEF

(Breach of Express Warranty)

**(Ariz. Rev. Stat. § 47-2313; Cal. Com. Code § 2313;
Haw. Rev. Stat. § 490:2-313; Mo. Rev. Stat. § 400.2-313;
N.C. Gen. Stat. § 25-2-313)**

268. Plaintiffs incorporate by reference each allegation set forth in the preceding paragraphs.

269. The allegations of this Claim for Relief are based on the breaches of warranty addressed herein above. The specific allegations of the Complaint relevant to that claim are detailed therein.

1 270. Bosch Solar was at all times relevant hereto a “merchant” with respect to solar
2 panels, as that term is defined under the Uniform Commercial Code as adopted in Arizona,
3 California, Hawaii, Missouri, or North Carolina, *see, e.g.*, California Commercial Code § 2104.

4 271. An express warranty by affirmation was created by Bosch Solar in favor of
5 Plaintiff by Hans Berg of Sullivan who made assurances to Plaintiffs as an end user of the product
6 the terms of the warranty.

7 272. During the October 28, 2012 phone call, Mr. Berg told Mr. Rojas that the panels
8 would be backed by a Bosch Solar warranty and explained the essential terms of the warranty.
9 Mr. Berg said the panels were guaranteed to be “free from defects.”

10 273. Mr. Berg also said that the panels would lose approximately 1% of their power
11 output capacity each year but they were guaranteed to produce 90% of the promised power for the
12 first 10 years and then 80% for the duration of the warranty.

13 274. Mr. Berg also told Mr. Rojas that if anything went wrong with the panels that
14 Bosch Solar would repair or replace the panels. For Mr. Rojas, the assurance of a Bosch Solar
15 warranty was critical to his decision to continue with the transaction.

16 275. For the reasons alleged hereinabove, Plaintiffs are direct beneficiaries of the Bosch
17 Solar Express Warranty as end users. In the alternative, Plaintiffs are intended third party
18 beneficiaries. Also, Plaintiffs are beneficiaries of the Bosch Solar Express Warranty by virtue of
19 being successor end users of the Bosch Solar panels.

20 276. Bosch Solar is not entitled to enforce the Warranty Exclusions described above
21 because they are unenforceable under the Uniform Commercial Code as adopted in Arizona,
22 California, Hawaii, Missouri, or North Carolina, *see, e.g.*, the California Commercial Code §
23 2719, and for the reasons set forth hereinabove.

24 277. As alleged previously, in paragraphs 178 to 200, Plaintiff gave notice to Bosch
25 Solar of its warranty claim; Bosch Solar had ample opportunity to cure the breach, promised to do
26 so, the reneged on its promise thus breaching the warranty.

27 278. Plaintiffs have provided Bosch Solar with notice of breach of the Warranty and a
28 reasonable opportunity to cure the breach. Bosch Solar has been given notice on behalf of the

1 Class of its breach of the Warranty and a reasonable opportunity to remedy the breach. Bosch
 2 Solar has failed to remedy the breach of warranty for Plaintiffs or the classes as defined herein.

3 279. As a result of Bosch's breach of the Warranty, Plaintiffs and the Classes have been
 4 damaged in an amount to be proven at trial, including consequential damages.

5 280. Plaintiffs relied on the representations of Sullivan regarding the reliability,
 6 durability and terms of the long-term warranty of Bosch Solar which was held out as a reputable
 7 and trustworthy company and would not have otherwise entered into the transaction.

8 **FOURTH CLAIM FOR RELIEF**
 9 **(For Violation of California's Unfair Competition Law)**

10 281. Plaintiffs incorporate by reference each allegation set forth in the preceding
 11 paragraphs.

12 282. Pursuant to Bus. & Prof. Code § 17200, "unfair competition shall mean and
 13 include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or
 14 misleading advertising."

15 283. Bosch's actions, as alleged herein, constitute deceptive, unfair, fraudulent, and
 16 unlawful practices committed in violation of the Bus. & Prof. Code § 17200, *et seq.*

17 284. All of the conduct and representations alleged herein occurred in the course of
 18 Bosch's business and were part of a pattern or generalized course of conduct.

19 285. Bosch's conduct was unlawful in that it systematically included an unlawful
 20 provision in its standardized warranty. Specifically, Bosch Solar includes in its Warranty Claims
 21 Procedure a requirement that warranty claimants to incur substantial expense for expert testing in
 22 order to submit a warranty claim and also provides that if, in Bosch's view, the warranty claim
 23 was without merit, the warranty claimant will be liable to Bosch Solar for Bosch's own testing
 24 expenses.

25 286. Bosch's conduct was unfair in that it systematically included an unlawful
 26 provision in its standard form warranty, as alleged above. Also, Bosch Solar crafted its warranty
 27 language to give the appearance of warranty coverage when, in fact, the warranty would fail to
 28

1 provide any meaningful coverage because the cost of invoking coverage equals or exceeds the
 2 value of the solar system and the cost to replace it. Consumers are unable to recover this expense
 3 even if their claims are shown to be meritorious. Moreover, Bosch Solar fails to disclose this
 4 hidden expense in plain language that the reasonable consumer can understand. Thus, the
 5 reasonable consumer is deceived by the warranty coverage being provided by Bosch. Also,
 6 Bosch Solar fails to disclose with sufficient specificity, the testing procedures that consumers
 7 would be required to comply with or the cost thereof. Bosch's failure to disclose the meaning of
 8 the Standard Test Conditions was intentional. The omissions were fraudulent and were they to
 9 have been disclosed, no one would have purchased Bosch Solar panels.

10 287. As a result of Bosch's unfair methods of competition and unfair or deceptive acts
 11 or practices, Plaintiffs and members of the Original Purchaser Subclass have suffered injury-in-
 12 fact, lost money, and lost property, in that they have incurred labor costs, inspection costs and
 13 energy loss associated with the faulty solar system resulting in increased electric bills.

14 288. As alleged hereinabove in paragraphs 94 through 143, Section VII The
 15 Unconscionability of the Warranty claim verification and procedure, Bosch Solar has fraudulently
 16 and unfairly imposed the obligation on end-users and owners of its panels, who seek to make a
 17 performance warranty claim, to maintain "the standard test conditions while producing evidence
 18 that the performance has fallen below the guaranteed minimum performance."

19 289. On December 19, 2018, a consultant hired by Plaintiffs' counsel, serving as
 20 Plaintiffs' agent, conducted an investigation of Plaintiffs' Bosch Solar rray. Among other things,
 21 the consultant attempted to gather evidence regarding the power output performance of Plaintiffs'
 22 Bosch Solar panels.

23 290. It was determined that it was not possible for an owner or end-user to maintain
 24 "the standard test conditions while producing evidence that the performance has fallen below the
 25 guaranteed minimum performance." Plaintiffs' consultant made use of a sophisticated piece of
 26 portable equipment known as I-V curve. However, that equipment cannot maintain the standard
 27 test conditions while performing power output testing. Standard test conditions can only be
 28 maintained under laboratory conditions as outlined in paragraphs 103 through 122.

291. The insertion of the unconscionable Standard Test Conditions in the Bosch Solar Limited Warranty has caused and will cause concrete harm to Plaintiffs. Due to the presence of these terms and in order to evaluate and test Plaintiffs' solar array, Plaintiffs' counsel paid the consultant \$5,927.55. This testing was done in an attempt to satisfy the conditions of the warranty, which specify that the consumer has the burden of maintaining "the standard test conditions while producing evidence that the performance has fallen below the guaranteed minimum performance." Plaintiffs have a contingent liability to reimburse the \$5,927.55, if Plaintiffs and the class prevail in this matter. The obligation will be paid from settlement or judgment proceeds by Plaintiffs and/or Class members should this matter be resolved. This obligation constitutes injury-in-fact caused by the unconscionable warranty terms requiring claimants to submit testing data. The obligation incurred is not hypothetical or based on conjecture.

292. The presence of the unconscionable STC terms in the Bosch Solar Limited Warranty has an immediate, detrimental and concrete impact on the value of Plaintiff's property. Although Bosch Solar has suggested a non-binding forbearance of the unconscionable terms, said terms remain in the Bosch Solar Limited Warranty and could be invoked by Bosch Solar at any time.

293. The present value of Plaintiffs' property depends, in part, on the presence and proper function of the solar panels and the efficacy of the available warranty benefits. At present, the value of the warranty benefits is contingent upon Bosch Solar voluntary and non-binding calculation to forego enforcement of express warranty terms which, if enforced, would cost the consumer as much or more than the value of the entire solar energy system.

294. Homebuyers would refuse to purchase, or would require a steep discount to purchase, Plaintiffs' property which is saddled with defective panels that constitute an admitted fire risk while Bosch Solar retains the right to invoke a clause requiring such homebuyers to expend as much as the panels are worth. Moreover, the Bosch Solar Limited Warranty includes the right of Bosch Solar to **recover** costs against any such homebuyers.

1 295. The adverse impact that the unconscionable provisions have on home property
2 values distinguishes the present situation from unenforced unconscionable provisions in credit
3 card agreements. This uncertainty has an immediate reduction on the value of the Rojas' ⁷
4 property and constitute injury-in-fact.

5 296. A dispute existed and still exists between Plaintiffs and Bosch Solar because
6 Plaintiffs' Bosch Solar panels were and are underperforming. The panels admittedly present a fire
7 and safety risk. Bosch Solar has indicated in their Motion to Dismiss that the panels do not
8 qualify for replacement under the recall. Bosch Solar has indicated that Plaintiffs allegedly do
9 not have a warranty claim because Plaintiffs have not presented "any facts indicating that their
10 panels do not or have not provided 80% of the minimum performance set forth in the data sheet
11 for NA30119 Panels, as warranted under the Performance Warranty." [Bosch Solar Motion to
12 Dismiss First Amended Complaint, p. 15, lines 11-13].

13 297. In other words, despite arguments of convenience, Plaintiffs' failure to obtain and
14 submit their own testing data in accordance with the Standard Test Conditions as a justification
15 for failing to address Plaintiffs' defective, underperforming panels. During the time that Bosch
16 Solar has failed to cure the defects because of Plaintiffs' alleged failure to submit testing data,
17 Plaintiff have been further damaged by continued loss of power as a result of the unconscionable
18 terms.

19 298. The terms of the Limited Warranty require claimants to submit "proof that...the
20 performance of the Module no longer meets the minimum performance" and states that "[t]he
21 Consumer is responsible for maintaining the standard test conditions while producing evidence
22 that the performance has fallen below the guaranteed minimum performance." As a direct result
23 of the foregoing terms, in an effort to assess testing options and obtain testing data to support a
24 power loss claim, Plaintiff Steven Rojas met with a solar consultant at the subject property for
25 inspection and testing. Mr. Rojas missed approximately five hours of work in order to
26 accommodate this inspection and testing. Mr. Rojas is paid \$105 per hour for his work and lost
27 approximately \$525 as a result of Bosch's requirement that claimant's submit testing data. The
28 loss of earnings by the Rojas household due to Mr. Rojas attempting to obtain testing data is

1 injury-in-fact caused by the unconscionable terms requiring Plaintiffs to submit testing data. The
2 loss of earnings is not hypothetical or based on conjecture.

3 299. Plaintiffs seek injunctive relief to compel Bosch Solar to notify the Plaintiff class
4 of the defect and to reasonably implement the replacement of the defective Bosch Solar panels as
5 promised in the recall.

6 300. Additionally, by threatening to enforce and actually enforcing the Warranty
7 Disclaimers/Liability Limitations and the Warranty Claim Verification and Procedure and by
8 understating and failing to disclose the risk of fire resulting from the failure of the Bosch Solar
9 panels, Bosch Solar acted unfairly, unlawfully and fraudulently against all members of the Class.
10 Members of the Class have been injured and will continue to be injured by the enforcement of the
11 Warranty Exclusions, and the understatement of the risk of fire posed by the solar panels.

12 301. The enforcement and threatened enforcement of the Warranty
13 Disclaimers/Liability Limitations and Warranty Claim Verification and Procedure and the
14 understatement and nondisclosure of the risk of fire resulting from the failure of the Bosch Solar
15 panels are unfair in that they: (1) violate public policy as expressed in the Consumer Legal
16 Remedies Act, the Magnuson-Moss Warranty Act and the Song-Beverly Consumer Warranty
17 action; (2) are immoral, unethical, oppressive, unscrupulous and substantially injurious to
18 consumers and these factors are not offset by the utility of Bosch's conduct since the conduct is
19 intended to and does only provide impediments to the assertion of valid claims for recovery and
20 limit the damages which Bosch Solar is legally obligated to compensate; and (3) inflict
21 substantial injury on consumers which is not outweighed by any countervailing benefits to
22 consumers or competition and the injury to consumers is one consumers could reasonably have
23 avoided.

24 302. Unless enjoined, Bosch's continued insistence upon the unenforceable Warranty
25 Exclusions and failure to reasonably implement a notice and replacement plan to the end-user of
26 the recalled Bosch Solar panels threaten to harm the public and the class alleged herein, now and
27 in the future.

28

FIFTH CLAIM FOR RELIEF
(For Unjust Enrichment)
(Common Law of Arizona, California, Hawaii, Missouri, North Carolina)

303. Plaintiffs incorporate by reference each allegation set forth in the preceding paragraphs.

304. Pleading in the alternative to an express warranty, Bosch Solar has been unjustly enriched in that Bosch Solar received the purchase price of the panels, a benefit which Defendant retained at Plaintiffs' expense.

305. Plaintiffs paid \$25,089.22 to purchase a Solar system which included 43 Bosch Solar panels, model NA30119.

306. The benefit that Plaintiff conferred on Bosch Solar and that Bosch Solar retained at Plaintiffs' expense was the purchase price of the 43 NA30119 panels. The chain of distribution of Plaintiffs' panels and the monetary compensation for those panels followed a pattern that is typical to all sales of Bosch Solar panels.

307. Bosch Solar did not sell its NA30119 solar panels directly to residential end users .

308. All NA30119 Bosch Solar panels, including those purchased by plaintiffs, were sold by Bosch Solar through approved solar panel distributors.

309. Plaintiffs contacted Sullivan Electric to purchase its solar array. Sullivan electric agreed to install Plaintiffs' ground-mounted solar array on Plaintiffs' property and did so in February, 2013. Plaintiffs' only contact in the transaction to acquire the Bosch Solar Panels was Hans Berg of Sullivan Electric.

310. At the suggestion of Sullivan Electric, Plaintiffs purchased their array through a prepaid solar power agreement with Kilowatt. Plaintiffs paid Kilowatt \$25,089.22. A copy of Plaintiffs' check to Kilowatt is attached hereto and marked **Exhibit E**.

311. Kilowatt then paid Sullivan, using Plaintiffs' money, for the cost of the Bosch Solar panels and materials to be purchased by Sullivan to build Plaintiffs' solar array. Sullivan bought the NA30119 panels used on Plaintiffs' property after Plaintiffs paid Kilowatt the \$25,089.22 which Kilowatt paid to Sullivan.

1 312. Sullivan purchased the Bosch Solar panels installed on Plaintiffs' property from
 2 Bosch Solar Aleo Solar North America ("Bosch Solar Aleo"), a wholly owned subsidiary of
 3 Bosch Solar in 2013. Plaintiffs' money was used by Sullivan to pay the solar distributor for the
 4 Bosch Solar panels installed on Plaintiffs' property.

5 313. Using Plaintiffs' money, the Bosch Solar Aleo paid Bosch Solar for all NA30119
 6 solar panels installed on Plaintiffs' property. Plaintiffs' money to purchase the panels was paid
 7 initially to Kilowatt, then to Sullivan, and then to the distributor Bosch Solar Aleo who paid
 8 Bosch Solar directly.

9 314. In this fashion, the benefit of Plaintiffs' money, namely the purchase price of the
 10 43 NA30119 Bosch Solar panels, was conferred on Bosch Solar and retained by Bosch Solar
 11 through the above-described distribution channels for Plaintiffs' solar panels.

12 315. All of the Bosch Solar NA30119 solar panels were sold to consumers or end-users
 13 in some variation of the above system, namely consumer or end-user pays the power supplier who
 14 pays the installer to buy the panels, who buys the panels from the distributor, who pays Bosch.
 15 Alternatively, the consumer or end-user pays the installer directly who buys the panels with the
 16 end users' money from the distributor who pays Bosch.

17 316. Thus, Bosch Solar was paid with Plaintiffs' money indirectly through its
 18 distributor Bosch Solar Aleo. The benefit of the purchase price was conferred on Bosch Solar
 19 and retained at Plaintiffs' expense.

20 317. As between Plaintiffs and Bosch, it is unjust for Bosch Solar to retain the benefit
 21 conferred upon it by Plaintiffs in that Plaintiff paid \$25,089.22 for the installation of the Bosch
 22 Solar panels based upon the promises from Bosch Solar that the panels would be free from
 23 defects and would safely supply certain minimum power output performance, none of which were
 24 delivered or fulfilled as promised by Bosch.

25 318. Bosch Solar has been further unjustly enriched in that the price paid by Plaintiffs
 26 and Class members for the panels did not contemplate that consumers would bear the cost of
 27 testing their panels in order to assert a performance warranty claim. Bosch Solar has refused to
 28 perform such testing. Plaintiffs and Class Members have and will continue to incur unnecessary

1 expenses in order to investigate and test their Bosch Solar panels to provide evidence of a
 2 performance warranty claim. All such expenses conferred an unjust benefit on Bosch Solar by
 3 virtue of Bosch Solar improperly shifting the burden of such expenses to Plaintiffs and members
 4 of the Class.

5 319. Defendant has been unjustly enriched in that Plaintiffs have expended money in an
 6 effort to prove a power output claim have saved Defendant Bosch Solar from that expense or loss.
 7 As such, a benefit has been conferred upon Defendant and retained at Plaintiffs' expense.

8 **SIXTH CLAIM FOR RELIEF**
 9 **(Consumers Legal Remedies Act)**

10 320. Plaintiffs incorporate by reference each allegation set forth in the preceding
 11 paragraphs.

12 321. Plaintiffs bring this Claim on behalf of the Consumer Legal Remedies Act
 13 Subclass as defined in paragraph 170e.

14 322. California's Consumer Legal Remedies Act ("CLRA"), California Civil Code §§
 15 1750, *et. seq.*, proscribes "unfair methods of competition and unfair or deceptive acts or practices
 16 undertaken by any person in a transaction intended to result or which results in the sale or lease of
 17 goods or services to any consumer." *Civil Code* § 1770

18 323. Where relevant, Plaintiffs also refer to the specific factual allegations supporting
 19 each element of the claim alleged herein.

20 324. The Bosch Solar panels are "goods" as defined by Civil Code § 1761(a). The
 21 Bosch Solar Express Warranty is a service as defined by Civil Code § 1761(b).

22 325. Defendants are a "person" as defined by Civil Code§ 1761(c).

23 326. Plaintiffs and Class members are "consumers" as defined by Civil Code§ 1761(d).
 24 Plaintiffs are original, direct beneficiaries of the Bosch Solar Express Warranty, which as drafted
 25 by Bosch, provides services to "end-users." The solar panels are for personal, family, and
 26 household purposes.

27 327. The provision of solar panels as described herein and the provision of the Bosch
 28 Solar Express Warranty are "transactions" as defined by Civil Code§ 1761(e).

1 328. Under the CLRA, Civil Code § 1770, *et seq.*, the following methods of
2 competition are unlawful when any person in a transaction intended to result or which results in
3 the sale or lease of goods or services to any consumer:

- 4 a. “Representing that goods Have sponsorship, approval, characteristics,
5 ingredients, uses, benefits, or quantities which they do not have.” Civil
6 Code § 1770(a)(5).
7 b. “Representing that goods... are of a particular standard, quality, or grade,
8 or that goods are of a particular style or model, if they are of another.:
9 Civil Code § 1770(a)(7).
10 c. “Representing that a transaction confers or involves rights, remedies, or
11 obligations that it does not have or involve, or that are prohibited by law.”
12 Civil Code § 1770(a)(14).
13 d. “Inserting an unconscionable provision in the contract.” Civil Code §
14 1770(a)(19).

15 329. Defendant Bosch Solar violated Civil Code §§ 1770(a)(5) and (a)(7) when it
16 represented that it provided a 25-year performance warranty with remedies in the event of power
17 output loss.

18 330. Defendant violated Civil Code § 1770(a)(19) by including in the Warranty the
19 unconscionable provisions, as more fully described hereinabove. This includes but is not limited
20 to representing that the solar panels are covered by the warranties without adequately disclosing
21 to consumers the proposed warranty claim system and that the cost of making a warranty claim
22 would likely equal or exceed the cost of the entire solar array. This also includes providing a
23 provision that violates 15 U.S.C. § 2304(d)(1), as alleged above.

24 331. Had Plaintiffs and members of the Consumer Subclasses known that the true facts
25 regarding the STC and proposed warranty claims process, Plaintiffs and members of the
26 Consumer Subclasses would not have purchased the Bosch Solar panels or purchased properties
27 on which the Bosch Solar panels were installed. Plaintiffs and members of the Consumer
28 Subclasses would not have made these purchases because making a warranty claim would be

1 prohibitively expense and the warranty would fail its essential purpose. Without a guarantee that
 2 the solar panels would perform for the promised period of time, the solar panels would not be
 3 cost-justified. The entire purpose of a warranty is that the business providing a product or service
 4 agrees to assume the risk of non-performance of the product or service. In the present case,
 5 Bosch Solar has included language in the warranty that cannot be understood by a reasonable
 6 consumer for the purpose of shifting the risk to the consumer while giving consumers the
 7 impression that they have warranty coverage.

8 332. As a result of Defendant's unfair and deceptive acts and practices, Plaintiffs and
 9 the CLRA Subclass have been harmed, as alleged hereinabove, and seek actual damages
 10 according to proof, attorneys' fees and costs and such other relief as the court deems proper.

11 333. Plaintiffs served Defendant Bosch Solar with notice of its violations of the CLRA
 12 pursuant to Civil Code§ 1782 (the "Notice") by certified mail on September 24, 2018. A copy of
 13 the Notice is attached hereto as **Exhibit F**. Bosch Solar failed to provide or offer to provide
 14 remedies for its violations of the CLRA within 30 days of the date of the Notice.

15 334. Plaintiffs and other California Members' injuries were proximately caused by
 16 Bosch's fraudulent and deceptive business practices.

17 335. Therefore, Plaintiffs and the other California Class Members are entitled to
 18 equitable and monetary relief under the CLRA.

19 336. In addition, the acts of Bosch Solar in omitting relevant facts concerning the Bosch
 20 Solar Express Warranty, deceived Plaintiffs and the Class concerning the benefits that they were
 21 purportedly receiving under the Bosch Solar Express Warranty and furthered a strategy of
 22 suppressing claims and deceptively shifting the risk back to the consumer. While Bosch Solar
 23 has imposed these obstacles to warranty claims, nearly 44,000 admittedly defective panels remain
 24 in place and present a fire risk. While Bosch Solar has initiated a recall, Bosch Solar
 25 misrepresented to the CPSC that it would directly contact consumers but it has not done so. As
 26 more fully alleged above, Bosch Solar has had no contact or virtually no contact with consumers
 27 regarding the defect and nearly all of the dangerous panels remain in place.

28

337. The conduct as alleged above was: (1) malicious in that they represent “despicable conduct” conduct carried on by Bosch Solar with a willful and conscious disregard of the rights or safety of others; (2) oppressive in that they represent “despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights;” and (3) fraudulent. Accordingly, Plaintiffs and the Class are entitled to punitive damages according to proof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray the Court to certify the Class as defined hereinabove, to enter judgment against Defendants and in favor of the Class, and to award the following relief:

1. For certification of the proposed Class and each Subclass thereof;
2. For the cost of removal and replacement of the Bosch Solar c-Si M 60 NA30119 solar panels;
3. For compensatory damages as alleged herein, according to proof;
4. For an injunction enjoining Bosch Solar from enforcing, threatening to enforce or claiming the right to enforce any of the unconscionable Warranty disclaimers and limitations, and to compel Bosch Solar to:
 - (a) advise consumers affirmatively of their rights to all damages to which they are lawfully entitled;
 - (b) make full disclosure to all members of the Class concerning the risk of fire resulting from the failure of the Bosch Solar panels;
 - (c) establish a protocol, at no charge to Plaintiffs and the Class to determine if they are the end-users or owners of the Bosch Solar panels and the amount of power loss degradation the Bosch Solar panels experienced;
5. For costs and attorneys’ fees, as allowed by law;
6. For punitive damages;
7. For such other further legal or equitable relief as this Court may deem appropriate under the circumstances; and

8. In the alternative, Plaintiffs pray to recover amounts that Bosch Solar was unjustly enriched, according to proof at trial.

DATED: September 12, 2022

BIRKA-WHITE LAW OFFICES

By: /s/ David M. Birka-White

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Attorneys for Individual and Representative Plaintiffs
STEVE R. ROJAS and ANDREA N. ROJAS, on behalf
of themselves and all others similarly situated

PLAINTIFFS' DEMAND FOR JURY TRIAL

Plaintiffs STEVE R. ROJAS and ANDREA N. ROJAS, on behalf of themselves and all others similarly situated, by and through their counsel, hereby demand a jury trial of all issues in the above-captioned matter.

1 DATED: September 12, 2022

BIRKA-WHITE LAW OFFICES

2 By: /s/ David M. Birka-White

3 DAVID M. BIRKA-WHITE

4 Attorneys for Individual and Representative
5 Plaintiffs STEVE R. ROJAS and ANDREA N.
6 ROJAS, on behalf of themselves and all others
7 similarly situated
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EXHIBIT A

EXHIBIT A

Solar Energy



Limited Warranty for photovoltaic modules

Bosch Solar Energy Corp. provides a product warranty and a performance warranty for its photovoltaic modules (hereinafter "Module" or "Modules") listed in the Appendix. The product warranty (the "Product Warranty") covers the material and workmanship of the Modules (see section A below). The performance warranty (the "Performance Warranty") covers loss of performance (degradation) and minimum output of the Modules (see section B below).

A: Product Warranty

Bosch Solar Energy Corp. warrants to the Consumer¹ (defined below) that the Module is free of defects in material and workmanship for a period of ten (10) years from the date of delivery, subject to the Warranty Conditions. The Consumer is the final customer or end-user that properly places the Modules into operation for the first time. The date of delivery as used in this Limited Warranty shall be the earlier of (i) the date of installation by the Consumer, or (ii) ninety (90) days after delivery of the Module by Bosch Solar Energy Corp. to the Consumer.

B: Performance Warranty

Bosch Solar Energy Corp. warrants to the Consumer that the Module will:

- a) within a period of ten years from the date of delivery provide at least 90%; and
- b) within a period of 25 years from the date of delivery provide at least 80%

of the minimum performance set forth in the data sheet (defined as the lower sorting limit of the respective module power class less the power measurement tolerance).

C: Warranty Conditions

1. General

- 1.1 These Warranties are granted to the Consumer or shall transfer from the Consumer to subsequent buyers / end users for the remainder of the warranty period, provided the subsequent buyers / end users can show that the Modules have not been modified or relocated from their originally installed location.
- 1.2 These warranties are independent of any warranty that may have been provided by the vendor of the Modules, and may not be enhanced, diminished or otherwise changed, modified or altered by the vendor or any other person.

- 1.3 In the event that these Warranty Conditions deviate from the specifications set forth in the

data sheet, these Warranty Conditions shall prevail.

- 1.4 These warranties shall apply to Modules sold and delivered in Canada, the United States, Mexico, the Caribbean and Central America by Bosch Solar Energy Corp. Claims arising from or in connection with these warranties must be filed in writing within the applicable warranty period. No extension of the warranty period, regardless of legal basis, will be permitted.

2. Disclaimers / Liability Limitations

- 2.1 These warranties apply only if (i) the Module was installed correctly, (ii) the Module is used as intended and under normal operating conditions, (iii) the product label and serial number of the Module is completely ascertainable, and (iv) the performance of the modules has not been reduced, diminished or otherwise adversely compromised by actions or events outside the control of Bosch Solar Energy Corp., including, without limitation, the following:

- Diminished performance/damage resulting from force majeure events (storms, hail, fire, power outage, lightning, flooding, snow damage, avalanches, frost, earthquakes, tornadoes, volcanic eruptions, landslides, plagues of insects and other detrimental effects by animals, acts of war, etc.), or from acts committed by third parties such as vandalism and theft;
- Improper installation, commissioning, operation or removal and/or reinstallation of Modules (e.g. not in compliance with current installation manual¹);
- Installation or use on mobile units such as vehicles and ships;
- Installation or use in corrosive areas, marine environments or under abnormal environmental conditions;
- Interconnection with Modules made by other manufacturers;
- Defects of the system into which the Module is integrated;
- Operation of Modules in excess of the maximum permissible temperatures as set forth in the operations manual due to insufficient ventilation or other cause;
- Changes in the optical characteristics of the Module that do not fundamentally influence the technical function of the Module.

- 2.2 These warranties may not be assigned or transferred to a third party except in accordance with this Limited Warranty.

¹ Current installation manual available at www.bosch-solarenergy.com

Solar Energy



2.3 THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE. THE LIABILITY OF BOSCH SOLAR ENERGY CORP. UNDER THESE WARRANTIES SHALL NOT EXCEED THE PURCHASE PRICE PAID BY THE CONSUMER FOR THE MODULE(S), AND UNDER NO CIRCUMSTANCES SHALL BOSCH SOLAR ENERGY CORP. OR ANY OF ITS AFFILIATES, BE LIABLE TO THE CONSUMER OR ANY OTHER THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, COMMERCIAL (LOSS OF USE, REVENUE, PROFITS, OR DOWNTIME) OR PUNITIVE DAMAGES WHATSOEVER.

2.4 The sole obligation of Bosch Solar Energy Corp. under these warranties shall be, at its sole discretion, to (i) replace the Module with a functional module of the same type, (ii) remedy the defects, or (iii) refund the unamortized portion of the purchase price of the Module. In the event that the type of Module is no longer available at the time of the warranty claim, Bosch Solar Energy Corp. may replace such Module with another type of solar Module (different size, shape, color and/or capacity).

2.5 The warranty period for replacement or repaired Modules shall be the same as the original Module.

3. Warranty Claim Verification and Procedure

3.1 All warranty claims must be submitted in writing to:

Bosch Solar Energy
care of:
Robert Bosch Power Tool Corporation
Fax: 630-705-7811
E-mail: claim.se@us.bosch.com
www.bosch-solarenergy.com

3.2 All warranty claims must be accompanied by (i) the original bill of sale for the Module, and (ii) proof that (a) there is a defect in the materials and/or workmanship of the Module, or (b) the performance of the Module no longer meets the minimum performance warranted by Bosch Solar Energy Corp.

3.3 Bosch Solar Energy Corp. or its authorized representative(s) reserve the right to verify the claim that the performance of the Module no longer meets the minimum performance warranted under the Performance Warranty.

Module performance shall be measured by Bosch Solar Energy Corp. under standard test conditions (25°C cell temperature, irradiation 1,000 W/m² and spectrum AM 1.5). Output will

be measured in each case at the ends of the pre-assembled connector on the rear of the module. The Consumer is responsible for maintaining the standard test conditions while producing evidence that the performance has fallen below the guaranteed minimum performance.

If such testing determines that the Module does in fact meet the minimum performance warranted under the performance Warranty or that the failure to meet such minimum performance level is the result of condition, circumstance or occurrence that is not covered by the Performance Warranty, Bosch Solar Energy Corp. shall be entitled to reimbursement of the cost of conducting such tests from the party submitting the warranty claim.

3.4 Claims submitted under these warranties must be submitted within three (3) months of the occurrence of an event placing the Consumer on notice that a claim under one of the warranties has or may have arisen. The burden of showing compliance with this time limitation lies with the Consumer. Claims not submitted within this period will not be considered.

3.5 All disputes arising from this warranty shall be governed by the laws of the State of Michigan and conflict of law rules shall not apply.

Warranty Appendix: List of Covered Bosch Crystalline Series Modules

c-Si M 60 -16

c-Si M 60 NA30117
c-Si M 60 NA42117
c-Si M 60 NA44117

c-Si M 60 NA30119

c-Si P 72 NA21126

Last Update: March 13, 2014

EXHIBIT B

EXHIBIT B

From: Bosch Solar Service <solarservice.us@bosch.com>

Date: November 3, 2017 at 2:33:40 PM PDT

To: "srrojas@aol.com" <srrojas@aol.com>

Subject: Bosch Solar Module Replacement Program

Dear valued customer,

Bosch Solar has confirmed that your rooftop photovoltaic system utilizes Bosch c-Si M 60 NA30119 solar modules. These modules are subject to a voluntary recall program implemented by Bosch Solar, and will be replaced without charge to you. The replacement work will be performed by a qualified installer on behalf of Bosch Solar. The installer will contact you soon to arrange for a site survey and inspect the photovoltaic installation to confirm our records match with the actual installation, and verify accessibility to it as well as site-specific requirements to perform the removal of the existing modules and their replacement with new modules.

Bosch Solar is no longer in the business of producing or selling photovoltaic products. Consequently, Bosch Solar will be replacing your Bosch c-Si M 60 NA30119 solar modules with high-quality modules, manufactured by a company with a 15+ year track record in the solar industry, come with a new 25 year linear power output warranty and a 10 year materials warranty. The replacement of the existing Bosch c-Si M 60 NA30119 solar modules will terminate the existing warranty on those modules. You will have the benefit of the full warranty period on the new modules.

If you have questions your qualified installer might have the answers or call our Customer Service Hotline at (855)-866-8470 or visit www.bosch-solarenergy.com.

Sincerely,

Bosch Solar Customer Service

Toll free hotline 1-855-866-8470 (Monday to Friday 7:00 a.m. and 7:00 p.m. CT) |

boschsolar.services@us.bosch.com | www.bosch-solarenergy.com

EXHIBIT C

EXHIBIT C

From: Thom Brodie <tbrodie@bakerhomeenergy.com>

Date: May 31, 2018 at 12:35:21 PM PDT

To: "srrojas@aol.com" <srrojas@aol.com>

Subject: Bosch PV Module Replacement Project

Hello Mr. Rojas,

We truly appreciate your patience during this process.

Attached, please find the "Baker-Bosch Construction Contract for Sullivan Customers". We are scheduled to survey the site on 6/6/18. Please review and submit the signed contract to my attention. The project will flow as follows:

- Baker completes site survey of the system
- Baker evaluates the existing system and creates proper engineering documents to replace the Bosch modules with Canadian Solar Modules
- Baker will request the homeowner to complete a customer acknowledgment form to confirm the module count
- Bosch approves the new engineering
- Baker will schedule the PV module replacement with the homeowner and completes the PV module swap
- Baker tests the system and provides confirmation to Bosch

Please let me know if you have any questions or concerns.

Best regards,

BAKER ELECTRIC
HOME ENERGY

Thom Brodie | Service Coordinator

tbrodie@bakerhomeenergy.com

Desk: 1.760.546.6072 Mobile: 1.760.484.6338

Phone: 1.877.578.8080 | 2140 Enterprise St. | Escondido, CA 92029 | www.bakerhomeenergy.com

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EXHIBIT D

EXHIBIT D



SOLAR MODULE REPLACEMENT PROGRAM SERVICE AND REPAIR CONTRACT

Home Improvement

<u>Customer Information:</u>	<u>Installation Location:</u>	<u>Utility Information:</u>
[Rohas, Steve]	[29294 Juniper Ave]	[SCE]
[29294 Juniper Ave]	[Moreno Valley CA 92555]	
[Moreno Valley CA 92555]		<u>Account No.:</u>
[951-751-4802]		
[srrojas@aol.com]		<u>Meter No.:</u>

This Solar Module Replacement Program Service and Repair Contract ("**Agreement**") is entered into on _____ ("**Agreement Date**") by NB Baker Electric, Inc., dba Baker Electric Solar ("**Baker**" or "**Contractor**") and the customer(s) listed above ("**Customer**", "**You**", or "**Your**") for the installation of replacement modules described below ("**Project**") for the existing photovoltaic solar system ("**System**") at the installation location listed above ("**Property**") upon the terms and conditions set forth in this **Agreement**, including all Exhibits attached hereto which are incorporated into this **Agreement**. You may send notices, including Notices of Cancellation, to Baker at 2140 Enterprise Street, Escondido, CA 92029.

1. DESCRIPTION OF PROJECT AND REPLACEMENT MATERIALS TO BE USED AND REPLACEMENT EQUIPMENT TO BE INSTALLED.

1.1 Robert Bosch Tool Corporation ("**Bosch**") has contracted with Baker to perform the Project at no cost to Customer. Customer has consented to Baker performing the Project. Baker agrees to perform the Project at the Property upon the terms set forth in this **Agreement** provided Customer will perform all of its obligations as set forth in this **Agreement**.

1.2 Description of the Project and Description of the Significant Materials to be Used and Equipment to be Installed:

Baker shall remove existing Bosch c-Si M 60 NA30119 photovoltaic modules currently installed on the Property and shall redesign, install, construct, commission and test replacement modules (e.g. Canadian Solar CS6K-xxxM or comparable) on the Property.

1.3 Customer acknowledges and agrees: (a) Customer has consented to Baker to removing existing modules within the System ("**Existing Modules**") and replacing them with replacement modules that will have sizes and characteristics different from those of the existing modules ("**Replacement Modules**"); (b) the total rated capacity of the Replacement Modules in kilowatts AC will be different than the rated capacity in kilowatts AC of the total number of Existing Modules in kilowatts AC; and (c) the Project will necessarily result in a change in the size and the characteristics of the System. Baker agrees it shall make commercially reasonable efforts to perform the Project and to do so in a manner that preserves the Customer's right to continue to participate in an existing Net Energy Metering ("**NEM**") Tariff (i.e. by increasing the System capacity rating by no more than any limitation on such capacity increases permitted under applicable law or utility tariff or rule). If such capacity increases will not jeopardize Customer's right to continue to participate in an Existing NEM Tariff, Baker shall perform the Project in a manner that does not decrease the capacity rating of the System. However, Customer acknowledges and agrees that Baker will not be held responsible or liable for any decrease to the capacity of a System provided the decrease is reasonably necessary in order to preserve Customer's right to continue to participate in an Existing NEM Tariff.

2. CONTRACT PRICE.

2.1 Baker agrees to accept payment for the performance of the Project from Bosch and not to hold Customer responsible for payments for this work or the Project.

3. INSTALLATION TIMELINE.

3.1 Baker will perform the Project within a reasonable amount of time after Baker signs this **Agreement**, but in no event later than 30 days from the date of the **Agreement**. Baker will schedule the performance of the Project at a mutually convenient date and time.

3.2 Approximate Start Date: 10 days from the **Agreement** Date

3.3 Approximate Completion Date: 30 days from the **Agreement** Date

3.4 The above Project timeline is an estimate only and may be adjusted as provided in this **Agreement**, including for



delays due to unforeseen conditions.

4. ARBITRATION OF DISPUTES.

4.1 ANY CONTROVERSY, DISPUTE, CLAIM, OR DISAGREEMENT BETWEEN THE PARTIES RELATING TO OR IN CONNECTION WITH THIS AGREEMENT AND/OR THE PROJECT ("DISPUTE") MUST BE RESOLVED EXCLUSIVELY BY BINDING ARBITRATION IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED. THE ARBITRATION, INCLUDING SELECTION OF THE ARBITRATOR, WILL BE ADMINISTERED BY JAMS, UNDER ITS STREAMLINED ARBITRATION RULES AND PROCEDURES ("RULES"), AND DECIDED BY A SINGLE NEUTRAL ARBITRATOR AGREED ON BY THE PARTIES WITHIN THIRTY (30) DAYS OF THE COMMENCEMENT OF THE ARBITRATION. EITHER PARTY MAY INITIATE THE ARBITRATION PROCESS BY FILING THE NECESSARY FORMS WITH JAMS. TO LEARN MORE ABOUT ARBITRATION, YOU CAN CALL ANY JAMS OFFICE OR REVIEW THE MATERIALS AT WWW.JAMSADR.COM.

4.2 If You initiate the arbitration, You will be required to pay \$250 toward the filing fee and Baker will pay the remainder of the arbitration fees and costs. If Baker initiates the arbitration, Baker will pay all the arbitration fees and costs. Each party will be responsible for its own attorneys' fees and costs except that the prevailing party in any Dispute will be entitled to recover its attorneys' fees, costs, and expenses from the non-prevailing Party, in addition to any other appropriate relief.

4.3 Arbitration must be on an individual (not class or representative basis) and the arbitrator may not award relief for or against anyone who is not a party. This means You agree that neither You nor Baker may (a) join or consolidate claims in arbitration by or against any other parties, or (b) litigate in court or arbitrate any Dispute as a representative, member of a class, or in a private attorney general capacity. The arbitrator will have the authority to award any legal or equitable remedy or relief that a court could order or grant under this Agreement. However, the arbitrator may not change or alter the terms of this Agreement or make any award that would extend to any transaction other than Yours. All statutes of limitations that are applicable to any Dispute shall apply with respect to any arbitration between the parties. The arbitrator will issue a decision or award in writing, briefly stating the essential findings of fact and conclusions of law.

4.4 NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE BUSINESS AND PROFESSIONS CODE OR OTHER APPLICABLE LAWS. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION. YOU ALSO ACKNOWLEDGE AND AGREE YOU ARE GIVING UP YOUR RIGHTS TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING.

Customer Initial: _____

Baker Initial: _____

5. LIST OF DOCUMENTS TO BE INCORPORATED INTO THE AGREEMENT.

- Exhibit 1 – General Terms and Conditions
- Exhibit 2 – Limited Warranty
- Exhibit 3 – Notice of Cancellation forms, 2 copies (required by law)
- Exhibit 4 – Notice About Contractors' State License Board (required by law)
- Exhibit 5 – Mechanics Lien Warning (required by law)
- Exhibit 6 – Association Acknowledgement
- Exhibit 7 – Form of Change Order (required by law)

6. THREE-DAY RIGHT TO CANCEL UNDER CALIFORNIA BUS & PROF CODE § 7159(e)(6)(B).

6.1 You, the buyer, have the right to cancel this contract within three business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor's place of business by midnight of the third business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.



6.2 If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received them, any goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the contractor's instructions on how to return the goods at contractor's expense and risk. If you do make the goods available to contractor and contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to contractor, or if you agree to return the goods to contractor and fail to do so, then you remain liable for performance of all obligations under the contract.

7. BOND NOTICE.

You have the right to require Baker to have a performance and payment bond. You must request any such bonds prior to commencement of any work under this Agreement and You will be solely responsible for the extra costs of obtaining such bonds.

8. NOTICE REGARDING SULLIVAN INSTALLATION WARRANTY.

The System was originally installed by Sullivan Solar Power ("Sullivan"). Performance of the Project may void installation and workmanship warranties previously issued in connection with the System by Sullivan ("Sullivan Installation Warranty"). Baker has agreed to provide and honor the Sullivan Installation Warranty, as further described in Section 1(d) of the Limited Warranty attached hereto as Exhibit 2.

9. SIGNATURES

CUSTOMER:

Signature: _____

Name: Steve Rojas

Dated: _____

6-6-18

Signature: _____

Name: [NAME #2 IF APPLICABLE]

Dated: _____

CONTRACTOR:

NB Baker Electric Inc. dba Baker Electric Solar,
a California corporation

Signature: _____

Name: _____

Title: _____

Dated: _____

You are entitled to a completely filled in copy of this agreement, signed by both You and the Contractor, before any work may be started.



EXHIBIT 1

GENERAL TERMS AND CONDITIONS1. Pricing and Termination Rights.

1.1 Both parties will have the right to terminate this Agreement, without penalty or fee. Except as provided otherwise in this Agreement, such termination right will expire three (3) days prior to scheduled delivery of Your Project materials.

2. Permits.

Baker will obtain any necessary permits at Baker's cost. You will have the opportunity to review and approve the working plans for the Project. If you do not request any changes to the working plans in writing within three (3) business days of Your receipt of such plans, the working plans will be deemed accepted and Baker will obtain all permits based on the accepted plans. Baker is not responsible for delays in the work due to the actions of any permitting and regulatory agencies or their employees.

3. Note about Extra Work and Change Orders.

3.1 Extra work and change orders become part of the Agreement once the order is prepared in writing and signed by the parties prior to the commencement of any work covered by the new change order. The order must describe the scope of the extra work or change, the cost to be added or subtracted from the Agreement, and the effect the order will have on the schedule for payment.

3.2 Notwithstanding the foregoing, Customer acknowledges and agrees it has requested Baker to perform the Project for the limited purpose and for the limited scope of work set forth in this Agreement. Accordingly, Customer and Baker agree that there should be no circumstance in which Baker would perform any change order or extra work in connection with this Agreement. In the event Customer desires Baker to perform any extra or additional work at the Property or in connection with the System, Baker may, at its sole discretion, agree to provide an estimate for such work which in all cases will be the subject of a separate contract by and between the Parties. Baker's failure to comply with the requirements of this paragraph does not preclude the recovery of compensation for work performed based on legal or equitable remedies designed to prevent unjust enrichment.

4. No Guarantee of Utility Bill Savings.

Pricing and savings vary based on location, system size,

government rebates, post-solar kWh usage and consumption, and local utility rates. BAKER EXPRESSLY DOES NOT GUARANTEE ANY SAVINGS ON YOUR ELECTRICITY COSTS OR UTILITY BILLS. SAVINGS (IF ANY) WILL BE BASED UPON SYSTEM PRODUCTION AND YOUR FUTURE ENERGY USE.

5. No Federal Renewable Energy Tax Credit.

IT IS BAKER'S UNDERSTANDING THAT THIS PROJECT WILL NOT QUALIFY CUSTOMER WILL NOT QUALIFY FOR THE FEDERAL RENEWABLE ENERGY TAX CREDIT OR ANY OTHER FEDERAL OR STATE TAX CREDITS.

6. Property Conditions.

You will be responsible for the structural integrity of the location where the Project is performed, including structural or electrical modifications necessary to prepare Your Property for the performance of the Project. You agree that Baker is not responsible for any known or unknown defects in the Property including any defects in the System. Baker's ability to timely perform the Project assumes that existing roofing materials and structural supports will be adequate to carry the load of all equipment to be installed and work to be done under this Agreement. If any modification of roofing materials and/or reinforcement of existing structural supports is required, Baker will be entitled to an extension of the completion date. Roofing leaks or compromised roof decking/materials may only become apparent during installation. If these conditions are discovered Baker will notify Customer and Bosch immediately to address the issue.

7. Existing Electrical Conditions.

Baker is not responsible for and bears no liability for the malfunctioning of existing electrical equipment at the Property, including but not limited to the main electrical service panel, any major electrical devices, or any other fuses or similar devices. You will provide 110 volt electrical power from the existing distribution system on the Property for hand-held portable power tools at no cost to Baker. Baker will not use the existing electric power system for welding machines or other electrical equipment with heavy power requirements.

8. Cost or Delay Due to Unforeseen Conditions.

Baker is not responsible for failures, delays, or expenses related to any event or circumstance (other than a lack of funds or finances) beyond the control of and without the fault or negligence of Baker that hinders or prevents Baker from



performing despite using commercially reasonable efforts to perform, including, without limitation acts of God such as storms, fires, floods, lightning and earthquakes, sabotage or destruction by a third party of Project Products, war, riot, acts of a public enemy or other civil disturbance, deterioration of the financing markets, a strike, walkout, lockout or other significant labor dispute (all of which shall be considered "**Force Majeure Events**"). Performance times under this Agreement will be considered extended for a period of time equivalent to the time lost due to such Force Majeure Events.

9. Property Access.

9.1 You hereby grant to Baker and its employees, agents, and contractors the right to reasonably access all of the Property as necessary for the purposes of (a) removing the Existing Modules and installing, constructing, commissioning, operating, and testing the Replacement Modules (b) installing, using and maintaining electric lines and inverters and meters necessary to interconnect the System to Your existing electrical system at the Property and/or to the utility's electric distribution system; and (c) taking any other action reasonably necessary in connection with the construction, installation, operation, maintenance, removal, or repair of the System.

9.2 In the event Customer authorizes Baker's access to the Property through adjacent properties to complete the Project, Customer is required to obtain written permission from the owner(s) of the adjacent properties for such use, and Customer agrees to be solely responsible and to defend, indemnify, and hold Baker harmless from any and all forms of liability that may arise out of or relate to such use, including but not limited to encroachment or interference thereby upon the property, easements, or rights of any third parties.

10. Termination and Default.

Baker may, upon seven (7) days written notice to Customer, terminate this Agreement for any material or non-material breach, for any failure of Customer to agree to an appropriate change order, for any failure of Bosch to pay Baker any amount due, or for any hindrance to Baker in the performance process.

11. Remedies Upon Customer's Breach.

Without limiting any of Baker's other rights and remedies, upon any breach by Customer, Baker shall have the right, to the fullest extent of the law, to: (a) pursue a stop work order at the Property; (b) stop any more work from being done at the Property until the breach is cured; (c) require You to make the Property available to us to remove any Project materials or equipment from the Property; and (e) any other legal remedies including, without limitation, mechanics liens or

similar remedies.

12. Insurance.

12.1 Commercial General Liability Insurance (CGL): Baker carries commercial general liability insurance written by Alliant Insurance Services. You may call Jim Castle at 619-699-0541 to check Baker's insurance coverage.

12.2 Workers' Compensation Insurance: Baker carries workers' compensation insurance for all employees.

13. Indemnification.

Contractor agrees to indemnify, defend, and hold harmless Customer from any and all third party claims, actions, costs, expenses (including reasonable attorneys' fees and expenses), damages (including damages to the Property), liabilities, penalties, losses, obligations, demands, and liens of any kind ("Claims") arising out of or relating to Contractor's performance of the Project, including, without limitation Claims arising from or related to the fraud, negligence or willful misconduct of, or violation of laws or breach of this Agreement by Contractor, any subcontractor, or any of their respective directors, officers, employees or agents. Customer agrees to indemnify, defend, and hold harmless Contractor and its employees, officers, directors, agents, and assigns from any and all third party claims, actions, costs, expenses (including reasonable attorneys' fees and expenses), damages, liabilities, penalties, losses, obligations, demands, and liens of any kind arising out of or relating to Customer's failure to perform its obligations under this Agreement. Neither party will be required to indemnify the other party for such other party's own negligence, willful misconduct, or fraud.

14. Governing Law.

The laws of the State of California will govern this Agreement without giving effect to conflict of laws principles.

15. Entire Agreement.

This Agreement contains the parties' entire agreement regarding the Project. There are no other agreements regarding this Agreement, either written or spoken. Any change to this Agreement must be in writing and signed by both parties. Only an authorized representative of Baker may execute any change to this Agreement on behalf of Baker. If any portion of this Agreement is determined to be unenforceable or invalid, the remaining provisions shall be enforced in accordance with their terms or shall be interpreted or rewritten so as to make them enforceable. Provisions that should reasonably be considered to survive termination of this Agreement will survive. Baker may assign or subcontract any of



its rights or obligations under this Agreement to any successor, partner, or purchaser.

16. Waiver.

Any delay or failure of a party to enforce any of the provisions of this Agreement, including but not limited to any remedies listed in this Agreement, or to require performance by the other party of any of the provisions of this Agreement, shall not be construed to be a waiver of such provisions or a party's right to enforce that provision or affect the validity of this Agreement.

17. Exercise of Reasonable Care.

Baker will exercise reasonable care not to damage Your Property during performance of the Project. In the event of damage to the Property due to Baker's performance of the Project, Baker shall, at the option of the Customer, repair such damage at Baker's cost, or shall bear liability to Customer for the cost of such repairs.

18. Limited Warranty.

18.1 EXCEPT AS EXPRESSLY SET FORTH IN THE LIMITED WARRANTY ATTACHED AS EXHIBIT 2 TO THE AGREEMENT ("LIMITED WARRANTY"), BAKER DISCLAIMS, AND YOU WAIVE, ALL OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION AS TO THE MERCHANTABILITY, FITNESS FOR ANY PURPOSE, CONDITION, DESIGN, CAPACITY, SUITABILITY OR PERFORMANCE OF THE PROJECT OR ITS INSTALLATION.

18.2 UPON RECEIPT OF PAYMENT IN FULL UNDER THIS AGREEMENT, ALL WARRANTIES THAT ARE PROVIDED BY MANUFACTURERS OF EQUIPMENT USED IN THE PROJECT WILL BE TRANSFERRED DIRECTLY TO YOU. EXCEPT AS PROVIDED IN SECTION [] OF THE LIMITED WARRANTY, BAKER SHALL NOT

BE LIABLE TO CUSTOMER UNDER THIS WARRANTY IF AN ALLEGED DEFECT IN ANY WORK OR EQUIPMENT WAS CAUSED BY CUSTOMER'S OR ANY THIRD PERSON'S (FOR WHOM BAKER IS NOT RESPONSIBLE AS PROVIDED HEREIN) MISUSE, NEGLIGENCE, UNAUTHORIZED ATTEMPTS TO REPAIR, OR ANY OTHER CAUSE BEYOND THE RANGE OF THE INTENDED USE, OR BY ACCIDENT, FIRE, LIGHTNING OR OTHER HAZARD.

19. Limitation of Liability.

19.1 EXCEPT WITH RESPECT TO DAMAGES TO THE CUSTOMER'S PROPERTY ARISING FROM THE PROJECT, EACH PARTY'S LIABILITY TO THE OTHER UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY. BOTH PARTIES AGREE THAT, EXCEPT WITH RESPECT TO DAMAGES TO THE CUSTOMER'S PROPERTY ARISING FROM THE PROJECT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION (a) PHYSICAL OR MENTAL PAIN AND SUFFERING OR EMOTIONAL DISTRESS DAMAGES; (b) COSTS OF TEMPORARY SHELTER, TRANSPORTATION, FOOD, MOVING, STORAGE, OR SIMILAR INCIDENTAL DAMAGES OR EXPENSES; (c) LOSS OF USE, LOSS OF OPPORTUNITY, LOSS OF FAIR MARKET VALUE, LOSS OF RENTAL VALUE, LOSS OF FINANCING, OR SIMILAR LOSS OF ECONOMIC OPPORTUNITY; OR (d) LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITY OR REPUTATION.

20. Time of the Essence.

The parties agree that time is of the essence in this Agreement.

21. Execution in Counterparts.

This Agreement may be signed by the parties in multiple counterparts, all of which shall be taken together as a single document.



EXHIBIT 2

LIMITED WARRANTY

THE FOLLOWING DESCRIBES THE TERMS AND CONDITIONS OF THE LIMITED WARRANTY (THE "**WARRANTY**") MADE PURSUANT TO THE REPLACEMENT PROGRAM SERVICE AND REPAIR CONTRACT ("**AGREEMENT**") ENTERED INTO BY AND BETWEEN YOU ("**CUSTOMER**") AND NB BAKER ELECTRIC SOLAR, INC. DBA BAKER ELECTRIC SOLAR ("**BAKER**"). ALL CAPITALIZED TERMS USED BUT NOT DEFINED IN THIS WARRANTY WILL HAVE THE MEANINGS SET FORTH IN THE AGREEMENT.

1. **What is the Limited Warranty and what does it cover?**

The Limited Warranty is part of the Agreement between You and Baker. Pursuant to this Limited Warranty Baker agrees to provide You with the following limited warranties in connection with the Replacement Modules and other equipment, as applicable, installed at Your Property by Baker during the Project (collectively, the "**Limited Warranty**"):

- (a) Baker covenants and warrants that: (i) all work is and will be of good quality and installed, constructed and accomplished in a good and workmanlike manner and using skill, care and diligence consistent with all manufacturer's requirements and specifications, design specifications and the practices, methods and acts engaged in or approved by the solar energy industry that at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with applicable Law, reliability, safety, environmental protection, equipment manufacturers' recommendations economy and expedition ("Prudent Practices"); (ii) the work shall be free from workmanship defects; and (iii) all work performed complies with all applicable Laws, permits, standards, Prudent Practices and this Agreement.

- (b) 5-Year Limited Workmanship and Installation Warranty. With respect to each Replacement Module installed pursuant to this Contract, Baker provides a warranty on all work against defects in design or workmanship and a warranty on all materials incorporated into the work (other than the

Replacement Module supplied by Bosch) against design, material, workmanship or manufacture, in each case for a period of five (5) years following final completion of the Project.

- (c) 5-Year Limited Roofing Penetration

Warranty. Baker does not anticipate making any new roofing penetrations on your roof, however if new roofing penetrations are required, Baker warrants Your roof against defects in, leaks, or damage caused by, all new roofing penetrations made by Baker for a period beginning when such roofing penetrations are made by Baker and ending upon the earlier of (i) five (5) years after the date performance of the Project is completed by Baker; or (ii) the expiration of the warranty applicable to such roof provided by the installer of such roof. Baker does not warrant any roofing related issues outside of the scope of the work performed by Baker for the Project, including without limitation, prior roof penetrations, or existing roof conditions.

- (d) Claims Under Limited Warranty. Claims under this Limited Warranty must be filed in writing within 90 days of the termination of the Limited Warranty period. Upon receipt of such notice, Baker shall repair or replace the malfunctioning or nonconforming warranted services within five (5) business days, subject (as applicable) to replacement part availability. During the period covered by the Limited Warranty, Baker will repair any defective parts or services covered at Baker's own expense. Baker will not charge Customer for parts and labor costs associated with these warranties however any expenses for the remedy of defects for malfunctions of part(s) or system(s) other than those covered by this Limited Warranty shall be paid for by Customer.

- (e) Coverage Under Sullivan Installation Warranty. The System was originally installed by Sullivan. Performance of the Project may void the Sullivan Installation Warranty. Baker hereby covenants and warrants that, as of the date it has completed a full inspection confirming no pre-existing defects or faults and has completed the module replacement and recommissioning of the System: (i) the System will be free of defects in installation or materials from ten (10) years from the date of System commissioning; (ii) Baker will replace or repair at its sole discretion any items it determines to be faulty as a result of errors and/or omissions on the part of Sullivan in installing the Systems; and (iii) Baker shall provide,



honor, uphold and bear any liability for the Sullivan Installation Warranty.

2. Who warrants the materials and products used by Baker for the Project?

(a) Baker will request and provide Customer with the standard warranties and guarantees (if any and where applicable) for any material, equipment, product, or component installed by Baker under the Agreement incorporated into and made a part of the Project (each a "Project Product" and collectively the "Project Products") that is covered under a warranty provided by any supplier, manufacturer, subcontractor, vendor, or other applicable third party (each a "Supplier" and collectively the "Suppliers") ("Project Product Warranties"). Baker will install all Project Products in such a manner as to not void or otherwise negate any manufacturers' warranty on Project Products. Baker will register the Project Products with the applicable manufacturer for warranty purposes. To the extent permitted, Baker will assign the Project Product Warranties directly to the Customer. Baker will reasonably assist the Customer with obtaining warranty assistance to the extent any Project Products are defective or damaged. EXCEPT AS PROVIDED ABOVE AND IN SECTION 1(d) ABOVE, BAKER DOES NOT WARRANT THE PROJECT PRODUCTS AND ASSUMES NO LIABILITY UNDER ANY PROJECT PRODUCTS WARRANTIES OR FOR ANY DEFECTS IN THE PROJECT PRODUCTS.

(b) All Project Product Warranties shall be for the sole benefit of Customer. If a Customer has a valid claim against a Supplier under a Project Product Warranty Baker shall (a) make such claim on the Customer's behalf and (b) perform the remedial work at no cost to the Customer so long as (i) the Customer allows Baker to retain any funds paid by the Supplier pursuant to such claim and (ii) the Supplier (or its successor) is a viable entity and complies with its warranty obligations that Baker files on the Customer's behalf.

3. What is not covered by the Limited Warranty?

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 1, ABOVE, BAKER DISCLAIMS, AND YOU WAIVE, ALL OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION AS TO THE MERCHANTABILITY, FITNESS FOR ANY PURPOSE, CONDITION, DESIGN, CAPACITY, SUITABILITY, OR PERFORMANCE OF THE SYSTEM AND/OR THE SYSTEM INSTALLATION.

In addition, except as provided in Section 1(d) above, the following items and circumstances (without limiting other potential exclusions from coverage) are expressly excluded

from coverage under the Limited Warranty: (a) any materials that were modified, altered, repaired, or attempted to be repaired by anyone other than Contractor, a subcontractor of Contractor, or any person acting at Contractor's direction or under Contractor's control; (b) any damages resulting from lack of Customer maintenance; (c) any damages resulting from project site abuse by Customer; (d) aesthetic changes; (e) damages due to animals, weather or natural disasters, or acts of god; (f) damages resulting from mold, fungus and other organic pathogens, unless caused by the negligence of Contractor as a direct result of a breach of the Limited Warranty; (g) shrinking/cracking of grouts and caulking; and (h) fading of paints and finishes exposed to sunlight.

4. What circumstances will void this Warranty?

In addition to the limitations and exclusions set forth above, the Limited Warranty will be void and will not apply to repairs, improvements, corrections, or replacements of the work performed under the Project required by any of the following:

- (a) Your gross negligence or Your intentional damage to the System;
- (b) Your breach of or failure to perform Your obligations under the Agreement and/or this Warranty; or
- (c) Any actual or attempted installation, repair, alteration, replacement, movement, change or modification to the Replacement Modules or any other component of the Project made by anyone other than Baker or without Baker's prior written consent.

5. Under what circumstances will Baker's obligation to perform under this Warranty be extended?

Baker will not be in breach of this Limited Warranty because of any failure or delay in complying with its Limited Warranty if such failure or delay is the result of one or more Force Majeure Events or their effects. Additionally, the periods allowed for the performance by Baker of its obligations under this Warranty shall be extended for so long as such Force Majeure Events or effects continue. In order to claim relief due to Force Majeure Events, Baker will provide You with prompt notice of the Force Majeure Event, to the extent reasonably practicable. The suspension of Baker's performance must be of no greater duration and scope than that required by the Force Majeure Event and Baker's excused obligation must not be one which arose before the Force Majeure Event and which should have been fully performed before the Force Majeure Event occurred.

6. How do You contact Baker with questions or submit a claim to get service? How will Baker contact You?

To ask a question regarding this Warranty, You may call Baker at (760) 546-6000 during normal business hours.



To submit a claim or provide any other notice under this Warranty, You must send us the request in writing, by email, certified or registered first-class mail, post prepaid, with a return receipt requested, or a reputable courier service requiring signature for receipt, at the following address:

Baker Electric Solar
Attn: Warranty Claims
2140 Enterprise Street
Escondido, California 92029
info@bakerelectricsolar.com

To notify You under this Limited Warranty, Baker may send You a notice in writing in the manner described above, to the email or mailing address provided in the Agreement or any subsequent contact information that You provide under the Agreement or this Limited Warranty.

The parties agree that any emailed document shall be deemed an original document.

7. What happens if You submit a claim?

If Your claim is covered by this Limited Warranty, Baker will make the repair or replacement under the Limited Warranty within five (5) Business Days, at no cost to You. Baker may use new or reconditioned parts to make repairs. Baker will use commercially reasonable efforts to replace parts with the same type of equipment but may substitute materials or types of equipment if necessary. Additionally, at Baker's option (but at no additional cost to You), Baker may elect to make cosmetic repairs that are not covered by the Limited Warranty.

If Your claim is not covered by this Warranty then You may request that Baker make the repair or replacement at Your cost and expense. Baker will send a representative to Your Property to provide You with a price quote for the requested services. You may then elect whether to have Baker provide the requested services at the quoted price. The price quote

will be based on standard pricing terms that are on a time and materials basis.

8. What happens if You sell Your Property?

This Limited Warranty only protects the person that owns the Property including the System. If You transfer all of Your rights and obligations in connection with the System to a transferee of Your Property in a manner that is permitted by the Agreement, then Your remaining rights and obligations under this Limited Warranty will also transfer to the transferee. YOU MAY NOT OTHERWISE TRANSFER YOUR RIGHTS OR OBLIGATIONS UNDER THIS LIMITED WARRANTY. ANY TRANSFeree OF THE SYSTEM WILL BE BOUND BY ALL REMAINING OBLIGATIONS AND DUTIES OF THE CUSTOMER UNDER THE AGREEMENT AND THIS LIMITED WARRANTY.

9. Can Baker transfer or assign its rights and obligations under this Limited Warranty?

Baker may transfer, sell, or otherwise assign any and all of its rights and obligations under this Limited Warranty to another party, without Your consent and without prior notice to You. Any assignment of Baker's obligations under this Limited Warranty will be to a creditworthy party that is qualified to perform such obligations and that expressly accepts responsibility in writing for our obligations under this Limited Warranty. Upon such transfer, sale, or assignment, Baker shall be released from all future obligations under this Limited Warranty.

10. How does this Limited Warranty relate to the Agreement?

This Limited Warranty is an exhibit to the Agreement and is subject to all of the terms and conditions of the Agreement. In the event of any conflict between this Limited Warranty and the terms of the Agreement, the terms of this Limited Warranty will control.



EXHIBIT 3

NOTICE OF CANCELLATION FORMS**NOTICE OF CANCELLATION (Customer Copy)**

[REDACTED]

Agreement Date

You may cancel this transaction, without any penalty or obligation, within three (3) business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to

NB Baker Electric, Inc. dba Baker Electric Solar,

at 2140 Enterprise Street, Escondido, CA 92029,

not later than midnight of [REDACTED].

Date (enter date 3 days from Agreement Date)

I hereby cancel this transaction.

(Date)

(Customer's signature) **(SIGN HERE ONLY IF CANCELLING)**

**NOTICE OF CANCELLATION (Contractor Copy)**

[REDACTED]

Agreement Date

You may cancel this transaction, without any penalty or obligation, within three (3) business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to

NB Baker Electric, Inc. dba Baker Electric Solar,

at 2140 Enterprise Street, Escondido, CA 92029,

not later than midnight of [REDACTED].

Date (enter date 3 days from Agreement Date)

I hereby cancel this transaction.

(Date)

(Customer's signature) **(SIGN HERE ONLY IF CANCELLING)**



EXHIBIT 4

NOTICE ABOUT CONTRACTORS' STATE LICENSE BOARD

California Business & Professions Code § 7159(e)(5):

INFORMATION ABOUT THE CONTRACTORS' STATE LICENSE BOARD (CSLB):

CSLB IS THE STATE CONSUMER PROTECTION AGENCY THAT LICENSES AND REGULATES CONSTRUCTION CONTRACTORS.

CONTACT CSLB FOR INFORMATION ABOUT THE LICENSED CONTRACTOR YOU ARE CONSIDERING, INCLUDING INFORMATION ABOUT DISCLOSABLE COMPLAINTS, DISCIPLINARY ACTIONS AND CIVIL JUDGMENTS THAT ARE REPORTED TO CSLB.

USE ONLY LICENSED CONTRACTORS. IF YOU FILE A COMPLAINT AGAINST A LICENSED CONTRACTOR WITHIN THE LEGAL DEADLINE (USUALLY FOUR YEARS), CSLB HAS AUTHORITY TO INVESTIGATE THE COMPLAINT. IF YOU USE AN UNLICENSED CONTRACTOR, CSLB MAY NOT BE ABLE TO HELP YOU RESOLVE YOUR COMPLAINT. YOUR ONLY REMEDY MAY BE IN CIVIL COURT, AND YOU MAY BE LIABLE FOR DAMAGES ARISING OUT OF ANY INJURIES TO THE UNLICENSED CONTRACTOR OR THE UNLICENSED CONTRACTOR'S EMPLOYEES.

FOR MORE INFORMATION:

VISIT CSLB'S WEBSITE AT WWW.CSLB.CA.GOV

CALL CSLB AT 800-321-CSLB (2752)

WRITE CSLB AT P.O. BOX 26000, SACRAMENTO, CA 95826



EXHIBIT 5

MECHANICS LIEN WARNING

NOTICE TO PROPERTY OWNER: If bills are not paid in full for the labor, services, equipment, or materials furnished or to be furnished, a mechanics lien leading to the loss, through court foreclosure proceedings, of all or part of your property being so improved may be placed against the property even though you have paid your contractor in full. You may wish to protect yourself against this consequence by (1) requiring your contractor to furnish a signed release by the person or firm giving you this notice before making payment to your contractor, or (2) any other method or device that is appropriate under the circumstances.

California Business & Professions Code § 7159(e)(4):

Anyone who helps improve your property, but who is not paid, may record what is called a mechanics lien on your property. A mechanics lien is a claim, like a mortgage or home equity loan, made against your property and recorded with the county recorder.

Even if you pay your contractor in full, unpaid subcontractors, suppliers, and laborers who helped to improve your property may record mechanics liens and sue you in court to foreclose the lien. If a court finds the lien is valid, you could be forced to pay twice or have a court office sell your home to pay the lien. Liens can also affect your credit.

To preserve their right to record a lien, each subcontractor and material supplier must provide you with a document called a "Preliminary Notice." This notice is not a lien. The purpose of the notice is to let you know that the person who sends you the notice has the right to record a lien on your property if he or she is not paid.

BE CAREFUL. The Preliminary Notice can be sent up to 20 days after the subcontractor starts work or the supplier provides material. This can be a big problem if you pay your contractor before you received the Preliminary Notices.

You will get the Preliminary Notices from your prime contractor or from laborers who work on your project. The law assumes that you already know they are improving your property.

PROTECT YOURSELF FROM LIENS. You can protect yourself from liens by getting a list from your contractor of all the subcontractors and material suppliers that work on your project. Find out from your contractor when these subcontractors started work and when these suppliers delivered goods or materials. Then wait 20 days, paying attention to the Preliminary Notices you receive.

PAY WITH JOINT CHECKS. One way to protect yourself is to pay with a joint check. When your contractor tells you it is time to pay for the work of a subcontractor or supplier who has provided you with a Preliminary Notice, write a joint check payable to both the contractor and the subcontractor or material supplier.

For other ways to prevent liens, visit CSLB's website at www.cslb.cs.gov or call CSLB at 800-321-CSLB (2752).

REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A LIEN PLACED ON YOUR HOME. This can mean that you may have to pay twice, or face the forced sale of your home to pay what you owe.

**EXHIBIT 6****ASSOCIATION APPROVAL ACKNOWLEDGEMENT****NOTICE REGARDING REQUIREMENT OF ASSOCIATION APPROVAL:**

You are solely responsible for any and all costs and expenses of any nature associated with obtaining any approvals required from any Homeowners Association or any other association or organization (each an "**Association**") with any rights or claims over or with respect to the Property in connection with the installation of Your System under this Agreement. Baker agrees to provide You with reasonable support and documentation required by any Association in connection with You obtaining any required Association approval.

Association Exists? (mark Yes or No): [Y] _____ [N] _____

Customer Initials: _____

Association Name and Contact Information (if applicable):

[OR]

ALTERNATIVE WAIVER OF ASSOCIATION APPROVAL REQUIREMENT AND INDEMNITY:

You may, at your own discretion and at Your sole risk, authorize Baker to proceed with installation of Your System without advance written approval from any applicable Association.

By signing below, You hereby direct Baker to proceed with installation of the Your System even though You have not received advance written approval from all applicable Associations.

You agree that You will be solely responsible for, and will immediately reimburse, defend, and indemnify Baker for all costs and expenses incurred directly and indirectly by Baker in connection with or arising out of Your election to waive and not obtain advance written Association approval for the installation of Your System. Such costs may include, without limitation, the cost of removing and replacing some or all of the installed System and/or the cost to revise the design, and a reasonable mark-up for overhead and profit in connection with any such work.

CUSTOMER:

Signature: _____

Dated: _____

Signature: _____

Dated: _____

**EXHIBIT 7****FORM OF CHANGE ORDER**

THE FOLLOWING CHANGE ORDER CONSTITUTES AN AMENDMENT TO THE HOME IMPROVEMENT AGREEMENT DATED _____ ("AGREEMENT") BY AND BETWEEN NB BAKER ELECTRIC, INC. DBA BAKER ELECTRIC ("BAKER") AND _____ ("CUSTOMER").

Change to Scope of Work:

Customer and Baker agree that the following scope of work will be added or deleted from the work to be performed by Baker under the Agreement:

Change to Contract Price:

AMOUNT ADDED TO THE CONTRACT PRICE: \$ _____

[OR]

AMOUNT SUBTRACTED FROM THE CONTRACT PRICE: (\$ _____)

Effect of Change Order on Progress Payments:

PAYMENT FOR THE CHANGE ORDER WILL BE ADDED TO (OR SUBTRACTED FROM) APPLICABLE PROGRESS PAYMENT AMOUNTS AND ADJUSTED PAYMENT MUST BE MADE ON THE DATES SCHEDULED FOR PROGRESS PAYMENTS BASED ON A PERCENTAGE OF COMPLETION (OR NONPERFORMANCE) OF THE WORK AUTHORIZED (OR DELETED) BY THE CHANGE ORDER.

Effect of Change Order on Completion Date:

No other terms or conditions of the Agreement shall be negated or changed as a result of this Change Order.

IT IS SO AGREED.

CUSTOMER:

Signature: _____
 Name: _____
 Dated: _____

Signature: _____
 Name: _____
 Dated: _____

CONTRACTOR:

NB Baker Electric Inc. dba Baker Electric Solar,
 a California corporation

Signature: _____
 Name: _____
 Title: _____
 Dated: _____

EXHIBIT E

EXHIBIT E

 **STEVEN R. ROJAS-WELDING**
ANDREA N. ROJAS
29294 JUNIPER AVENUE PH. 951-247-8739
MORENO VALLEY, CA 92555

9476

2-20-2013 Date

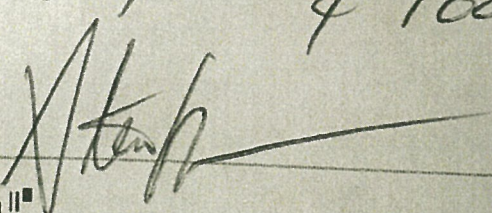
90-3210/1222
225

PAY to the order of KiloWatt Systems, LLC \$25,089.²²/₁₀₀

TWENTY FIVE THOUSAND & EIGHTY NINE ²²/₁₀₀ Dollars

 **CALIFORNIA BANK TRUST**
MORENO VALLEY OFFICE
12625 FREDERICK STREET, MORENO VALLEY, CALIFORNIA 92553
CBT Connect 1-800-400-6080 www.calbanktrust.com

For KW0016171



MP

⑆ 1 2 2 2 3 2 1 0 9 ⑆ 9 4 7 6 ⑆ 4 2 5 0 0 0 2 1 5 1 ⑆

Harland Clarke

COLONIAL CLASSIC®

EXHIBIT F

EXHIBIT F

BIRKA-WHITE
L A W O F F I C E S

178 E. Prospect Avenue
Danville, California 94526
Tel: (925) 362-9999
Fax: (925) 362-9970
www.birka-white.com

DAVID M. BIRKA-WHITE
dbw@birka-white.com

September 24, 2018

**NOTICE OF VIOLATION OF CONSUMER LEGAL REMEDIES ACT
AND BREACH OF WARRANTY**

**VIA CERTIFIED MAIL &
RETURN RECEIPT REQUESTED**

Bosch Solar Energy Corporation
38000 Hills Tech Drive
Farmington, Michigan 48331

Bosch Solar Energy Corporation
4009 Miranda Avenue
Palo Alto, California 94304

RE: *Steve R. Rojas and Andrea N. Rojas, on behalf of themselves and all others
similarly situated, v. Bosch Solar Energy Corporation*

To Whom It May Concern:

In accordance with Section 1782 of the California Consumers Legal Remedies Act ("CLRA"), Steve R. Rojas and Andrea N. Rojas, on behalf of themselves and all others similarly situated, notify you that Bosch Solar Energy Corporation ("Bosch") has violated Civil Code § 1770 by misrepresenting to consumers the attributes of the photovoltaic modules commonly referred to as the Modules c-Si M60 NA 30119 Series. This conduct violates the following provisions of Civil Code § 1770:

1. Bosch violated § 1770 (a)(5) by representing that the solar panels had benefits or characteristics that they did not actually have.
2. Bosch violated § 1770(a)(7) by representing that the solar panels were of a particular standard or quality when they were of another.

As detailed below, the representations referenced in paragraphs 1 and 2 above include, without limitation, representations that the solar panels were free from defects in materials and workmanship and that they would deliver specified levels of power for varying periods of time.

3. Bosch's written warranties violate § 1770 (a)(19) by including unconscionable provisions including, without limitation: (1) purported limitations in the remedies available upon breach (such as the exclusion of the cost of labor to repair and replace the defective product, the exclusion of incidental and consequential



Bosch Solar Energy Corporation
September 24, 2018
Page 2 of 3

damages and the limitation of the amount of recoverable damages to the amount paid by the purchaser for the panels); (2) failure by Bosch to conduct measurements to determine the actual power output of the product after receipt of a claim; and (3) failure of Bosch to adequately notify end users of the recall or to replace the defective panels subject to the April 13, 2017 Recall through the United States Consumer Product Safety Commission.

Bosch represented in its warranties and various marketing materials that the Bosch solar panels were (1) "free from defect in materials and workmanship" for the term of the warranty (10 years); and (2) the solar panels would produce at least ninety percent (90%) of their minimum peak power output for a specified period of ten (10) years and at least eighty percent (80%) for another fifteen (15) year period from the date of purchase.

The Bosch solar panels have suffered a soldering defect which causes a power output defect and which render the solar panels a safety risk and causes them to fail prematurely. The solder defect presents a risk of overheating, fire and property damage, a condition admitted by Bosch.

There are forty-two (42) c-Si M60 NA 30119 Bosch solar panels installed at the Rojas's residence located at 29294 Juniper Avenue, Moreno Valley, California. The Rojas purchased the panels on or about October 28, 2012. The system was installed in April 2013. The panels are the subject of a recall and have experienced power degradation below ninety percent (90%) of minimum power. Bosch has also refused to pay for the power loss measurements, the cost of labor and materials for replacing the defective panels and the value of the lost power.

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand that Bosch: (1) pay all costs required to investigate and replace all solar panels subject to the recall or or similarly designed and manufactured and installed in the United States; and (2) provide notice to all end users and final customers of the issues addressed in this letter and of their right to present a claim for the full amount of any loss they have sustained, including losses purportedly excluded under the written warranty. Plaintiffs demand that Bosch remedy these defects within thirty (30) days of receipt of this letter. If we do not hear from you within this time period, we will assume that you will not take the corrective action requested.

Notice of Breach of Warranty

This letter also constitutes a notice on behalf of Plaintiffs and all persons similarly situated of the breach by Bosch of its express warranties and the implied warranties of merchantability and fitness for use; and further constitutes notice of breach of express and implied warranty under Song-Beverly, Magnuson Moss, California warranty law, and the warranty laws of all states in which the Bosch product was sold or installed.



Bosch Solar Energy Corporation
September 24, 2018
Page 3 of 3

This letter also serves as a demand that you preserve and maintain all of the following records, including electronic records and data, pending resolution of this matter:

1. All internal manuals, written policies, directives, memoranda, correspondence, electronic mail, and other records of communication regarding Bosch solar panels that are subject to the recall as well as all solar panels similarly designed and manufactured. In other words, if the solder defect identified in the recall could reasonably extend to other panels manufactured by Bosch, the those records must be preserved as well;
2. All advertisements or marketing information discussing or concerning Bosch solar panels;
3. Any materials disseminated to consumers, retailers, and/or distributors that discuss or concern the Bosch solar panels;
4. Any warranty complaints from any source concerning allegedly defective or problematic or poor performing Bosch solar panels including dates and locations;
5. Any documents or communications between Bosch and its distributors, installers and consumers related to the Bosch solar panels; and
6. All communications within Bosch or with third parties regarding Bosch solar panels which are the subject of the Bosch recall including similarly manufactured Bosch panels.

If you have any questions regarding this notice and demand, please contact the undersigned counsel at (925) 362-9999.

Sincerely,

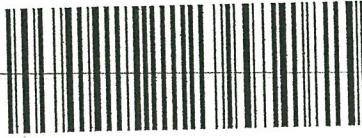
BIRKA-WHITE LAW OFFICES

DAVID M. BIRKA-WHITE

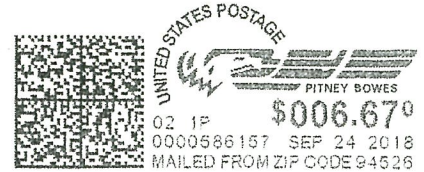
DBW:sh

➤ BIRKA-WHITE
178 E. Prospect Ave.
Danville, CA 94526

CERTIFIED MAIL



7015 1520 0001 7549 3529



Bosch Solar Energy Corporation
38000 Hills Tech Drive
Farmington, Michigan 48331

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Bosch Solar Energy Corp
38000 Hills Tech Drive
Farmington, Michigan
48331

2. Article Number

(Transfer from service label)

7015 1520 0001 7549 3529

PS Form 3811, July 2013

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Chris Byers

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

Chris Byers

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☒ Certified Mail® ☐ Priority Mail Express™
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee)

- ☐ Yes

➤ BIRKA-WHITE
178 E. Prospect Ave.
Danville, CA 94526

CERTIFIED MAIL



7015 1520 0001 7549 3512



Bosch Solar Energy Corporation
4009 Miranda Avenue
Palo Alto, California 94304

NIXTE .957 DE 1 0010/24/18

RETURN TO SENDER
NO SUCH STREET
UNABLE TO FORWARD

000044000000

BC: 04026861278