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SUNPOWER CORPORATION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SUNPOWER CORPORATION, a
Delaware corporation,

Plaintiff,

v.

SOLARCITY CORPORATION, a
Delaware corporation; TOM LEYDEN, an
individual; MATT GIANNINI, an
individual; DAN LEARY, an individual;
FELIX AGUAYO, an individual; and
ALICE CATHCART, an individual,

Defendants.

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FILED
FEB 19 2012
RICHARD W. PIERCE
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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Case No. CV 12-00694

COMPLAINT FOR COMPUTER
FRAUD AND ABUSE; TRADE SECRET
MISAPPROPRIATION; BREACH OF
CONTRACT; BREACH OF
CONFIDENCE; CONVERSION;
TRESPASS TO CHATTELS;
INTERFERENCE WITH
PROSPECTIVE BUSINESS
ADVANTAGE; COMMON LAW AND
STATUTORY UNFAIR COMPETITION;
CALIFORNIA COMPREHENSIVE
COMPUTER DATA ACCESS AND
FRAUD; BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALING; AND CIVIL
CONSPIRACY; AND, DEMAND FOR
JURY TRIAL

COMPLAINT

1 Plaintiff SUNPOWER CORPORATION ("SUNPOWER") hereby complains of
2 Defendants SOLARCITY CORPORATION ("SOLARCITY"), TOM LEYDEN
3 ("LEYDEN"), MATT GIANNINI ("GIANNINI"), DAN LEARY ("LEARY"), FELIX
4 AGUAYO ("AGUAYO"), and ALICE CATHCART ("CATHCART"), (collectively,
5 "DEFENDANTS"), and alleges as follows:

6 **JURISDICTION**

7 1. SUNPOWER alleges causes of action arising under the Computer Fraud and
8 Abuse Act. This Court has jurisdiction over this matter pursuant to 18 U.S.C. § 1030(g) and
9 28 U.S.C. § 1331.

10 2. This Court has supplemental jurisdiction over the pendent state law claims
11 under 28 U.S.C. § 1367. These claims derive from a common nucleus of operative facts and
12 are so related that they form part of the same case or controversy.

13 **VENUE**

14 3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a
15 substantial part of the events giving rise to the dispute occurred in this district and this Court
16 has personal jurisdiction over each of the parties as alleged throughout this complaint.

17 **INTRADISTRICT ASSIGNMENT**

18 4. Assignment to the San Jose Division is appropriate pursuant to Civil Local
19 Rule 3-2(c) and 3-2(e) because a substantial part of the events that give rise to
20 SUNPOWER's claims occurred in Santa Clara County, California, where SUNPOWER is
21 headquartered.

22 **THE PARTIES**

23 5. Plaintiff SUNPOWER is a corporation organized and existing under the laws
24 of the state of Delaware, having its principal place of business in this district at 77 Rio
25 Robles, San Jose, CA 95134.

26 6. SUNPOWER is informed and believes, and thereon alleges, that Defendant
27 SOLARCITY is a corporation organized and existing under the laws of the state of Delaware,

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1 having its principal place of business in this district at 3055 Clearview Way, San Mateo, CA
2 94402.

3 7. SUNPOWER is informed and believes, and thereon alleges, that Defendant
4 LEYDEN is an individual residing in New Jersey.

5 8. SUNPOWER is informed and believes, and thereon alleges, that Defendant
6 GIANNINI is an individual residing in the Northern District of California.

7 9. SUNPOWER is informed and believes, and thereon alleges, that Defendant
8 LEARY is an individual residing in New Jersey.

9 10. SUNPOWER is informed and believes, and thereon alleges, that Defendant
10 AGUAYO is an individual residing in New Jersey.

11 11. SUNPOWER is informed and believes, and thereon alleges, that Defendant
12 CATHCART is an individual residing in New Jersey.

13 **STATEMENT OF FACTS**

14 12. SUNPOWER is a leading manufacturer and distributor of solar panels and
15 other related equipment.

16 13. SOLARCITY is a distributor of solar panels and other related equipment.

17 14. Defendants LEYDEN, GIANNINI, LEARY, AGUAYO, and CATHCART
18 were all previously employed by SUNPOWER and are now currently employed by
19 SOLARCITY.

20 **A. Employment at SUNPOWER**

21 15. LEYDEN was employed by SUNPOWER from January 31, 2000 to August
22 23, 2011. As of LEYDEN's last day of employment with SUNPOWER, his title was the
23 Managing Director, East Operations.

24 16. GIANNINI was employed by SUNPOWER from August 14, 2006 to
25 September 15, 2011. As of GIANNINI's last day of employment with SUNPOWER, his title
26 was a Senior Project Development Manager.

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1 17. LEARY was employed by SUNPOWER from September 20, 2005 to
2 November 4, 2011. As of LEARY's last day of employment with SUNPOWER, his title was
3 a Senior Project Developer.

4 18. AGUAYO was employed by SUNPOWER from April 15, 2005 to November
5 1, 2011. As of AGUAYO's last day of employment with SUNPOWER, his title was a
6 Project Development Director.

7 19. CATHCART was employed by SUNPOWER from April 7, 2010 to
8 November 4, 2011. As of CATHCART's last day of employment with SUNPOWER, her
9 title was a Project Development Manager.

10 20. On March 23, 2007, LEYDEN agreed to and signed a SUNPOWER
11 Agreement Concerning Proprietary Information and Inventions ("Leyden Agreement").

12 21. On March 13, 2007, GIANNINI agreed to and signed a SUNPOWER
13 Agreement Concerning Proprietary Information and Inventions ("Giannini Agreement").

14 22. On March 26, 2007, LEARY agreed to and signed a SUNPOWER Agreement
15 Concerning Proprietary Information and Inventions ("Leary Agreement").

16 23. On March 23, 2007, AGUAYO agreed to and signed a SUNPOWER
17 Agreement Concerning Proprietary Information and Inventions ("Aguayo Agreement").

18 24. On April 7, 2010, CATHCART agreed to and signed a SUNPOWER
19 Agreement Concerning Proprietary Information and Inventions ("Cathcart Agreement").

20 25. Among the terms of each of the Leyden Agreement, Giannini Agreement,
21 Leary Agreement, Aguayo Agreement, and Cathcart Agreement discussed above are:

22 a. "I understand that I will have access to confidential or proprietary information
23 concerning one or more of SunPower's business or activities, including research and
24 development work, new product, and other service design and development material, market
25 plans, and other confidential or proprietary information originating in SunPower or disclosed
26 to SunPower by others under an agreement to hold such information in confidences."

27 b. "During and after my employment with SunPower, I agree not to utilize any
28 such information as described above for my own or others benefit or to disclose any such

1 information to which I may have access to anyone outside SunPower, unless otherwise
2 authorized in writing by SunPower.”

3 c. “I agree that upon termination of employment, whenever and for whatever
4 reasons, I will surrender to SunPower all SunPower information of the kind thereof, in
5 whatever form or medium, including all copies.”

6 d. “During my employment with SunPower, I agree to refrain from engaging in
7 any business or activity that is either competitive with, or places me in a conflict with the full,
8 faithful, and efficient discharge of my employment duties.”

9 e. “During the term of my employment with SunPower and for a period of two
10 (2) years thereafter, I agree that I will not solicit or encourage, or cause, or enable others to
11 solicit or encourage, any employees of SunPower to terminate their employment with
12 SunPower.”

13 f. “I agree that this Agreement shall be governed and construed according to the
14 laws of the State of California, without regard to its conflict of interest laws.”

15 26. During LEYDEN, LEARY, AGUAYO, GIANNINI, and CATHCART’s
16 employment at SUNPOWER, SUNPOWER had several policies in place regarding the use of
17 SUNPOWER computers and related equipment. Among these policies are: the “Acceptable
18 Use of SunPower Information Resources” policy and the “Information Access Control
19 Practices” policy.

20 27. Among the terms of these policies are:

21 a. “All SunPower employees, contractors, consultants, service providers, and
22 temporary workers are responsible for following these practices.”

23 b. “Protect SunPower’s intellectual property and keep it confidential.”

24 c. “Do not forward, provide access, store, distribute, and/or process SunPower
25 confidential information to unauthorized people or places, or post SunPower confidential
26 information on Internet bulletin boards, chat rooms, or other electronic forums.”

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1 d. "Do not access SunPower information resources, company records, files,
2 information, or any other data when there is no proper, authorized, job-related need for such
3 information."

4 e. "Do not connect any non-SunPower-owned equipment to Sunpower's
5 network."

6 f. "Don't use USB drives (including flash memory, USB sticks, or external USB
7 hard drives) for file storage or transfer."

8 g. "Each user is assigned a unique user-ID based on their name."

9 28. SUNPOWER is headquartered in California and its main computer servers and
10 files are located in California. SUNPOWER stores confidential information and non-
11 confidential proprietary information on these computer servers.

12 29. SUNPOWER employees regularly access data contained on these computer
13 servers. While employed by SUNPOWER, defendants LEYDEN, GIANNINI, LEARY,
14 AGUAYO, and CATHCART regularly accessed and modified SUNPOWER files stored on
15 SUNPOWER's servers.

16 30. SUNPOWER also maintains a database to manage sales contacts and data on
17 www.salesforce.com. This database includes information regarding past sales activity and
18 potential leads on new sales. The database contains contact information, previously sold
19 products, potential interest in new products, prior sales, potential new sales, status, and other
20 highly confidential information. This information is vital to the success of any employee
21 involved in sales.

22 31. Employees involved in sales at SUNPOWER regularly access data contained
23 on www.salesforce.com servers. While employed by SUNPOWER, defendants LEYDEN,
24 GIANNINI, LEARY, AGUAYO, and CATHCART accessed data contained on
25 www.salesforce.com servers.

26 32. On or about December 9, 2011, SUNPOWER discovered that AGUAYO had
27 accessed his company email account after he was terminated. SUNPOWER discovered that

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1 AGUAYO had forwarded several emails containing customer information, price lists, and
2 market reports to his personal email address on or about November 18, 2011.

3 33. Based on the emails AGUAYO accessed and the proximity in time to
4 defendants LEYDEN, GIANNINI, LEARY, AGUAYO, and CATHCART leaving
5 SUNPOWER, SUNPOWER initiated an investigation, including conducting a computer
6 forensic analysis of the computers used by defendants LEYDEN, LEARY, AGUAYO,
7 GIANNINI, and CATHCART.

8 **B. Results of Computer Forensic Investigation**

9 34. The forensic analysis established that, shortly before leaving SUNPOWER,
10 defendants LEYDEN, GIANNINI, LEARY, AGUAYO, and CATHCART connected
11 personal USB devices and used them to steal tens-of-thousands of computer files containing
12 SUNPOWER confidential information and non-confidential proprietary information. These
13 files included at least quotes, deals, proposals, contracts, and files containing forecast
14 analysis, market analysis, business analysis and information downloaded from the
15 www.salesforce.com database.

16 35. LEYDEN connected at least three personal USB storage devices within days
17 of leaving SUNPOWER. At least one of these devices was a portable external hard drive
18 with 2 terabytes of storage capacity.

19 36. The forensic evidence indicated that LEYDEN copied at least thousands of
20 files containing SUNPOWER confidential information and non-confidential proprietary
21 information to these devices. These files included hundreds of quotes, proposals, and
22 contracts, as well as files containing market analysis, forecast analysis, and business analysis.

23 37. LEYDEN also copied highly confidential data from the SUNPOWER database
24 on www.salesforce.com. This data included information about major SUNPOWER
25 customers accounting for over \$100 million of sales throughout 2011. The data also
26 contained the name of the SUNPOWER employee that was responsible for these major sales.
27 SUNPOWER is informed and believes, and thereon alleges, that this information allowed
28 LEYDEN to recruit SunPower employees, including Leary, Aguayo, and Cathcart.

1 38. SUNPOWER is informed and believes, and thereon alleges that, while
2 employed by defendant SOLARCITY, LEYDEN began recruiting SUNPOWER employees.

3 39. SUNPOWER is informed and believes, and thereon alleges, that LEYDEN
4 recruited at least defendants LEARY, AGUAYO, and CATHCART to work at SOLARCITY.

5 40. LEARY connected at least two personal USB storage devices within days of
6 leaving SUNPOWER. At least one of these devices was a portable Western Digital hard
7 drive.

8 41. The forensic evidence indicates that LEARY copied at least tens-of-thousands
9 of files containing SUNPOWER confidential information and non-confidential proprietary
10 information to these devices. These files included over 40,000 quotes, contracts, proposals,
11 and deals, as well as hundreds of files containing cash flow analysis, market analysis,
12 business analysis, and forecast analysis.

13 42. AGUAYO connected at least one personal USB storage device on his last day
14 of employment at SUNPOWER.

15 43. The forensic evidence indicated that AGUAYO copied at least tens-of-
16 thousands of files containing SUNPOWER confidential information and non-confidential
17 proprietary information to this device. These files included thousands of proposals, contracts,
18 and quotes, as well as hundreds of files containing cash flow analysis, market analysis,
19 business analysis, and forecast analysis.

20 44. CATHCART connected at least one personal portable external hard drive on
21 her last day of employment at SUNPOWER.

22 45. The forensic evidence indicated that CATHCART copied at least hundreds of
23 files containing SUNPOWER confidential information and non-confidential proprietary
24 information to this device. These files included proposals, contracts, quotes, and deals, as
25 well as files containing cash flow analysis, project economics, and market analysis.

26 46. CATHCART also copied highly confidential data from the SUNPOWER
27 database on www.salesforce.com. CATHCART exported at least three separate reports from
28 www.salesforce.com, including confidential sales and contact information.

1 47. GIANNINI connected at least one personal USB device on his last day of
2 employment at SUNPOWER.

3 48. The forensic evidence indicated that GIANNINI copied at least hundreds of
4 files containing SUNPOWER confidential information and non-confidential proprietary
5 information to his USB device. These files included hundreds of quotes, deals, proposals and
6 contracts, and files containing forecast analysis, market analysis, and business analysis.

7 49. SUNPOWER is informed and believes, and thereon alleges, that LEYDEN,
8 GIANNINI, LEARY, AGUAYO, and CATHCART have transferred some or all of the stolen
9 computer files containing SUNPOWER confidential information and non-confidential
10 proprietary information to computers and devices at SOLARCITY.

11 50. SUNPOWER is informed and believes, and thereon alleges, that SOLARCITY
12 knowingly accepted these stolen computer files containing SUNPOWER confidential
13 information and non-confidential proprietary information.

14 51. SUNPOWER is informed and believes, and thereon alleges, that
15 SOLARCITY, LEYDEN, GIANNINI, LEARY, AGUAYO, and CATHCART have used and
16 continue to use these stolen computer data containing SUNPOWER confidential information
17 and non-confidential proprietary information for their own benefit.

18 52. SUNPOWER is informed and believes, and thereon alleges that
19 DEFENDANTS have misappropriated and continue to misappropriate SUNPOWER's
20 confidential information, obtained under obligations of secrecy and confidentiality for the
21 purpose of unfairly competing with SUNPOWER.

22 53. SUNPOWER is informed and believes, and thereon alleges, that
23 DEFENDANTS have used and disclosed and continue to use and disclose SUNPOWER's
24 confidential information, in willful and conscious disregard of a duty of confidence owed to
25 SUNPOWER.

26 54. SUNPOWER is informed and believes, and thereon alleges, that
27 DEFENDANTS have committed and continue to commit unlawful business practices
28 including, but not limited to, using SUNPOWER's confidential information for

1 DEFENDANTS' own purposes, and adversely to the interests of SUNPOWER and its
2 business venture.

3 55. By the aforesaid acts of DEFENDANTS, SUNPOWER has been greatly
4 damaged, and will continue to be irreparably damaged unless DEFENDANTS are enjoined
5 by the Court.

6 **FIRST CAUSE OF ACTION**

7 **(COMPUTER FRAUD AND ABUSE ACT BY LEYDEN, LEARY, AGUAYO,**
8 **GIANNINI, AND CATHCART)**

9 56. SUNPOWER hereby realleges and incorporates by reference the allegations
10 set forth in paragraphs 1 through 55.

11 57. Defendants LEYDEN, LEARY, AGUAYO, GIANNINI, and CATHCART
12 have violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, by intentionally
13 accessing a computer used for interstate commerce or communication, without authorization
14 and by exceeding authorized access to such a computer and by obtaining information from
15 such a protected computer, and so causing significant damage.

16 58. Defendants LEYDEN, LEARY, AGUAYO, GIANNINI, and CATHCART
17 have violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, by knowingly, and with
18 intent to defraud SUNPOWER, accessing a protected computer, without authorization or by
19 exceeding authorized access to such a computer, and, by means of such conduct, furthered
20 their intended fraud and obtained one or more things of value, including, but not limited to
21 SUNPOWER's vendor, customer, and sales information.

22 59. Defendants LEYDEN, LEARY, AGUAYO, GIANNINI, and CATHCART
23 have violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, by intentionally
24 accessing a protected computer beyond the scope of the authorization granted, causing
25 damage to SUNPOWER, recklessly or without due regard for their actions.

26 60. The computer system or systems that LEYDEN, LEARY, AGUAYO,
27 GIANNINI, and CATHCART accessed as described above constitute a "protected computer"
28 within the meaning of 18 U.S.C. § 1030.

1 between SUNPOWER and defendants LEYDEN, LEARY, AGUAYO, GIANNINI, and
2 CATHCART. LEYDEN, LEARY, AGUAYO, GIANNINI, and CATHCART were under an
3 obligation to maintain the secrecy of the confidential information obtained during their
4 employment.

5 67. SUNPOWER is informed and believes, and thereon alleges, that SOLARCITY
6 gained access to SUNPOWER's confidential information by accepting it from LEYDEN,
7 LEARY, AGUAYO, GIANNINI, and CATHCART.

8 68. SUNPOWER took reasonable precautions under the circumstances to protect its
9 trade secrets, and all parties with access to the information were subject to obligations to
10 maintain its secrecy.

11 69. SUNPOWER is informed and believes, and thereon alleges, that
12 DEFENDANTS have and continue to use and disclose to third parties SUNPOWER's trade
13 secrets without SUNPOWER's consent or permission, in an attempt to benefit themselves.

14 70. SUNPOWER is informed and believes, and thereon alleges, that
15 DEFENDANTS have disclosed SUNPOWER's trade secrets to third parties, maliciously and in
16 willful and conscious disregard of the rights of SUNPOWER.

17 71. As a direct and proximate result of DEFENDANTS' willful, improper, and
18 unlawful use and disclosure of SUNPOWER's trade secrets, SUNPOWER has suffered, and will
19 continue to suffer, great harm and damage. SUNPOWER will continue to be irreparably
20 damaged unless DEFENDANTS are enjoined from further use and disclosure of SUNPOWER's
21 trade secret information.

22 72. The aforementioned acts of DEFENDANTS in wrongfully misappropriating
23 SUNPOWER's trade secrets, were and continue to be willful and malicious, warranting an
24 award of exemplary damages, as provided by Civ. Code § 3426.3(c), and an award of reasonable
25 attorneys' fees, as provided by Civ. Code § 3426.4.

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1 THIRD CAUSE OF ACTION

2 (BREACH OF CONTRACT BY LEYDEN, LEARY, AGUAYO, GIANNINI, AND
3 CATHCART)

4 73. SUNPOWER hereby realleges and incorporates by reference the allegations
5 set forth in paragraphs 1 through 72.

6 74. As a result of the Leyden Agreement, LEYDEN had an obligation to use
7 SUNPOWER confidential and proprietary information only for SUNPOWER's benefit,
8 return the information to SUNPOWER upon termination of employment, refrain from
9 engaging in any business or activity that is competitive with SUNPOWER while employed
10 by SUNPOWER, and refrain from using any confidential or proprietary information to solicit,
11 encourage, cause, or enable others to solicit or encourage any employees of SUNPOWER to
12 terminate their employment with SUNPOWER.

13 75. The foregoing covenants in the Leyden Agreement were intended and
14 necessary to protect SUNPOWER's legitimate business interests in its goodwill and
15 confidential information.

16 76. The Leyden Agreement is a valid and enforceable contract between
17 SUNPOWER and LEYDEN.

18 77. LEYDEN breached the Leyden Agreement by using SUNPOWER's
19 confidential and proprietary information for his own benefit, refusing to return
20 SUNPOWER's confidential and proprietary information to SUNPOWER upon termination,
21 and soliciting, recruiting, and causing SUNPOWER employees to terminate their
22 employment with SUNPOWER and begin working for SOLARCITY.

23 78. Upon information and belief, LEYDEN continues to wrongfully retain
24 SUNPOWER's confidential data and other documents and company property, and he has
25 copied some or all of the electronic data onto other computers or devices in violation of his
26 nondisclosure obligations.

27 79. Upon information and belief, LEYDEN has wrongfully utilized or disclosed
28 SUNPOWER's confidential information in the course of his employment with SOLARCITY.

1 80. SUNPOWER has fully performed all of the obligations and satisfied all
2 conditions for performance under the Leyden Agreement.

3 81. LEYDEN has willfully and with conscious disregard for the contractual
4 obligations owed to SUNPOWER, breached the Leyden Agreement.

5 82. As a result of the Leary Agreement, LEARY had an obligation to use
6 SUNPOWER confidential and proprietary information only for SUNPOWER's benefit,
7 return the information to SUNPOWER upon termination of employment, refrain from
8 engaging in any business or activity that is competitive with SUNPOWER while employed
9 by SUNPOWER, and refrain from using any confidential or proprietary information to solicit,
10 encourage, cause, or enable others to solicit or encourage any employees of SUNPOWER to
11 terminate their employment with SUNPOWER.

12 83. The foregoing covenants in the Leary Agreement were intended and necessary
13 to protect SUNPOWER's legitimate business interests in its goodwill and confidential
14 information.

15 84. The Leary Agreement is a valid and enforceable contract between
16 SUNPOWER and LEARY.

17 85. LEARY breached the Leary Agreement by using SUNPOWER's confidential
18 and proprietary information for his own benefit and refusing to return SUNPOWER's
19 confidential and proprietary information to SUNPOWER upon termination.

20 86. Upon information and belief, LEARY continues to wrongfully retain
21 SUNPOWER's confidential data and other documents and company property, and he has
22 copied some or all of the electronic data onto other computers or devices in violation of his
23 nondisclosure obligations.

24 87. Upon information and belief, LEARY has wrongfully utilized or disclosed
25 SUNPOWER's confidential information in the course of his employment with SOLARCITY.

26 88. SUNPOWER has fully performed all of the obligations and satisfied all
27 conditions for performance under the Leary Agreement.

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1 89. LEARY has willfully and with conscious disregard for the contractual
2 obligations owed to SUNPOWER, breached the Leary Agreement.

3 90. As a result of the Giannini Agreement, GIANNINI had an obligation to use
4 SUNPOWER confidential and proprietary information only for SUNPOWER's benefit,
5 return the information to SUNPOWER upon termination of employment, refrain from
6 engaging in any business or activity that is competitive with SUNPOWER while employed
7 by SUNPOWER, and refrain from using any confidential or proprietary information to solicit,
8 encourage, cause, or enable others to solicit or encourage any employees of SUNPOWER to
9 terminate their employment with SUNPOWER.

10 91. The foregoing covenants in the Giannini Agreement were intended and
11 necessary to protect SUNPOWER's legitimate business interests in its goodwill and
12 confidential information.

13 92. The Giannini Agreement is a valid and enforceable contract between
14 SUNPOWER and GIANNINI.

15 93. GIANNINI breached the Giannini Agreement by using SUNPOWER's
16 confidential and proprietary information for his own benefit and refusing to return
17 SUNPOWER's confidential and proprietary information to SUNPOWER upon termination.

18 94. Upon information and belief, GIANNINI continues to wrongfully retain
19 SUNPOWER's confidential data and other documents and company property, and he has
20 copied some or all of the electronic data onto other computers or devices in violation of his
21 nondisclosure obligations.

22 95. Upon information and belief, GIANNINI has wrongfully utilized or disclosed
23 SUNPOWER's confidential information in the course of his employment with SOLARCITY.

24 96. SUNPOWER has fully performed all of the obligations and satisfied all
25 conditions for performance under the Giannini Agreement.

26 97. GIANNINI has willfully and with conscious disregard for the contractual
27 obligations owed to SUNPOWER, breached the Giannini Agreement.

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1 98. As a result of the AGUAYO Agreement, Aguayo had an obligation to use
2 SUNPOWER confidential and proprietary information only for SUNPOWER's benefit,
3 return the information to SUNPOWER upon termination of employment, refrain from
4 engaging in any business or activity that is competitive with SUNPOWER while employed
5 by SUNPOWER, and refrain from using any confidential or proprietary information to solicit,
6 encourage, cause, or enable others to solicit or encourage any employees of SUNPOWER to
7 terminate their employment with SUNPOWER.

8 99. The foregoing covenants in the Aguayo Agreement were intended and
9 necessary to protect SUNPOWER's legitimate business interests in its goodwill and
10 confidential information.

11 100. The Aguayo Agreement is a valid and enforceable contract between
12 SUNPOWER and AGUAYO.

13 101. AGUAYO breached the Aguayo Agreement by using SUNPOWER's
14 confidential and proprietary information for his own benefit and refusing to return
15 SUNPOWER's confidential and proprietary information to SUNPOWER upon termination.

16 102. Upon information and belief, AGUAYO continues to wrongfully retain
17 SUNPOWER's confidential data and other documents and company property, and he has
18 copied some or all of the electronic data onto other computers or devices in violation of his
19 nondisclosure obligations.

20 103. Upon information and belief, AGUAYO has wrongfully utilized or disclosed
21 SUNPOWER's confidential information in the course of his employment with SOLARCITY.

22 104. SUNPOWER has fully performed all of the obligations and satisfied all
23 conditions for performance under the Aguayo Agreement.

24 105. AGUAYO has willfully and with conscious disregard for the contractual
25 obligations owed to SUNPOWER, breached the Aguayo Agreement.

26 106. As a result of the Cathcart Agreement, CATHCART had an obligation to use
27 SUNPOWER confidential and proprietary information only for SUNPOWER's benefit,
28 return the information to SUNPOWER upon termination of employment, refrain from

1 engaging in any business or activity that is competitive with SUNPOWER while employed
2 by SUNPOWER, and refrain from using any confidential or proprietary information to solicit,
3 encourage, cause, or enable others to solicit or encourage any employees of SUNPOWER to
4 terminate their employment with SUNPOWER.

5 107. The foregoing covenants in the Cathcart Agreement were intended and
6 necessary to protect SUNPOWER's legitimate business interests in its goodwill and
7 confidential information.

8 108. The Cathcart Agreement is a valid and enforceable contract between
9 SUNPOWER and CATHCART.

10 109. CATHCART breached the Cathcart Agreement by using SUNPOWER's
11 confidential and proprietary information for their own benefit and refusing to return
12 SUNPOWER's confidential and proprietary information to SUNPOWER upon termination.

13 110. Upon information and belief, CATHCART continues to wrongfully retain
14 SUNPOWER's confidential data and other documents and company property, and he has
15 copied some or all of the electronic data onto other computers or devices in violation of his
16 nondisclosure obligations.

17 111. Upon information and belief, CATHCART has wrongfully utilized or
18 disclosed SUNPOWER's confidential information in the course of his employment with
19 SOLARCITY.

20 112. SUNPOWER has fully performed all of the obligations and satisfied all
21 conditions for performance under the Cathcart Agreement.

22 113. CATHCART has willfully and with conscious disregard for the contractual
23 obligations owed to SUNPOWER, breached the Cathcart Agreement.

24 114. Unless restrained and enjoined by the Court, LEYDEN, LEARY, AGUAYO,
25 GIANNINI, and CATHCART will continue to breach the agreements.

26 115. As a foreseeable, direct and proximate result of LEYDEN, LEARY,
27 AGUAYO, GIANNINI, and CATHCART's breach of contract, SUNPOWER has suffered
28 irreparable injury to its rights and pecuniary damages. SUNPOWER will continue to suffer

1 such injury, loss, and damage unless and until LEYDEN, LEARY, AGUAYO, GIANNINI,
2 and CATHCART are required to return SUNPOWER's confidential information and non-
3 confidential proprietary information, enjoined from further use and disclosure of
4 SUNPOWER's confidential information and non-confidential proprietary information, and
5 enjoined from soliciting and recruiting other SUNPOWER employees.

6 116. LEYDEN, LEARY, AGUAYO, GIANNINI, and CATHCART have derived,
7 received, and will continue to derive and receive from the aforementioned breach of contract,
8 gains, profits and advantages, many of which are not presently known to SUNPOWER.

9 117. SUNPOWER is therefore entitled to injunctive relief or specific performance,
10 as well as damages as provided by law.

11 **FOURTH CAUSE OF ACTION**

12 **(BREACH OF CONFIDENCE BY LEYDEN, LEARY, AGUAYO, GIANNINI, AND**
13 **CATHCART)**

14 118. SUNPOWER hereby realleges and incorporates by reference the allegations
15 set forth in paragraphs 1 through 117.

16 119. This is a cause of action for Breach of Confidence under California common
17 law.

18 120. When SUNPOWER disclosed its non-trade secret proprietary information to
19 LEYDEN, LEARY, AGUAYO, GIANNINI, and CATHCART, it did so in confidence in the
20 course of an employee-employer relationship, and, therefore, LEYDEN, LEARY, AGUAYO,
21 GIANNINI, and CATHCART owed SUNPOWER a legal duty of confidence to maintain the
22 information in a confidential and proprietary manner, and not to use the information for
23 LEYDEN, LEARY, AGUAYO, GIANNINI, and CATHCART's own purposes.

24 121. LEYDEN, LEARY, AGUAYO, GIANNINI, and CATHCART accepted the
25 non-trade secret proprietary information as alleged herein voluntarily and for the purpose of
26 their employment with SUNPOWER, thereby owing SUNPOWER a duty of confidence with
27 respect to SUNPOWER's non-trade secret proprietary information.

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1 122. LEYDEN, LEARY, AGUAYO, GIANNINI, and CATHCART have willfully
2 and in conscious disregard for the duty of confidence owed to SUNPOWER, used for
3 LEYDEN, LEARY, AGUAYO, GIANNINI, and CATHCART's own purposes and disclosed
4 to others SUNPOWER's non-trade secret proprietary information.

5 123. As a direct and proximate result of LEYDEN, LEARY, AGUAYO,
6 GIANNINI, and CATHCART's willful, improper, and unlawful use and disclosure of
7 SUNPOWER's non-trade secret proprietary information, SUNPOWER has suffered, and will
8 continue to suffer, great harm and damage. SUNPOWER will continue to be irreparably
9 damaged unless LEYDEN, LEARY, AGUAYO, GIANNINI, and CATHCART are enjoined
10 from further use and disclosure of SUNPOWER's non-trade secret proprietary information.

11 124. The aforementioned acts of LEYDEN, LEARY, AGUAYO, GIANNINI, and
12 CATHCART, in breaching their duty of confidence owed to SUNPOWER, were and
13 continue to be willful, oppressive, fraudulent, and malicious, warranting an award of punitive
14 damages in addition to the actual damages suffered by SUNPOWER.

15 **FIFTH CAUSE OF ACTION**

16 **(CONVERSION BY DEFENDANTS)**

17 125. SUNPOWER hereby realleges and incorporates by reference the allegations
18 set forth in paragraphs 1 through 124.

19 126. SUNPOWER has a right to possess its non-trade secret proprietary
20 information as described herein.

21 127. DEFENDANTS have willfully interfered with SUNPOWER's ownership and
22 possessory rights to such property, without lawful justification, with every intention of
23 exercising those rights as though they were theirs. DEFENDANTS' intent to exercise
24 dominion or control over the property is incompatible with, and invasive of, SUNPOWER's
25 rights and has deprived SUNPOWER of its ability to exclusively use and possess the
26 Property.

27 128. SUNPOWER has been damaged as a result of DEFENDANTS' actions.

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1 **SEVENTH CAUSE OF ACTION**

2 **(INTERFERENCE WITH PROSPECTIVE BUSINESS ADVANTAGE BY**
3 **DEFENDANTS)**

4 138. SUNPOWER hereby realleges and incorporates by reference the allegations
5 set forth in paragraphs 1 through 137.

6 139. SUNPOWER enjoys an economic relationship with many customers with
7 which it has contracted in the past, and with which it expects to contract in the future.

8 140. DEFENDANTS know of this relationship and the economic benefit it brings
9 to SUNPOWER because LEYDEN, LEARY, AGUAYO, GIANNINI, and CATHCART
10 worked for SUNPOWER and obtained SUNPOWER's customer information during
11 employment and thereafter began working for SOLARCITY to use SUNPOWER's customer
12 information.

13 141. DEFENDANTS have and continue to intentionally disrupt SUNPOWER's
14 relationship with SUNPOWER's customers by attempting to convert SUNPOWER's
15 customers to their own.

16 142. DEFENDANTS' acts of intentional and wrongful disruption include the past
17 and continuing wrongful use of SUNPOWER's non-trade secret proprietary information.

18 143. DEFENDANTS' intentional acts have actually and proximately caused a
19 disruption of the economic relationship SUNPOWER enjoys with its customers by
20 wrongfully drawing current and prospective customers away from SUNPOWER.

21 144. The aforementioned acts of DEFENDANTS were and continue to be willful,
22 oppressive, fraudulent, and malicious, warranting an award of punitive damages in addition to
23 the actual damages suffered by SUNPOWER.

24 145. DEFENDANTS' acts have resulted in a loss of beneficial economic
25 relationships and actual profits to Plaintiffs. Money damages would provide an insufficient
26 remedy. Plaintiffs have no plain, speedy and adequate remedy at law and are entitled to
27 injunctive relief.

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1 **EIGHTH CAUSE OF ACTION**

2 **(UNFAIR COMPETITION BY DEFENDANTS)**

3 146. SUNPOWER hereby realleges and incorporates by reference the allegations
4 set forth in paragraphs 1 through 145.

5 147. This is a cause of action for Unfair Competition under the California common
6 law.

7 148. The acts of DEFENDANTS, alleged herein, constitute unlawful, unfair, and
8 fraudulent business practices in violation of the California common law of Unfair Competition.

9 149. SUNPOWER is informed and believes, and thereon alleges, that
10 DEFENDANTS have willfully and in conscious disregard for SUNPOWER's rights and its
11 business, committed unfair and unlawful business practices including, but not limited to, stealing
12 SUNPOWER's non-trade secret proprietary information, using for DEFENDANTS' own
13 purposes, and adversely to the interests of SUNPOWER and its business venture,
14 SUNPOWER's non-trade secret proprietary information, and interfering with SUNPOWER's
15 business.

16 150. The aforementioned acts of DEFENDANTS were and continue to be willful,
17 oppressive, fraudulent, and malicious, warranting an award of punitive damages in addition to
18 the actual damages suffered by SUNPOWER.

19 151. As a direct and proximate result of DEFENDANTS' willful, improper, and
20 unlawful conduct, SUNPOWER has suffered, and will continue to suffer, great harm and
21 damage. SUNPOWER will continue to be irreparably damaged unless DEFENDANTS are
22 enjoined from further committing unfair and unlawful business practices against SUNPOWER
23 and SUNPOWER's business.

24 **NINTH CAUSE OF ACTION**

25 **(STATUTORY UNFAIR COMPETITION BY DEFENDANTS)**

26 152. SUNPOWER hereby realleges and incorporates by reference the allegations
27 set forth in paragraphs 1 through 151.

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1 agreements with SUNPOWER, as a result of which SUNPOWER has been and will continue
2 to be significantly harmed.

3 168. LEYDEN, LEARY, AGUAYO, GIANNINI, AND CATHCART are liable to
4 SUNPOWER for all damages SUNPOWER sustained as a result of their breach of the
5 implied covenant of good faith and fair dealing.
6

7 169. The aforementioned acts of LEYDEN, LEARY, AGUAYO, GIANNINI, AND
8 CATHCART were and continue to be willful, oppressive, fraudulent, and malicious,
9 warranting an award of punitive damages in addition to the actual damages suffered by
10 SUNPOWER.

11 **TWELTH CAUSE OF ACTION**

12 **(CIVIL CONSPIRACY BY LEYDEN, LEARY, AGUAYO, GIANNINI, AND**
13 **CATHCART)**

14 170. SUNPOWER hereby realleges and incorporates by reference the allegations
15 set forth in paragraphs 1 through 169.

16 171. By engaging in the foregoing conduct, including but not limited to the
17 Defendants' secret plan to steal data, selectively solicit key employees and provide
18 confidential information to a competing business while still employed by or affiliated with
19 SUNPOWER, and doing so with full knowledge of each other's actions, LEYDEN, LEARY,
20 AGUAYO, GIANNINI, AND CATHCART entered into an agreement to accomplish an
21 unlawful purpose or to accomplish a lawful purpose by unlawful means.

22 172. The actions of LEYDEN, LEARY, AGUAYO, GIANNINI, AND
23 CATHCART have resulted in actual damages to SUNPOWER in an amount to be determined
24 at trial.

25 173. The aforementioned acts of LEYDEN, LEARY, AGUAYO, GIANNINI, AND
26 CATHCART were and continue to be willful, oppressive, fraudulent, and malicious,
27 warranting an award of punitive damages in addition to the actual damages suffered by
28 SUNPOWER.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, SUNPOWER prays for judgment in its favor against DEFENDANTS
3 for the following relief:

4 A. That LEYDEN, LEARY, AGUAYO, GIANNINI, and CATHCART be
5 adjudged to have violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, and that
6 LEYDEN, LEARY, AGUAYO, GIANNINI, and CATHCART's acts in doing so be
7 adjudged willful, malicious, oppressive, and done knowingly;

8 B. That DEFENDANTS be adjudged to have misappropriated SUNPOWER's trade
9 secrets in violation of the California Uniform Trade Secrets Act, Cal. Civ. Code § 3426 *et seq.*,
10 and that DEFENDANTS' acts in doing so be adjudged willful, malicious, oppressive, and
11 done knowingly;

12 C. That LEYDEN be adjudged to have breached the Leyden Agreement with
13 SUNPOWER, under the common law of the State of California, and that LEYDEN's acts in
14 doing so be adjudged willful, malicious, oppressive, and done knowingly;

15 D. That LEARY be adjudged to have breached the Leary Agreement with
16 SUNPOWER, under the common law of the State of California, and that LEARY's acts in
17 doing so be adjudged willful, malicious, oppressive, and done knowingly;

18 E. That AGUAYO be adjudged to have breached the Aguayo Agreement with
19 SUNPOWER, under the common law of the State of California, and that AGUAYO's acts in
20 doing so be adjudged willful, malicious, oppressive, and done knowingly;

21 F. That GIANNINI be adjudged to have breached the Giannini Agreement with
22 SUNPOWER, under the common law of the State of California, and that GIANNINI's acts in
23 doing so be adjudged willful, malicious, oppressive, and done knowingly;

24 G. That CATHCART be adjudged to have breached the Cathcart Agreement with
25 SUNPOWER, under the common law of the State of California, and that Cathcart's acts in
26 doing so be adjudged willful, malicious, oppressive, and done knowingly;

27 H. That LEYDEN, LEARY, AGUAYO, GIANNINI, and CATHCART be
28 adjudged to have breached their duty of confidence owed to SUNPOWER under the common

1 law of the State of California, and that LEYDEN, LEARY, AGUAYO, GIANNINI, and
2 CATHCART's acts in doing so be adjudged willful, malicious, oppressive, and done
3 knowingly;

4 I. That DEFENDANTS be adjudged to have interfered with SUNPOWER's
5 ownership and possessory rights to SUNPOWER's property, including SUNPOWER's non-
6 trade secret proprietary information, without lawful justification, with every intention of
7 exercising those rights as though they were theirs, under the common law of the State of
8 California, and that DEFENDANTS' acts in doing so be adjudged willful, malicious,
9 oppressive, and done knowingly;

10 J. That DEFENDANTS be adjudged to have interfered with SUNPOWER's
11 ownership and/or possessory rights to non-trade secret proprietary information, under the
12 common law of the State of California, and that Defendants' acts in doing so be adjudged
13 willful, malicious, oppressive, and done knowingly;

14 K. That DEFENDANTS be adjudged to have intentionally interfered with
15 SUNPOWER's prospective business advantage, under the common law of the State of
16 California, and that DEFENDANTS' acts in doing so be adjudged willful, malicious,
17 oppressive, and done knowingly;

18 L. That DEFENDANTS be adjudged to have competed unfairly with SUNPOWER,
19 under the common law of the State of California, and that DEFENDANTS' acts in doing so be
20 adjudged willful, malicious, oppressive, and done knowingly;

21 M. That DEFENDANTS be adjudged to have competed unfairly with SUNPOWER
22 under California Business and Professions Code § 17200, and that DEFENDANTS' acts in
23 doing so be adjudged willful, malicious, oppressive, and done knowingly;

24 N. That LEYDEN, LEARY, AGUAYO, GIANNINI, and CATHCART be
25 adjudged to have violated the California Comprehensive Computer Data Access and Fraud
26 Act, California Penal Code § 502 (c), and that LEYDEN, LEARY, AGUAYO, GIANNINI,
27 and CATHCART's acts in doing so be adjudged, fraudulent, willful, malicious, oppressive,
28 and done knowingly;

1 O. That LEYDEN, LEARY, AGUAYO, GIANNINI, and CATHCART be
2 adjudged to have breached the implied covenant of good faith and fair dealing, under the
3 common law of the State of California, and that LEYDEN, LEARY, AGUAYO, GIANNINI,
4 and CATHCART's acts in doing so be adjudged oppressive, fraudulent, willful, malicious,
5 and done knowingly;

6 P. That LEYDEN, LEARY, AGUAYO, GIANNINI, and CATHCART be
7 adjudged to have conspired and combined with each other in the wrongful and illegal conduct
8 described above, including their computer fraud, trade secret misappropriation, breach of
9 contract, breach of confidence, conversion, trespass to chattels, interference, unfair
10 competition, and breach of implied covenant of good faith and fair dealing, and that
11 LEYDEN, LEARY, AGUAYO, GIANNINI, and CATHCART'S acts in doing so be
12 adjudged willful malicious, oppressive, and done knowingly;

13 Q. That DEFENDANTS be adjudged to have been unjustly enriched;

14 R. That DEFENDANTS, their respective agents, servants, employees and attorneys,
15 and all those persons in active concert or participation with it, be forthwith temporarily,
16 preliminarily and thereafter permanently enjoined, pursuant to Federal Rule Civil Procedure 65
17 and Uniform Trade Secrets Act, Cal. Civ. Code § 3426.2 to return all of SUNPOWER's trade
18 secrets; and from further disclosing to any third parties any of SUNPOWER's trade secret
19 information;

20 S. That DEFENDANTS, their respective agents, servants, employees and attorneys,
21 and all those persons in active concert or participation with it, be forthwith temporarily,
22 preliminarily and thereafter permanently enjoined, pursuant to Federal Rule Civil Procedure 65,
23 18 U.S.C. § 1030 (g), California Business and Professions Code § 17200, and the common law
24 of the State of California to return all of SUNPOWER's non-trade secret proprietary
25 information; from further disclosing to any third parties any of SUNPOWER's non-trade secret
26 proprietary information; and from unfairly competing with SUNPOWER in any manner;

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T. That DEFENDANTS be directed to file with this Court and serve on Plaintiff within thirty (30) days after the service of the injunction, a report in writing, under oath, setting forth in detail the manner and form in which DEFENDANTS have complied with the injunction;

U. That DEFENDANTS be required to account to SUNPOWER for any and all gains, profits and advantages derived by it, and all damages sustained by SUNPOWER, by reason of Defendants' acts complained herein;

V. That the Court deem this case exceptional under 15 U.S.C. § 1117 and award SUNPOWER reasonable attorneys' fees;

W. An order imposing a constructive trust for the benefit of SUNPOWER over: (1) any trade secrets DEFENDANTS obtained from SUNPOWER; (2) any profits, revenues, or other benefits obtained by DEFENDANTS as a result of any disclosure or use of trade secrets obtained from SUNPOWER; (3) any proprietary information obtained from SUNPOWER; and (4) any profits, revenues, or other benefits obtained by Defendants as a result of any disclosure or use of proprietary information obtained from SUNPOWER; and

X. Such other and further relief as this Court may deem just.

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 2-13-2012

By: 
Michael K. Friedland
Boris Zelkind

Attorneys for Plaintiff
SUNPOWER CORPORATION

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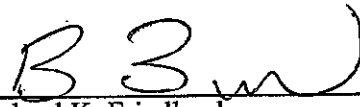
DEMAND FOR JURY TRIAL

SUNPOWER hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 2-13-2012

By: 
Michael K. Friedland
Boris Zelkind

Attorneys for Plaintiff
SUNPOWER CORPORATION

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