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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SANTA CLARA**

11 MAX WEISS, LEZLEY HOLMES,
12 SEBASTIEN TARDIF, and JOHN
13 MACZYNSKI, individually and on behalf
14 of all others similarly situated,

15 Plaintiffs,

16 v.

17 SUNPOWER CORPORATION,
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19 Defendant.
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Case No.: **21CV384151**

CLASS ACTION COMPLAINT FOR:

- (1) Breach of Express Warranty;
- (2) Breach of the Implied Warranty of Merchantability;
- (3) Deceptive Acts or Practices Prohibited by Mass. Gen. Laws Ch. 93A;
- (4) Violations of the Song-Beverly Consumer Warranty Act, Cal. Civ. Code §§ 1792 and 1791.1, *et seq.*;
- (5) Violations of the California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*;
- (6) Violations of the California Unfair Competition Law, Cal. Civ. Code § 17200, *et seq.*;
- (7) Violations of the California False Advertising Law, Cal. Civ. Code § 17500, *et seq.*;
- (8) Negligence;
- (9) Unjust Enrichment; and
- (10) Declaratory Relief.

DEMAND FOR JURY TRIAL

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1 Plaintiffs Max Weiss, Lezley Holmes, Sebastien Tardif, and John Maczynski
2 (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated,
3 through their undersigned counsel, file this Class Action Complaint (the “Complaint”)
4 against Defendant SunPower Corporation (“SunPower” or “Defendant”).

5 In support thereof, Plaintiffs allege upon personal knowledge as to themselves and
6 their own acts, and, as to all other matters, upon information and belief and the
7 investigation of their counsel, as follows:

8 **I. INTRODUCTION**

9 1. This case arises out of an alleged defective component in certain residential
10 solar panel modules with factory-integrated Generation 3.0 microinverters manufactured
11 by or for SunPower through December 2016 (the “Solar Modules”). The component at
12 issue is a certain capacitor produced by a third-party manufacturer that was integrated as
13 part of the Generation 3.0 microinverters used in the Solar Modules for a period of time
14 from July 2015 through December 2016. The Solar Modules impacted or potentially
15 impacted by the affected Generation 3.0 microinverters include certain of SunPower’s
16 “Equinox” systems, including panel model numbers SPR-E20-327-C-AC, SPR-E19-320-
17 C-AC, SPR-E18-305-C-AC, SPR-X22-360-C-AC, SPR-X21-350-BLK-C-AC, SPR-
18 X21-345-C-AC, SPR-X21-335-C-AC, SPR-X21-335-BLK-C-AC, and SPR-X20-327-
19 BLK-C-AC.

20 2. The Solar Modules contain photovoltaic cells made from silicon that
21 transform incoming sunlight into electricity rather than heat. Solar photovoltaic cells
22 consist of a positive and a negative film of silicon placed under a thin slice of glass. As
23 the photons of the sunlight beat down upon these cells, they knock the electrons off the
24 silicon. The negatively charged free electrons are preferentially attracted to one side of
25 the silicon cell, which creates an electric voltage that can be collected and channeled. The
26 electricity produced at this stage is DC (direct current) that must be converted to AC
27 (alternating current) to be suitable for residential use.

1 3. Microinverters play an essential role in the solar module system. The
2 microinverter converts that DC power to AC power, which can be used to power
3 customers' homes and potentially exchanged with a local utility for credits.

4 4. Each SunPower Solar Module that is the subject of this Complaint consists
5 of, among other things, a solar panel and a microinverter. The degradation of the
6 microinverter, or any component of the microinverter, adversely impacts the panel's
7 performance, as the module fails to convert solar-generated DC power into AC power at
8 the expected production level.

9 5. Plaintiffs allege on information and belief that the Solar Modules at issue in
10 this complaint are defective in that the factory-integrated microinverters within the
11 modules degrade and intermittently cease to function at the expected production level
12 within a few years of installation, long before the end of their claimed useful life, and
13 long before the end of the 25-year period that SunPower promises that the Solar Modules
14 will be free from defects.

15 6. Plaintiffs allege on information and belief that SunPower knew or should
16 have known of the microinverter defect before the Solar Modules were sold to Plaintiffs
17 and other Class members, and SunPower failed to timely correct the defect or disclose it
18 to Plaintiffs and the Class.

19 7. Plaintiffs allege on information and belief that SunPower internally referred
20 to this specific microinverter defect as the "Ironman Issue." SunPower began to offer
21 replacement microinverters to customers who raised underperformance issues with the
22 dealer or SunPower and proactively replaced microinverters in systems exhibiting
23 underperformance. A SunPower customer service representative has admitted that
24 Generation 3.0 microinverters suffer "a product issue that effected communication and
25 degradation of performance" that warrants "[p]roactive replacement" of the
26 microinverters.

27 8. Nevertheless, Plaintiffs allege that SunPower did not timely notify its
28 customers or recall the defective microinverters in the Solar Modules, and has failed to

1 adequately compensate Plaintiffs and Class members for economic losses and property
2 damage caused by the defective microinverters in the Solar Modules. Based on the
3 warranty terms, SunPower has taken the position that such losses and damages are not
4 covered by or recoverable under the limited warranty for the system.

5 9. Plaintiffs allege that SunPower also has not fully compensated or, in some
6 instances has failed or refused to compensate, Plaintiffs and the Class for losses resulting
7 from reduced power production caused by the defective microinverters in the Solar
8 Modules. Reduced solar power production causes system owners to pay higher electricity
9 bills and/or accrue fewer credits to offset future electricity bills, and, where applicable,
10 lose the opportunity to earn valuable renewable energy incentives, including Solar
11 Renewable Energy Certificates (“SRECs”). In failing to timely disclose the defect and
12 recall the microinverters in the Solar Modules, Plaintiffs and the Class were prevented
13 from taking steps to avoid reduced or lost power production and other economic losses
14 caused by the defective microinverters.

15 10. Plaintiffs allege that, although SunPower has now replaced the defective
16 microinverters in the Solar Modules in Plaintiffs’ and most Class Members’ systems,
17 SunPower has not compensated or has not adequately compensated Plaintiffs and other
18 Class members for the reduced power production and lost SRECs or other incentives for
19 which they bargained and would have received but for the defect, as well as for any
20 property damage to their roof as a result of the replacement of the microinverters.
21 SunPower has taken the position that lost production, lost SRECs or other incentives, and
22 other economic losses, and damages are not covered by nor recoverable under the limited
23 warranty for the systems. Accordingly, Plaintiffs seek damages on behalf of the Class
24 defined below.

25 **II. PARTIES**

26 **A. Plaintiffs**

27 11. Plaintiff Max Weiss is a citizen of the Commonwealth of Massachusetts. On
28 July 26, 2016, Mr. Weiss purchased 46 SunPower Solar Modules.

1 12. Plaintiff Lezley Holmes is a citizen of the State of California. On or about
2 June 20, 2016, Ms. Holmes purchased 30 SunPower Solar Modules.

3 13. Plaintiff Sebastien Tardif is a citizen of the Commonwealth of
4 Massachusetts. On or about September 5, 2016, Mr. Tardif purchased 28 SunPower Solar
5 Modules.

6 14. Plaintiff John Maczynski is a citizen of the Commonwealth of
7 Massachusetts. On or about August 3, 2016, Mr. Maczynski purchased 46 SunPower
8 Solar Modules.

9 **B. Defendant**

10 15. Defendant SunPower Corporation is a corporation organized under the laws
11 of the State of Delaware. SunPower's principal executive offices and principal place of
12 business are located at 51 Rio Robles, San Jose, California 95134.

13 **III. JURISDICTION AND VENUE**

14 16. This Court has jurisdiction over this action pursuant to Article VI, Section
15 10, of the California Constitution.

16 17. This is a class action brought pursuant to California Code of Civil Procedure
17 Section 382. The damages sought exceed the minimal jurisdictional limits of this Court
18 and will be established at trial.

19 18. This Court has personal jurisdiction over Defendant because its principal
20 place of business is located in California and the acts complained of herein occurred in
21 California.

22 19. Venue in this Court is proper pursuant to California Code of Civil Procedure
23 Section 395 because Defendant resides in this County.

24 **IV. FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

25 20. Homeowners generally purchase solar power systems for two reasons: (1)
26 to enjoy the financial benefits of a solar power system, including reduced energy bills,
27 government credits such as SRECs, and participate in other renewable energy incentive
28 programs, tax benefits, and increased property values; and (2) to increase their use of

1 clean energy and, correspondingly, reduce the use of fossil fuels and its adverse
2 environmental impact.

3 21. Installing a residential solar power system requires a substantial up-front
4 financial outlay by the homeowner, which will be defrayed or offset by the benefits that
5 the system will generate over its useful life. Indeed, SunPower represented that the DC
6 power of the Solar Modules will be at least 95% of the minimum peak power rating for
7 the first 5 years, and decline no more than 0.4% per year for the following 20 years, so
8 the power output at the end of the final year of the 25 year warranty period will be at least
9 87% of the minimum peak power rating. Also, SunPower represented to consumers on
10 its website: “We’ve got you covered for 25 years—including performance, labor and
11 parts.”

12 22. In or around March 2016, SunPower introduced the Equinox residential solar
13 electric system with a press release titled “SunPower Reinvents Home Solar with
14 SunPower Equinox.” SunPower’s Chairman, President and CEO Tom Werner called
15 Equinox “an important milestone” for the Company because “every major component has
16 been designed and engineered by SunPower to work seamlessly together, delivering
17 unbeatable power, long term performance, reliability and superior aesthetics.” Mr. Werner
18 touted SunPower’s “proprietary microinverters that are factory integrated with every panel
19 eliminating field assembly and allowing each panel to operate at peak performance” as a
20 “key element” of the new residential solar product line. *Id.* Mr. Werner highlighted the
21 key advantages of Equinox:

22 Equinox offers customers up to 70% more lifetime power with 70%
23 fewer visible parts than conventional systems, all-backed by our
24 industry leading 25-year product and power warranty. We expect
25 Equinox to be a key driver for our residential business going forward
26 and we are already seeing Equinox at a run rate of more than 40% of
all new residential orders in the U.S.

27 23. SunPower promoted its Equinox and other residential solar systems on its
28 website by emphasizing their “factory-integrated microinverters,” which allow for “direct

1 panel installation, eliminating the need to mount or assemble additional components on
2 the roof or the side of a building, driving down system costs, improving overall system
3 reliability, and providing improved, cleaner design aesthetics.” SunPower claimed that the
4 “Equinox system maximizes energy production and converts more sunlight into usable
5 power immediately right at the panel,” and “[e]very part of your SunPower Equinox™
6 system is meticulously designed and built by SunPower to work perfectly together, and
7 rigorously tested for long-term reliability.” According to the Company, its microinverters
8 “are specifically designed for SunPower panels, and enable each panel to operate at peak
9 performance independently.” These and similar claims were incorporated into
10 SunPower’s advertising and were crucial to Plaintiffs and the Class who were considering
11 “going solar,” which requires a significant up-front investment that is supposed to be more
12 than recouped over time through utilities savings, tax benefits, increased property value,
13 and, where applicable, SRECs.

14 24. In the absence of these and similar representations by SunPower that its
15 Solar Modules would be free from defects in materials and workmanship under normal
16 application and meet performance specifications for 25 years, Plaintiffs and the Class,
17 who relied upon these common representations, would not have purchased the SunPower
18 Solar Modules at issue, or would have paid substantially less for them, because realizing
19 the financial incentives of solar panels is the essential benefit of the bargain that Plaintiffs
20 and the Class expect to receive when purchasing and installing solar panels on their
21 property.

22 25. Plaintiffs and the Class, moreover, relied on SunPower’s 25-year warranty in
23 connection with their purchase decisions. In addition, SunPower represented that it was a
24 premier provider of solar power solutions in terms of reliability and efficiency.

25 26. Plaintiffs and the Class relied on SunPower’s representations concerning the
26 quality and reliability of the Solar Modules when entering into transactions to acquire the
27 Solar Modules, as the Solar Modules would have to perform as promised for many years
28 before Plaintiffs and the Class would earn a return on their investment.

1 27. However, Plaintiffs allege on information and belief that SunPower did not
2 have an adequate basis to reasonably claim that the Solar Modules and particularly the
3 microinverters and their electrical components, would last 25 years.

4 28. The Generation 3.0 microinverters in the SunPower Solar Modules are
5 defective in that they degrade and intermittently cease to function at the expected
6 production level within a few years of installation. Plaintiffs allege on information and
7 belief that SunPower knew of this defect yet continued to sell the Solar Modules and
8 failed to issue a recall.

9 **V. PLAINTIFFS' ALLEGATIONS**

10 **A. Plaintiff Weiss**

11 29. On July 26, 2016, based upon SunPower's representations, which Plaintiff
12 Weiss read and analyzed as he conducted research and compared SunPower's solar power
13 systems with systems offered by other companies, Plaintiff Weiss entered into a contract
14 with an authorized SunPower residential solar system dealer, Rayah Power Integration
15 Corp. ("Rayah Power"), for the installation of 46 SunPower solar modules on the roof of
16 his approximate 3,500 square foot home in Natick, Massachusetts. Plaintiff Weiss shortly
17 thereafter added an additional four panels and thus has 50 SunPower panels on his roof.

18 30. Plaintiff Weiss decided to purchase a solar power system for his home
19 because he wanted to power his home with solar energy and additionally take advantage
20 of the federal and state incentives available to homeowners that install residential solar
21 power systems.

22 31. Plaintiff Weiss conducted research regarding solar panel systems and
23 ultimately chose to have SunPower Solar Modules installed at his home because of
24 SunPower's representations that it sold high quality, reliable, and efficient solar modules.

25 32. Plaintiff Weiss also chose SunPower Solar Modules because they are
26 accompanied by a written warranty promising that the product will be free from defects
27 in materials and workmanship under normal application and meet performance
28 specifications for 25 years.

1 33. Plaintiff Weiss paid \$60,000.00, for his solar power system, which included
2 the cost of the Solar Modules and their warranties, and turnkey installation of the system.

3 34. Plaintiff Weiss financed \$50,000.00 of the purchase price through the
4 Massachusetts Solar Loan Program. He paid the remaining \$10,000.00 by drawing
5 money from a home equity line of credit.

6 35. Plaintiff Weiss' solar power system was thereafter installed and connected
7 to the utility grid on November 3, 2016.

8 36. Plaintiff Weiss' solar power system initially performed as expected,
9 producing sufficient energy to cover his electricity usage.

10 37. By the end of summer 2018, however, Plaintiff Weiss began to receive
11 electric bills from his electric utility indicating that he had a balance due for electricity
12 usage. Prior to this time but after his solar panel system was installed, Plaintiff Weiss
13 would receive bills from the electric utility stating that he had no balance due or showing
14 the excess power that he had generated, which he could use to offset future shortfalls in
15 his production, as described below.

16 38. Through winter 2018, Plaintiff Weiss continued to receive bills from his
17 utility showing balances due for electricity usage, which were not commensurate with his
18 expectations regarding how his solar panel system was supposed to work.

19 39. On March 14, 2019, Rayah Power, the authorized SunPower dealer that
20 installed Plaintiff Weiss' solar power system, conducted an inspection of his Solar
21 Modules at Plaintiff Weiss' request, and determined that 14 modules (*i.e.*, approximately
22 30% of Plaintiff's modules) had burned out microinverters that were not converting any
23 DC power captured by the solar panels into AC power. This was a shock and surprise to
24 Plaintiff Weiss given that the modules were supposed to work well for 25 years.

25 40. However, Plaintiffs allege that SunPower knew that its Solar Modules
26 contained defective microinverters that prematurely fail, leaving the module in which
27 they are incorporated unable to convert solar energy into usable power at the expected
28 level.

1 41. When Rayah Power eventually performed diagnostic tests on Plaintiff
2 Weiss's modules in or around March 2019, and determined that 14 microinverters had
3 failed, SunPower instructed Rayah Power to replace not just Plaintiff Weiss' 14 failed
4 microinverters, but all 50 of his microinverters. SunPower made this instruction to Rayah
5 Power because it was aware of the defect in the microinverters. SunPower's customer
6 service representative, Andres Hernandez, admitted to Rayah Power that Plaintiff Weiss'
7 solar power system suffered from the Ironman Issue defect.

8 42. Rayah Power, at the direction of SunPower, has now replaced all of the
9 microinverters in SunPower's Solar Modules for over 50 customers of Rayah Power in
10 and around Massachusetts.

11 43. To replace Plaintiff Weiss' microinverters, a team of five solar panel
12 installers had to remove each Solar Module from his roof, swap the defective
13 microinverter with a new microinverter, and then re-install each Solar Module back on
14 his roof.

15 44. Completing this task for 50 Solar Modules, which took approximately one
16 week, placed stress on Plaintiff Weiss' roof that it would not have suffered but for the
17 Solar Module's defective microinverters, damaging his roof.

18 45. Following the re-installation of the Solar Modules, Plaintiff Weiss observed
19 significant deterioration of his roof shingles, including a large volume of dislodged
20 granules in his gutter and on his deck.

21 46. Such roof damage is a foreseeable result from removing and reinstalling
22 Solar Modules on a roof.

23 47. Because roofing materials are easily damaged, roofing professionals
24 recommend walking as little as possible on a roof. When shingles lose their granules,
25 become dislodged, or are otherwise damaged, their effectiveness is diminished. The
26 weight of people on a roof also can cause the underlayment and foundation wood to creak,
27 crack, and develop weaknesses. All of this decreases the useful life of a roof and increases
28 the likelihood of damaging leaks.

1 48. SunPower has not compensated Plaintiff Weiss or other Class members for
2 the damage to their roofs that was caused by the defective microinverters in the Solar
3 Modules.

4 **B. Plaintiff Holmes**

5 49. On June 20, 2016, Plaintiff Holmes entered into a contract with Hooked On
6 Solar, Inc., an authorized SunPower dealer, for the installation of 30 SunPower solar
7 modules on the roof of her approximately 2,660 square foot home in Granite Bay,
8 California.

9 50. Plaintiff Holmes decided to purchase a solar power system for her home
10 because she wanted to power her home with solar energy and additionally take advantage
11 of the federal and state incentives available to homeowners that install residential solar
12 power systems.

13 51. Plaintiff Holmes relied on SunPower's representations and chose to have
14 SunPower Solar Modules installed at her home because of SunPower's representations
15 that it sold high quality, reliable, and efficient solar modules, and because the Solar
16 Modules are accompanied by a written warranty promising that the product will be free
17 from defects in materials and workmanship under normal application and meet
18 performance specifications for 25 years.

19 52. Plaintiff Holmes paid \$49,045.00 for her solar power system, which included
20 the cost of the Solar Modules and their warranties, and turnkey installation of the system.

21 53. Following installation, Plaintiff Holmes's solar power system was connected
22 to the utility grid on September 6, 2016.

23 54. In August 2019, Plaintiff Holmes noticed that her utility bill was far higher
24 than seemed reasonable, given the power that her Solar Modules should have been
25 producing.

26 55. In response, Plaintiff Holmes contacted Hooked On Solar in August 2019 to
27 determine if there was a problem with her solar system. Hooked On Solar informed
28 Plaintiff Holmes that it would monitor her solar system to determine whether it was

1 performing properly. After monitoring Plaintiff Holmes' solar system, Hooked On Solar
2 informed SunPower in August 2019 that Plaintiff Holmes' solar system was
3 underperforming.

4 56. After Plaintiff Holmes complained to SunPower on several occasions,
5 SunPower sent technicians to inspect Plaintiff Holmes' Solar Modules in December 2019.
6 Subsequently, SunPower informed Plaintiff Holmes that all her Solar Modules'
7 microinverters were defective and needed to be replaced. However, SunPower told
8 Plaintiff Holmes that it did not have enough labor to replace her microinverters at that
9 time.

10 57. Plaintiff Holmes continued to complain to SunPower. In February 2020,
11 SunPower replaced all the microinverters in Plaintiff Holmes' Solar Modules, but
12 SunPower has not compensated her for all power production lost as a result of the
13 defective microinverters.

14 **C. Plaintiff Maczynski**

15 58. On August 3, 2016, Plaintiff Maczynski entered into a contract with Rayah
16 Power for the installation of 46 SunPower solar modules on the roof of his approximately
17 5,300 square foot home in Middleton, Massachusetts.

18 59. Plaintiff Maczynski decided to purchase a solar power system for his home
19 because he wanted to power his home with solar energy and additionally take advantage
20 of the federal and state incentives available to homeowners that install residential solar
21 power systems.

22 60. Plaintiff Maczynski relied on SunPower's representations and chose to have
23 SunPower Solar Modules installed at his home because of SunPower's representations
24 that it sold high quality, reliable, and efficient solar modules and because the Solar
25 Modules are accompanied by a written warranty promising that the product will be free
26 from defects in materials and workmanship under normal application and meet
27 performance specifications for 25 years.

1 61. Plaintiff Maczynski paid approximately \$50,000 for his solar power system,
2 which included the cost of the Solar Modules and their warranties and turnkey installation
3 of the system.

4 62. Following installation, Plaintiff Maczynski's solar power system was
5 connected to the utility grid on September 8, 2016.

6 63. Plaintiff Maczynski's solar power system initially performed as expected.
7 However, in September 2018, he was contacted by a third party, SunSystems Technology,
8 which informed Plaintiff Maczynski that they had a work order for his Solar Modules.

9 64. Plaintiff Maczynski then contacted Rayah Power for an explanation about
10 the work SunSystems Technology intended to perform. Rayah Power contacted
11 SunSystems Technology and, thereafter, informed Plaintiff that SunSystems Technology
12 had called him "to schedule a time for them to come by and replace [Plaintiff
13 Maczynski's] microinverters due to systems issues that have been occurring."

14 65. SunSystems Technology was contracted by SunPower to perform this work
15 because SunPower was aware at that time of the defect in the microinverters.

16 66. In late 2018, SunSystems Technology came to Plaintiff Maczynski's home
17 to replace his microinverters. However, at that time, SunSystems Technology only
18 replaced 28 of the microinverters.

19 67. SunSystems Technology left the remainder of the replacement
20 microinverters on Plaintiff Maczynski's porch and did not return to complete the job until
21 the end of May 2019, despite repeated inquiries from Rayah Power about the project.

22 68. While Plaintiff Maczynski was waiting for SunSystems Technology to
23 replace his microinverters, he contacted Rayah Power for assistance obtaining
24 reimbursement for the amounts he had lost and would lose due to the defective
25 microinverters. In April 2019, Rayah reported to Plaintiff Maczynski that it was working
26 with SunPower to "finalize the agreement on compensation for production losses for your
27 microinverter replacement."
28

1 69. In September 2019, Rayah reaffirmed that Plaintiff Maczynski had lost
2 production from his Solar Modules as a result of his microinverters being down. Plaintiff
3 Maczynski's lost production is also evident from the decrease in SRECs he received in
4 2018 and 2019. After generating power to earn 17 SRECs in 2017, Plaintiff Maczynski's
5 Solar Modules only generated enough power to earn 14 SRECs in 2018 and 13 SRECs
6 in 2019.

7 70. Plaintiff Maczynski still has received no compensation from SunPower to
8 account for the defective microinverters and the lost power production in his Solar
9 Modules.

10 **D. Plaintiff Tardif**

11 71. On September 5, 2016, Plaintiff Tardif entered into a contract with Rayah
12 Power for the installation of 28 SunPower solar modules on the roof of his approximately
13 5,000 square foot home in Woburn, Massachusetts.

14 72. Plaintiff Tardif decided to purchase a solar power system as an investment
15 for his home. By reducing or eliminating payments to an electric utility company, and by
16 taking advantage of federal and state incentives available to homeowners that install
17 residential solar power systems, including the Massachusetts SREC, Plaintiff Tardif
18 sought a solar power system that would quickly pay for itself and remain a producing
19 asset through its useful life.

20 73. Plaintiff Tardif relied on SunPower's representations and chose to have
21 SunPower Solar Modules installed at his home because of SunPower's representations
22 that it sold high quality, reliable, and efficient solar modules and because the Solar
23 Modules are accompanied by a written warranty promising that the product will be free
24 from defects in materials and workmanship under normal application and meet
25 performance specifications for 25 years.

26 74. Plaintiff Tardif was motivated to purchase SunPower Solar modules
27 because, based on SunPower's representations and reasonable assumptions flowing from
28 them, he expected to achieve a return on his investment within seven years.

1 75. Plaintiff Tardif paid \$42,210.00 for his solar power system, which included
2 the cost of the Solar Modules and their warranties and turnkey installation of the system.

3 76. Following installation, Plaintiff Tardif's solar power system was connected
4 to the utility grid on December 8, 2016.

5 77. However, Plaintiff Tardif noticed a drop in production from his Solar
6 Modules. Plaintiff contacted SunPower and asked the company to check his Solar
7 Modules to verify that they were producing properly. In response, SunPower informed
8 Plaintiff Tardif that he simply needed a firmware/software update.

9 78. A firmware/software update was not sufficient to fix the problem. Plaintiff
10 Tardif's Solar Modules were not functioning as promised, even though a SunPower
11 customer service representative said, as late as January 30, 2019, that there was no
12 problem.

13 79. By mid-February 2019, SunPower agreed to replace all microinverters in
14 Plaintiff Tardif's Solar Modules.

15 80. On March 25, 2019, it was confirmed to Plaintiff Tardif via email that his
16 microinverters had been underperforming.

17 81. At SunPower's instruction in or around April 2019, Rayah Power replaced
18 all 28 of Plaintiff Tardif's microinverters. SunPower made this instruction to Rayah
19 Power because it was aware at the time of the defect in the microinverters.

20 82. SunPower had told Plaintiff Tardif that it would compensate him for his lost
21 power production. However, after several months, Plaintiff Tardif had not heard from
22 SunPower regarding compensation. Plaintiff Tardif contacted SunPower to request
23 reimbursement of his losses incurred due to his defective SunPower Solar Modules.

24 83. In response, SunPower acknowledged in writing that Plaintiff Tardif's solar
25 power system produced fewer kilowatt hours during the period from April 23, 2017
26 through April 24, 2019 than SunPower expected the system to generate during that
27 period.

28

1 84. To date, SunPower has not fully compensated Plaintiff Tardif for his lost
2 net-metering credits or his lost SRECs.

3 85. In addition, Plaintiff Tardif observed damage to his roof as a result of the
4 removal and re-installation of his Solar Modules to replace the defective microinverters.

5 **VI. PLAINTIFFS AND THE CLASS HAVE SUFFERED DAMAGES**

6 86. Purchasers and owners of Solar Modules did not receive the benefit of the
7 solar systems bargained for at the time of purchase. Had they known the defective nature
8 of the microinverters in the Solar Modules, they would have paid less for the Solar
9 Modules, or chosen to purchase other solar systems instead.

10 87. Despite, as Plaintiffs allege, knowing of the defective microinverters in the
11 Solar Modules, SunPower has failed to timely notify its customers and prospective
12 customers of the defect or issue a recall, and instead instructed its dealers to replace
13 defective microinverters only when customers raise issues with their system or where
14 SunPower observes that a system is exhibiting performance issues.

15 88. SunPower, moreover, has declined to fully compensate Plaintiffs and the
16 Class for their economic losses resulting from the microinverter defect, including failing
17 to restore Plaintiffs' and the Class' benefit of the bargain lost at the point of sale when
18 Plaintiffs and the Class received Solar Modules with defective microinverters that had
19 the potential to fail within months to a few years of installation, far before the end of their
20 useful life, or alternatively, the amount of lost production they experienced prior to
21 replacement of the microinverters in their Solar Modules, as well as any property damage
22 experienced in connection with the replacement of the microinverters in their systems.

23 89. For example, SunPower did not compensate Plaintiffs and the Class for their
24 lost net-metering credits when the system fails to perform as expected and did not timely
25 provide Plaintiffs and the Class disclosure of the defect to enable them to avoid incurring
26 those losses in the first place.

27 90. Net-metering is a well-known system of debits and credits between a solar
28 power system owner and their electricity utility. Based on the difference between how

1 much energy an owner’s solar power system produces and how much energy the owner
2 consumes, their electricity utility bill either will be debited or credited the difference.

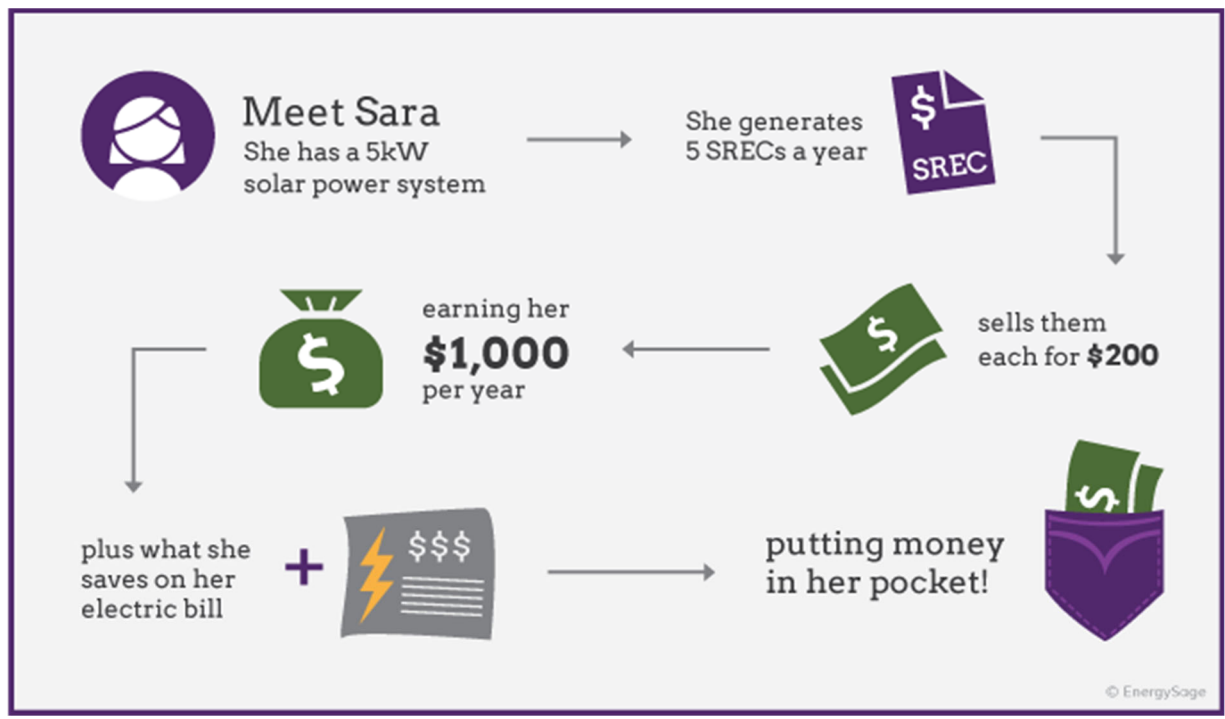
3 91. If, due to a defect, a solar power system fails to produce energy, or produces
4 less energy than expected given the conditions, the owner of the system will either owe
5 money to the electric utility for electricity consumed or will generate fewer net-metering
6 credits to be used to offset a future energy bill. SunPower takes the position that such
7 losses and compensation are not covered or recoverable under the limited warranty for
8 the system.

9 92. In addition, for Plaintiffs and Class Members located in states that offer
10 incentive programs based on power produced by their Solar Modules, including Solar
11 Renewable Energy Certificates (“SRECs”), SunPower has failed to compensate Plaintiffs
12 and Class Members for their lost financial benefits from those programs. SunPower takes
13 the position that, under the terms of the limited warranty, Plaintiffs and the Class are not
14 entitled to compensation for lost or reduced SRECs or other incentives.

15 93. SRECs are a solar incentive that allows homeowners in some states to sell
16 certificates for energy to their utility. A homeowner earns one SREC for every 1,000
17 kilowatt hours (kWhs) produced by their solar panel system.

18 94. Importantly, when purchasing SRECs, the utility is not paying the solar
19 power system owners for the excess energy they produce. Rather, they are paying the
20 owners for the ability to take credit for the clean energy produced by the solar power
21 system. Thus, the value of a solar power system owner’s SRECs is not dependent on the
22 amount of energy the owner consumes. A single SREC can be worth over \$300 in certain
23 states.

24 95. As the illustration below indicates, in the states offering SREC programs,
25 SRECs can improve the financial returns of installing solar panels:
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96. Plaintiffs allege that by failing to alert Plaintiffs and the Class that their SunPower Solar Modules could have a known defect which will cause them to produce less electricity than expected, SunPower deprives Plaintiffs and the Class not only of the valuable SRECs when the microinverters fail and the system stops working as intended, but also of the information essential for Plaintiffs and the Class to avoid missing the opportunity to earn those SRECs. If SunPower informed its Plaintiffs and the Class that their Solar Modules would prematurely fail due to the defect inherent in the microinverters, Plaintiffs and the Class would have promptly submitted warranty claims for replacement of the defective microinverters with non-defective microinverters (or at the very least would be on the lookout for signs that a microinverter had failed) and, thus, would have avoided losing or lost fewer future SRECs, where applicable.

97. Plaintiff Weiss' experience, which is consistent with that of the other Plaintiffs, is emblematic of SunPower's failure to remedy his and the other Plaintiffs' economic injuries from the defective microinverters. In March 2019, following the replacement of Plaintiff Weiss' defective Generation 3.0 microinverters with functioning

1 Generation 3.1 microinverters, Plaintiff Weiss contacted SunPower to request
2 reimbursement of the losses he had incurred due to his defective microinverters.

3 98. In response, SunPower acknowledged in writing that Plaintiff Weiss' solar
4 power system, by SunPower's own calculation, had produced fewer kilowatt hours during
5 the period from March 15, 2018 through March 14, 2019, than SunPower expected the
6 system to generate during that period.

7 99. SunPower thereafter rejected Plaintiff Weiss' request to reimburse his actual
8 economic losses, and proposed instead to partially compensate him for each kilowatt hour
9 that SunPower estimates that he lost.

10 100. Even if SunPower's offer fully compensated Plaintiff Weiss for his lost net-
11 metering credits, which it does not, the offer provided him with no compensation for his
12 lost SRECs.

13 101. Plaintiff Weiss informed SunPower's customer service representative that
14 SunPower's offer did not fully compensate him for his economic losses resulting from
15 the defective microinverters in his Solar Modules, and he asked to speak with someone
16 in SunPower's management.

17 102. In response, SunPower's customer service representative told Plaintiff
18 Weiss that SunPower was not required to compensate him for his lost energy production,
19 relying on the terms of SunPower's limited warranty.

20 103. SunPower sold to Plaintiffs photovoltaic solar modules with a written
21 warranty that promises that "for 25 years beginning on the Warranty Start Date"
22 SunPower's photovoltaic modules "shall be free from defects in materials and
23 workmanship under normal application, installation, use and service conditions."

24 104. SunPower's written warranty also guarantees the power output of the Solar
25 Modules. For example, SunPower's 2016 warranty promises that "the DC power of the
26 PV Modules will be at least 95% of the Minimum Peak Power rating for the first 5 years,
27 and declining by no more than 0.4% per year for the following 20 years, so that the power
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1 output at the end of the final year of the 25 year warranty period will be at least 87% of
2 the Minimum Peak Power Rating.”

3 105. Through its written warranty, SunPower purports to limit its customers’
4 remedies to repair or replacement of any defective parts, or refund of the purchase price
5 of the defective photovoltaic module, if repairing or replacing the defective parts is not
6 commercially feasible.

7 106. SunPower’s attempt in its written warranty to limit Plaintiffs’ and the Class’
8 remedies, however, as well as the other exclusions contained in the written warranty, are
9 not enforceable and are void because they are unconscionable. These limitations and
10 exclusions were imposed on Plaintiffs and the Class by SunPower unilaterally, without
11 affording Plaintiffs and the Class the opportunity to negotiate. The limitations and
12 exclusions are also unfair in that they are outside the reasonable expectations of the
13 parties thereto, and deny Plaintiffs and the Class an effective remedy, especially given
14 SunPower’s wrongful conduct that denies Plaintiffs and the Class the information needed
15 to assert their rights under the written warranty in the first place, and denies them the
16 opportunity to avoid losses for which SunPower purports to exclude relief under the
17 warranty.

18 **VII. CLASS ACTION ALLEGATIONS**

19 **A. Class Definitions**

20 107. Plaintiffs bring this action individually and pursuant to California Code of
21 Civil Procedure Section 382 on behalf of the following proposed classes (collectively the
22 “Class”):

23 **Nationwide Class**

24 All persons in the United States who purchased one or more
25 Solar Modules for residential use through a cash or financed
26 transaction from SunPower or a SunPower authorized dealer
27 and who currently own a residence on which the purchased
28 Solar Modules are installed (the “Nationwide Class”).

1 **Massachusetts Class**

2 All persons in the Commonwealth of Massachusetts who
3 purchased one or more Solar Modules for residential use
4 through a cash or financed transaction from SunPower or a
5 SunPower authorized dealer and who currently own a residence
6 on which the purchased Solar Modules are installed. (the
7 “Massachusetts Class”).

8 **California Class**

9 All persons in the State of California who purchased one or more
10 Solar Modules for residential use through a cash or financed
11 transaction from SunPower or a SunPower authorized dealer
12 and who currently own a residence on which the purchased
13 Solar Modules are installed (the “California Class”).

14 108. The Classes alleged above are referred to collectively as the “Class” or the
15 “Classes.” Plaintiffs reserve the right to redefine the Classes and/or to assert additional
16 classes or subclasses prior to or at the time of Plaintiffs’ motion for class certification
17 following discovery.

18 109. **Numerosity and Ascertainability.** The members of each Class are so
19 numerous that joinder of all members is impractical. Class members may be identified
20 through objective means. The identities of the Class members can be ascertained from
21 SunPower’s records. Class members can be notified of this action by recognized notice
22 means, such as by direct mail or email. Thus, the proposed Classes are ascertainable.

23 110. **Commonality and Predominance.** There are numerous questions of fact
24 and law common to Plaintiffs and the Class, and those questions predominate over any
25 questions that may affect individual Class members, including, without limitation:

- 26 i. Whether the Solar Modules are defective;
- 27 ii. Whether and when SunPower knew about the microinverter defect;
- 28 iii. To what extent SunPower hid and concealed the microinverter defect;
- iv. Whether, in connection with the microinverter defect, SunPower
 breached its express warranties to Plaintiffs and the Classes;
- v. Whether, in connection with the microinverter defect, SunPower
 breached its implied warranties to Plaintiffs and the Classes;

- 1 vi. Whether, in connection with the microinverter defect, SunPower
2 breached a duty of reasonable and ordinary care owed to Plaintiffs and
3 the Classes;
- 4 vii. Whether SunPower is obligated to compensate Plaintiffs and the Class
5 members for their economic losses related to the microinverter defect;
- 6 viii. Whether SunPower is obligated to compensate Plaintiffs and the Class
7 members for property damage caused by the microinverter defect;
- 8 ix. Whether any Class Members whose system has not yet been retrofit with
9 replacement microinverters, are entitled to immediate replacement of
10 each Solar Module’s microinverter with non-defective parts;
- 11 x. Whether SunPower’s concealment of and/or failure to disclose its
12 knowledge of the microinverter defect constitutes unfair, deceptive, or
13 unconscionable acts or practices in violation of state consumer protection
14 statutes;
- 15 xi. Whether SunPower violated state consumer protection statutes by its
16 misrepresentations concerning the quality, reliability, and expected life
17 of the Solar Modules and their constituent parts, including the
18 microinverter;
- 19 xii. Whether Class members are entitled to be notified and warned about the
20 microinverter defect and are therefore entitled to the entry of final and
21 injunctive relief compelling SunPower to issue a notification and
22 warning to all Class members concerning the defect;
- 23 xiii. Whether Plaintiffs and Class members are entitled to actual damages; and
- 24 xiv. Whether Plaintiffs and Class members are entitled to restitution and/or
25 disgorgement.

26 111. **Typicality.** Plaintiffs’ claims are typical of the claims of the members of the
27 Class, as Plaintiffs and all members of the Class were similarly affected by SunPower’s
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1 wrongful conduct as alleged herein. Plaintiffs and each Class member purchased the Solar
2 Modules, which are uniformly subject to the microinverter defect set forth herein.

3 112. **Adequacy.** Plaintiffs will fairly and adequately represent and protect the
4 interests of the Class. Plaintiffs have retained counsel competent and experienced in class
5 action, product defect, and consumer fraud litigation. Plaintiffs and their counsel are
6 committed to prosecuting this action vigorously on behalf of the Class and have the
7 financial resources to do so. Plaintiffs and their counsel are aware of no conflicts of
8 interest between Plaintiffs and other members of the Class.

9 113. **Declaratory and Injunctive Relief.** SunPower has acted or refused to act
10 on grounds that apply to the entirety of each Class such that final injunctive or declaratory
11 relief is appropriate.

12 114. **Superiority.** A class action is superior to all other available methods for the
13 fair and efficient adjudication of this controversy since joinder of all Class members is
14 impracticable. Given the common design and/or manufacturing defects present in all
15 Solar Modules with the particular microinverters, and the uniformity of SunPower's
16 conduct, misrepresentations, and omissions to Plaintiffs and Class members, Plaintiffs
17 are not aware of any difficulties in managing the action as a class action.

18 115. The prosecution of separate actions can create a risk of inconsistent or
19 varying adjudications with respect to individual members of the Class, which could
20 establish incompatible standards of conduct for SunPower. Further, as the damages
21 suffered by individual members of the Classes may be relatively small, the expense and
22 burden of individual litigation make it difficult and uneconomical for members of the
23 Class to individually redress the wrongs done to them.

24 116. Notice to Class members can be accomplished efficiently and in a manner
25 best designed to protect the due process rights of all Class members by means of written
26 and/or published notices, and based on SunPower's own records and the records of its
27 dealers.

28

1 **VIII. CAUSES OF ACTION**

2 **COUNT ONE**
3 **Breach of Express Warranty**

4 117. Plaintiffs reallege and incorporate by reference the preceding allegations.

5 118. Plaintiffs bring Count One against SunPower individually and on behalf of
6 the Classes.

7 119. SunPower expressly warranted in writing that “for 25 years beginning on
8 the Warranty Start Date” its Solar Modules “shall be free from defects in materials and
9 workmanship,” and that “the DC power of the [Solar Modules] will be at least 95% of
10 the Minimum Peak Power rating for the first 5 years, and declining by no more than 0.4%
11 per year for the following 20 years, so that the power output at the end of the final year
12 of the 25 year warranty period will be at least 87% of the Minimum Peak Power Rating.”

13 120. Pursuant to this express warranty, SunPower is to pay costs to repair or
14 replace any defective parts, or refund the purchase price of the Solar Modules with
15 defective microinverters, if repairing or replacing the defective parts is not commercially
16 feasible.

17 121. In exchange for its duties and obligations under the warranty, SunPower
18 received payment of the purchase price for the Solar Modules from Plaintiffs and the
19 Class members.

20 122. SunPower made the express warranties to the ultimate consumers, including
21 Plaintiffs and the Class members.

22 123. The limitations and exclusions in SunPower’s warranties are
23 unconscionable and unenforceable.

24 124. The consequential or incidental losses sustained by Plaintiffs and the Class
25 members are within the contemplation of the parties, and therefore should not be
26 prohibited when such bargained for remedy fails its essential purpose.

27 125. SunPower’s purported “limited warranty” fails its essential purpose in that
28 the primary benefit to Plaintiffs and the Class members of owning a solar power system
is the financial reward flowing from the power the system generates, which is lost when

1 the Solar Modules fail to perform at the expected level – a circumstance that would be
2 avoidable had SunPower disclosed the defect in a timely and responsible manner.

3 126. Because SunPower’s warranty fails its essential purpose, Plaintiffs and the
4 Class members are entitled to recover all available damages.

5 127. SunPower’s Solar Modules were defective at the time they were acquired by
6 Plaintiffs and Class members.

7 128. SunPower failed to perform as required under its warranties and breached
8 its contracts and agreements by providing Plaintiffs and the Class members with Solar
9 Modules that were defective and unfit for their intended use and did not perform as
10 promised, and failed to promptly replace the defective microinverter components within
11 the Solar Modules or otherwise provide relief.

12 129. SunPower breached its express warranties to Plaintiffs and the Classes by
13 designing, manufacturing, marketing, and selling Solar Modules that were defective and
14 not fit for their intended use as durable products with a long useful life exceeding 25
15 years.

16 130. Plaintiffs allege that SunPower knew that the Generation 3.0 microinverters
17 in the Solar Modules were defective yet continued to represent that they were free of
18 defects. Plaintiffs and Class members had no ability to detect the defect at the time of
19 purchase and did not receive notice of the defect prior to experiencing underperformance,
20 if at all. Based on facts within its control, SunPower knew or should have known of the
21 defect in the Solar Modules before or shortly after it began selling them.

22 131. Plaintiffs and the Class members have relied on SunPower’s express
23 warranties to their detriment.

24 132. Plaintiffs notified SunPower of its breaches of express warranty prior to
25 Plaintiff filing this lawsuit.

26 133. As a result of SunPower’s breach of its express warranties, Plaintiffs and
27 Class members have suffered actual damages in that they have purchased or own Solar
28 Modules that are defective and not suitable for their intended purpose. These defects have

1 caused Plaintiffs and the Classes economic losses for lost production occurring prior to
2 the replacement of the microinverters in their Solar Modules, as well as property damage
3 to their roofs.

4 134. Plaintiffs and the Class are entitled to all damages in an amount to be proven
5 at trial.

6 **COUNT TWO**

7 **Breach of the Implied Warranty of Merchantability**

8 135. Plaintiffs reallege and incorporate by reference the preceding allegations.

9 136. Plaintiffs bring Count Two against SunPower individually and on behalf of
10 the Classes.

11 137. SunPower is and was at all relevant times a merchant with respect the Solar
12 Modules.

13 138. A warranty by SunPower that the Solar Modules were in merchantable
14 condition was implied by law.

15 139. The Solar Modules with faulty microinverters were not merchantable and
16 were not fit for the ordinary purpose for which solar modules are used. Specifically, the
17 Solar Modules suffer from an inherent defect that is substantially certain to cause the
18 microinverter component in the Solar Modules to degrade or fail, rendering the Solar
19 Modules incapable of performing, at the expected level, their primary function of
20 converting sunlight into usable AC power.

21 140. Plaintiffs notified SunPower of its breaches of implied warranty prior to
22 Plaintiffs filing this lawsuit.

23 141. SunPower was provided notice of these issues through its direct knowledge,
24 including its own testing and monitoring of consumers' Solar Modules, dealer
25 communications, customer complaints, and internal investigations.

26 142. Plaintiffs and Class members have had sufficient direct dealings with either
27 SunPower or its authorized dealers to establish privity of contract.

28 143. Nonetheless, privity is not required here, because Plaintiffs and Class
members are intended third-party beneficiaries of contracts between SunPower and its

1 authorized dealers, and specifically, of the implied warranties. The dealers were not
2 intended to be the ultimate consumers of the Solar Modules, rather consumers such as
3 Plaintiffs and the Class Members are the persons whom SunPower reasonably expects to
4 use, consume or be affected by the Solar Modules. All warranties for the Solar Modules
5 are intended to benefit consumers, such as Plaintiffs and the Class members.

6 144. As a direct and proximate result of SunPower’s breach of the implied
7 warranty of merchantability and the implied warranty of fitness for a particular purpose,
8 Plaintiffs and the Classes have been damaged in an amount to be proven at trial.

9
10 **COUNT THREE**
Deceptive Acts or Practices Prohibited by Massachusetts Law
Mass. Gen. Laws Ch. 93A (“Chapter 93A”)

11 145. Plaintiffs reallege and incorporate by reference the preceding allegations.

12 146. Plaintiffs Weiss, Tardif, and Maczynski bring Count Three against
13 SunPower individually and on behalf of the Massachusetts Class.

14 147. Plaintiffs Weiss, Tardif, and Maczynski and the Massachusetts Class are
15 “persons” within the meaning of Mass. Gen. Laws ch. 93A, § 1(a).

16 148. SunPower engaged in “trade” or “commerce” within the meaning of Mass.
17 Gen. Laws ch. 93A, § 1(b).

18 149. Massachusetts law prohibits “unfair or deceptive acts or practices in the
19 conduct of any trade or commerce.” Mass. Gen. Laws ch. 93A, § 2. SunPower
20 participated in misleading, false, or deceptive acts that violated Chapter 93A.

21 150. By failing to disclose the defect in the microinverters incorporated in the
22 Solar Modules in a timely manner, SunPower engaged in deceptive and unlawful business
23 practices prohibited by Chapter 93A.

24 151. By representing that the Solar Modules would be free of defects for 25 years
25 without an adequate basis for making such claim, SunPower engaged in deceptive and
26 unlawful business practices prohibited by Chapter 93A.

27 152. SunPower’s unfair, deceptive or unlawful acts or practices had a tendency
28 or capacity to create a false impression in consumers and were likely to and did in fact

1 mislead reasonable consumers, including Plaintiffs Weiss, Tardif, and Maczynski and the
2 Massachusetts Class, about the true quality, reliability and value of the Solar Modules.

3 153. Plaintiffs allege that SunPower misrepresented material facts regarding the
4 Solar Modules and their microinverters to mislead Plaintiffs Weiss, Tardif, and
5 Maczynski and the Massachusetts Class.

6 154. SunPower knew or should have known that its conduct violated Chapter
7 93A.

8 155. SunPower made material statements about the reliability and quality of the
9 Solar Modules that were either false or misleading. SunPower's representations,
10 omissions, statements, and commentary have included selling and marketing the Solar
11 Modules as reliable, highly efficient, and long-lasting despite SunPower's knowledge of
12 the Solar Module's defect or of SunPower's failure to reasonably investigate it.

13 156. SunPower failed to disclose the Solar Modules' microinverter defect in a
14 timely manner, injuring customers who had already purchased the product and allowing
15 unsuspecting consumers to newly purchase a known defective product.

16 157. SunPower owed Plaintiffs Weiss, Tardif, and Maczynski and the
17 Massachusetts Class a duty to disclose the true information concerning the Solar
18 Modules' microinverter defect because, as Plaintiffs allege on information and belief,
19 SunPower:

- 20 i. Possessed exclusive knowledge of the Solar Modules' microinverter
21 defect;
- 22 ii. Intentionally concealed its knowledge of the Solar Modules' microinverter
23 defect from Plaintiffs and the Massachusetts Class; and/or
- 24 iii. Made incomplete representations about the reliability and quality of the
25 Solar Modules' generally, while withholding material facts from Plaintiffs
26 and the Massachusetts Class that contradicted these representations.

27 158. SunPower's failure to disclose the Solar Modules' microinverter defect in a
28 timely manner was material to Plaintiffs Weiss, Tardif, and Maczynski and the

1 Massachusetts Class, as a solar module with a defective microinverter is worth far less
2 than a solar module that is not defective.

3 159. Plaintiffs Weiss, Tardif, and Maczynski and the Massachusetts Class
4 suffered ascertainable losses caused by SunPower's misrepresentations and its failure to
5 disclose material information in a timely manner. Had Plaintiffs Weiss, Tardif, and
6 Maczynski and the Massachusetts Class been aware of the Solar Modules' microinverter
7 defect, they either would not have paid as much for their Solar Modules as they did or
8 would not have purchased them at all. In addition, had SunPower timely disclosed its
9 knowledge of the Solar Modules' microinverter defect, Plaintiffs Weiss, Tardif, and
10 Maczynski and the Massachusetts Class could have taken appropriate steps to minimize
11 their losses from the eventual failure and underperformance of the Solar Modules.
12 Plaintiffs and the Massachusetts Class did not receive the benefit of their bargain as a
13 result of SunPower's misconduct.

14 160. As a direct and proximate result of SunPower's violations of Chapter 93A,
15 Plaintiffs Weiss, Tardif, and Maczynski and the Massachusetts Class have suffered
16 injury-in-fact and/or actual damage for underproduction occurring prior to the
17 replacement of the microinverters in their Solar Modules.

18 161. Pursuant to Mass. Gen. Laws ch. 93A, § 9, Plaintiffs Weiss, Tardif, and
19 Maczynski and the Massachusetts Class seek monetary relief and damages against
20 SunPower measured as the greater of (a) actual damages in an amount to be determined
21 at trial and (b) statutory damages in the amount of \$25 for each Plaintiff and each
22 Massachusetts Class member. Plaintiffs allege that because SunPower's conduct was
23 committed willfully and knowingly, Plaintiffs Weiss, Tardif, and Maczynski are entitled
24 to recover, for themselves and each Massachusetts Class member, up to three times actual
25 damages, but no less than two times actual damages.

26 162. On July 11, 2019, Plaintiffs' counsel, on behalf of Plaintiff Weiss, sent a
27 letter to SunPower complying with Mass. Gen. Laws ch. 93A, § 9(3), providing
28 SunPower with notice of its alleged violations of Chapter 93A relating to the Solar

1 Modules, and demanding that SunPower correct or agree to correct the actions described
2 therein. Because SunPower failed to remedy its unlawful conduct within the requisite
3 time period, as requested in the letter, Plaintiffs Weiss, Tardif, and Maczynski seek
4 damages and relief to which they and the Massachusetts Class are entitled.

5 **COUNT FOUR**

6 **Violations of the Song-Beverly Consumer Warranty Act**
7 **Cal. Civ. Code §§ 1792 and 1791.1, *et seq.***

8 163. Plaintiffs reallege and incorporate by reference the preceding allegations.

9 164. Plaintiff Holmes brings Count Four against SunPower individually and on
10 behalf of the California Class.

11 165. Plaintiff Holmes and the California Class are “buyers” within the meaning
12 of Cal. Civ. Code § 1791(b).

13 166. SunPower is and was at all relevant times a “manufacturer” within the
14 meaning of Cal. Civ. Code § 1791(j).

15 167. The Solar Modules are and were at all relevant times “consumer goods”
16 within the meaning of Cal. Civ. Code § 1791(a).

17 168. A warranty that the Solar Modules were in merchantable condition and fit
18 for the ordinary purpose for which solar modules are used is implied by law under Cal.
19 Civ. Code §§ 1791.1(a) & 1792.

20 169. SunPower knew or had reason to know of the specific use consumers
21 intended for the Solar Modules, as well as consumers’ performance and warranty
22 representations. SunPower sold and marketed the Solar Modules both directly to
23 customers and through authorized dealers to consumers, like those from whom Plaintiff
24 Holmes and the California Class purchased their Solar Modules. SunPower knew that the
25 Solar Modules would and did pass unchanged from the authorized dealers to Plaintiff
26 Holmes and the California Class, with no modification to the defective microinverters.

1 170. SunPower provided Plaintiff Holmes and the California Class with an
2 implied warranty that the Solar Modules and their components and parts are merchantable
3 and fit for the ordinary purposes for which they were sold.

4 171. This implied warranty included, among other things, that the Solar Modules
5 would be fit for their intended use of converting sunlight into usable AC power.

6 172. Contrary to the applicable implied warranties, the Solar Modules and their
7 microinverters, at the time of sale and prior to the replacement of the microinverters, were
8 not fit for their ordinary and intended purpose, and were defective, as alleged herein.

9 173. Plaintiffs allege that SunPower knew or had reason to know of this defect at
10 the time these transactions occurred.

11 174. As a result of SunPower's breach of the applicable implied warranties,
12 Plaintiff Holmes and the California Class suffered an ascertainable loss of money,
13 property, and/or value of their Solar Modules. Additionally, as a result of the Solar
14 Modules' defect, Plaintiff Holmes and the California Class were harmed and suffered
15 actual damages in that the Solar Modules' microinverters failed or were substantially
16 certain to fail before their expected useful life has run.

17 175. SunPower's actions, as complained of herein, breached the implied warranty
18 that the Solar Modules were of merchantable quality and fit for such use in violation of
19 violation of California Civil Code §§ 1792 and 1791.1.

20 176. Plaintiff Holmes and the California Class have complied with all obligations
21 under the warranty, or otherwise have been excused from performance of said obligations
22 as a result of SunPower's conduct described herein.

23 177. Plaintiff Holmes and the California Class were not required to notify
24 SunPower of the breach because affording SunPower a reasonable opportunity to cure its
25 breach of written warranty would have been futile. SunPower was also on notice of the
26 Solar Modules' microinverter defect from complaints it received from Plaintiffs, Class
27 Members, dealers, and other internal sources.

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1 178. As a direct and proximate cause of SunPower’s breach, Plaintiff Holmes and
2 the California Class have suffered damages, including economic damages at the point of
3 sale and diminution of value of their Solar Modules or lost production. Additionally,
4 Plaintiff Holmes and the California Class have incurred or will incur economic damages
5 and/or property damages at the point of repair in the form of the cost of repair.

6 179. As a direct and proximate result of SunPower’s breach of the implied
7 warranty of merchantability, Plaintiff Holmes and the California Class have been
8 damaged in an amount to be proven at trial.

9 **COUNT FIVE**
10 **Violations of the California Consumer Legal Remedies Act**
11 **Cal. Civ. Code § 1750, *et seq.***

12 180. Plaintiffs reallege and incorporate by reference the preceding allegations.

13 181. Plaintiff Holmes brings Count Five against SunPower individually and on
14 behalf of the California Class.

15 182. SunPower is a “person” as defined by California Civil Code § 1761(c).

16 183. Plaintiff Holmes and the California Class are “consumers” within the
17 meaning of California Civil Code § 1761(d) because they purchased their Solar Modules
18 primarily for personal, family, or household use.

19 184. By failing to disclose and concealing the defective nature of the
20 microinverters in the Solar Modules from Plaintiff Holmes and the California Class in a
21 timely manner, and by representing that the Solar Modules would be free of defects for
22 25 years, without a reasonable basis to allow it to reasonably make such claim, SunPower
23 violated California Civil Code § 1770(a), as it represented that the Solar Modules and
24 their microinverters had characteristics and benefits that they do not have and represented
25 that the Solar Modules and their microinverters were of a particular standard, quality, or
26 grade when they were of another. See Cal. Civ. Code §§ 1770(a)(5) & (7).

1 185. SunPower’s unfair and deceptive acts or practices occurred repeatedly in
2 Defendant’s trade or business and were capable of deceiving a substantial portion of the
3 purchasing public.

4 186. Plaintiffs allege that SunPower knew that the Solar Modules and their
5 microinverters suffered from a defect, were defectively designed or manufactured, and
6 were not suitable for their intended use.

7 187. Because of their reliance on SunPower’s misrepresentations and omissions,
8 Plaintiff Holmes and the California Class suffered an ascertainable loss of money,
9 property, and/or value of their Solar Modules. Additionally, because of the defect in the
10 microinverters installed in the Solar Modules, Plaintiff Holmes and the California Class
11 were harmed and suffered actual damages resulting from the fact that the microinverters
12 have or were substantially certain to fail or degrade before their expected useful life has
13 run.

14 188. SunPower owed Plaintiff Holmes and the California Class a duty to disclose
15 the true information concerning the microinverter defect because, as Plaintiffs allege on
16 information and belief, SunPower:

- 17 i. Possessed exclusive knowledge of the microinverter defect;
- 18 ii. Concealed its knowledge of the microinverter defect from Plaintiff Holmes
19 and the California Class; and/or
- 20 iii. Made incomplete representations about the reliability and quality of the
21 Solar Modules and the microinverters generally, while withholding material
22 facts from Plaintiff Holmes and the California Class that contradicted these
23 representations.

24 189. In failing to disclose the defective nature of the microinverters, SunPower
25 knowingly and intentionally concealed material facts and breached its duty not to do so.

26 190. The facts SunPower misrepresented to, concealed from, or failed to disclose
27 to Plaintiff Holmes and the California Class are material in that a reasonable consumer
28 would have considered them to be important in deciding whether to purchase the Solar

1 Modules or pay less. Had Plaintiff Holmes and the California Class known that SunPower
2 lacked evidence to claim that the Solar Modules would remain defect free for 25 years or
3 that the Solar Modules were defective, they would not have purchased or acquired the
4 Solar Modules or would have paid less for them.

5 191. Plaintiff Holmes and the California Class are reasonable consumers who do
6 not expect the microinverters installed in their Solar Modules to exhibit the defects in the
7 microinverter described herein. This is the reasonable and objective consumer
8 expectation relating to a Solar Module's microinverter.

9 192. Because of SunPower's conduct Plaintiff Holmes and the California Class
10 were harmed and suffered actual damages.

11 193. As a direct and proximate result of SunPower's unfair or deceptive acts or
12 practices, Plaintiff Holmes and the California Class have suffered actual damages.

13 194. Plaintiff Holmes and the California Class are entitled to equitable relief.

14 195. Plaintiff Holmes and the California Class provided SunPower with notice of
15 its violations of the CLRA pursuant prior to filing this Complaint.

16 **COUNT SIX**
17 **Violations of the California Unfair Competition Law**
18 **Cal. Civ. Code § 17200, et seq.**

19 196. Plaintiffs reallege and incorporate by reference the preceding allegations.

20 197. Plaintiff Holmes brings Count Six against SunPower individually and on
21 behalf of the California Class.

22 198. California Business & Professions Code § 17200 prohibits acts of "unfair
23 competition," including any "unlawful, unfair or fraudulent business act or practice" and
24 "unfair, deceptive, untrue or misleading advertising."

25 199. The acts and practices of SunPower as alleged herein constitute "unfair"
26 business acts and practices under the UCL in that SunPower's conduct is unconscionable,
27 immoral, deceptive, unfair, illegal, unethical, oppressive, and/or unscrupulous.

28 200. Plaintiffs allege that SunPower has, in the course of its business and the
course of trade or commerce, undertaken and engaged in unfair business acts and

1 practices under the UCL by failing to disclose and actively concealing its knowledge of
2 the defect in the microinverters incorporated in the Solar Modules, and by intentionally
3 and knowingly misrepresenting material facts regarding the Solar Modules with the intent
4 to mislead.

5 201. These acts also constitute “fraudulent” business acts and practices under the
6 UCL in that SunPower’s conduct is false, misleading, and has a tendency to deceive the
7 California Class and the general public.

8 202. The above-described unfair business acts or practices presented a threat and
9 likelihood of harm and deception to Plaintiff Holmes and the California Class in that
10 SunPower has systematically perpetrated the unfair conduct upon members of the public
11 by engaging in the conduct described herein.

12 203. Because of their reliance on SunPower’s misrepresentations and omissions
13 of material facts concerning the Solar Modules, Plaintiff Holmes and the California Class
14 have suffered an ascertainable loss of money, property, and/or value and were harmed
15 and suffered actual damages.

16 204. SunPower owed Plaintiff Holmes and the California Class a duty to disclose
17 the true information concerning the microinverter defect because, as Plaintiffs allege on
18 information and belief, SunPower:

- 19 i. Possessed exclusive knowledge of the microinverter defect;
- 20 ii. Concealed its knowledge of the microinverter defect from Plaintiff Holmes
21 and the California Class; and/or
- 22 iii. Made incomplete representations about the reliability and quality of the
23 Solar Modules and microinverters generally, while withholding material
24 facts from Plaintiff Holmes and the California Class that contradicted these
25 representations.

26 205. Had Plaintiff Holmes and the California Class been aware of the
27 microinverter defect, SunPower’s disregard for ensuring that the product would not fail
28 and would continue to produce usable energy, or that SunPower lacked evidence for its

1 claim that the Solar Modules would remain free of defects in materials and workmanship
2 under normal application and would meet performance specifications or 25 years,
3 Plaintiff Holmes and the California Class either would not have paid as much for their
4 Solar Modules as they did or would not have purchased them at all. In addition, had
5 SunPower disclosed its knowledge of the microinverter defect, Plaintiff Holmes and the
6 California Class could have taken appropriate steps to minimize their losses from the
7 eventual failure of the microinverters in the Solar Modules. Plaintiff Holmes and the
8 California Class did not receive the benefit of their bargain as a result of SunPower's
9 misconduct.

10 206. The gravity of harm resulting from SunPower's unfair conduct outweighs
11 any potential utility.

12 207. The harm from SunPower's conduct was not reasonably avoidable by
13 Plaintiffs and the California Class because only SunPower was aware of the true facts
14 concerning its defective microinverters, and SunPower did not disclose them in a timely
15 manner.

16 208. Plaintiff Holmes and the California Class have suffered injury in fact and
17 have lost money as a direct and proximate result of SunPower's fraudulent business acts
18 or practices.

19 209. Through its unfair conduct, SunPower acquired money that Plaintiff Holmes
20 and the California Class once had an ownership interest in either directly or through
21 authorized SunPower dealers.

22 210. Plaintiff Holmes and the California Class accordingly seek appropriate relief
23 under the UCL, including (a) restitution in full and disgorgement of all profits relating to
24 the above-described unfair business acts or practices, and (b) such orders or judgments
25 as may be necessary to enjoin SunPower from continuing its unfair practices. Plaintiffs
26 also seek reasonable attorneys' fees and costs under applicable law, including California
27 Code of Civil Procedure section 1021.5.

28

COUNT SEVEN
Violations of California False Advertising Law
Cal. Bus. & Prof. Code § 17500, et seq.

211. Plaintiffs reallege and incorporate by reference the preceding allegations.

212. Plaintiff Holmes brings Count Seven against SunPower individually and on behalf of the California Class.

213. California Bus. & Prof. Code § 17500 states: “It is unlawful for any...corporation...with intent directly or indirectly to dispose of real or personal property...to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state,...in any newspaper or other publication, or any advertising device,...or in any other manner or means whatever, including over the Internet, any statement...which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading....”

214. As alleged herein, SunPower caused to be made or disseminated through California and the United States, through advertising, marketing and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to SunPower, to be untrue and misleading to consumers, including Plaintiff Holmes and the California Class.

215. SunPower has violated § 17500 because the misrepresentations and omissions regarding the quality, reliability and performance of its Solar Modules were material and likely to deceive a reasonable consumer.

216. Plaintiff Holmes and the California Class have suffered an injury in fact, including the loss of money or property, as a result of SunPower’s unfair, unlawful, and/or deceptive practices. In purchasing the Solar Modules, Plaintiff Holmes and the California Class members relied on the misrepresentations and/or omissions of SunPower with respect to the quality, reliability and performance of SunPower’s Solar Modules. SunPower’s representations turned out not to be true because the microinverters in the Solar Modules were defective and prematurely fail or degrade. Had Plaintiff Holmes and

1 the California Class known this, or that SunPower lacked evidence to support its claims
2 about the Solar Modules, Plaintiff Holmes and the California Class would not have
3 purchased the Solar Modules, or would not have paid the prices they paid. Accordingly,
4 Plaintiff Holmes and the California Class members overpaid for their Solar Modules and
5 did not receive the benefit of their bargain.

6 217. All of the wrongful conduct alleged herein occurred, in the conduct of
7 SunPower's business.

8 218. Plaintiff Holmes, individually and on behalf of the California Class, requests
9 that this Court enter such orders or judgments as may be necessary to restore to Plaintiff
10 Holmes and the California Class any money SunPower acquired by violation of
11 California Bus. & Prof. Code § 17500, *et seq.*, including restitution and/or restitutionary
12 disgorgement, and for such other relief set forth below.

13 **COUNT EIGHT**
14 **Negligence**

15 219. Plaintiffs reallege and incorporate by reference the preceding allegations.

16 220. Plaintiffs bring Count Nine against SunPower individually and on behalf of
17 the Classes.

18 221. SunPower designed, developed, formulated, tested, manufactured and sold
19 the Solar Modules with the microinverters for use and installation on homes and other
20 structures.

21 222. SunPower was negligent in that it failed to use ordinary and reasonable care
22 when it designed, developed, formulated, tested, manufactured and sold Solar Modules
23 with the defective microinverters.

24 223. SunPower owed a duty to the consuming public to design, develop,
25 formulate, test, and manufacture a product reasonably free of defect. SunPower further
26 had a duty not to put defective products such as its Solar Modules with the defective
27 microinverters on the market.

1 235. Plaintiffs bring Count Eleven against SunPower individually and on behalf
2 of the Classes.

3 236. Upon information and belief, Plaintiffs allege there is an actual controversy
4 between SunPower and Plaintiffs concerning:

- 5 i. whether the microinverters in the Solar Modules are defective;
- 6 ii. whether SunPower knew or should have known of the defect in the
7 microinverters; and
- 8 iii. whether SunPower has an obligation to notify its customers that the
9 microinverters in the Solar Modules are defective and, as a result, may
10 not produce power at the expected level of performance.

11 237. Plaintiffs seek a declaration that the microinverters in the Solar Modules are
12 defective as alleged herein. The defective nature of the Solar Modules' microinverters is
13 material and requires disclosure to all persons who purchased or own the Solar Modules.

14 238. The declaratory relief requested herein will generate common answers that
15 will settle the controversy related to the alleged defective nature of the microinverters in
16 the Solar Modules and the reasons for their failure. There is an economy to resolving
17 these issues as they have the potential to eliminate the need for continued and repeated
18 litigation.

19 **IX. PRAYER FOR RELIEF**

20 239. Plaintiffs, individually and on behalf of the Class members, respectfully
21 request the Court to enter judgment against SunPower, as follows:

22 A. An order certifying the Classes, designating Plaintiffs as the named
23 representatives of the Classes as set forth herein, designating the undersigned counsel as
24 Class Counsel, and making such further orders for the protection of the members of the
25 Class members as the Court deems appropriate;

26 B. A declaration that the microinverters in the Solar Modules are defective;

1 C. An order enjoining SunPower to desist from further deceptive practices with
2 respect to the Solar Modules and the microinverters and such other injunctive relief that
3 the Court deems just and proper;

4 D. An award to Plaintiffs and the Class members of compensatory, exemplary,
5 and punitive remedies and damages, and all available statutory penalties, including
6 interest, in an amount to be proven at trial;

7 E. A SunPower-funded program, using transparent, consistent, and reasonable
8 protocols, under which all property damage, out-of-pocket. and loss-of-use expenses and
9 damages associated with the defective microinverters in the Solar Modules, and the
10 replacement of the microinverters in the Solar Modules, can be made and paid, such that
11 SunPower, and not the Class members, absorbs all economic losses and expenses fairly
12 traceable to the defective microinverters in the Solar Modules;

13 F. A declaration that SunPower must disgorge, for the benefit of Plaintiffs and
14 the Class members, all of the ill-gotten profits that SunPower received from the sale of
15 the Solar Modules with the defective microinverters, or make full restitution to Plaintiffs
16 and the Class members;

17 G. An award of attorneys' fees and costs, as allowed by law;

18 H. An award of prejudgment and post-judgment interest, as provided by law;

19 I. Leave to amend this Complaint to conform to the evidence produced during
20 discovery and at trial; and

21 J. Such other relief as may be appropriate under the circumstances.

22 **X. DEMAND FOR JURY TRIAL**

23 Plaintiffs demand a jury trial as to all issues triable by a jury.

24 Dated: July 9, 2021

/s/ Sophia M. Rios

Sophia M. Rios (SBN 305801)

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**pro hac vice forthcoming*

***Counsel for Plaintiffs and the Proposed
Classes***