

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
SOLARCITY CORPORATION, :  
Plaintiff, : Case No. 17 cv 3916  
-against- : **COMPLAINT**  
TRINITY HEATING & AIR, INC., doing : Jury Trial Demanded  
business as TRINITY SOLAR; and DAVID L.  
RUSH, :  
Defendants. :  
----- X

Plaintiff SolarCity Corporation (“SolarCity”) complains and alleges as follows against Defendants Trinity Heating & Air, Inc., doing business as Trinity Solar (“Trinity Solar”), and David L. Rush (“Rush”) (collectively, “Defendants”). The allegations herein are made based on personal knowledge as to SolarCity with respect to its own actions, and upon information and belief as to all other matters.

**INTRODUCTION**

1. SolarCity is the market leader in the United States in providing solar power systems that offer a clean and affordable alternative to traditional carbon-based energy sources. Its innovations have won it a vast and diverse customer base.

2. SolarCity expends significant resources to locate potential customers, educate them about the benefits and advantages of solar power, and ultimately enter into long term contracts to finance solar energy systems, lease them, or purchase the energy the systems generate. The identities of SolarCity’s prospective and existing customers are extremely valuable in generating ongoing sales and referrals for new customers. SolarCity maintains databases of its current and potential customers and also of other individuals who have referred business to SolarCity. These databases—and the information in them—is highly confidential and a trade secret.

3. Rush, a former SolarCity salesperson, and Trinity Solar, a direct competitor of SolarCity, misappropriated SolarCity's trade secrets. While still employed by SolarCity, Rush sent information about hundreds of SolarCity's customers or potential customers to an email address in his name at Trinity Solar, and directly solicited at least one SolarCity customer to bring her business to Trinity Solar. After resigning from SolarCity, Rush, acting on behalf of Trinity Solar, solicited SolarCity customers and potential customers whose contact information he had stolen from SolarCity. Rush also improperly solicited SolarCity employees to join Trinity Solar, in violation of his employment agreement with SolarCity.

4. Upon discovery of Defendants' wrongdoing but prior to bringing this suit, SolarCity gave Defendants opportunities to return SolarCity's customer lists, but they have not done so. SolarCity also requested Trinity Solar's cooperation in investigating Rush's improper conduct, but Trinity Solar has not addressed SolarCity's concerns.

5. The confidential and proprietary customer information and trade secrets asserted in this case reflect a significant investment of resources by SolarCity to provide first-quality customer service and successfully compete in the marketplace. While SolarCity welcomes legitimate competition in the marketplace, Defendants' misappropriation unfairly takes SolarCity's intellectual property and cannot be permitted.

## **THE PARTIES**

6. SolarCity is a Delaware corporation having a principal place of business in San Mateo, California. SolarCity is a leading innovator and provider of proprietary solar technologies. SolarCity maintains an office in Westchester County, New York and conducts business in this judicial district.

7. Trinity Solar is a New Jersey corporation with its principal place of business in Wall, New Jersey. Trinity Solar regularly conducts business in this judicial district and maintains an office in Brewster, New York. Trinity Solar is a direct competitor of SolarCity.

8. Rush is an individual residing in Wappingers Falls, New York. Rush was an employee of SolarCity from about December 15, 2014 until he resigned on or about January 22, 2017.

#### **NATURE OF ACTION**

9. SolarCity brings this action for (1) misappropriation under the Defend Trade Secrets Act, 18 U.S.C. § 1836; (2) breach of contract; (3) misappropriation of trade secrets under New York law; (4) unfair competition under New York law; (5) conversion; (6) breach of fiduciary duty; and (7) aiding and abetting breach of fiduciary duty.

#### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction pursuant to the Defend Trade Secrets Act, 18 U.S.C. § 1836(c), and 28 U.S.C. § 1331. This Court has supplemental jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. § 1337(a) because the federal and state law claims derive from a common nucleus of operative facts.

11. This Court has personal jurisdiction over Trinity Solar because it regularly conducts business in this judicial district and has engaged in acts of trade secret misappropriation, among others, in this judicial district. Trinity Solar has purposefully availed itself of the benefits of doing business in New York, including by establishing minimum contacts in this state through its regular business activities and the tortious conduct and wrongful conduct described herein.

12. This Court has personal jurisdiction over Rush because he resides in this judicial district and has engaged in acts of trade secret misappropriation and breach of contract, among others, in this judicial district.

13. Venue is proper under 28 U.S.C. § 1391(b) and (c) because both Defendants reside in this judicial district and because a substantial part of the events or omissions giving rise to SolarCity's claims occurred in this judicial district.

14. Pursuant to Rule 18 of the Rules for the Division of Business Among District Judges in this district, this case is being designated for assignment to White Plains because the claims arose in whole or in major part in the counties of Dutchess, Orange, Putnam, Rockland, Sullivan, or Westchester and at least one of the parties resides in these counties.

### **FACTUAL ALLEGATIONS**

#### **I. SolarCity's highly confidential customer information is a trade secret.**

15. From its founding to the present, SolarCity developed and maintains extensive non-public databases of information relating to its customers and prospective customers (the "Customer Database Records"). These Customer Database Records are the result of SolarCity's significant expenditure of time, money, and effort.

16. SolarCity's Customer Database Records include names, addresses, and other confidential customer information such as buying histories, preferences, contracts with SolarCity, current solar installations, potential opportunities and the value of those opportunities, and the timing and nature of SolarCity's past communications. Such customer information is not generally known to the public or to other persons who can obtain economic value from its disclosure or use. It is password-protected, accessible only by certain SolarCity employees, and disseminated within the company only on a "need to know" basis.

17. The Customer Database Records provide SolarCity with a significant competitive advantage over SolarCity's competitors in a number of ways, including by enabling SolarCity to build and leverage its goodwill in the community and lower SolarCity's cost of customer acquisition. Customer Database Records are also used to generate new business, thereby

providing both revenue for the company and sales commissions paid to SolarCity's sales personnel, as well as to facilitate ongoing service and maintenance of SolarCity's current customer base. The identity of and information concerning SolarCity's current customers and prospective customers is critical to SolarCity's business.

18. SolarCity protects the confidentiality of its Customer Database Records by, among other things, requiring its employees to sign employment contracts that include strict confidentiality provisions. SolarCity also restricts access to its Customer Database Records by storing them using secure, password-protected software. Only those with a password are authorized to view the data in the customer databases.

**II. Rush signed agreements with SolarCity to maintain the confidentiality of SolarCity's confidential information.**

19. From on or about December 15, 2014 through on or about January 22, 2017, Rush was an employee of SolarCity.

20. At SolarCity, Rush worked first as a Field Energy Consultant and then as a Senior Field Energy Consultant, which was the position he held during the time of the wrongful conduct alleged herein. During his employment, he performed his services primarily in Westchester County, New York.

21. SolarCity's Field Energy Consultants sell its products and services to potential residential customers in New York. Field Energy Consultants are responsible for making contacts with potential customers, gathering potential leads, discussing the benefits of solar energy with customers, and selling solar energy to residential customers.

22. SolarCity requires all new employees to sign an At Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement (the "Employment and Confidentiality Agreement") as a condition of their employment.

23. Rush signed an Employment and Confidentiality Agreement on or about November 24, 2014. (*See Exhibit A.*)

24. Under the Employment and Confidentiality Agreement, Rush agreed, “during the term of [his] employment and thereafter, to hold in strictest confidence, and not to use, except for the benefit of [SolarCity], or disclose to any person, firm or corporation without written authorization of the Board of Directors of [SolarCity], any [SolarCity] Confidential Information.” (Exhibit A ¶ 2.A.)

25. The Employment and Confidentiality Agreement defined SolarCity’s Confidential Information to include non-public customer lists and customer contact information. Specifically, it defined Confidential Information to include

any non-public information that relates to the actual or anticipated business or research and development of [SolarCity], technical data, trade secrets or know-how, including, but not limited to: research, product plans or other information regarding [SolarCity’s] products or services and markets therefor; customer lists and customer contact information, buying histories, and preferences (including, but not limited to, such information relating to customers of [SolarCity] on whom I called or with whom I became acquainted during the term of my employment) . . . (Exhibit A ¶ 2.A.)

26. Rush also agreed to return all SolarCity records and data upon leaving employment with SolarCity:

I agree that, at the time of leaving the employ of [SolarCity], I will deliver to [SolarCity] (and will not keep in my possession, recreate or deliver to anyone else) any and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings blueprints, sketches, materials, equipment, other documents or property, or reproductions of any aforementioned items developed by me pursuant to my employment with [SolarCity] or otherwise belonging to [SolarCity] . . . (Exhibit A ¶ 4.)

27. Rush also agreed to diligently adhere to SolarCity’s Conflict of Interest Guidelines, which were attached as an exhibit to the Employment and Confidentiality Agreement. (*See Exhibit A ¶ 7.*) The Conflict of Interest Guidelines expressly prohibited Rush from “[r]evealing

confidential information to outsiders or misusing confidential information . . . whether or not for personal gain and whether or not harm to [SolarCity] is intended.” (Exhibit A at page 10.) The Conflict of Interest Guidelines also prohibited Rush from “[e]ngaging in any other conduct that is injurious to the best interests of [SolarCity] or violates [SolarCity] policy.” (Exhibit A at page 10.)

28. Rush also agreed that, for 12 months following his termination of employment with SolarCity, he would not directly or indirectly “solicit, induce, recruit or encourage” any SolarCity “employees or consultants to terminate their relationship with” SolarCity, whether for his own benefit or the benefit of any other person or entity. (Exhibit A ¶ 6.) This provision is critical to SolarCity’s ability to protect its business, maintain the stability of its workforce, and protect its investment in its employees.

29. As described above, Rush was fully informed and aware, through the Employment and Confidentiality Agreement he signed, that SolarCity’s Customer Database Records were confidential, proprietary, and not to be used or disclosed except in connection with legitimate SolarCity business.

30. The Employment and Confidentiality Agreement is a valid and enforceable agreement.

31. At all times, SolarCity performed any and all obligations required of it under the Employment and Confidentiality Agreement.

32. At no time was Rush’s performance under the Employment and Confidentiality Agreement excused.

33. Rush also signed a Sales Compensation Plan, in which he acknowledged that one of his duties was to “comply with the Company’s Employee handbook.” (Exhibit B ¶ 5.H.)

SolarCity's Employee Handbook makes clear that employees must maintain the confidentiality of, and not divulge, SolarCity's confidential information, specifically "customer" information.

The Employee Handbook states:

#### CONFIDENTIALITY

Each employee is responsible for safeguarding confidential information obtained during employment. While at work, employees may have access to confidential information regarding SolarCity, its suppliers, its customers, or perhaps even fellow employees. Employees have a responsibility not to reveal or divulge any such information. Access to confidential information should be on a "need-to-know" basis and must be authorized by management. Any breach of this policy will not be tolerated and legal action may be taken by SolarCity. (Exhibit C § 9.12.)

34. Rush also signed an offer of employment (the "Offer Letter") on November 24, 2014, in which he agreed that "during the term of [his] employment with [SolarCity], [he] will not engage in any other employment, occupation, consulting or other business activity directly related to the business in which [SolarCity] is now involved or becomes involved during the term of [his] employment, nor will [he] engage in any other activities that conflict with [his] obligations to [SolarCity].” (Exhibit D at page 2.)

#### **III. Rush and Trinity Solar misappropriated SolarCity's confidential trade secret information.**

35. On January 18, 2017, while Rush was still employed by SolarCity, Rush sent by email from his SolarCity email address several files containing contact information of hundreds of SolarCity's customers or prospective customers (the "Customer Lists").

36. The information in the Customer Lists was taken or derived from SolarCity's Customer Database Records.

37. Although Rush was still employed by SolarCity, he sent these files to an email address in his name at Trinity Solar: dave.rush@trinity-solar.com.

38. Rush was not authorized to send the Customer Lists to Trinity Solar.

39. Rush never sought permission from SolarCity to work concurrently for SolarCity and Trinity Solar.

40. Working concurrently for SolarCity and Trinity Solar would not have been permitted, as it would have violated the Offer Letter Rush signed, which prohibited him from engaging in any business “directly related” to SolarCity’s business while employed by SolarCity. (Exhibit D at page 2.).

41. Days later, on or about January 21, 2017, while still employed by SolarCity, Rush informed a SolarCity customer that he was leaving SolarCity for Trinity Solar and solicited this customer to bring her business to Trinity Solar.

42. That same day, Rush admitted that he referred this customer to Trinity Solar, but sought to cover up the nature of his interaction with this customer by falsely informing a SolarCity sales manager that Rush wanted the customer to remain with SolarCity but that he encouraged the customer to contact Trinity Solar to obtain financing.

43. The next day, on or about January 22, 2017, Rush resigned from SolarCity.

44. Also on or about January 22, 2017, Rush sent a text message to a current SolarCity employee stating that he had resigned from SolarCity to join Trinity Solar and encouraged the SolarCity employee to do the same.

45. On January 25, 2017, SolarCity sent a letter to Rush expressing concern that Rush had contacted at least one SolarCity customer before he left SolarCity and tried to convert that customer to Trinity Solar. The letter also advised Rush that SolarCity had evidence that Rush had solicited a current SolarCity employee to join him at Trinity Solar. The letter reminded Rush that customer and prospective customer information is proprietary SolarCity information that he agreed to maintain in confidence and not share or use with any other entity. The letter

also reminded Rush of his obligation not to solicit SolarCity employees for a period of 12 months after his employment with SolarCity. The letter directed Rush to, among other things, confirm in writing that he did not possess or have access to any SolarCity confidential or proprietary information, including employee or customer information, and to confirm that he will comply with his obligations under the Employment and Confidentiality Agreement. The letter instructed Rush to preserve all evidence relating to his access to and use of SolarCity's proprietary information and data, and also instructed him to contact SolarCity to arrange for the return of any SolarCity materials.

46. Rush never contacted SolarCity to arrange for the return of the Customer Lists.

47. On March 12, 2017, Rush sent an email from his Trinity Solar email address advertising and soliciting for Trinity Solar. The email included the subject line "I Switched!" and touted the benefits of Trinity Solar.

48. In sending this email, Rush acted as an agent of Trinity Solar.

49. Among the recipients of this email was at least one SolarCity customer whose contact information appeared on the Customer Lists that Rush sent to Trinity Solar on January 18, 2017. This customer expressed concern to SolarCity about being contacted by SolarCity's former sales person (Rush) on behalf of Trinity Solar when the customer had only provided their contact information to SolarCity.

50. Upon information and belief, Rush, along with a number of other individuals who left employment with SolarCity to join Trinity Solar, solicited numerous SolarCity customers, with whom they worked at SolarCity, to bring their business to Trinity Solar.

**IV. Despite requests from SolarCity, Rush and Trinity Solar failed to return SolarCity's trade secret information or adequately address SolarCity's concerns.**

51. On March 20, 2017, SolarCity sent a letter to Trinity Solar's legal department, notifying it that SolarCity was aware that Rush had solicited SolarCity customers and employees to join Trinity Solar. The letter informed Trinity Solar that Rush's conduct seemed to be part of a pattern and practice whereby a number of former SolarCity employees may have used SolarCity's confidential information to contact SolarCity customers or employees on behalf of Trinity Solar. The letter informed Trinity Solar that Rush and other SolarCity employees were subject to Employment and Confidentiality Agreements, which prohibited their soliciting SolarCity employees for 12 months after the end of their employment with SolarCity.

52. SolarCity's March 20, 2017 letter also requested Trinity Solar to take investigative and preventive steps and provide written assurances by March 23, 2017 as follows: (1) Provide the details of three individuals' (including Rush's) employment with Trinity Solar, including their first date of contact with Trinity Solar; (2) Provide a written description of specific steps that Trinity Solar took to ensure that the individuals did not retain, use, or disclose SolarCity's confidential information for Trinity Solar's benefit; (3) Provide written confirmation that Trinity Solar has directed each of the individuals to immediately return all confidential information to SolarCity; and (4) Provide written confirmation that Trinity Solar directed each of the individuals to immediately refrain from soliciting any SolarCity employees. The letter also requested Trinity Solar to provide additional written confirmations following an investigation by Trinity Solar into the conduct described in the letter.

53. After sending the March 20, 2017 letter to SolarCity, SolarCity discovered—as part of its continued investigation into Rush's conduct—that Rush had emailed the Customer Lists to his Trinity Solar email address on January 18, 2017.

54. On March 21, 2017, SolarCity sent a follow-up letter to Trinity Solar's legal department, alerting them to Rush's theft of the Customer Lists. SolarCity stated that this information "raises the level of concern tremendously" and reiterated its request for a "thorough response" as soon as possible and by no later than March 23, 2017.

55. Despite SolarCity's detailed and reasonable requests in its March 20, 2017 letter, Trinity Solar did not address SolarCity's concerns in a written response.

56. On March 25, 2017, Rush responded to SolarCity's January 25, 2017 letter. Rush admitted that he had contact with the customer identified in SolarCity's January 25, 2017 letter, but stated that all contact with that customer had stopped. He also admitted that he solicited SolarCity employees, but stated that all solicitation of them had stopped. He also stated that he would not use SolarCity's confidential information to solicit customers, that he did not possess SolarCity's confidential information, and that he would comply with all obligations of his Employment and Confidentiality Agreement. Rush's letter did not mention that he had taken the Customer Lists nor did he attempt to arrange for their return to SolarCity.

57. Rush's assertions in this March 25, 2017 letter about his use or possession of SolarCity's confidential information were false or misleading. As alleged above, Rush sent the Customer Lists to an email address in his name at Trinity Solar, had not contacted SolarCity to arrange for their return, and just weeks before had emailed SolarCity customers or prospects to solicit on behalf of Trinity Solar.

58. SolarCity expended significant resources in responding to Rush's misappropriation of SolarCity's confidential and proprietary information, including by reviewing Rush's email usage, conducting forensic analysis of Rush's hard drive, notifying Trinity Solar of Rush's

conduct, and bringing this lawsuit to protect its rights, and has suffered damages relating to that undertaking.

## **CLAIMS FOR RELIEF**

### **CLAIM I**

#### **Violation of the Defend Trade Secrets Act (18 U.S.C. § 1836) (Against Trinity Solar and Rush)**

59. SolarCity repeats and re-alleges each and every allegation above as if fully set forth herein.

60. SolarCity owned, possessed, and developed the Customer Database Records, which are nonpublic, confidential, proprietary, and trade secret information, and include lists of active and prospective customers of SolarCity, their contact information, and other information related to the customers that enabled SolarCity to evaluate the probability of conducting business with the customer. The Customer Lists taken by Rush were taken and derived from the confidential, proprietary, and trade secret Customer Database Records.

61. SolarCity took reasonable steps to keep the information secret, including by: maintaining the information in a secure server that could only be accessed by an assigned username and password; by having its employees, contractors, and other vendors with access to this information sign agreements to maintain the confidentiality of the information; by adopting policies and procedures to maintain the confidentiality of the information; by taking steps to determine whether breaches of these policies occurred and responding to actual or potential breaches; and by taking legal action where necessary to protect the information.

62. This confidential, proprietary, and trade secret information involves and relates to products and services used, sold, shipped and ordered in, or intended to be used, sold, shipped

and/or ordered in, interstate or foreign commerce. For example, SolarCity sells its products throughout the United States.

63. This confidential, proprietary, and trade secret information derives independent economic value from not being generally known to, and not being readily ascertainable through proper means by, another person who could obtain economic value from the disclosure or use of the information.

64. Defendants misappropriated SolarCity's trade secrets.

65. Rush disclosed SolarCity's trade secrets to Trinity Solar without express or implied consent.

66. Rush used SolarCity's trade secrets without express or implied consent.

67. Rush knew or had reason to know that he had a duty to maintain the secrecy of the trade secrets because, among other things, he signed the Employment and Confidentiality Agreement requiring him to do so.

68. Trinity Solar acquired SolarCity's trade secrets from Rush.

69. At the time of Trinity Solar's acquisition of SolarCity's trade secrets, Trinity Solar knew or had reason to know that Rush acquired them by improper means, because Rush acquired them in breach of a duty to maintain secrecy.

70. Trinity Solar, through its agent Rush, used SolarCity's trade secrets without express or implied consent, and with knowledge or having reason to know that the trade secrets were derived from Rush, who had acquired them by improper means and who owed SolarCity a duty to maintain the secrecy of the trade secrets.

71. Defendants' misappropriation of SolarCity's confidential, proprietary, and trade secret information was intentional, knowing, willful, malicious, and in bad faith. Trinity Solar

and Rush knew of the confidentiality, ownership of, and use restrictions on SolarCity's trade secrets, which Rush agreed to follow by signing the Employment and Confidentiality Agreement.

72. Defendants have failed to return SolarCity's confidential and trade secret information and have attempted to conceal their theft of such information. Defendants will continue to misappropriate, disclose, and use SolarCity's trade secret information for their benefit and in violation of SolarCity's rights.

73. As the direct and proximate result of Defendants' conduct, SolarCity has suffered and, if Defendants' conduct is not enjoined, will continue to suffer, irreparable injury. SolarCity's business is reliant on its business reputation and its ability to maintain and grow its client base in a competitive market and will continue suffering irreparable harm absent injunctive relief.

74. SolarCity has no adequate remedy at law.

## **CLAIM II**

### **Breach of Contract (Against Rush)**

75. SolarCity repeats and re-alleges each and every allegation above as if fully set forth herein.

76. The November 24, 2014 Employment and Confidentiality Agreement, including the Conflict of Interest Guidelines attached to it, is a valid and enforceable agreement.

77. The November 24, 2014 Offer Letter is a valid and binding agreement.

78. The 2014 Sales Compensation Plan is a valid and binding agreement.

79. At all times, SolarCity performed all obligations required of it under each of these agreements.

80. At no time was Rush's performance under any of these agreements excused. For instance, Rush acknowledged in the Employment and Confidentiality Agreement that his confidentiality obligations apply "during the term of [his] employment and thereafter."

81. Rush breached his agreements with SolarCity, including by soliciting a SolarCity customer for Trinity Solar while still employed by SolarCity, misappropriating SolarCity's confidential customer information, and soliciting or encouraging SolarCity employees to terminate their relationship with SolarCity to join Trinity Solar.

82. As a direct and proximate result of Rush's breaches, SolarCity has been harmed in an amount to be proven at trial.

83. SolarCity's damages are difficult to quantify in dollars and cannot be redressed simply by awarding money damages.

### **CLAIM III**

#### **Misappropriation of Trade Secrets (Against Trinity Solar and Rush)**

84. SolarCity repeats and re-alleges each and every allegation above as if fully set forth herein.

85. SolarCity owned, possessed, and developed nonpublic, confidential, proprietary, and trade secret information, including a list of active and prospective customers of SolarCity, their contact information, and other information related to the customers that enabled SolarCity to evaluate the probability of conducting business with the customer. The Customer Lists taken by Rush were taken and derived from the confidential, proprietary, and trade secret Customer Database Records.

86. SolarCity expended substantial efforts and resources to develop its confidential customer information.

87. SolarCity uses its trade secret information, including the information from the Customer Lists, in conducting its business.

88. SolarCity took steps to guard the secrecy of its trade secret information.

89. Rush used SolarCity's trade secrets in breach of the agreements he signed with SolarCity, including the Employment and Confidentiality Agreement.

90. Trinity Solar used SolarCity's trade secrets as a result of discovery by improper means through Rush, who disclosed and used them in breach of his duty to SolarCity.

91. Defendants have failed to return SolarCity's confidential and trade secret information and have attempted to conceal their theft of such information. Defendants will continue to misappropriate, disclose, and use SolarCity's trade secret information for their benefit and in violation of SolarCity's rights.

92. As the direct and proximate result of Defendants' conduct, SolarCity has suffered and, if Defendants' conduct is not enjoined, will continue to suffer, irreparable injury.

93. As a direct and proximate result of Defendants' misappropriation, SolarCity has suffered harm in an amount to be proven at trial.

94. SolarCity's damages are difficult to quantify in dollars and cannot be redressed simply by awarding money damages.

#### **CLAIM IV**

##### **Unfair Competition (Against Trinity Solar and Rush)**

95. SolarCity repeats and re-alleges each and every allegation above as if fully set forth herein.

96. Rush misappropriated SolarCity's labors and expenditures by soliciting a SolarCity customer on behalf of Trinity Solar while still employed by SolarCity, by taking and using

SolarCity's confidential customer information, and by soliciting SolarCity employees in violation of his Employment and Confidentiality Agreement.

97. SolarCity spends significant time, money, and effort in developing its customer information, including the information in the Customer Lists, and that information has independent economic value derived from not being generally known.

98. SolarCity spends significant time, money, and effort training and developing its employees and it is critical to SolarCity's business to retain knowledgeable, experienced employees.

99. Trinity Solar misappropriated SolarCity's labors and expenditures, including by acquiring, using, and failing to return SolarCity's confidential customer information; by failing to address, despite requests from SolarCity, the solicitation of current SolarCity employees by former SolarCity employees who joined Trinity Solar and who were acting in violation of their employment agreements with SolarCity; and through the actions of its agent Rush.

100. Defendants acted in bad faith in misappropriating SolarCity's labors and expenditures. Rush sought to cover up his solicitation of a SolarCity customer while still employed by SolarCity, sent SolarCity's confidential customer information directly to one of SolarCity's competitors, and falsely or misleadingly told SolarCity that he did not possess any confidential SolarCity information. Because Rush was acting as Trinity Solar's agent, Rush's actions are attributable to Trinity Solar.

101. As a direct and proximate result of Defendants' unfair competition, SolarCity has suffered harm in an amount to be proven at trial.

102. SolarCity's damages are difficult to quantify in dollars and cannot be redressed simply by awarding money damages.

## **CLAIM V**

### **Conversion (Against Trinity Solar and Rush)**

103. SolarCity repeats and re-alleges each and every allegation above as if fully set forth herein.

104. SolarCity has rightful ownership and right of possession over its confidential customer information, including Customer Database Records and the Customer Lists.

105. Trinity Solar and Rush intentionally and unlawfully exercised dominion over SolarCity's confidential customer information, including the Customer Lists.

106. SolarCity was dispossessed of its right to the exclusive use and possession of its confidential customer information, including the Customer Lists.

107. Trinity Solar's and Rush's tortious conduct with regards to SolarCity's confidential customer information is the proximate cause of damages suffered by SolarCity.

108. Trinity Solar's and Rush's tortious conduct was not privileged or excused.

109. Trinity Solar's and Rush's tortious conduct was willful and malicious, warranting an award of punitive damages in addition to the full value of the converted property.

110. SolarCity's damages are difficult to quantify in dollars and cannot be redressed simply by awarding money damages.

## **CLAIM VI**

### **Breach of Fiduciary Duty (Against Rush)**

111. SolarCity repeats and re-alleges each and every allegation above as if fully set forth herein.

112. Rush, as an employee of SolarCity, owed a fiduciary duty to SolarCity, whereby he was bound to exercise the utmost good faith and undivided loyalty toward SolarCity throughout

his employment relationship with SolarCity. Rush was required to exert his best efforts on behalf of SolarCity and not compete with it or profit at its expense, or place his private interests in conflict with SolarCity's.

113. Rush breached his fiduciary duty of loyalty to SolarCity by, while still being employed by SolarCity, soliciting a customer on behalf of Trinity Solar and by sending confidential customer and prospective customer information to Trinity Solar, a direct competitor of SolarCity.

114. As a direct and proximate result of Rush's breaches, SolarCity has been harmed in an amount to be determined at trial.

115. SolarCity's damages are difficult to quantify in dollars and cannot be redressed simply by awarding money damages.

## **CLAIM VII**

### **Aiding and Abetting Breach of Fiduciary Duty (Against Trinity Solar)**

116. SolarCity repeats and re-alleges each and every allegation above as if fully set forth herein.

117. Trinity Solar knew that Rush, while still employed by SolarCity, owed SolarCity a fiduciary duty of loyalty requiring Rush to exert his best efforts on behalf of SolarCity and not compete with it or profit at its expense, or place his private interests in conflict with SolarCity's.

118. Trinity Solar knew that Rush breached that duty by, while still being employed by SolarCity, soliciting a customer on behalf of Trinity Solar and by sending the proprietary, confidential, and trade secret Customer Lists to Trinity Solar, a direct competitor of SolarCity.

119. Trinity Solar provided direct and substantial assistance and/or encouraged Rush in the breach of his fiduciary duty, including by providing Rush an email address at Trinity Solar

while he was still employed by SolarCity to which Rush sent the confidential, proprietary, and trade secret Customer Lists.

120. As a direct and proximate result of Trinity Solar's aiding and abetting, SolarCity has been harmed in an amount to be determined at trial.

121. SolarCity's damages are difficult to quantify in dollars and cannot be redressed simply by awarding money damages.

#### **PRAYER FOR RELIEF**

SolarCity demands a judgment against Trinity Solar and Rush granting the following relief:

1. A temporary restraining order, preliminary injunction, and/or permanent injunction (a) ordering Defendants to immediately return all copies of SolarCity's electronic files and paper copies containing SolarCity customer and potential customer information, or other confidential information in their possession; (b) ordering the permanent removal, deletion and destruction of all copies of SolarCity's electronic files and paper copies containing SolarCity customer and potential customer information, or other confidential information transmitted to Defendants' computers or personal email accounts or otherwise in Defendants' possession, subject to the supervision of SolarCity so as to preserve evidence of all such files or information; (c) enjoining Defendants from using, copying or disclosing any information relating to SolarCity that is not generally known to the public or to competitors who can obtain economic value from it; and (d) ordering such other injunctive relief as the Court deems appropriate.
2. An award of restitution in an amount to be determined at trial.
3. An award of compensatory damages in an amount to be determined at trial.
4. An award of royalties in an amount to be determined at trial.

5. An award of exemplary damages in an amount not more than two times the amount of damages awarded hereunder.
6. An award of punitive damages in an amount to be determined at trial.
7. An award of attorneys' fees, costs, and interest.
8. Such other relief as the Court deems appropriate.

Dated: May 24, 2017

s/  
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