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9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 MARYA FRIEDMAN,

12 Plaintiff,

13 v.

14 VIVINT SOLAR, INC., DAVID BYWATER,  
15 ELLEN S. SMITH, PETER F. WALLACE,  
16 TODD R. PEDERSEN, JOSEPH S.  
17 TIBBETTS, JR., DAVID F.  
18 D’ALESSANDRO, BRUCE MCEVOY, and  
19 JAY D. PAULEY,

20 Defendants.

) Case No.

) **COMPLAINT FOR VIOLATIONS OF**  
) **THE FEDERAL SECURITIES LAWS**

) JURY TRIAL DEMANDED

21  
22 Plaintiff Marya Friedman (“Plaintiff”), upon information and belief, including an examination  
23 and inquiry conducted by and through her counsel, except as to those allegations pertaining to  
24 Plaintiff, which are alleged upon personal belief, alleges the following for her Complaint:  
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**NATURE AND SUMMARY OF THE ACTION**

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2 1. Plaintiff brings this action against Vivint Solar, Inc. (“Vivint Solar” or the  
3 “Company”) and the members of its Board of Directors (the “Board” or the “Individual Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange  
4 Act”), 15 U.S.C. §§ 78n(a), 78t(a), and U.S. Securities and Exchange Commission (“SEC”) Rule 14a-  
5 9, 17 C.F.R. § 240.14a-9, arising out of their attempt to sell the Company to Sunrun Inc. (“Sunrun”),  
6 through its wholly owned subsidiary Viking Merger Sub, Inc. (“Merger Sub”) (the “Proposed  
7 Transaction”).  
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10 2. On July 6, 2020, Vivint Solar and Sunrun entered into an Agreement and Plan of  
11 Merger (the “Merger Agreement”) pursuant to which each Vivint Solar stockholder will receive 0.55  
12 shares of Sunrun common stock for each share of Vivint Solar common stock they own.

13 3. On September 2, 2020, Vivint Solar filed the Schedule 14A Definitive Proxy  
14 Statement (the “Proxy”) with the SEC. The Proxy is materially deficient and misleading because,  
15 *inter alia*, it fails to disclose material information regarding: (i) the Company’s and Sunrun’s financial  
16 projections; (ii) the financial analyses performed by the Company’s financial advisors, Morgan  
17 Stanley & Co. LLC (“Morgan Stanley”) and BofA Securities, Inc. (“BofA”); and (iii) BofA’s  
18 potential conflicts of interest. Accordingly, without additional information the Proxy is materially  
19 misleading in violation of the federal securities laws.  
20

21 4. The stockholder vote to approve the Proposed Transaction is forthcoming. Under the  
22 Merger Agreement, following a successful stockholder vote, the Proposed Transaction will be  
23 consummated. For these reasons and as set forth in detail herein, Plaintiff seeks to enjoin defendants  
24 from conducting the stockholder vote on the Proposed Transaction unless and until the material  
25 information discussed below is disclosed to the holders of the Company’s common stock, or, in the  
26

1 event the Proposed Transaction is consummated, to recover damages resulting from the defendants'  
2 violations of the Exchange Act.

3 **JURISDICTION AND VENUE**

4 5. This Court has jurisdiction over the claims asserted herein for violations of Sections  
5 14(a) and 20(a) of the Exchange Act and Rule 14a-9 promulgated thereunder pursuant to Section 27  
6 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. §1331 (federal question jurisdiction).

7  
8 6. The Court has jurisdiction over defendants because each defendant is either a  
9 corporation that conducts business in and maintains operations in this District, or is an individual who  
10 has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by this  
11 Court permissible under traditional notions of fair play and substantial justice.

12 7. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. §  
13 78aa, as well as under 28 U.S.C. § 1391 because: (i) the Company maintains and operates offices in  
14 Concord and San Jose, which are located in this District; and (ii) defendants have received substantial  
15 compensation in this District by doing business here and engaging in numerous activities that had an  
16 effect in this District.

17  
18 **THE PARTIES**

19 8. Plaintiff is, and has been at all times relevant hereto, a continuous stockholder of  
20 Vivint Solar.

21 9. Defendant Vivint Solar is a Delaware corporation with its principal executive offices  
22 located at 1800 West Ashton Boulevard, Lehi, Utah 84043. Vivint Solar operates offices located  
23 at 2510 Dean Leshner Drive, Suite A, Concord, California 94520 and 1939 Hartog Drive, San Jose,  
24 California 95131. The Company's common stock trades on the New York Stock Exchange under  
25 the ticker symbol "VSLR."  
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1 10. Defendant David Bywater has served as Chief Executive Officer (“CEO”) of the  
2 Company since December 2016 and as a director of the Company since 2017.

3 11. Defendant Ellen S. Smith has served as a director of the Company since March 2020.

4 12. Defendant Peter F. Wallace has served as Chairman of the Board since March 2014  
5 and as a director of the Company since November 2012.

6 13. Defendant Todd R. Pedersen is a co-founder of the Company and has served as a  
7 director since November 2012.

8 14. Defendant Joseph S. Tibbetts, Jr. has served as a director of the Company since August  
9 2014.

10 15. Defendant David F. D’Alessandro has served as a director of the Company since  
11 August 2013.

12 16. Defendant Bruce McEvoy has served as a director of the Company since November  
13 2012.

14 17. Defendant Jay D. Pauley has served as a director of the Company since September  
15 2015.

16 18. Defendants identified in paragraphs 10-17 are referred to herein as the “Board” or the  
17 “Individual Defendants.”

18 19. Relevant non-party Sunrun is a Delaware corporation with its principal executive  
19 offices located at 225 Bush Street, Suite 1400, San Francisco, California 94104. Sunrun’s common  
20 stock trades on the NASDAQ Global Select market under the ticker symbol “RUN.”  
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22

## 23 **SUBSTANTIVE ALLEGATIONS**

### 24 **Background of the Company and the Proposed Transaction**

25 20. Vivint Solar provides distributed solar energy primarily to residential customers in the  
26 United States. It owns and installs solar energy systems through long-term customer contracts. The  
27  
28

1 Company also sells photovoltaic installation products, as well as solar renewable energy certificates.  
2 As of December 31, 2019, it had an aggregate capacity of 1,294.0 megawatts covering approximately  
3 188,300 homes. Founded in 2011, the Company was formerly known as V Solar Holdings, Inc. and  
4 changed its name to Vivint Solar, Inc. in April 2014.

5 21. On July 6, 2020, Vivint Solar and Sunrun issued a joint press release announcing the  
6 Proposed Transaction which states, in relevant part:

7  
8 SAN FRANCISCO, July 06, 2020 -- Sunrun (NASDAQ: RUN), a leading provider of  
9 residential solar, battery storage and energy services, and Vivint Solar (NYSE: VSLR),  
10 a leading full-service residential solar provider in the United States, today announced  
11 the companies have entered into a definitive agreement under which Sunrun will  
12 acquire Vivint Solar in an all-stock transaction, pursuant to which each share of Vivint  
13 Solar common stock will be exchanged for 0.55 shares of Sunrun common stock,  
14 representing a combined Enterprise Value of \$9.2 billion based on the closing price of  
15 Sunrun's shares on July 6, 2020. Vivint Solar stockholders are expected to own  
16 approximately 36% and Sunrun stockholders are expected to own approximately 64%  
17 of the fully diluted shares of the combined company. The exchange ratio implies a  
18 10% premium for Vivint Solar shares based on closing prices on July 6, 2020, and a  
19 15% premium to the exchange ratio implied by the three month volume weighted  
20 average price of Vivint Solar and Sunrun shares.

21 "Americans want clean and resilient energy. Vivint Solar adds an important and high-  
22 quality sales channel that enables our combined company to reach more households  
23 and raise awareness about the benefits of home solar and batteries," said Lynn Jurich,  
24 Sunrun's Chief Executive Officer and co-founder. "This transaction will increase our  
25 scale and grow our energy services network to help replace centralized, polluting  
26 power plants and accelerate the transition to a 100% clean energy future. We admire  
27 Vivint Solar and its employees, and look forward to working together as we integrate  
28 the two companies."

21 David Bywater, Chief Executive Officer of Vivint Solar, added, "Vivint Solar and  
22 Sunrun have long shared a common goal of bringing clean, affordable, resilient energy  
23 to homeowners. Joining forces with Sunrun will allow us to reach a broader set of  
24 customers and accelerate the pace of clean energy adoption and grid modernization.  
25 We believe this transaction will create value for our customers, our shareholders, and  
26 our partners."

### 27 **A Shared Mission to Create a Planet Run by the Sun**

28 Sunrun and Vivint Solar share a mission to create a planet run by the sun. Together,  
we can empower more families to take control of their energy future by increasing  
customer choice in how they create and consume power.

1 There is an urgent need to decarbonize our energy system. Extreme weather due to  
2 climate change is increasing, putting immense strain on our energy system. Fossil fuel  
3 power plants are responsible for more than 30% of all carbon pollution across the  
4 country. Sunrun will be a meaningful contributor to a fully renewable and electrified  
5 energy system. Our growing fleet of solar homes and batteries will be networked to  
6 provide greater benefits to the grid and energy consumers. Generating energy at the  
7 point it is used reduces the need for dirty energy being produced far away that is  
8 increasingly expensive to transmit. Our customers have already and will continue to  
9 help shut down inefficient carbon-producing power plants.

10 Our combined customer base of nearly 500,000 creates a leading owner of solar assets  
11 globally, with over 3 gigawatts of solar assets on the balance sheet. Yet, residential  
12 solar has reached only 3% penetration in the United States today and the runway for  
13 growth remains massive.

14 Sunrun has committed to leading the solar industry in diversity and inclusion efforts,  
15 career development, and employee benefits. As part of a broader, more diversified  
16 company, we will be able to offer employees even more opportunities and solidify our  
17 position as the best place to work in the solar industry.

18 **Strategic rationale**

19 This is a transformational opportunity to generate consumer and shareholder value,  
20 realize annual cost synergies and bring cleaner, affordable energy to more homes. It  
21 establishes Sunrun as a leading home solar and energy services company across the  
22 United States, bringing greater opportunities for consumers to save money on their  
23 electric bills and decrease dependence on fossil fuels.

24 Residential solar has reached only 3% penetration in the United States today and yet  
25 surveys show nearly 9 out of 10 people in the United States favor expanding the use  
26 of solar power. The acquisition of Vivint Solar adds a complementary direct-to-home  
27 sales channel to Sunrun's platform, increasing our reach and capabilities in a growing  
28 market. Our thirteen years of experience has shown that a consultative experience from  
trusted sales advisors is important to educate customers of the merits of solar energy.  
Vivint Solar's highly trained, consultative field sales experts will be an important part  
of the combined platform and will serve as critical ambassadors for consumers to learn  
the benefits of solar energy.

Like Sunrun, Vivint Solar has adapted to the current environment, accelerating digital  
lead generation efforts and providing a contact-less selling and installation experience  
in most instances. This transition has resulted in improvements for both companies,  
including setting the foundation for structural cost reductions and improved customer  
experience.

We expect to deliver meaningful cost synergies, estimated at \$90 million on an annual  
basis. We see opportunities across the entire cost base, including consolidating and  
optimizing our branch footprint, reducing redundant spending on technology systems,  
scaling our proprietary racking technology, as well as improving sourcing capabilities

1 within our supply chains. There are also opportunities to realize scale benefits from  
2 shared corporate functions including accounting, human resources, legal, and policy.

3 We expect additional revenue synergies to generate enhanced value creation for our  
4 customers and shareholders from a larger base of solar assets. We expect to be able to  
5 offer batteries to the combined base of solar customers. A larger footprint of solar and  
6 battery assets also increases the value of what we bring to our grid services  
7 partnerships and strengthens our ability to deliver considerable value in that business.  
8 We expect to benefit from efficiencies in large scale project finance capital raising  
9 activities and are excited about the opportunity to build an even stronger and more  
10 recognizable consumer brand in residential energy services.

### 11 **Benefits for Customers**

12 Most energy consumers are currently beholden to a single power company that  
13 provides electricity to them based on their household location. As a benefit of this  
14 combination, Sunrun's increased scale, operating efficiency and combined research  
15 and development (R&D) efforts will enable the company to even further accelerate the  
16 adoption of renewable energy and give households more control over their energy  
17 future.

18 A lower cost structure from greater scale can open more markets and allow lower  
19 pricing for customers, accelerating the transition away from polluting fossil fuels. It  
20 will also give our customers access to better, more affordable products and services.  
21 Lastly, combining R&D resources and focusing efforts will allow us to accelerate the  
22 offering of advanced solutions, such as virtual power plants and other energy services  
23 programs, to more customers in more markets.

### 24 **Transaction Details**

25 Under the terms of the definitive transaction agreement, each share of Vivint Solar  
26 common stock issued and outstanding immediately prior to the effective time of the  
27 merger will be converted automatically into the right to receive 0.55 shares of Sunrun  
28 common stock.

The Board of Directors of Sunrun and Vivint Solar have each unanimously voted in  
favor of the definitive transaction agreement.

The acquisition of Vivint Solar is expected to be completed during the fourth quarter  
of 2020, subject to approval by Vivint Solar and Sunrun stockholders, regulatory  
approvals and other customary closing conditions.

Sunrun's Board of Directors will be expanded by adding 2 directors, one of which is  
expected to be Vivint Solar's CEO, David Bywater.

Support Agreements have been obtained from both companies' largest stockholders,  
313 Acquisition LLC (Blackstone affiliate) and Tiger Global, to vote their respective  
shares in favor of the merger and the share issuance, respectively.

1 In addition, 313 Acquisition LLC (Blackstone affiliate) has agreed to lock up 50% of  
2 shares obtained as a result of the acquisition for 60 days following closing and the  
3 remaining 50% for 120 days. Sales are allowed to occur during these periods subject  
to certain conditions.

4 **The Proxy Misleads Vivint Solar Stockholders by Omitting Material Information**

5 22. On August 14, 2020, defendants filed the materially misleading and incomplete Proxy  
6 with the SEC. Designed to convince the Company's stockholders to vote in favor of the Proposed  
7 Transaction, the Proxy is rendered misleading by the omission of critical information, including: (i)  
8 the Company's and Sunrun's financial projections; (ii) the financial analyses performed by the  
9 Company's financial advisors, Morgan Stanley and BofA; and (iii) BofA's potential conflicts of  
10 interest.  
11

12 ***Material Omissions Concerning Vivint Solar's and Sunrun's Financial Projections***

13 23. The Proxy omits material information regarding Company management's and  
14 Sunrun's financial projections.  
15

16 24. In connection with Vivint Solar management's projections for the Company, the Proxy  
17 fails to disclose: (i) with respect to the January Forecasts, EBITDA and levered free cash flow for the  
18 calendar years 2020 through 2024; (ii) the details of the updated forecasts presented to the Board at  
19 its May 8, 2020 Board meeting; and (iii) net income for each of the projection sets, for the calendar  
20 years 2020 through 2024.

21 25. In connection with Vivint Solar management's extrapolated projections for Sunrun,  
22 the Proxy fails to disclose Sunrun's net income over the projection period.  
23

24 26. If a proxy statement discloses financial projections and valuation information, such  
25 projections must be complete and accurate.  
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1 27. The omission of this material information renders certain portions of the Proxy  
2 materially misleading, including, inter alia, the following section of the Proxy: “Certain Vivint Solar  
3 Unaudited Prospective Financial Information.”

4 ***Material Omissions Concerning Morgan Stanley’s and BofA’s Financial Analyses***

5 28. The Proxy omits material information regarding Morgan Stanley’s and BofA’s  
6 financial analyses supporting their fairness opinions.

7  
8 29. The Proxy describes Morgan Stanley’s and BofA’s fairness opinions and the various  
9 valuation analyses performed in support of their opinions. However, the description of Morgan  
10 Stanley’s and BofA’s fairness opinions and analyses fails to include key inputs and assumptions  
11 underlying these analyses. Without this information, as described below, Vivint Solar’s public  
12 stockholders are unable to fully understand these analyses and, thus, are unable to determine what  
13 weight, if any, to place on Morgan Stanley’s and BofA’s fairness opinions in determining whether to  
14 vote in favor of the Proposed Transaction.

15  
16 30. With respect to Morgan Stanley’s *Trading Comparables Analysis* of Vivint Solar, the  
17 Proxy fails to disclose: (i) the number of fully diluted outstanding shares; and (ii) net debt as of March  
18 31, 2020 utilized in the analysis.

19 31. With respect to Morgan Stanley’s *Levered Discounted Cash Flow Analysis* of Vivint  
20 Solar, the Proxy fails to disclose: (i) the estimated levered free cash flows that Vivint Solar  
21 management forecasted Vivint Solar to generate during calendar years 2020 through 2050 from  
22 Vivint Solar’s systems installed as of December 31, 2019 (“Vivint Solar AssetCo”); (ii) current  
23 unrestricted excess cash; (iii) the estimated levered cash flows that Vivint Solar management  
24 forecasted Vivint Solar to generate during calendar years 2020 through 2024 from Vivint Solar’s new  
25 systems forecasted to be installed from January 1, 2020 through 2024 (“Vivint Solar DevCo”); (iv)  
26 Vivint Solar DevCo’s 2025 EBITDA, utilized to derive the terminal value; (v) terminal year debt;  
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1 (vi) the inputs and assumptions underlying the discount rate range of 9.3% to 11.3%; and (vii) fully  
2 diluted outstanding shares.

3 32. With respect to Morgan Stanley's *Discounted Equity Research Analysts' Future Price*  
4 *Targets* analysis of Vivint Solar, the Proxy fails to disclose: (i) the price targets observed by Morgan  
5 Stanley; and (ii) identification of the sources of the price targets.

6 33. With respect to Morgan Stanley's *Trading Comparables Analysis* of Sunrun, the Proxy  
7 fails to disclose: (i) the number of fully diluted outstanding shares; and (ii) net debt as of March 31,  
8 2020 utilized in the analysis.

9 34. With respect to Morgan Stanley's *Levered Discounted Cash Flow Analysis* of Sunrun,  
10 the Proxy fails to disclose (i) the estimated levered free cash flows that Sunrun is forecasted to  
11 generate during calendar years 2020 through 2050 from Sunrun's systems installed as of December  
12 31, 2019 ("Sunrun AssetCo"); (ii) the estimated levered cash flows that Sunrun is forecasted to  
13 generate during calendar years 2020 through 2024 from Sunrun's new systems forecasted to be  
14 installed from January 1, 2020 through 2024 ("Sunrun DevCo") (iii) Sunrun Devco's 2025 EBITDA;  
15 (iv) terminal year debt; (v) the inputs and assumptions underlying the discount rate range of 9.4% to  
16 11.4%; and (vi) fully diluted outstanding shares.

17 35. With respect to Morgan Stanley's *Discounted Equity Research Analysts' Future Price*  
18 *Targets* analysis of Sunrun, the Proxy fails to disclose: (i) the price targets observed by Morgan  
19 Stanley; and (ii) identification of the sources of the price targets.

20 36. With respect to Morgan Stanley's *Pro Forma Levered Discounted Cash Flow*  
21 *Analysis*, the Proxy fails to disclose (i) the estimated levered free cash flows that Vivint Solar and  
22 Sunrun are forecasted to generate during calendar years 2020 through 2050 from Vivint Solar  
23 AssetCo and Sunrun AssetCo, respectively; (ii) current unrestricted excess cash; (iii) the estimated  
24 levered cash flows that Vivint Solar and Sunrun are forecasted to generate during calendar years 2020  
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1 through 2024 from Vivint Solar DevCo and Sunrun DevCo, respectively; (iii) Vivint Solar DevCo's  
2 and Sunrun DevCo's combined EBITDA in 2025; (iv) Vivint Solar's and Sunrun's terminal year  
3 debt; (v) net debt as of March 31, 2020; (vi) the inputs and assumptions underlying the discount rate  
4 range of 9.4% to 11.4%; and (vii) the assumed number of fully diluted shares outstanding of the pro  
5 forma combined company.

6 37. With respect to BofA's *Discounted Cash Flow Analysis* of Vivint Solar, the Proxy  
7 fails to disclose: (i) the stand-alone, levered, after-tax free cash flows that Vivint Solar was forecasted  
8 to generate from its existing aggregate portfolio of installed PPA/Lease solar energy systems ("Vivint  
9 Solar OpCo") during calendar years 2020 through 2049; (ii) the stand-alone, levered, after-tax free  
10 cash flows that Vivint Solar was forecasted to generate from sales, assuming a certain financing  
11 strategy of future solar energy systems during calendar years 2020 through 2027; (iii) Vivint Solar's  
12 stand-alone, net retained value attributable to assets not otherwise included in Vivint Solar OpCo as  
13 of the end of the terminal year; and (iv) the inputs and assumptions underlying the discount rate range  
14 of 9.0% to 12.0%.

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17 38. With respect to BofA's *Discounted Cash Flow Analysis* of Sunrun, the Proxy fails to  
18 disclose: (i) the stand-alone, levered, after-tax free cash flows that Sunrun was forecasted to generate  
19 from its existing aggregate portfolio of installed PPA/Lease solar energy systems ("Sunrun OpCo")  
20 during calendar years 2020 through 2049; (ii) the stand-alone, levered, after-tax free cash flows that  
21 Sunrun was forecasted to generate from sales of newly installed solar energy systems during calendar  
22 years 2020 through 2027; (iii) Sunrun's stand-alone, net retained value attributable to assets not  
23 otherwise included in Sunrun OpCo as of the end of the terminal year; and (iv) the inputs and  
24 assumptions underlying the discount rate range of 10.0% to 13.5%.

1 39. With respect to BofA's review of certain publicly available equity research analyst  
2 price targets for Vivint Solar and Sunrun, the Proxy fails to disclose: (i) the price targets observed by  
3 BofA; and (ii) identification of the sources of the price targets.

4 40. With respect to BofA's *Has/Gets Analysis*, the Proxy fails to disclose: (i) the estimated  
5 after-tax Synergies (net of after-tax cost costs to achieve such Synergies) during 2020 through 2023;  
6 (ii) quantification of the inputs and assumptions underlying the discount rate range of 10.0% to 13.5%;  
7 and (iii) the after-tax Synergies in the terminal year.  
8

9 41. Without such undisclosed information, Vivint Solar stockholders cannot evaluate for  
10 themselves whether the financial analyses performed by Morgan Stanley and BofA were based on  
11 reliable inputs and assumptions or whether they were prepared with an eye toward ensuring that a  
12 positive fairness opinion could be rendered in connection with the Proposed Transaction. In other  
13 words, full disclosure of the omissions identified above is required in order to ensure that stockholders  
14 can fully evaluate the extent to which Morgan Stanley's and BofA's opinions and analyses should  
15 factor into their decision whether to vote in favor of or against the Proposed Transaction.  
16

17 42. The omission of this material information renders certain portions of the Proxy  
18 materially misleading, including, inter alia, the following sections of the Proxy: "Certain Vivint Solar  
19 Unaudited Prospective Financial Information" and "Opinion of Vivint Solar's Financial Advisors."

20 ***Material Omissions Concerning BofA's Potential Conflicts of Interest***

21 43. The Proxy fails to disclose material information concerning the potential conflicts of  
22 interest faced by BofA.  
23

24 44. The Proxy sets forth:  
25 BofA Securities and its affiliates in the past have provided, currently are providing,  
26 and in the future may provide, investment banking, commercial banking and other  
27 financial services to Vivint Solar and have received or in the future may receive  
28 compensation for the rendering of these services, including (i) having acted or acting  
as placement agent, bookrunner and/or manager on various equity and debt offerings  
by Vivint Solar and/or its subsidiaries, (ii) having acted or acting as a structure and/or

1 arranger of, and/or as a principal in, various tax equity, warehouse and other financing  
2 transactions undertaken by Vivint Solar and/or its subsidiaries; and (iii) having  
3 provided or providing certain commodity trading and treasury management services  
4 to Vivint Solar and/or its subsidiaries. From June 1, 2018 through May 31, 2020, BofA  
5 Securities and its affiliates derived aggregate revenues from Vivint Solar and certain  
6 of its affiliates of approximately \$30 million for investment and corporate banking  
7 services.

8 In addition, BofA Securities and its affiliates in the past have provided, currently are  
9 providing, and in the future may provide, investment banking, commercial banking  
10 and other financial services to Blackstone Entities and have received or in the future  
11 may receive compensation for the rendering of these services, including (i) having  
12 acted or acting as financial advisor to Blackstone Entities in connection with certain  
13 mergers and acquisition transactions, (ii) having acted or acting as administrative  
14 agent, collateral agent, arranger, bookrunner and/or lender for Blackstone Entities,  
15 including but not limited to in connection with the financing for various acquisition  
16 transactions, (iii) having acted or acting as underwriter, initial purchaser and  
17 placement agent for various equity and debt offerings undertaken by Blackstone  
18 Entities and (iv) having provided or providing certain commodity, derivatives and  
19 foreign exchange trading services and treasury and trade services and products to  
20 Blackstone Entities. BofA Securities also advised that, from June 1, 2018 through  
21 May 31, 2020, BofA Securities and its affiliates derived aggregate revenues from  
22 Blackstone Entities of approximately \$1 billion for investment and corporate banking  
23 services.

24 Proxy at 126. The Proxy, however, fails to disclose the details of any services BofA has provided, or  
25 is currently providing, to Sunrun or its affiliates, the timing and nature of such services and the amount  
26 of compensation BofA received, or expects to receive, in connection with any services provided..

27 45. Full disclosure of investment banker compensation and all potential conflicts is  
28 required due to the central role played by investment banks in the evaluation, exploration, selection,  
and implementation of strategic alternatives.

46. The omission of this material information renders certain portions of the Proxy  
materially misleading, including, inter alia, the following section of the Proxy: “Opinion of Vivint  
Solar’s Financial Advisors.”

47. Accordingly, Plaintiff seeks injunctive and other equitable relief to prevent the  
irreparable injury that Company stockholders will continue to suffer absent judicial intervention.

**CLAIMS FOR RELIEF**

**COUNT I**

**Claims Against All Defendants for Violations of Section 14(a) of the Exchange Act and Rule 14a-9 Promulgated Thereunder**

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3  
4  
5 48. Plaintiff repeats all previous allegations as if set forth in full.

6 49. During the relevant period, defendants disseminated the false and misleading Proxy  
7 specified above, which failed to disclose material facts necessary to make the statements, in light of  
8 the circumstances under which they were made, not misleading in violation of Section 14(a) of the  
9 Exchange Act and SEC Rule 14a-9 promulgated thereunder.

10 50. By virtue of their positions within the Company, the defendants were aware of this  
11 information and of their duty to disclose this information in the Proxy. The Proxy was prepared,  
12 reviewed, and/or disseminated by the defendants. It misrepresented and/or omitted material facts,  
13 including material information about Vivint Solar management's financial projections relied upon by  
14 Morgan Stanley and BofA for their financial analyses, the data and inputs underlying the valuation  
15 analyses performed by Morgan Stanley and BofA, and BofA's potential conflicts of interest. The  
16 defendants were at least negligent in filing the Proxy with these materially false and misleading  
17 statements.  
18

19 51. The omissions and false and misleading statements in the Proxy are material in that a  
20 reasonable stockholder would consider them important in deciding how to vote on the Proposed  
21 Transaction.  
22

23 52. By reason of the foregoing, the defendants have violated Section 14(a) of the Exchange  
24 Act and SEC Rule 14a-9(a) promulgated thereunder.

25 53. Because of the false and misleading statements in the Proxy, Plaintiff is threatened  
26 with irreparable harm, rendering money damages inadequate. Therefore, injunctive relief is  
27 appropriate to ensure defendants' misconduct is corrected.  
28

**COUNT II**

**Claims Against the Individual Defendants for Violations of  
Section 20(a) of the Exchange Act**

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3 54. Plaintiff repeats all previous allegations as if set forth in full.

4  
5 55. The Individual Defendants acted as controlling persons of Vivint Solar within the  
6 meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as  
7 officers and/or directors of Vivint Solar, and participation in and/or awareness of the Company's  
8 operations and/or intimate knowledge of the false statements contained in the Proxy filed with the  
9 SEC, they had the power to influence and control and did influence and control, directly or indirectly,  
10 the decision-making of the Company, including the content and dissemination of the various  
11 statements which Plaintiff contends are false and misleading.

12  
13 56. Each of the Individual Defendants was provided with or had unlimited access to copies  
14 of the Proxy and other statements alleged by Plaintiff to be misleading prior to and/or shortly after  
15 these statements were issued and had the ability to prevent the issuance of the statements or cause the  
16 statements to be corrected.

17  
18 57. In particular, each of the Individual Defendants had direct and supervisory  
19 involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had  
20 the power to control or influence the particular transactions giving rise to the securities violations as  
21 alleged herein, and exercised the same. The Proxy at issue contains the unanimous recommendation  
22 of each of the Individual Defendants to approve the Proposed Transaction. They were, thus, directly  
23 involved in the making of the Proxy.

24  
25 58. In addition, as the Proxy sets forth at length, and as described herein, the Individual  
26 Defendants were each involved in negotiating, reviewing, and approving the Proposed Transaction.  
27 The Proxy purports to describe the various issues and information that they reviewed and  
28 considered—descriptions the Company directors had input into.

1 59. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of  
2 the Exchange Act.

3 60. As set forth above, the Individual Defendants had the ability to exercise control over  
4 and did control a person or persons who have each violated Section 14(a) and SEC Rule 14a-9,  
5 promulgated thereunder, by their acts and omissions as alleged herein. By virtue of their positions as  
6 controlling persons, these defendants are liable pursuant to Section 20(a) of the Exchange Act. As a  
7 direct and proximate result of defendants' conduct, Vivint Solar's stockholders will be irreparably  
8 harmed.  
9

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff demands judgment and preliminary and permanent relief, including  
12 injunctive relief, in her favor on behalf of Vivint Solar, and against defendants, as follows:

- 13 A. Preliminarily and permanently enjoining defendants and all persons acting in concert  
14 with them from proceeding with, consummating, or closing the Proposed Transaction;  
15  
16 B. In the event defendants consummate the Proposed Transaction, rescinding it and  
17 setting it aside or awarding rescissory damages to Plaintiff;  
18  
19 C. Directing the Individual Defendants to disseminate a Proxy that does not contain any  
20 untrue statements of material fact and that states all material facts required in it or  
21 necessary to make the statements contained therein not misleading;  
22  
23 D. Declaring that defendants violated Sections 14(a) and/or 20(a) of the Exchange Act,  
24 as well as SEC Rule 14a-9 promulgated thereunder;  
25  
26 E. Awarding Plaintiff the costs of this action, including reasonable allowance for  
27 Plaintiff's attorneys' and experts' fees; and  
28  
29 F. Granting such other and further relief as this Court may deem just and proper.



**JURY DEMAND**

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Plaintiff demands a trial by jury.

Dated: September 11, 2020

**WEISSLAU LLP**

Joel E. Elkins

By: /s/ Joel E. Elkins

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**OF COUNSEL:**

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*Attorneys for Plaintiff*

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

MARYA FRIEDMAN

(b) County of Residence of First Listed Plaintiff Kings County, NY (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Joel E. Elkins, WeissLaw LLP
9107 Wilshire Blvd., Suite 450, Beverly Hills, CA 90210
Telephone: 310/208-2800 Facsimile: 310/209-2348

DEFENDANTS

VIVINT SOLAR, INC., DAVID BYWATER, ELLEN S. SMITH, PETER F. WALLACE, TODD R. PEDERSEN, JOSEPH S. TIBBETTS, JR., DAVID F. D'ALESSANDRO, BRUCE MCEVOY, and JAY D. PAULEY.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. §§ 78n(a), 78t(a)

Brief description of cause: Violations of the Federal Securities Laws

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE Hon. Kandis A. Westmore DOCKET NUMBER 20-cv-05880

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 09/11/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Joel E. Elkins

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## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.