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OF ORIGINAL FILED
Los Angeles Superior Court

JUN 24 2015

Sherri R. Carter, Executive Officer/Clerk
By: Moses Soto, Deputy

FAXED

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF LOS ANGELES
9

10 MICHAEL MCCAFFREY,)
11)
Plaintiff,)
12)
v.)
13)
14 SOLARMAX TECHNOLOGY, INC., a)
corporation, SOLARMAX RENEWABLE)
ENERGY PROVIDER, INC., a corporation;)
15 DAVID HSU, an individual (aka David B.)
Hsu, Bing Hsu, and Hsu Bing); CHING LIU,)
16 an individual; SIMON YUAN, an individual)
(aka Simon Uan, Sihung Hung Yuan, Simon)
17 Si Hung Yuan); and DOES 1 through 50,)
inclusive,)
18)
Defendants.)
19)

Case No. **BC 5 8 5 9 5 2**

COMPLAINT FOR DAMAGES:

- (1) VIOLATION OF CALIFORNIA LABOR CODE SECTION 1102.5
- (2) DISCRIMINATION BASED ON NATIONAL ORIGIN, ANCESTRY, ETHNICITY AND RACE [Cal. Gov't Code § 12940(a)]
- (3) RETALIATION [Cal. Gov't Code §12940(h)]
- (4) HARASSMENT BASED ON NATIONAL ORIGIN, ANCESTRY, ETHNICITY AND RACE [Cal. Gov't Code § 12940(j)]
- (5) FAILURE TO TAKE ALL REASONABLE STEPS TO PREVENT DISCRIMINATION AND HARASSMENT [Cal. Gov't Code § 12940(k)]
- (6) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
- (7) FAILURE TO PAY WAGES [Cal. Labor Code §§ 200, *et seq.*]
- (8) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

1 (9) NEGLIGENCE INFLICTION OF
2 EMOTIONAL DISTRESS

3 **DEMAND FOR TRIAL BY JURY**

4 Plaintiff MICHAEL MCCAFFREY (hereinafter “MR. MCCAFFREY” or
5 “PLAINTIFF”), as an individual, complains and alleges as follows:
6

7 **INTRODUCTION**
8

9 1. In this action, plaintiff Michael McCaffrey, the former CFO of defendant
10 SolarMax Technology, Inc., uncovered a network of financial improprieties and other fraudulent and
11 illegal activities engaged in by SolarMax’s highest level executives, directors and managers –
12 including defendants David Hsu, Ching Liu and Simon Yuan. Among other things, he discovered
13 that SolarMax, by engaging in a series of shady Enron-like “round trip” transactions with sham
14 middleman entities, reported approximately \$50,00,000 in phantom revenue on its 2011 and 2012
15 audited financial statements. In an effort to create a false impression of stronger financial
16 performance and, thus, to attract capital, such figures were disseminated to lenders, equity investors
17 and foreign investors who invested millions of dollars of capital through the federal EB-5 Visa
18 Program. The EB-5 program provides wealthy foreign nationals (and their immediate families) with
19 a two-year fast track to permanent U.S. residency in return for investing \$1,000,000 or, in some
20 cases, \$500,000 in qualifying domestic enterprises. The inflated revenue figures were also presented
21 to the U.S. Citizenship and Immigration Services (USCIS) – part of U.S. Homeland Security –
22 which regulates the EB-5 program.
23

24 2. As set forth herein, Mr. McCaffrey was fired in retaliation for exposing and
25 raising concerns about these and other unlawful activities – including efforts to defraud the U.S.
26 Social Security Administration (by, among other things, including non-employee family members
27 and friends on the SolarMax payroll in order to accrue Social Security credits) and the California
28

1 State Disability Insurance system. He further alleges that he – and other employees of non-Chinese
2 descent – were discriminated against and subjected to a hostile work environment.

3
4 3. Mr. McCaffrey, by this action, seeks to recover, among other things,
5 economic
6 and non-economic damages, punitive damages, costs and attorneys’ fees, and all other relief to
7 which he may be entitled.

8
9 **JURISDICTION AND VENUE**

10
11 4. The Court has personal jurisdiction over the defendants because they are
12 residents of and/or are doing business in the State of California.

13
14 5. Venue is proper in this county in accordance with Section 395(a) of the
15 California Code of Civil Procedure because the defendants, or some of them, reside in this county.

16
17 **PARTIES**

18 6. MR. MCCAFFREY is an individual who, at relevant times during the
19 events alleged herein, resided in the County of Riverside, State of California and the County of San
20 Bernardino, State of California.

21
22 7. MR. MCCAFFREY is informed and believes, and thereon alleges, that
23 defendant SOLARMAX TECHNOLOGY, INC., is a Nevada corporation, incorporated in or about
24 2008, which maintains its principal place of business in Riverside, California, maintains an office in
25 Los Angeles County, and does business throughout the State of California.

26
27 8. MR. MCCAFFREY is informed and believes, and thereon alleges, that
28 defendant SOLARMAX RENEWABLE ENERGY PROVIDER, INC., is a California corporation,

1 incorporated in or about 2011, which maintains its principal place of business in Riverside,
2 California, maintains an office in Los Angeles County, and does business throughout the State of
3 California. Defendant SOLARMAX RENEWABLE ENERGY PROVIDER, INC. is a wholly-
4 owned subsidiary of defendant SOLARMAX TECHNOLOGY, INC.

5
6 9. MR. MCCAFFREY is informed and believes, and thereon alleges, that
7 defendant DAVID HSU, also known as David B. Hsu, Bing Hsu, and Hsu Bing (hereinafter “HSU”),
8 is an individual who resides in the County of Los Angeles, State of California. Defendant HSU is
9 the President, Chief Executive Officer, and Chairman of the Board of Directors of defendant
10 SOLARMAX TECHNOLOGY, INC. and all of defendant SOLARMAX TECHNOLOGY, INC.’s
11 wholly-owned subsidiaries, including, without limitation, defendant SOLARMAX RENEWABLE
12 ENERGY PROVIDER, INC. As such, defendant HSU is a director, officer, member and/or
13 managing agent of defendants, and each of them.

14
15 10. MR. MCCAFFREY is informed and believes, and thereon alleges, that
16 defendant CHING LIU (hereinafter “LIU”) is an individual who resides in the County of Los
17 Angeles, State of California. Defendant LIU is the Executive Vice President of defendant
18 SOLARMAX TECHNOLOGY, INC. and all of defendant SOLARMAX TECHNOLOGY, INC.’s
19 wholly-owned subsidiaries, including, without limitation, defendant SOLARMAX RENEWABLE
20 ENERGY PROVIDER, INC. As such, defendant LIU is a director, officer, member and/or
21 managing agent of defendants, and each of them.

22
23 11. MR. MCCAFFREY is informed and believes, and thereon alleges, that
24 defendant SIMON YUAN, also known as Simon Uan, Sihung Hung Yuan, Simon Si Hung Yuan
25 (hereinafter “YUAN”) is an individual who resides in the County of Los Angeles, State of
26 California. Defendant YUAN is a Director, the Audit Committee Chair and the acting Chief
27 Financial Officer of defendant SOLARMAX TECHNOLOGY, INC., and all of defendant
28 SOLARMAX TECHNOLOGY, INC.’s wholly-owned subsidiaries, including, without limitation,

1 defendant SOLARMAX RENEWABLE ENERGY PROVIDER, INC. As such, defendant YUAN
2 was a director, officer, member and/or managing agent of defendants, and each of them.

3
4 12. MR. MCCAFFREY is informed and believes, and thereon alleges, that
5 defendants SOLARMAX TECHNOLOGY, INC., SOLARMAX RENEWABLE ENERGY
6 PROVIDER, INC., and DOES 1 through 25, and each of them, are, and at all times herein
7 mentioned were, corporations, limited partnerships, limited liability companies, or other business
8 entities qualified to do and doing business in the State of California. MR. MCCAFFREY is further
9 informed and believes, and thereon alleges, that said defendants are and were, at all relevant times
10 mentioned herein, “employer[s]” within the meaning of Sections 12926(d) and 12940(j)(4)(A) of the
11 California Government Code.

12
13 13. MR. MCCAFFREY is informed and believes, and thereon alleges, that
14 defendants SOLARMAX TECHNOLOGY, INC., and SOLARMAX RENEWABLE ENERGY
15 PROVIDER, INC. are, together, an integrated enterprise, containing, among other things,
16 interrelation of operations, common management and centralized control of labor relations.

17
18 14. Defendants SOLARMAX TECHNOLOGY, INC., and SOLARMAX
19 RENEWABLE ENERGY PROVIDER, INC. were MR. MCCAFFREY’s joint or co-employers.

20
21 15. The true names and capacities, whether corporate, associate, individual or
22 otherwise of defendants DOES 1 through 50, inclusive, are unknown to MR. MCCAFFREY, who
23 therefore sues said defendants by such fictitious names. Each of the defendants designated herein as
24 a DOE is negligently or otherwise legally responsible in some manner for the events and happenings
25 herein referred to and caused injuries and damages proximately thereby to MR. MCCAFFREY, as
26 herein alleged. MR. MCCAFFREY will seek leave of Court to amend this Complaint to show their
27 names and capacities when the same have been ascertained.

28

1 16. At all times herein mentioned, defendants, and each of them, were the agents,
2 representatives, employees, successors and/or assigns, each of the other, and at all times pertinent
3 hereto were acting within the course and scope of their authority as such agents, representatives,
4 employees, successors and/or assigns and acting on behalf of, under the authority of, and subject to
5 the control of each other.

6
7 **FACTS COMMON TO ALL CAUSES OF ACTION**

8
9 **A. SolarMax’s Business Profile, Executive Team, and Background.**

10
11 17. Defendant SOLARMAX TECHNOLOGY, INC. wholly owns and controls
12 three related SolarMax subsidiaries, including defendant SOLARMAX RENEWABLE ENERGY
13 PROVIDER, INC., SolarMax Financial, Inc., and SolarMax LED, Inc., all of which share the same
14 corporate headquarters located at 3080 12th Street, Riverside, CA 92507. Defendant SOLARMAX
15 TECHNOLOGY, INC. also owns 93.75% of a fourth SolarMax subsidiary – SMX Capital, Inc. –
16 with the remaining 6.25% owned by an individual named Yu-Min “Richard” Gu (who performs no
17 work for SMX Capital, Inc. but who is, suspiciously, on that entity’s payroll).¹ Together, this
18 SolarMax enterprise (hereinafter collectively referred to as “SOLARMAX”) sells, designs, installs
19 and provides financing for commercial and residential solar power systems. It also provides other
20 services related to the renewable energy industry, including the sale and installation of light-emitting
21 diode (“LED”) lighting systems.²

22
23 18. This web of SOLARMAX entities was founded by, and is managed and
24 controlled by, the same group of individuals – defendants HSU, LIU and YUAN, all of whom are of

25
26 ¹ Defendant SOLARMAX TECHNOLOGY, INC. also owns several non-domestic subsidiaries
including SolarMax Technology Shanghai, Ltd., and SolarMax Technology China, Ltd.

27 ² SolarMax LED, Inc. was established as an operating subsidiary of defendant SOLARMAX
28 TECHNOLOGY, INC. in May 2014. SolarMax LED, Inc. was, therefore, not included on
SOLARMAX’s consolidated financial statements until after that time.

1 Chinese and/or Taiwanese descent and/or national origin. Defendant HSU is the President and CEO
2 of SOLARMAX; defendant LIU is SOLARMAX's Executive Vice President; and defendant YUAN,
3 since MR. MCCAFFREY's unlawful termination, is currently SOLARMAX's acting CFO (he also
4 held the CFO position prior to MR. MCCAFFREY'S hire). Defendants HSU, LIU and YUAN are
5 principals of SOLARMAX and, together, own a substantial equity interest in SOLARMAX's
6 outstanding shares.

7
8 19. Aside from their ownership and executive officer roles, defendants HSU, LIU
9 and YUAN all serve on the Board of Directors of SOLARMAX. Specifically, defendant HSU
10 serves as the Chairman of the Board and the Corporate Governance Chair, defendant LIU serves as
11 the Secretary of the Board, and defendant YUAN serves as the Audit Committee Chair of the Board.

12
13 20. In or about 2011, the owners, management team and Board of Directors
14 undertook plans to take defendant SOLARMAX TECHNOLOGY, INC. public. In furtherance
15 thereof, the owners, management team and Board of Directors began soliciting investment banks to
16 underwrite the initial public offering, which was anticipated to occur in 2013 or 2014.

17
18 **B. Aside from Equity Investors and Bank Loans, SOLARMAX Relies Heavily on**
19 **Investment Funding Derived from Foreign Nationals Through the Controversial**
20 **EB-5 ("Visa for Sale") Immigration Program.**

21
22 21. Since it was founded in 2008, defendant SOLARMAX TECHNOLOGY, INC.
23 has raised capital through traditional sources, including equity investors and banking institutions.
24 Indeed, since the time of its inception, when the three founders (defendants HSU, LIU and YUAN)
25 split the founders' shares amongst themselves, the corporation has engaged in multiple issuances of
26 stock, and now has approximately 47 shareholders. The vast majority of its shareholders are of
27 Chinese and/or Taiwanese descent. In addition to shareholder investments, the company has also
28 obtained capital through loans and lines of credit from banking institutions, including Cathay Bank.

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22. Aside from raising capital through equity investors and bank loans, SOLARMAX relies heavily on capital raised and solicited from foreign investors (primarily from China and Taiwan) seeking to obtain a Green Card through the EB-5 immigration and visa program. The EB-5 program – colloquially known as the federal “visa for sale” program – provides a fast track to a United States Green Card. The program, which is administered and overseen by the U.S. Citizenship and Immigration Services (“USCIS”) – a component of the Department of Homeland Security – allows wealthy foreign nationals to obtain Green Cards by investing large sums of money in domestic businesses, so long as the investment results in the creation of at least ten full time jobs for American workers. Generally, each foreign national must invest a minimum of \$1,000,000, unless the jobs are created in an area of high unemployment (“Targeted Employment Area”), in which case the minimum investment is decreased to \$500,000.

23. Upon initial approval of the investment and the required petitions and applications, the USCIS grants conditional permanent residence status (*i.e.*, a conditional Green Card) to the EB-5 investor for a period of two years. At the end of the two-year period, the EB-5 investor must prove that the investment has created the requisite number of jobs. If the petition is successful, the USCIS then removes the conditions from the Green Card, and the EB-5 investor (and derivative family members) are permitted to permanently live and work in the United States.

24. The EB-5 investment capital may either be invested directly in a qualifying business or, more frequently, is invested through a USCIS-approved “Regional Center.” A Regional Center is a private, for-profit entity, which pools EB-5 investor money into funds, disburses it to the job-creating businesses, and submits the necessary information and proof to the USCIS. In order to obtain Green Cards on behalf of the investors, the Regional Center and the businesses in which it invests are required to submit detailed information to the USCIS, typically in the form of audited or reviewed financial statements, proving that the investments have resulted in the creation of the requisite number of jobs. In return for managing the investments and submitting information to the

1 USCIS, the Regional Center generally charges an oftentimes hefty administrative fee to the EB-5
2 investors.

3
4 25. The EB-5 immigration and visa program is notorious for being subject to
5 abuse and fraud. Indeed, the U.S. Securities and Exchange Commission (“SEC”) and the USCIS
6 have jointly issued an Investment Alert in which they warn potential investors “about fraudulent
7 investment scams that exploit the Immigrant Investor Program, also known as ‘EB-5.’” The Alert
8 further cautions investors that Regional Centers and the businesses to whom they direct EB-5
9 investment funds are sometimes owned and managed by the same individuals, thus creating conflicts
10 of interest. As the Alert states, “Some EB-5 regional center investments are structured through
11 layers of different companies that are managed by the same individuals,” and warns investors to
12 “confirm that conflicts of interest have been fully disclosed and are minimized.”

13
14 26. Just as the SEC/USCIS Investment Alert cautions, SOLARMAX and the
15 Regional Center it uses to solicit and pool EB-5 investment funds – as well as the investment funds
16 themselves – comprise a web of interrelated companies owned and managed by the same
17 individuals. Specifically, the Regional Center used to direct funds to SOLARMAX – the Inland
18 Empire Renewable Energy (“IERE”) Regional Center – is owned by defendants HSU, LIU and
19 YUAN.

20
21 27. The IERE Regional Center targeted investors located primarily in China and
22 Taiwan, and solicited them to invest in entities owned and controlled by SOLARMAX, and/or by
23 defendants HSU, LIU and YUAN.³ The money was invested through two limited partnerships or
24 “funds” – Clean Energy Center, L.P. (“CEC”) and Clean Energy Funding, L.P. (“CEF”).⁴ The

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26 _____
27 ³ One of these entities is SMX Property, LLC, a company owned and controlled by defendants
28 HSU, LIU and YUAN.

⁴ During Mr. McCaffrey’s employment, SOLARMAX, the IERE Regional Center, and
defendants HSU, LIU and YUAN were in the process of organizing a third fund, which would likewise

1 IERE Regional Center was the General Partner of these limited partnerships. These limited
2 partnerships then “loaned” the money to entities owned and controlled by SOLARMAX, and/or by
3 defendants HSU, LIU and YUAN, which were then tasked with creating the requisite number of
4 jobs, and, at the end of four years, returning the principal investment to investors. Before directing
5 the funds to the entities owned and controlled by SOLARMAX and/or defendants HSU, LIU and
6 YUAN, the IERE Regional Center (and, thus, defendants HSU, LIU and YUAN) profited by
7 charging each investor a \$50,000 administrative fee. In short, this investment structure gave rise to a
8 myriad of conflicts of interest and self-interested transactions – among other things, the
9 SOLARMAX principals directed EB-5 investment funds to a Regional Center they owned, and, after
10 deducting the administrative fee, re-directed the funds (which they controlled) into their own
11 companies.⁵ These conflicts manifested themselves as follows:

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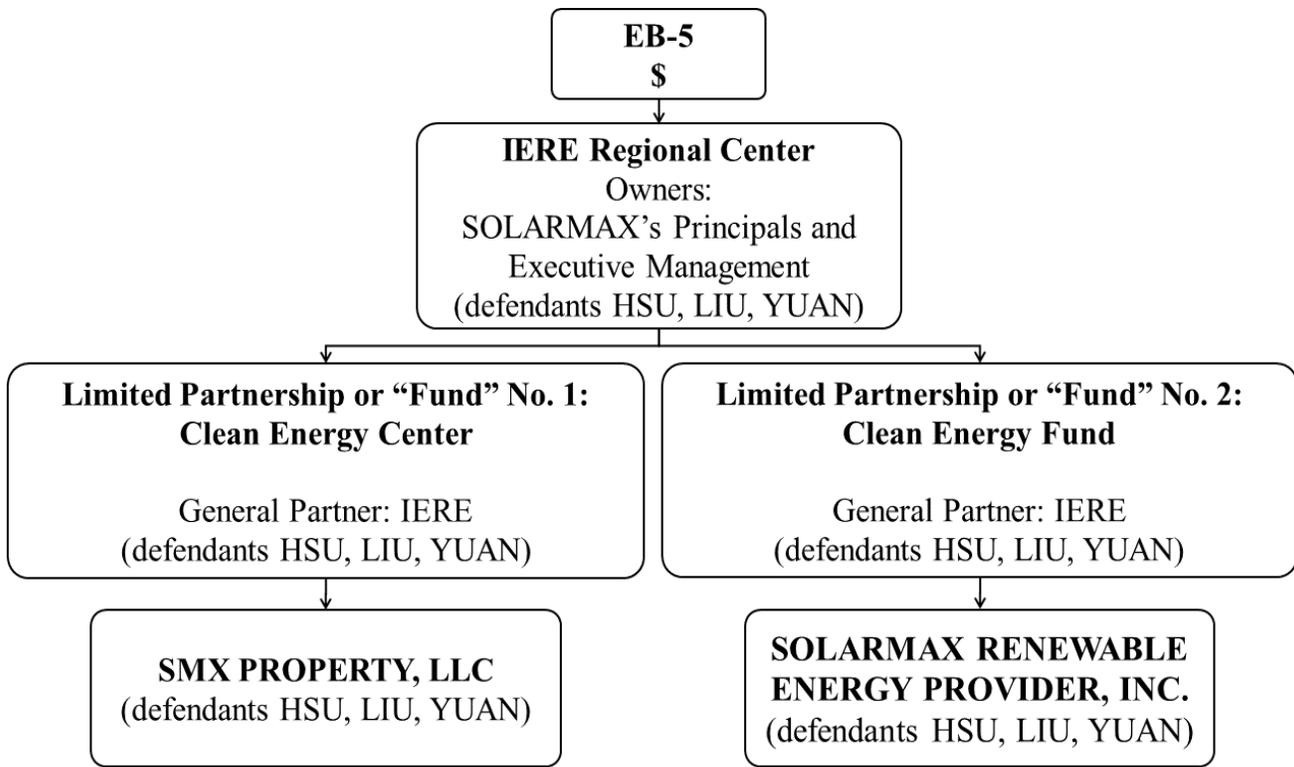
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26 funnel EB-5 money to a SOLARMAX entity. It was anticipated that this fund would provide
27 SOLARMAX with capital totaling \$10 million.

28

⁵ Indeed, according to information on file with the California Secretary of State, the business
address of the Clean Energy Center, L.P. (“CEC”) – which directed EB-5 capital to SMX Property, LLC
– is the *same address as SOLARMAX’s corporate headquarters.*

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28. As set forth above, defendant SOLARMAX TECHNOLOGY, INC. and the entire web of SOLARMAX entities relied heavily on EB-5 capital. Indeed, the Clean Energy Center, L.P. (“CEC”) provided SMX Property, LLC (owned by defendant HSU, LIU and YUAN) with capital totaling \$13 million; the Clean Energy Funding, L.P. (“CEF”) provided SOLARMAX with capital totaling \$45 million.⁶

C. In May 2013, MR. MCCAFFREY is Hired as SOLARMAX’s Chief Financial Officer.

29. Staring in or about January 2013, plaintiff MICHAEL MCCAFFREY

⁶ The EB-5 capital invested in Clean Energy Center, L.P. (“CEC”) was allegedly funneled to SMX Property, LLC – an entity owned by defendants HSU, LIU and YUAN – to finance the acquisition and development of a dilapidated and unoccupied 159,639 square foot building located at 3080 12th Street in Riverside, California. Adding another layer of conflict, SOLARMAX was to be the primary tenant of the renovated building (which was billed as a “Renewable Energy Supercenter”). The EB-5 capital invested in Clean Energy Funding, L.P. (“CEF”) was allegedly used to finance defendant SOLARMAX RENEWABLE ENERGY PROVIDER, INC.

1 participated in a series of interviews with SOLARMAX executives for the position of Chief
2 Financial Officer. On or about April 16, 2013, defendant SOLARMAX TECHNOLOGY, INC.
3 formally offered MR. MCCAFFREY the position. Pursuant to the terms of the written offer letter,
4 MR. MCCAFFREY was to receive an annual salary of \$180,000, plus an annual bonus and a full
5 package of executive-level benefits, including stock options. In addition, the offer letter specifically
6 provided that MR. MCCAFFREY, in the event he was terminated “without cause,” was
7 unconditionally entitled to receive, as wages, six months of “severance compensation” (*i.e.*,
8 \$90,000). The written offer letter was signed by defendant HSU.

9
10 30. In reliance on the representations contained in the written offer letter, MR.
11 MCCAFFREY accepted the offer, relocated from San Francisco to Riverside, and, on or about April
12 22, 2013, locked himself into a one-year residential lease. The lease provided that, in the event of
13 breach or early termination by MR. MCCAFFREY, he would be liable for, among other things, lost
14 rent, rental commissions, advertising expenses, expenses for re-rental, and attorneys’ fees.

15
16 31. On or about May 1, 2013, MR. MCCAFFREY commenced employment with
17 SOLARMAX as its Chief Financial Officer. As the CFO of SOLARMAX, MR. MCCAFFREY was
18 responsible for, among other things, managing the financial resources of the organization, as well as
19 preparing SOLARMAX for an initial public offering.

20
21 **D. Over the Course of His Employment, MR. MCCAFFREY Discovers That SOLARMAX**
22 **Had Engaged in “Round-trip” Transactions to Fraudulently Inflate its Revenue by**
23 **More than \$49 Million (The “Diversified/Systems Hardware Transactions”).**

24
25 32. In August and September 2013, MR. MCCAFFREY began to examine
26 SOLARMAX’s historical financial statements in preparation for the company’s 2013 audit. As he
27 reviewed the documents, MR. MCCAFFREY discovered irregularities in the revenue reported by
28 SOLARMAX on its 2011 and 2012 audited financial statements. Among other things, MR.

1 MCCAFFREY noticed that, between 2011 and 2013, SOLARMAX's revenues had declined
2 markedly. For MR. MCCAFFREY, who had been in the solar energy business since 2004, this
3 decrease did not make sense; the industry was growing at approximately 20% annually and even
4 faster in California.

5
6 33. MR. MCCAFFREY further determined that a substantial percentage of
7 SOLARMAX's revenue in 2011 and 2012 (for a combined total of \$49,793,108.00) was derived
8 from sales of solar panels to two customers: (a) an entity named "Diversified Global Management
9 Services, Inc.," and (b) an entity named "Systems Hardware, Inc."⁷ MR. MCCAFFREY, who had
10 years of experience in the renewable energy industry and knew most of the major players, was
11 unfamiliar with either of these entities. MR. MCCAFFREY approached SOLARMAX's Controller,
12 Jessie Chen, and asked for more information about these customers. Ms. Chen was conspicuously
13 vague in her response, and reluctant to engage in any type of discussion with MR. MCCAFFREY.
14 She abruptly ended the conversation by saying she was not involved in the sales. Frustrated by Ms.
15 Chen's evasiveness, MR. MCCAFFREY continued to research the irregular transactions.

16
17 34. Upon further investigation, MR. MCCAFFREY discovered a web of
18 connections and interrelationships among and between SOLARMAX, the two "customers," and the
19 IERE Regional Center. Among other things, Diversified Global Management Services, Inc.
20 ("Diversified") was controlled by an individual named Alicia Lim, who also served as the Executive
21 Director of the IERE Regional Center and was a personal friend of defendant LIU (SOLARMAX's
22 Executive Vice President). He further learned that Diversified's corporate address was the same as
23 the IERE Regional Center's and that SOLARMAX had paid the fees for Diversified's incorporation.
24 He also discovered that SOLARMAX had reimbursed Alicia Lim for IERE-related travel expenses
25 to China (including hotel and airfare). With respect to Systems Hardware, Inc. ("Systems
26 Hardware"), he discovered that, among other things, the company was jointly owned by Chungjen

27
28 ⁷ In its 2011 audited financial statements, SOLARMAX esoterically identified the two customers simply as "Customer A" and "Customer B."

1 Tsai (one of SOLARMAX's Directors and the Chair of the Board's Compensation Committee) and
2 his wife, Su Tsu Tsai (a SOLARMAX shareholder). Systems Hardware's corporate address was
3 identical to SOLARMAX's former address, and was the same address SOLARMAX used on other
4 official documents, including wire transfers and Department of Homeland Security documents.

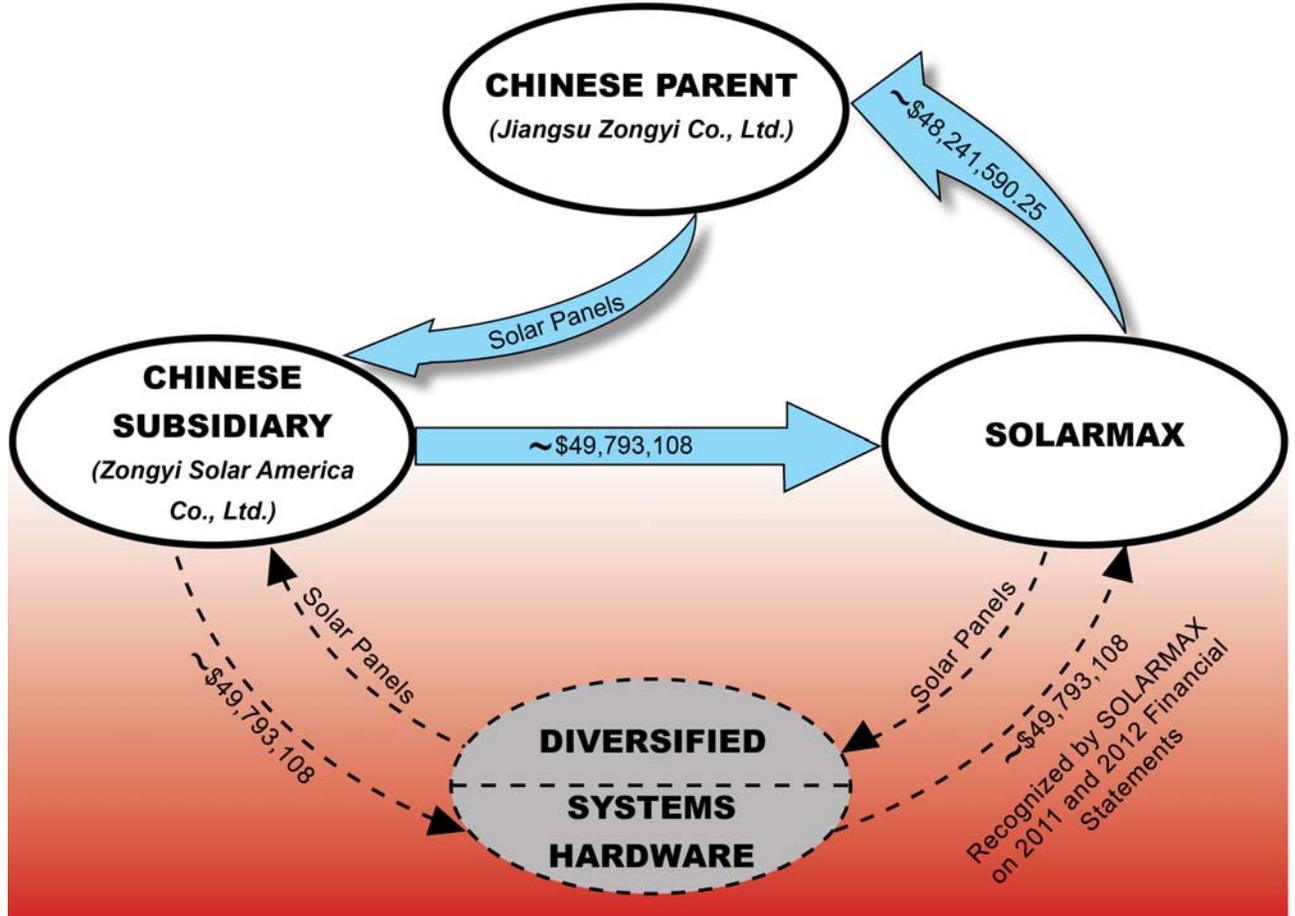
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6 35. Although neither Diversified nor Systems Hardware were in the solar energy
7 business – or even had the capacity to receive or store solar panel inventory – SOLARMAX, for
8 fiscal years 2011 and 2012, nonetheless reported a combined total of \$49,793,108.00 in revenue
9 from purported sales of solar panels to those two entities – \$36,530,664.00 (or 68% of total revenue)
10 in 2011 and \$13,262,444.00 (or 35% of total revenue) in 2012.⁸

11 36. As MR. MCCAFFREY continued to investigate, the contours of a possible
12 “round-trip” scheme began to materialize. SOLARMAX allegedly purchased the solar panels in
13 question from a company called Jiangsu Zongyi Co., Ltd. (also known as Nantong Zongyi Import &
14 Export Co., Ltd.) – a Chinese solar panel manufacturer located in Nantong, China, and one of
15 SOLARMAX's joint venture partners.⁹ Then, SOLARMAX allegedly re-sold the same panels to
16 Diversified and Systems Hardware, which, closing the loop on the “round-trip,” allegedly re-sold the
17 same panels to Zongyi Solar America Co., Ltd. – the wholly-owned American subsidiary of Jiangsu
18 Zongyi Co., Ltd. (the original China-based seller). MR. MCCAFFREY is informed and believes,
19 and thereon alleges, that the transactions generally manifested themselves as follows:

20
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22 _____
23 ⁸ In 2011, SOLARMAX reported the following revenue from Diversified and/or Systems
24 Hardware: (a) \$9,609,257 on September 1, 2011 from Systems Hardware; (b) \$12,252,843 on September
25 19, 2011 from Systems Hardware; and (c) \$14,668,564 on December 5, 2011 from Diversified. In 2012,
26 SOLARMAX reported the following revenue from Diversified and/or Systems Hardware: (a)
27 \$3,442,695 on June 25, 2012 from Diversified; (b) \$3,123,236 on August 28, 2012 from Diversified; and
28 (c) \$6,696,513 on December 12, 2012 from Diversified.

⁹ Between September 2011 and December 2011, and again in December 2012, SOLARMAX
wired funds to Jiangsu Zongyi Co., Ltd. totaling approximately \$49,351,590.25. The funds were wired
through Cathay Bank.

2011/2012 Diversified/Systems Hardware Roundtrip



37. In effect, the Chinese parent entity (Jiangsu Zongyi Co., Ltd.) sold the solar panels to its U.S.-based subsidiary (Zongyi Solar America Co., Ltd.). Although SOLARMAX reported that it received revenue from selling the panels to Diversified and Systems Hardware, it was becoming clearer to MR. MCCAFFREY that those transactions were fictional. In fact, MR. MCCAFFREY could not find any documentation showing that Diversified or Systems Hardware ever took possession of the solar panels that they purportedly sold to Zongyi Solar America Co., Ltd. Instead, documents from U.S. Customs and Border Protection confirm that the panels were shipped straight from Nantong, China (where Jiangsu Zongyi Co., Ltd. is located) to New Jersey (where SOLARMAX has a storage facility and Zongyi Solar America Co., Ltd. is headquartered). Moreover, belying SOLARMAX's records that it received the sales revenue from Diversified and Systems Hardware, emails between Zongyi Solar America Co., Ltd. executives and SOLARMAX's Controller, Jessie Chen, establish that SOLARMAX, in fact, received the revenue directly from

1 Zongyi Solar America Co., Ltd.

2
3 38. MR. MCCAFFREY became increasingly concerned that Diversified and
4 Systems Hardware were not legitimate solar energy businesses, and that SOLARMAX was using the
5 “round-trip” sales transactions to artificially inflate the sales revenue and volume reported on its
6 2011 and 2012 financial statements – thus making SOLARMAX more attractive to investors – while
7 adding minimal, if any, actual profit or value. As a veteran of the financial industry, MR.
8 MCCAFFREY recognized that such “round-trip” transactions violated generally accepted
9 accounting principles (“GAAP”), and was the type of activity that brought down giants such as
10 Enron Corporation. He also became concerned that the inflated figures would be – or had already
11 been – submitted to USCIS in connection with SOLARMAX’s participation (through the IERE
12 Regional Center) in the EB-5 program, used by equity investors when making a decision to invest in
13 SOLARMAX, and creditors when determining whether to lend money to SOLARMAX.

14
15 39. Moreover, SOLARMAX, in a statement made to the public, misrepresented
16 that, for fiscal year 2011, it had achieved total revenues in the amount of \$53 million – a figure that
17 necessarily included the enhanced revenues allegedly derived from the “sales” to Diversified and
18 Systems Hardware.

19
20 **E. Not Wanting to “Panic” its EB-5 Investors or to Otherwise Disclose the Inflated**
21 **Revenue from the Diversified/Systems Hardware Transactions, SOLARMAX**
22 **Retaliates Against MR. MCCAFFREY and Resists His Efforts to Correct and Restate**
23 **the Revenue Figures.**

24
25 40. In or about the week of October 7, 2013, MR. MCCAFFREY sat down with
26 defendants HSU, LIU and YUAN – SOLARMAX’s management team – and notified them that he
27 had noticed some irregularities in the company’s accounting. Among other things, he questioned the
28 propriety of the sales transactions with Diversified and Systems Hardware – two entities that had

1 nothing to do with the solar industry. Defendant HSU immediately became defensive, and informed
2 MR. MCCAFFREY that Jiangsu Zongyi Co., Ltd. asked SOLARMAX to perform the transactions
3 and pass the inventory through two United States companies before it was sold to Zongyi Solar
4 America Co., Ltd. Defendant HSU also asserted that Zongyi Solar America Co., Ltd. was unable to
5 do their own importing, and insisted that these sales were legitimate as part of SOLARMAX's
6 "wholesale" business.

7
8 41. In mid-October 2013, MR. MCCAFFREY, who continued to doubt the
9 legitimacy of the Diversified and Systems Hardware transactions, presented "normalized," or
10 restated, financial statements to SOLARMAX's Board of Directors, which were revised so as to
11 omit the revenue from the alleged sales to those two entities.¹⁰ With the millions of dollars of
12 revenue omitted from the financial statements, the revisions reflected a material adverse change in
13 the company's financial performance. MR. MCCAFFREY knew that such change might affect
14 investor confidence and affect SOLARMAX's (and, by extension, the IERE Regional Center's)
15 participation in the EB-5 program, but he did not want to be complicit in presenting inflated and
16 misleading revenue figures to investors, creditors or to the U.S. Government.

17
18 42. On October 29, 2013, SOLARMAX's auditor, BDO USA, LLP ("BDO"),
19 completed its audit of SOLARMAX's financial results for fiscal year 2012.¹¹ Despite MR.

21 ¹⁰ Although MR. MCCAFFREY did not know it when he made his presentation, this was not
22 the first time that SOLARMAX's Board of Directors had seen a financial analysis excluding revenue
23 from these transactions. Specifically, on or about September 21, 2012, September 25, 2012 and October
24 5, 2012, Dong Pu (a Board Member, co-owner of the IERE Regional Center and one of SOLARMAX's
25 original investors) raised concerns to the Board that the company was experiencing "loss as well as tight
26 cash flow," was in need of "internal control," and announced he was not able to "trust the management
27 team anymore." Mr. Pu then presented, through an associate who he had specifically brought to the
28 meetings to "clarify [the] company's finance," a financial analysis in which the Diversified and Systems
Hardware revenue was removed, just as MR. MCCAFFREY did nearly thirteen months later. In 2014,
Dong Pu was removed from SOLARMAX's Board.

¹¹ MR. MCCAFFREY, who joined SOLARMAX as CFO in May 2013, was instructed by
management and the Board of Directors not to be involved in the audit of the company's fiscal year

1 MCCAFFREY's concerns raised at the Board of Directors meeting a few weeks earlier,
2 SOLARMAX's Board and management concealed his findings from the auditors. As a result,
3 BDO's audit of SOLARMAX's fiscal year 2012 financial results included the inflated revenue
4 figures derived from the alleged transactions with Diversified and Systems Hardware.

5
6 43. Despite the fact that the 2012 audited financial statements contained false and
7 inflated financial information, SOLARMAX provided such information to investors, potential
8 investors, creditors, and the USCIS.

9
10 44. Subsequent to the completion of the 2012 audit by BDO, MR. MCCAFFREY
11 notified defendant HSU, defendant LIU and defendant YUAN that, as he attempted to raise capital
12 and otherwise perform his duties as CFO, he would not present financial statements that included
13 revenue from the alleged sales of solar panels to Diversified and Systems Hardware. He advised
14 them that it was only a matter of time before investors, the SEC, the USCIS and creditors realized
15 that the revenue figures had been artificially inflated.

16
17 45. In November and December 2013, MR. MCCAFFREY actively engaged in
18 efforts to retain a new auditor – Deloitte LLP – to conduct SOLARMAX's next audit for fiscal year
19 2013. He wanted to retain an auditor who he was confident would recognize the impropriety of the
20 Diversified and Systems Hardware transactions and the need to restate the financial statements so as
21 to remove the revenue from those alleged transactions.¹²

22
23 46. On December 31, 2013, MR. MCCAFFREY received an ominous email from
24 defendant YUAN, which was copied to defendant HSU and defendant LIU. In his email, defendant
25 YUAN advised MR. MCCAFFREY that he wanted to "sit down" with him to discuss his "job
26 _____
27 2012 results, but, instead, to focus on 2013 and beyond.

28 ¹² Mr. McCaffrey also questioned defendant YUAN's independence due to the fact that
defendant YUAN's accounting firm was affiliated with BDO.

1 function.” He further stated that he had been asked by defendant HSU to arrange this “sit down”
2 and that defendant HSU and defendant LIU wanted to be present.

3
4 47. On January 5, 2014, defendant YUAN sent another email to MR.
5 MCCAFFREY in which he responded to MR. MCCAFFREY’s efforts to correct and restate the
6 SOLARMAX financial statements, and to retain a new auditor. After emphasizing the extent to
7 which SOLARMAX relied on EB-5 capital and explaining that such EB-5 funding was subject to
8 “balloon” repayments, defendant YUAN stated that it would be “risky if Solarmax does not
9 perform.” He further asserted that restating SOLARMAX’s financial statements “could cause panic
10 of EB-5 investors.” He also rejected MR. MCCAFFREY’s proposal to retain a new auditor and, in
11 so doing, made it sound as if an audit was an adversarial proceeding rather than a transparent,
12 thorough and objective review by a neutral third party. According to defendant YUAN, “We have
13 issues with our auditors every year and we have to fight vigorously with our auditor in order to
14 prevail.” New auditors, he continued, would have to “re-examine all these issues” Then, in
15 what was, perhaps, a Freudian slip, defendant YUAN explained his reluctance to work with new
16 auditors, who, unlike the old ones, might refuse to put their imprimatur on SOLARMAX’s financial
17 statements: “It is like you may very well be a good food critic but you can never be a good chef.”
18 Regardless of whether defendant YUAN intended to evoke the imagery of an auditor willing to
19 “cook the books,” it is also difficult, in the context of his statement, not to see, at a minimum, the
20 irony in his analogy.

21
22 48. In his January 5, 2014 email, defendant YUAN also began retaliating against
23 MR. MCCAFFREY and subjecting him to unwarranted criticism. Specifically, after emphasizing
24 that MR. MCCAFFREY’s two main work objectives were “To raise the money for the company to
25 fund the operation,” and “To initiate and mapping [sic] our path to IPO,” he faulted MR.
26 MCCAFFREY for spending time investigating the irregular Diversified and Systems Hardware
27 transactions and attempting to correct the financial statements. As defendant YUAN stated, “[F]or
28 the past eight months, you find yourself spent almost all your time to do the [sic] things otherwise.”

1 At the conclusion of his email, defendant YUAN underscored the urgency of filing an S-1 form with
2 the SEC to register SOLARMAX's securities – a form used by companies planning to go public,
3 which includes detailed financial information. In short, defendant YUAN pressured MR.
4 MCCAFFREY to solicit investors and to proceed with plans for SOLARMAX's IPO regardless of
5 whether the company's financial statements contained inaccurate information.

6
7 49. Despite defendant YUAN's attempt to pressure MR. MCCAFFREY to be
8 complicit in the fraud, MR. MCCAFFREY refused to do so. MR. MCCAFFREY resolved to work
9 with the company's current auditors, BDO, to complete an accurate audit of SOLARMAX's 2013
10 financial statements and to correct any mis-stated revenue from earlier financial statements,
11 including the recently completed 2012 audit.

12
13 50. In or about January 2014, MR. MCCAFFREY met with a partner at BDO and
14 notified him that he wanted BDO to assign an entirely new team to the SOLARMAX account.

15
16 51. In or about February 2014, MCCAFFREY met with the new BDO team
17 assigned to conduct the 2013 audit and disclosed his findings and concerns about SOLARMAX's
18 fictional transactions with Diversified and Systems Hardware, and about the revenue that
19 SOLARMAX had reported from those transactions on its 2011 and 2012 financial statements. The
20 BDO representatives were immediately concerned about the propriety of the transactions, and
21 agreed that further investigation was warranted.

22
23 52. Over the course of the ensuing two to three months, MR. MCCAFFREY
24 worked with the team from BDO to complete the 2013 audit, and to decipher and untangle the web
25 of "round-trip" transactions between Jiangsu Zongyi Co., Ltd., SOLARMAX, Diversified, Systems
26 Hardware and Zongyi Solar America Co., Ltd.

27
28 53. In June 2014, the BDO audit team completed its investigation and determined,

1 conclusively, that the revenue from the fictional transactions with Diversified and Systems
2 Hardware was not legitimate, and that SOLARMAX's 2012 audited financial statements would have
3 to be adjusted to omit such revenue. In early July 2014, MR. MCCAFFREY met with defendant
4 HSU, defendant YUAN and Chungjen Tsai (SOLARMAX's Director, the Board's Compensation
5 Committee Chair and the owner of Systems Hardware) to discuss, among other things,
6 SOLARMAX's initial public offering, including the time frame for registering its securities with the
7 SEC. During the meeting, MR. MCCAFFREY notified them of the auditors' conclusions regarding
8 the Diversified and Systems Hardware transactions, and that the 2012 financial statements would
9 have to be adjusted.

10
11 54. Pursuant to generally accepted accounting principles ("GAAP") and other
12 applicable prevailing standards, companies present their audited financial statements on a multi-
13 year, or comparative basis, so that the reviewer – whether it be an investor, a potential investor,
14 lender or a governmental authority – may compare the current year being audited to the previous
15 year(s) and, thus, be able to make informed decisions and assessments about the company's financial
16 condition, including, among other things, changes in revenue, sales, expenses, debt and other key
17 indicia of value and performance. At a *minimum*, this requires that two years of audited financial
18 statements be set forth, essentially, in a side-by-side manner.

19
20 55. On or about July 10, 2014, BDO completed a comprehensive draft of its audit
21 of SOLARMAX's 2013 financial statements. Consistent with GAAP and, indeed, with
22 SOLARMAX's own past practice, the audit provided a comparison of the company's 2012 and 2013
23 financial results. Because the 2012 financial statements had been revised so as to omit the revenue
24 from the "round trip" transactions," it was readily apparent to anyone reviewing the audited financial
25 information – whether a domestic investor, an EB-5 investor, a creditor, the SEC (in connection with
26 an S-1 filing), the USCIS, the IRS or other governmental agency – that there had been a material,
27 downward revision to SOLARMAX's 2012 revenues.

28

1 56. Subsequent to the circulation of the comparative audit, SOLARMAX’s
2 management and members of its Board of Directors, including defendants HSU, LIU and YUAN,
3 commenced concerted efforts to unduly influence MR. MCCAFFREY and the auditors. Initially,
4 they tried to persuade them to reverse the decision to restate the revenue. When those efforts proved
5 to be futile, to obfuscate the restated revenues by insisting that BDO issue a single-year audit rather
6 than a standard multi-year audit.

7
8 57. On or about July 11, 2014, defendant LIU called MR. MCCAFFREY, angry
9 about the restated 2012 revenue. In a hostile tone of voice, she accused MR. MCCAFFREY of
10 being disloyal to SOLARMAX. She subjected him to a barrage of rapid-fire, panicked questions
11 about legal liability (*e.g.*, “Why didn’t you protect us? Who is going to handle the lawsuit?”). MR.
12 MCCAFFREY responded that the inclusion of revenue from the Diversified and Systems Hardware
13 transactions was inappropriate and needed to be corrected. Continuing her tirade, defendant LIU
14 demanded that BDO write a letter to “her” EB-5 investors and to the USCIS. In a material
15 admission, she screamed that the EB-5 investors had based their decision to invest in SOLARMAX
16 on the 2011 and 2012 revenues. In an effort to influence MR. MCCAFFREY to change or conceal
17 the adjustments, she insisted that he consider the ramifications that would result if those investors
18 and the USCIS learned about the adjusted financial statements. MR. MCCAFFREY reminded her
19 that his obligation, as SOLARMAX’s CFO, was to ensure that the company provided *accurate*
20 financial statements to investors and to the government. MS. LIU then abruptly hung up on him.

21
22 58. On or about July 17, 2014, defendant YUAN contacted BDO partner, Brad
23 Schrupp, and inappropriately attempted to influence him to reinstate the phantom revenue into
24 SOLARMAX’s 2012 audited financial statements.

25
26 59. When the BDO auditors refused to succumb to defendant YUAN’s pressure to
27 include the revenue in the financial statements, defendant YUAN then tried to convince them – and
28 MR. MCCAFFREY – to hide it. Specifically, he tried to persuade them to remove the 2012 revised

1 financial statements from the 2013 audit, and instead issue a single-year audit for 2013. A single-
2 year audit, as opposed to the standard comparative year-by-year audit, would only show an audit of
3 SOLARMAX's 2013 financial statements, thus concealing the fact that the 2012 financial statements
4 had been revised. BDO refused. Nevertheless, this did not deter defendant YUAN.

5
6 60. On August 12, 2014, defendant YUAN emailed MR. MCCAFFREY and
7 falsely represented to him that BDO had agreed to issue a single-year audit for 2013. On or about
8 August 20, 2014, defendant YUAN repeated this misrepresentation to MR. MCCAFFREY at
9 SOLARMAX's annual shareholder meeting. Moreover, he directed MR. MCCAFFREY to join him
10 in pressuring BDO to finalize, approve, and issue the single-year audit as quickly as possible.
11 According to defendant YUAN, USCIS was waiting to review SOLARMAX's audited financial
12 statements. MR. MCCAFFREY knew that USCIS was conducting an audit of the IERE Regional
13 Center in or about late September 2014, and that SOLARMAX's financial statements were crucial to
14 this endeavor.

15
16 61. Suspicious of defendant YUAN's representations and directives, MR.
17 MCCAFFREY contacted BDO. Contrary to defendant YUAN's statements, Mr. Schrupp informed
18 MR. MCCAFFREY that nobody at BDO had spoken to defendant YUAN. He further informed MR.
19 MCCAFFREY that BDO had not confirmed or agreed to issue a single-year audit and, indeed, had
20 refused to do so, as it would hide the revisions and significantly deviate from prevailing accounting
21 standards. Instead, BDO would issue the standard, two-year comparative audit, including the
22 revised 2012 financial statements alongside the 2013 financial statements.

23
24 62. Determined to hide the negative revision to SOLARMAX's 2012 revenues
25 from investors, lenders and the government, defendant YUAN attempted to exert his influence and
26 persuade the BDO auditors to issue irregular, single-year audited financial statements for 2013. On
27 August 25, 2014, for example, the BDO partner sent defendant YUAN and MR. MCCAFFREY a
28 standard comparative audit of SOLARMAX's 2012 and 2013 financials statements, advising them

1 that it was ready to be issued. In response, defendant YUAN, in an email tinged with anger and
2 frustration, instructed the auditor that the “Company’s Board wishes to issue a stand alone” audited
3 financial statement for 2013, adding falsely, “[J]ust like BDO did in the past 3 years.” He even
4 attached a stand-alone, single-year audit and directed the auditor to “review and approve it.” In a
5 reply email on the same date, the auditor starkly refused: “We can not do this.” He further
6 corrected defendant YUAN’s false statement: “[W]e have not issued stand alone statements in the
7 past. Attached are the [financial statements] we issued in 2012 and 2011 and both are comparative.”
8

9 63. Defendant YUAN – and the other members of SOLARMAX’s management
10 team and Board of Directors – were still not to be deterred in their efforts to conceal the adjusted
11 2012 revenues. In another email dated August 25, 2014 (which was copied to MR. MCCAFFREY,
12 defendant HSU and defendant LIU), defendant YUAN continued to pressure the BDO auditor to
13 issue a stand-alone, single-year audit of the 2013 financial statements. Revealingly, defendant
14 YUAN asserted that the single-year audit (which would hide the 2012 revisions) would be
15 “sufficient” to “satisfy our lender, supplier and EB-5 investors.” Once again, the auditor refused.
16

17 64. On August 26, 2014, MR. MCCAFFREY emailed defendant YUAN
18 and questioned SOLARMAX’s effort to obfuscate the 2012 revenue revisions by issuing a single-
19 year audit for 2013. According to MR. MCCAFFREY, “In my experience, I have never seen this
20 done before” He emphasized that SOLARMAX had, for the past three years, always issued
21 comparative two-year audits, and, in the interest of transparency, encouraged the company to do the
22 same for 2012 and 2013. He advised defendant YUAN that a single-year audit would only raise
23 suspicion and lead to additional questions.
24

25 65. On August 26, 2014, defendant YUAN – cornered by the BDO auditors and
26 MR. MCCAFFREY, unable to come up with any further rebuttal, and undoubtedly concerned about
27 his legal liability – reluctantly permitted BDO to issue a comparative audit.
28

1 66. On September 22, 2014, MR. MCCAFFREY complained to defendant HSU
2 about SOLARMAX’s unlawful efforts to fraudulently inflate its 2011 and 2012 revenues. He had
3 spent almost a year opposing SOLARMAX’s publication and dissemination of fraudulently inflated
4 revenue figures to investors, potential investors, lenders and the government, as well as
5 SOLARMAX’s subsequent efforts to conceal necessary revisions and corrections to those figures.¹³
6 In addition, defendant LIU had made public statements, including to the Riverside Chamber of
7 Commerce, fraudulently representing that SOLARMAX’s revenues were significantly higher than
8 they actually were.

9
10 67. Eight days later, on September 30, 2014, as further set forth herein below,
11 defendants, without any notice, abruptly terminated MR. MCCAFFREY’s employment.

12
13 **F. MR. MCCAFFREY Discovers Another “Round-Trip” Scheme Designed to Inflate and**
14 **to Secretly Shift Revenue from a SOLARMAX Subsidiary to the SOLARMAX Parent**
15 **Entity (The “Victoria/High Tech Transactions”).**

16
17 68. Beginning in or about December 2013 and continuing through the date of
18 his termination on September 30, 2014, MR. MCCAFFREY – as he was opposing defendants’
19 efforts to inflate revenues from the Diversified and Systems Hardware transactions – discovered an
20 additional “round-trip” scheme. By using two sham entities owned by friends and relatives,
21 SOLARMAX created the false appearance that it had generated legitimate sales revenue, when, in
22 fact, it was merely shifting capital from its wholly owned subsidiary (defendant SOLARMAX
23 RENEWABLE ENERGY PROVIDER, INC.) to the parent entity (defendant SOLARMAX

24
25 ¹³ For example, MR. MCCAFFREY is informed and believes, and thereon alleges, that a
26 prominent, publicly traded Chinese company called Changzhou Almaden Stock Co., Ltd., as well as a
27 large publicly traded Taiwanese company called Neo-Solar Power Corporation, had requested and were
28 provided with SOLARMAX’s 2011 and 2012 financial statements in connection with making
investment decisions. In fact, in November 2013, after requesting SOLARMAX’s audited 2012
financial statements, Changzhou Almaden Stock Co., Ltd. finalized a \$10 million investment in
SOLARMAX and was issued a stock certificate.

1 TECHNOLOGY, INC.). As set forth below, SOLARMAX was, in effect, “selling” solar panels to
2 itself (even though no panels, in fact, ever changed hands) and then booking the revenue from such
3 “sales” on its financial statements. Not only did this conduct artificially inflate SOLARMAX’s
4 revenue; it also misappropriated EB-5 capital to a fraudulent use. Specifically, defendants took EB-
5 5 capital from the Clean Energy Funding, L.P. – money that was earmarked solely for use by
6 defendant SOLARMAX RENEWABLE ENERGY PROVIDER, INC. – and “shifted” it to the
7 parent entity, SOLARMAX TECHNOLOGY, INC., where it could then be used for purposes well
8 beyond the scope of the EB-5 authorization.¹⁴

9
10 69. The “round-trip” transactions implicated two large-scale projects in which
11 defendant SOLARMAX RENEWABLE ENERGY PROVIDER, INC. entered into contracts to
12 install solar energy systems.

13
14 70. In the first project (the “Roofing Project”), defendant SOLARMAX
15 RENEWABLE ENERGY PROVIDER, INC. entered into an \$811,440.00 contract to install solar
16 panels on the roof of the building it occupied at 3080 12th Street in Riverside, California (which was
17 owned by defendants HSU, LIU, and YUAN, which had been purchased and renovated largely with
18 EB-5 capital, and which was the corporate headquarters of defendants SOLARMAX RENEWABLE
19 ENERGY, INC. and SOLARMAX TECHNOLOGY, INC.).

20
21 71. In the second project (the “UC Riverside Project”), defendant SOLARMAX
22 RENEWABLE ENERGY PROVIDER, INC. entered into a \$2,277,000.00 contract to install a solar
23 power system at the Center for Environmental Research and Technology at the University of
24 California, Riverside.

25
26
27
28 ¹⁴ MR. MCCAFFREY is informed and believes, and thereon alleges, that the money moved to
defendant SOLARMAX TECHNOLOGY, INC. was used to satisfy an arbitration award and to pay
legal bills and other corporate expenses.

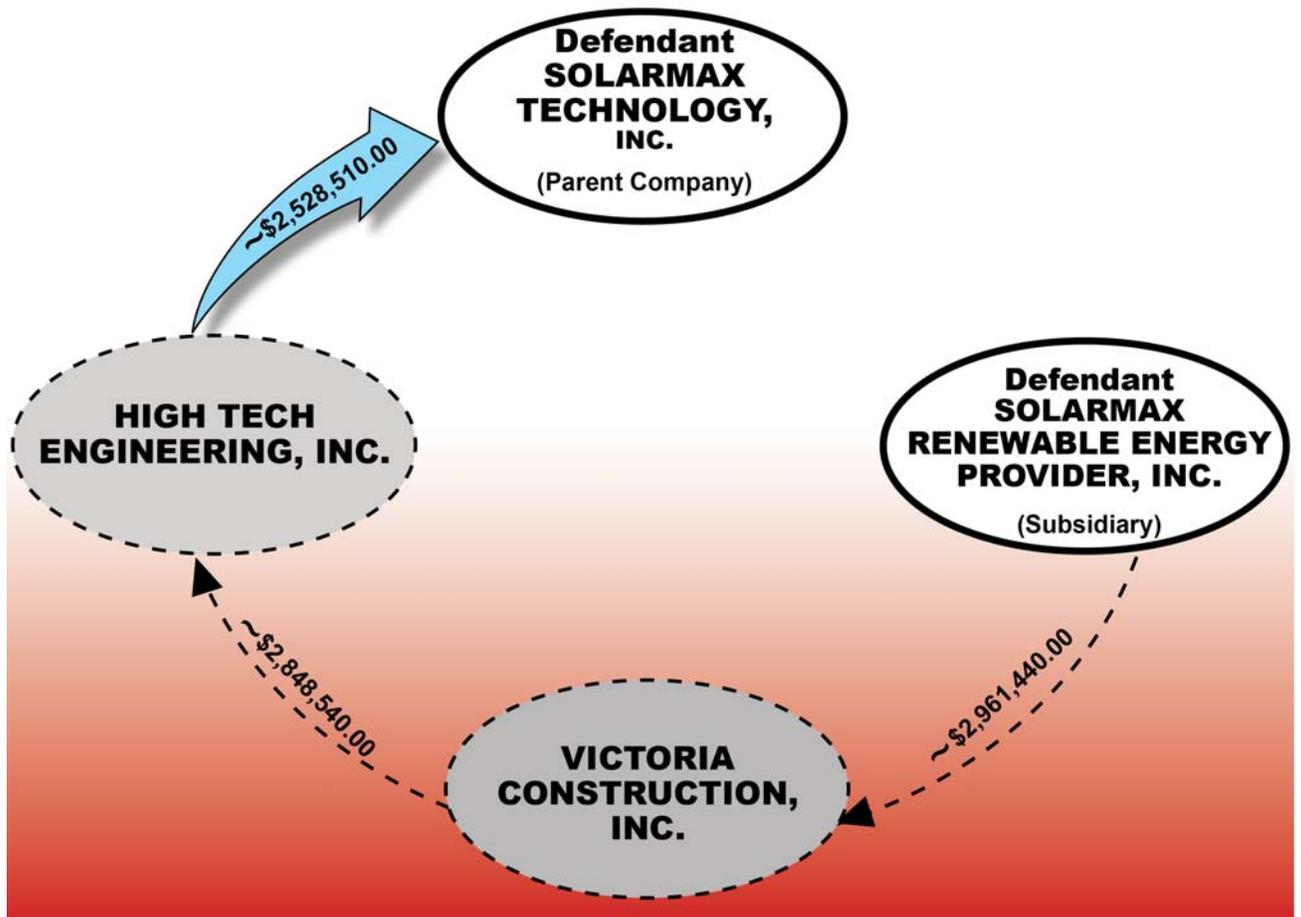
1 72. As the initial step in the round trip, defendant SOLARMAX RENEWABLE
2 ENERGY PROVIDER, INC. transferred approximately \$2,961,440.00 to an arcane entity called
3 Victoria M Construction, Inc. (“Victoria Construction”), purportedly to purchase and procure the
4 necessary solar panels for the Roofing and UC Riverside Projects and to install the respective
5 systems. Victoria Construction is owned by a longtime friend of defendant LIU’s – an individual
6 named Victor Fang.

7
8 73. Victoria Construction, in turn, transferred approximately \$2,848,540.00
9 to an entity called High Tech Engineering, Inc. (“High Tech”) in connection with the Roofing and
10 UC Riverside Projects. MR. MCCAFFREY is informed and believes, and thereon alleges, that High
11 Tech is owned by defendant HSU’s sister-in-law. Moreover, High Tech maintains its headquarters
12 at 3230 Fallow Field Drive, Diamond Bar, CA 91765 – *the same building occupied by the IERE*
13 *Regional Center, defendant YUAN’s accounting firm, and defendant SOLARMAX RENEWABLE*
14 *ENERGY PROVIDER, INC. and SolarMax LED, Inc.* High Tech is managed and controlled by
15 defendant HSU, defendant LIU and SOLARMAX’s Controller, Jessie Chen, from SOLARMAX’s
16 offices in Riverside and Diamond Bar. Among other things, SOLARMAX’s Information
17 Technology Director informed MR. MCCAFFREY that Ms. Chen managed High Tech’s books, and,
18 on multiple occasions, MR. MCCAFFREY saw mail for High Tech on Ms. Chen’s desk.

19
20 74. Completing the “round-trip” circle, High Tech transferred approximately
21 \$2,528,510.00 to defendant SOLARMAX TECHNOLOGY, INC., allegedly to procure the solar
22 panels for the projects.

23
24 75. MR. MCCAFFREY is informed and believes, and thereon alleges, that
25 approximately \$500,000 was siphoned off to pay High Tech and/or Victoria Construction for their
26 roles in hiding what was, in effect, a transfer of cash from defendant SOLARMAX RENEWABLE
27 ENERGY PROVIDER, INC. to defendant SOLARMAX TECHNOLOGY, INC. The purported
28 transactions manifested themselves as follows:

The Victoria/High Tech Roundtrip



76. The “round trip” and transfers of cash are corroborated by supporting documentation, including, without limitation, diagrams and handwritten flowcharts prepared by defendant LIU and SOLARMAX’s Controller, Jessie Chen, as well as check receipts and wire transfer records.¹⁵

¹⁵ Between January 28, 2013 and April 23, 2014, defendant SOLARMAX RENEWABLE ENERGY PROVIDER, INC. made six (6) payments, totaling approximately \$3 million, to Victoria Construction via wire and check for both projects. These payments were made on January 28, 2013 (\$300,000 via check), February 12, 2013 (\$500,000 via check), February 26, 2013 (\$200,000 via check), March 27, 2013 (\$500,000 via check), May 7, 2013 (\$650,000 via wire) and April 23, 2014 (\$811,440.10 via wire). Between February 19, 2013 and July 3, 2013, High Tech then made nine (9) payments via check, totaling approximately \$2.5 million, to defendant SOLARMAX TECHNOLOGY, INC. All payments were arranged by Ms. Chen and approved by defendant LIU.

1 77. Moreover, despite the fact that defendant SOLARMAX RENEWABLE
2 ENERGY PROVIDER, INC. was allegedly procuring solar panels from Victoria Construction,
3 which was allegedly procuring them from High Tech, which was allegedly procuring them from
4 defendant SOLARMAX TECHNOLOGY, INC., *no solar panels ever changed hands*. Defendant
5 SOLARMAX RENEWABLE ENERGY PROVIDER, INC. already possessed the solar panels
6 necessary for the projects. Nonetheless, defendant SOLARMAX TECHNOLOGY, INC. ultimately
7 booked \$2.5 million in revenue on its 2013 audited financial statements from the fictional sale of the
8 panels (first to High Tech, then to Victoria Construction, and then, finally, to its own subsidiary).¹⁶
9

10 78. In short, the elaborate circular scheme was designed to conceal the movement
11 of money from a “cash rich” subsidiary to a “cash poor” parent, that needed cash to satisfy its own
12 obligations. By doing so, defendants not only artificially inflated the revenue reported on their
13 financial statements; they also misappropriated EB-5 capital that was earmarked for use solely by
14 and for the benefit of the subsidiary – defendant SOLARMAX RENEWABLE ENERGY
15 PROVIDER, INC. The EB-5 money, after being filtered through the various players in the “round-
16 trip,” conveniently ended up in the hands of the parent entity (defendant SOLARMAX
17 TECHNOLOGY, INC.), which, contrary to the EB-5 mandate, could use it at its own discretion, for
18 its own benefit, and without any effective oversight.
19

20 79. By engaging in such conduct, defendants artificially inflated and
21 misrepresented the revenue reported on SOLARMAX’s 2013 audited financial statements, which, in
22

23 ¹⁶ SOLARMAX’s recognition of revenue from the “sale” of solar panels from defendant
24 SOLARMAX TECHNOLOGY, INC. to defendant SOLARMAX RENEWABLE ENERGY
25 PROVIDER, INC. on its 2013 consolidated financial statements violates generally accepted accounting
26 principles (“GAAP”). In particular, GAAP requires that, in the event of an inter-company sale, the
27 companies perform an “inter-company elimination,” thereby eliminating any revenue from the financial
28 statements of the seller (here, defendant SOLARMAX TECHNOLOGY, INC.). The rationale for such
eliminations is that a company cannot recognize revenue from sales to itself. Here, this did not happen.
Instead, defendant SOLARMAX TECHNOLOGY, INC. fraudulently reported the revenue it received
from its subsidiary, defendant SOLARMAX RENEWABLE ENERGY PROVIDER, INC., to existing
and potential investors on its 2013 audited financial statements.

1 turn, were were submitted to EB-5 investors, equity investors, creditors, and to the USCIS and other
2 governmental authorities.

3
4 80. Further underscoring the fictitious nature of the transactions is that High Tech
5 and Victoria Construction performed little or no work on the projects. High Tech did not perform
6 *any* work on either the Roofing Project or the UC Riverside Project. Victoria Construction (which
7 does not even hold a contractor's license) likewise did not perform *any* work on the UC Riverside
8 Project. Indeed, it had to withdraw from its obligations to work on the UC Riverside Project *but,*
9 *mysteriously, still received full payment.* With respect to the minimal work that Victoria
10 Construction did perform on the Roofing Project, the work was grossly substandard, and failed
11 multiple inspections by the City of Riverside's Building and Safety Division. Among other things,
12 solar panels were put on backwards, wires were exposed and MR. MCCAFFREY was informed that
13 the roof would have caught on fire if the solar power system was turned on.

14 //

15 //

16 //

17 //

18 //

19 **G. Between Late 2013 and September 2014, MR. MCCAFFREY Raised Concerns About**
20 **the Victoria/High Tech Transactions.**

21
22 81. Beginning in late 2013, MR. MCCAFFREY began to question the legitimacy
23 of the Victoria/High Tech Transactions to, among others, defendant HSU, defendant LIU and
24 SOLARMAX's Controller, Jessie Chen. Defendant HSU, defendant LIU and Ms. Chen were
25 evasive.

26
27 82. In or about May 2014, after months of questioning by MR. MCCAFFREY,
28 Ms. Chen, in a meeting with MR. MCCAFFREY and defendant LIU, finally admitted that the

1 purpose of the “round-trip” scheme was to move money from SOLARMAX RENEWABLE
2 ENERGY PROVIDER, INC. to its parent, defendant SOLARMAX TECHNOLOGY, INC., in order
3 to pay and satisfy defendant SOLARMAX TECHNOLOGY, INC.’s bills and obligations.
4

5 83. MR. MCCAFFREY, who had already spent the past approximately eight
6 months trying to mitigate and reverse the damage from SOLARMAX’s “round-trip” with Systems
7 Hardware and Diversified, was alarmed by the fact that SOLARMAX was mired in yet another
8 fraudulent “round-trip” scheme. MR. MCCAFFREY realized that defendants were misappropriating
9 EB-5 investor money to an impermissible use, and that SOLARMAX was, yet again, fraudulently
10 inflating revenue on its 2013 audited financial statements, which it intended to disseminate to
11 investors, potential investors, creditors and the government.
12

13 84. In response to Ms. Chen’s revelation, MR. MCCAFFREY immediately
14 objected. He demanded that money be moved back to defendant SOLARMAX RENEWABLE
15 ENERGY PROVIDER, INC. and that the transactions with Victoria Construction and High Tech be
16 unwound. Ms. Chen, in the presence of defendant LIU, simply laughed, and told MR.
17 MCCAFFREY that the money was “gone.” Undeterred, as MR. MCCAFFREY stood up to leave,
18 he insisted that Ms. Chen and defendant LIU provide him with a reconciliation of all of the funds
19 flowing from defendant SOLARMAX RENEWABLE ENERGY PROVIDER, INC., to Victoria
20 Construction, to High Tech, and finally, to defendant SOLARMAX TECHNOLOGY, INC.
21

22 85. On June 15, 2014, MR. MCCAFFREY again complained to defendant LIU
23 about the legitimacy of the Victoria/High Tech Transactions. Unless the transactions were reversed,
24 MR. MCCAFFREY complained, it would lead to a “host of other issues.” He specifically requested
25 that he and defendant LIU engage in a “broader discussion” about the matter. MS. LIU ignored his
26 request.
27

28 **H. In Addition to the Inflated Revenue and “Round-Trip” Schemes, MR. MCCAFFREY**

1 **Complained about Other Instances in Which SOLARMAX Was Defrauding EB-5**
2 **Investors.**

3
4 86. On or about July 29, 2014, and continuing through his termination on
5 September 30, 2014, MR. MCCAFFREY complained to defendant LIU that SOLARMAX and the
6 IERE Regional Center had made material misrepresentations to its EB-5 investors regarding its
7 ability to repay the millions of dollars they had invested in SOLARMAX-related entities through the
8 Clean Energy Center, L.P. (“CEC”) and the Clean Energy Funding, L.P. (“CEF”). Among other
9 things, defendants HSU, LIU and YUAN (acting in their own capacity and in their capacity as
10 officers, directors and owners of SOLARMAX and the IERE Regional Center) made the following
11 misrepresentations and material omissions:

- 12
13 (a) The Clean Energy Center, L.P.’s (“CEC”) Private Placement Memorandum
14 (which was provided to EB-5 investors and the USCIS), represented that
15 investor money would be used to purchase and renovate the building located
16 at 3080 12th Street in Riverside, California and to convert it into a “Renewable
17 Energy Supercenter,” which would then be leased to renewable energy
18 companies.¹⁷ The Private Placement Memorandum, which was dated March
19 15, 2013, misrepresented to EB-5 investors that their money would be repaid
20 “at [the] end of the four-year term from the revenues generated from the lease
21 payments by tenants of the Supercenter.” This statement was false and
22 misleading. In fact, even if the building was rented at gross capacity, at or
23 above market rent, it would not generate enough money to repay investors in
24
25
26

27 ¹⁷ The funds were to be directed to SMX Property, LLC – an entity owned by defendants HSU,
28 LIU and YUAN – purportedly to acquire and refurbish the building located at 3080 12th Street,
Riverside, CA 92507 (which also serves as SOLARMAX’s corporate headquarters).

1 four (4) years.¹⁸

2
3 (b) The Clean Energy Center, L.P.’s (“CEC”) Private Placement Memorandum
4 (which was provided to EB-5 investors and the USCIS) concealed and omitted
5 the material fact that the vast majority of the space in the “Renewable Energy
6 Supercenter” building would be leased to defendant SOLARMAX
7 TECHNOLOGY, INC. (*i.e.*, an entity owned and controlled by defendants
8 HSU, LIU and YUAN), and for rent well below market rates. This, in itself,
9 would make repayment of the EB-5 capital virtually impossible within the
10 four year period represented under the terms of the Private Placement
11 Memorandum.

12
13 (c) The Clean Energy Center, L.P.’s (“CEC”) Private Placement Memorandum
14 (which was provided to EB-5 investors and the USCIS) represented that, if
15 EB-5 investors were not repaid from revenue generated by lease payments
16 from tenants of the Supercenter, they could “be repaid from the refinancing or
17 sale of the Project” This statement was false and misleading. The value
18 of the loan from EB-5 investors was \$13 million. However, as of 2013 – the
19 year of the CEC offering – the assessed value of the Supercenter property was
20 only \$6,014,582.00. Thus, there was simply no way the loan could be repaid
21 from the refinancing or sale of the property. (Indeed, in order for EB-5
22 investors to recoup their \$13 million loan by the loan maturity date in 2017,
23 the property would have to appreciate by a staggering 116%).

24
25 (d) Clean Energy Funding, L.P.’s (“CEF”) Private Placement Memorandum
26 (which was provided to EB-5 investors and the USCIS), represented that

27
28 ¹⁸ Indeed, by August 2014, the building was still unfinished and had not been approved to
operate by the City of Riverside.

1 defendant SOLARMAX RENEWABLE ENERGY PROVIDER, INC.
2 “intends” and “expects” to repay EB-5 investors in four (4) years “from the
3 stream of payments by residential and commercial customers” from its “Solar
4 Energy Contracts.” This statement was false and misleading. In fact,
5 defendant SOLARMAX RENEWABLE ENERGY PROVIDER, INC.,
6 offered financing for solar panels to residential and commercial customers
7 through an installment sales contract, the *average term of which was*
8 *approximately seven (7) years*. Because the average term of the contract to
9 customers was almost double the term of the loan from EB-5 investors, it
10 would be impossible to repay EB-5 investors in four (4) years as
11 misrepresented in the Private Placement Memorandum.

12
13 87. Defendants HSU, LIU and YUAN, and the IERE Regional Center made these
14 materially false and/or misleading statements to foreign nationals to solicit investment, and to
15 USCIS, to make it appear that Clean Energy Center, L.P. (“CEC”) and Clean Energy Funding, L.P.
16 (“CEF”) were qualifying projects for purposes of the EB-5 program.

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21
22 **I. MR. MCCAFFREY Complains that SOLARMAX is Committing Social Security Fraud**
23 **and is Defrauding the California State Disability Insurance System.**

24
25 88. In or about June 2013 – shortly after he commenced employment with
26 SOLARMAX – MR. MCCAFFREY discovered that the company, with the knowledge and approval
27 of its highest level executives – was defrauding the U.S. Social Security system. Specifically,
28 during a routine audit of SOLARMAX’s payroll expenses, MR. MCCAFFREY noticed that there

1 were a number of employees and independent contractors who he did not recognize. When MR.
2 MCCAFFREY questioned SOLARMAX's Human Resources Director, Felecita Ferera-Gabourel,
3 she admitted that these individuals were not employees, but rather, were friends and relatives of
4 defendant HSU, defendant LIU and Jessie Chen (SOLARMAX's Controller). She explained that
5 these individuals were on SOLARMAX's payroll for the sole purpose of earning Social Security
6 credit so that they could collect Social Security payments.

7
8 89. Dismayed by this misconduct, MR. MCCAFFREY confronted defendant LIU
9 and defendant HSU. Far from denying the Human Resources Director's explanation, defendant
10 HSU and defendant LIU confirmed it (indeed, defendant LIU referred to these individuals as
11 "phantom employees."). Although MR. MCCAFFREY complained to defendants HSU and LIU
12 that such conduct constituted fraud and was unacceptable, MR. MCCAFFREY is informed and
13 believes, and thereon alleges, that SOLARMAX continued these practices.

14
15 90. In June 2014, MR. MCCAFFREY learned that SOLARMAX, again with the
16 knowledge and approval of its highest level executives, was defrauding the California State
17 Disability Insurance System. He discovered the fraud when SOLARMAX's Controller, Jessie Chen,
18 asked him to sign a \$9,000 check payable to a woman whose name he did not recognize ("Rose Y M
19 Liu"). When he questioned Ms. Chen about the check and the woman, she replied that it was for a
20 "consulting fee" and that she did not know who payee was. Upon further investigation, MR.
21 MCCAFFREY learned that the payee lived in Chatsworth, California and worked at a pre-school in
22 North Hills, California. He further learned that she was married to an individual named Daniel Shih
23 – the former owner of an entity that was acquired by SOLARMAX.¹⁹

24
25 91. MR. MCCAFFREY confronted defendant LIU about the payment and asked
26 to know why SOLARMAX was paying \$9,000 in "consulting fees" to Daniel Shih's wife – a pre-

27 _____
28 ¹⁹ The entity, after being acquired by SOLARMAX, subsequently became SOLARMAX LED, INC.

1 school worker who had never provided services to SOLARMAX. Defendant LIU explained to MR.
2 MCCAFFREY that Daniel Shih could not be paid directly because he was receiving disability
3 benefits from the State of California and would lose those benefits if he declared this income. MR.
4 MCCAFFREY replied that such conduct constituted fraud, and refused to sign the check. MR.
5 MCCAFFREY thereafter complained to defendant LIU and defendant HSU that this scheme was
6 “insurance fraud, plain and simple” and refused to participate in this illegal conduct, stating, “I will
7 not be party to this activity.”
8

9 **J. During His Employment, MR. MCCAFFREY Was Subjected to Harassment and**
10 **Discrimination Based on National Origin, Race and Ethnicity.**
11

12 92. Throughout his employment, MR. MCCAFFREY, along with other
13 employees of non-Chinese and/or Taiwanese descent, was subjected to an incessant pattern and
14 practice of harassment and discrimination based on national origin, race and ethnicity. Such
15 conduct, included, among other things, the following:
16

- 17 (a) Defendants LIU and YUAN repeatedly subjected MR. MCCAFFREY to
18 discriminatory epithets. Among other things, defendants LIU and YUAN
19 repeatedly called MR. MCCAFFREY “white face.” Defendants used these
20 slurs often, and in the presence of other employees and management.
21
- 22 (b) Defendants LIU and YUAN repeatedly told MR. MCCAFFREY that they
23 chose a “white face” as their CFO because it would look better to have a
24 “white face” on their management team, that it would look better to have a
25 “white face” when SOLARMAX went public, and that they needed a “white
26 face” to solicit investors on Wall Street. This statement was made repeatedly,
27 including during management meetings with other executives.
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- (c) Defendant YUAN repeatedly called MR. MCCAFFREY a “gringo.”

- (d) Defendant LIU repeatedly told MR. MCCAFFREY that SOLARMAX’s Caucasian female employees were “fat white cows.” Defendant LIU would then proceed to mock and insult these employees, imitating how she believed they walked – puffing out her chest, raising her arms, and stomping in a circle.

- (e) Defendant LIU repeatedly warned MR. MCCAFFREY that all African Americans, including those employed by SOLARMAX, were “dangerous and lazy.”

- (f) Defendant YUAN told MR. MCCAFFREY: “You are from New York, you must be Jewish – they have all of the money. You should go there to raise money.”

- (g) In 2013 and 2014, SOLARMAX disproportionately terminated employees of non-Chinese and/or Taiwanese descent. Although MR. MCCAFFREY suggested several low-performing employees of Chinese and/or Taiwanese descent for a layoff in June 2014, defendant LIU and defendant HSU refused to even consider them, instead opting to terminate higher-performing employees of *non*-Chinese and/or Taiwanese descent.

- (h) SOLARMAX paid cash bonuses (in red envelopes) at Chinese New Year to employees of Chinese and/or Taiwanese descent, while giving nothing to other employees, who were not of Chinese and/or Taiwanese descent, including MR. MCCAFFREY.

93. Throughout his employment, MR. MCCAFFREY protested and objected to the harassing and discriminatory conduct. When defendants YUAN or LIU would utter an offensive

1 insult or epithet, MR. MCCAFFREY contemporaneously objected, telling them that their comments
2 were inappropriate. Then, on June 16, 2014, he complained in writing to defendant LIU. Despite
3 his objections, MR. MCCAFFREY is informed and believes, and thereon alleges, that defendants
4 failed to investigate or otherwise take immediate and appropriate corrective action to address the
5 conduct.

6
7 **K. On September 30, 2014, in Retaliation for His Opposition to SOLARMAX's Illegal**
8 **Activities, Mr. McCaffrey Is Fired.**

9
10 94. As set forth hereinabove, MR. MCCAFFREY, starting on June 13, 2013 and
11 continuing through September 2014, reported, objected to, opposed, resisted and otherwise raised
12 concerns about the fraud, harassment, discrimination and other unlawful conduct he encountered
13 during his employment with SOLARMAX.

14
15 95. On September 30, 2014 – just eight days after MR. MCCAFFREY's most
16 recent complaint about SOLARMAX's efforts to fraudulently inflate its revenue – defendant HSU
17 summoned him to SOLARMAX's executive conference room. Three other board members were in
18 attendance, including defendant LIU and defendant YUAN. After pre-textually informing MR.
19 MCCAFFREY that there were “communication problems” and he was not “the right person for the
20 role,” defendants summarily fired him.

21
22 96. SOLARMAX's attempt to justify MR. MCCAFFREY's termination by
23 vaguely referring to “communication problems” is a pretext. In fact, SOLARMAX fired him in
24 retaliation for his opposition to the fraud, harassment, discrimination and other unlawful conduct he
25 encountered and uncovered during his employment.

26
27 97. Moreover, after terminating him without good cause, defendants refused to
28 pay him the severance compensation to which he was entitled under the terms of his employment

1 agreement. Instead, in violation of Section 206.5 of the California Labor Code, they unlawfully
2 attempted to condition the payment of such compensation upon his willingness to execute a full
3 release and waiver of all claims, including, without limitation, the claims alleged herein. MR.
4 MCCAFFREY refused to do so. Defendants have, to date, refused to pay him the wages to which he
5 is entitled.

6
7 98. With MR. MCCAFFREY out of its way and no longer an obstacle to the
8 company's misconduct, SOLARMAX was free to continue engaging in its pattern of unlawful
9 activity. Indeed, within months after his termination, MR. MCCAFFREY is informed and believes,
10 and thereon alleges, that SOLARMAX replaced him as Chief Financial Officer with defendant
11 YUAN – an individual who would not only stay silent about those activities, but who would be, and
12 had been, complicit in them.

13
14 99. Prior to the filing of this action, MR. MCCAFFREY filed a complaint with
15 the Department of Fair Employment and Housing (“DFEH”) alleging that the acts of defendants, and
16 each of them, established a violation of the Fair Employment and Housing Act, Government Code
17 Sections 12900, *et seq.*, and has received the requisite right to sue letters.

18
19 100. MR. MCCAFFREY has been generally damaged in an amount within the
20 jurisdictional limits of this Court.

21
22 //

23 **ALTER EGO ALLEGATIONS**

24 101. MR. MCCAFFREY is informed and believes and thereon alleges that there
25 exists, and all times relevant herein there existed, a unity of interest and ownership between
26 defendant SOLARMAX TECHNOLOGY, INC., defendant SOLARMAX RENEWABLE ENERGY
27 PROVIDER, INC., defendant HSU, defendant LIU, and defendant YUAN such that any
28 individuality and separateness between and among such entities and individuals has ceased to exist,

1 and defendant SOLARMAX TECHNOLOGY, INC., and defendant SOLARMAX RENEWABLE
2 ENERGY PROVIDER, INC. are and were at all times relevant to this action, the alter ego of each
3 other, as well as the alter egos of defendant HSU, defendant LIU and defendant YUAN.
4

5 102. MR. MCCAFFREY is informed and believes, and thereon alleges, that
6 defendant SOLARMAX TECHNOLOGY, INC., and defendant SOLARMAX RENEWABLE
7 ENERGY PROVIDER, INC. are, and at all times mentioned herein were, mere shells,
8 instrumentalities and conduits through which defendants HSU, LIU and YUAN carried on their
9 business in the corporate names. Defendants HSU, LIU and YUAN completely control and
10 dominate defendant SOLARMAX TECHNOLOGY, INC. and defendant SOLARMAX
11 RENEWABLE ENERGY PROVIDER, INC. MR. MCCAFFREY is informed and believes, and
12 thereon alleges, that defendants HSU, LIU and YUAN colluded to unduly influence shareholders to
13 vote off key board members who were challenging the control of defendants HSU, LIU and YUAN.
14 MR. MCCAFFREY is further informed and believes, and thereon alleges, that defendants HSU, LIU
15 and YUAN diverted assets from defendant SOLARMAX TECHNOLOGY, INC. and defendant
16 SOLARMAX RENEWABLE ENERGY PROVIDER, INC. for personal use and to the detriment of
17 creditors and shareholders, and withdrew corporate funds for personal use without treating such
18 withdrawals as salaries or dividends (including, without limitation, withdrawing thousands of dollars
19 in cash for trips to China and Taiwan). MR. MCCAFFREY is further informed and believes and
20 thereon alleges that defendants HSU, LIU and YUAN have commingled personal and corporate
21 funds and assets, have undercapitalized defendant SOLARMAX TECHNOLOGY, INC. and
22 defendant SOLARMAX RENEWABLE ENERGY PROVIDER, INC., have personally guaranteed
23 the obligations of defendant SOLARMAX TECHNOLOGY, INC. and defendant SOLARMAX
24 RENEWABLE ENERGY PROVIDER, INC. (including, without limitation, defendant HSU and
25 defendant LIU's personal guarantee of a \$3,000,000 line of credit from Cathay Bank to defendant
26 SOLARMAX TECHNOLOGY, INC.), and have failed to observe corporate formalities, including
27 failing to observe the bylaws of defendant SOLARMAX TECHNOLOGY, INC. and defendant
28 SOLARMAX RENEWABLE ENERGY PROVIDER, INC.

1 106. As alleged herein and in violation of California Labor Code Section 1102.5,
2 defendants, and each of them, retaliated against MR. MCCAFFREY for his disclosure of
3 information that he had reasonable cause to believe disclosed a violation of Federal and California
4 laws, rules and regulations to persons with authority over MR. MCCAFFREY, and who had the
5 authority to investigate, discover, and correct the complained of violations or noncompliance. Said
6 activities would result in a violation of various Federal and California statutes and regulations such
7 as the following: (1) 18 U.S.C.A. §§ 1341, 1343, 1348; (2) Section 17(a) of the Securities Act of
8 1933 [15 U.S.C. § 77q(a)(1)-(3)]; (3) Section 10(b) of the Securities Exchange Act of 1934 [15
9 U.S.C.A. § 78j]; (4) SEC Rule 10b-5 [17 C.F.R. § 240.10b-5]; (5) Sections 1572 and 1573 of the
10 California Civil Code; (6) Sections 1709, 1710 and 1711 of the California Civil Code; (7) Sections
11 12940, *et seq.* of the California Government Code; (8) Sections 309, 820, 1507, 2207, 2254, 2255
12 and 25000, *et seq.* of the California Corporations Code; (9) Sections 17500 and 17200, *et seq.* of the
13 California Business and Professions Code; (10) various other California and Federal statutes,
14 regulations and codes.

15
16 107. By the aforesaid acts and omissions of defendants, and each of them, MR.
17 MCCAFFREY has been directly and legally caused to suffer actual damages including, but not
18 limited to, loss of earnings, reliance damages, costs of suit and other pecuniary loss in an amount not
19 presently ascertained, but to be proven at trial.

20
21 108. As a further direct and legal result of the acts and conduct of defendants, and
22 each of them, as aforesaid, MR. MCCAFFREY has been caused to and did suffer and continues to
23 suffer severe emotional and mental distress, anguish, humiliation, shame, embarrassment, fright,
24 shock, pain, discomfort and anxiety. MR. MCCAFFREY does not know at this time the exact
25 duration or permanence of said injuries, but is informed and believes, and thereon alleges, that some
26 if not all of the injuries are reasonably certain to be permanent in character.

27
28 109. MR. MCCAFFREY is informed and believes and thereon alleges that the

1 defendants, and each of them, by engaging in the aforementioned acts and/or in authorizing and/or
2 ratifying such acts, engaged in wilful, malicious, fraudulent, intentional, oppressive and despicable
3 conduct, and acted with wilful and conscious disregard of the rights, welfare and safety of MR.
4 MCCAFFREY, thereby justifying the award of punitive and exemplary damages in an amount to be
5 determined at trial.

6
7 110. The aforesaid acts and omissions of defendants, and each of them, justify the
8 imposition of any and all civil penalties pursuant to Cal. Labor Code §§ 1102.5(f).

9
10 111. As a result of Defendants' conduct as alleged herein MR. MCCAFFREY is
11 entitled to reasonable attorneys' fees and costs of suit as provided in Section 1021.5 of the California
12 Civil Procedure Code.

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21 **SECOND CAUSE OF ACTION**

22 **DISCRIMINATION IN EMPLOYMENT BASED ON NATIONAL ORIGIN, ANCESTRY**
23 **ETHNICITY AND RACE**

24 **(CALIFORNIA GOVERNMENT CODE SECTION 12940(a))**

25 (Against Defendants SOLARMAX TECHNOLOGY, INC., SOLARMAX RENEWABLE ENERGY
26 PROVIDER, INC., and DOES 1-25)

27
28 112. MR. MCCAFFREY realleges and incorporates by reference paragraphs 1

1 through 111, as though set forth in full.

2
3 113. As alleged herein and in violation of California Government Code Section
4 12940(a), defendants, and each of them, terminated and discharged MR. MCCAFFREY because of
5 his national origin, ancestry, ethnicity, and/or race. Among other things, MR. MCCAFFREY's
6 national origin, ancestry, ethnicity, and/or race was a substantial motivating reason in defendants'
7 decision to terminate him.

8
9 114. By the aforesaid acts and omissions of defendants, and each of them, MR.
10 MCCAFFREY has been directly and legally caused to suffer actual damages including, but not
11 limited to, loss of earnings and future earning capacity, attorneys' fees, costs of suit and other
12 pecuniary loss not presently ascertained.

13
14 115. As a further direct and legal result of the acts and conduct of defendants, and
15 each of them, as aforesaid, MR. MCCAFFREY has been caused to and did suffer and continues to
16 suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock,
17 discomfort, anxiety, and related symptoms. The exact nature and extent of said injuries is presently
18 unknown to MR. MCCAFFREY. MR. MCCAFFREY does not know at this time the exact duration
19 or permanence of said injuries, but is informed and believes, and thereon alleges, that some if not all
20 of the injuries are reasonably certain to be permanent in character.

21
22 116. MR. MCCAFFREY is informed and believes, and thereon alleges, that the
23 defendants, and each of them, by engaging in the aforementioned acts and/or in authorizing and/or
24 ratifying such acts, engaged in wilful, malicious, intentional, oppressive and despicable conduct, and
25 acted with wilful and conscious disregard of the rights, welfare and safety of MR. MCCAFFREY,
26 thereby justifying the award of punitive and exemplary damages in an amount to be determined at
27 trial.

28

1 discomfort, anxiety, and related symptoms. The exact nature and extent of said injuries is presently
2 unknown to MR. MCCAFFREY. MR. MCCAFFREY does not know at this time the exact duration
3 or permanence of said injuries, but is informed and believes, and thereon alleges, that some if not all
4 of the injuries are reasonably certain to be permanent in character.

5
6 122. MR. MCCAFFREY is informed and believes, and thereon alleges, that the
7 defendants, and each of them, by engaging in the aforementioned acts and/or in authorizing and/or
8 ratifying such acts, engaged in wilful, malicious, intentional, oppressive and despicable conduct, and
9 acted with wilful and conscious disregard of the rights, welfare and safety of MR. MCCAFFREY,
10 thereby justifying the award of punitive and exemplary damages in an amount to be determined at
11 trial.

12
13 123. As a result of defendants' acts and conduct, as alleged herein, MR.
14 MCCAFFREY is entitled to reasonable attorneys' fees and costs of suit as provided in Section
15 12965(b) of the California Government Code.

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22 **FOURTH CAUSE OF ACTION**

23 **HARASSMENT BASED ON NATIONAL ORIGIN, ANCESTRY, ETHNICITY AND RACE**

24 **(CALIFORNIA GOVERNMENT CODE SECTION 12940(j))**

25 (Against Defendants SOLARMAX TECHNOLOGY, INC., SOLARMAX RENEWABLE ENERGY
26 PROVIDER, INC., CHING LIU, SIMON YUAN and DOES 1-50)

27
28 124. MR. MCCAFFREY realleges and incorporates by reference paragraphs 1

1 through 123, as though set forth in full.

2
3 125. As alleged herein and in violation of California Government Code Section
4 12940(j), defendants, and each of them, and/or their agents and employees, subjected MR.
5 MCCAFFREY to harassment based on national origin, ancestry, ethnicity, and/or race. Defendants,
6 their agents, and supervisors, actively engaged in, facilitated, fostered, approved of, and knew or
7 should have known of the unlawful harassing conduct, failed to take immediate and appropriate
8 corrective action and otherwise failed to abide by their statutory duty to take all reasonable steps to
9 prevent harassment from occurring. The harassment was sufficiently pervasive or severe as to alter
10 the conditions of MR. MCCAFFREY's employment and to create a hostile, intimidating and/or
11 abusive work environment.

12
13 126. By the aforesaid acts and omissions of defendants, and each of them, MR.
14 MCCAFFREY has been directly and legally caused to suffer actual damages including, but not
15 limited to, loss of earnings and future earning capacity, attorneys' fees, costs of suit and other
16 pecuniary loss not presently ascertained.

17
18 127. As a further direct and legal result of the acts and conduct of defendants, and
19 each of them, as aforesaid, MR. MCCAFFREY has been caused to and did suffer and continues to
20 suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock,
21 discomfort, anxiety, and related symptoms. The exact nature and extent of said injuries is presently
22 unknown to MR. MCCAFFREY. MR. MCCAFFREY does not know at this time the exact duration
23 or permanence of said injuries, but is informed and believes, and thereon alleges, that some if not all
24 of the injuries are reasonably certain to be permanent in character.

25
26 128. MR. MCCAFFREY is informed and believes, and thereon alleges, that the
27 defendants, and each of them, by engaging in the aforementioned acts and/or in authorizing and/or
28 ratifying such acts, engaged in wilful, malicious, intentional, oppressive and despicable conduct, and

1 acted with wilful and conscious disregard of the rights, welfare and safety of MR. MCCAFFREY,
2 thereby justifying the award of punitive and exemplary damages in an amount to be determined at
3 trial.

4
5 129. As a result of defendants' acts and conduct, as alleged herein, MR.
6 MCCAFFREY is entitled to reasonable attorneys' fees and costs of suit as provided in Section
7 12965(b) of the California Government Code.

8
9
10 **FIFTH CAUSE OF ACTION**
11 **FAILURE TO TAKE ALL REASONABLE STEPS TO PREVENT DISCRIMINATION AND**
12 **HARASSMENT**

13 **(CALIFORNIA GOVERNMENT CODE SECTION 12940(k))**

14 (Against Defendants SOLARMAX TECHNOLOGY, INC., SOLARMAX RENEWABLE ENERGY
15 PROVIDER, INC., and DOES 1-25)

16
17 130. MR. MCCAFFREY realleges and incorporates by reference paragraphs 1
18 through 129, as though set forth in full.

19
20 131. As alleged herein and in violation of California Government Code Section
21 12940(k), defendants, and each of them, failed to take all reasonable steps necessary to prevent
22 discrimination and harassment from occurring.

23
24 132. By the aforesaid acts and omissions of defendants, and each of them, MR.
25 MCCAFFREY has been directly and legally caused to suffer actual damages including, but not
26 limited to, loss of earnings and future earning capacity, attorneys' fees, costs of suit and other
27 pecuniary loss not presently ascertained.

28

1 137. As set forth herein, defendants, and each of them, wrongfully terminated MR.
2 MCCAFFREY's employment in violation of various fundamental public policies of the United
3 States and the State of California. These fundamental public policies are embodied in, *inter alia*, the
4 following Federal and California statutes and codes: (1) 15 U.S.C.A. § 78u-6; (2) 18 U.S.C.A. §§
5 1341, 1343, 1348; (3) Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)(1)-(3)];
6 (4) Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C.A. § 78j]; (5) SEC Rule 10b-5
7 [17 C.F.R. § 240.10b-5]; (6) 8 U.S.C.A. § 1153(b)(5); (7) 8 C.F.R. § 204.6; (8) Sections 1572 and
8 1573 of the California Civil Code; (9) Sections 1709, 1710 and 1711 of the California Civil Code;
9 (10) Sections 12940, *et seq.* of the California Government Code; (11) Section 1102.5 of the
10 California Labor Code; (12) Section 51, *et seq.*, of the California Civil Code; (13) Article I, Section
11 8 of the California Constitution; (14) Sections 309, 820, 1507, 2207, 2254, 2255 and 25000, *et seq.*
12 of the California Corporations Code; (15) Sections 17500 and 17200, *et seq.* of the California
13 Business and Professions Code; and (16) various other California and Federal statutes, regulations
14 and codes.

15
16 138. By the aforesaid acts and omissions of defendants, and each of them, MR.
17 MCCAFFREY has been directly and legally caused to suffer actual damages including, but not
18 limited to, loss of earnings and future earning capacity, attorneys' fees, costs of suit and other
19 pecuniary loss not presently ascertained.

20
21 139. As a further direct and legal result of the acts and conduct of defendants, and
22 each of them, as aforesaid, MR. MCCAFFREY has been caused to and did suffer and continues to
23 suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock,
24 discomfort, anxiety, and related symptoms. The exact nature and extent of said injuries is presently
25 unknown to MR. MCCAFFREY. MR. MCCAFFREY does not know at this time the exact duration
26 or permanence of said injuries, but is informed and believes, and thereon alleges, that some if not all
27 of the injuries are reasonably certain to be permanent in character.

28

1 Defendants.

2

3 145. By the aforesaid acts and omissions of Defendants, MR. MCCAFFREY has
4 been directly and legally caused to suffer actual damages including, but not limited to, loss of earned
5 wages owed to him by Defendants.

6

7 146. As a result of Defendants' wilful failure to pay MR. MCCAFFREY his wages
8 as alleged herein, MR. MCCAFFREY is entitled to an additional waiting time penalty in an amount
9 equal to thirty days' of his regular rate of pay, as provided in Section 203 of the California Labor
10 Code.

11

12 147. As a result of Defendants' failure to pay MR. MCCAFFREY his wages, and
13 other benefits, as alleged herein, MR. MCCAFFREY is entitled to interest on his unpaid wages from
14 the date they were due, as provided in Section 218.6 of the California Labor Code.

15

16 148. As a result of Defendants' failure to pay MR. MCCAFFREY his wages, as
17 alleged herein, MR. MCCAFFREY is entitled to reasonable attorneys' fees and costs of suit, as
18 provided in Section 218.5 of the California Labor Code.

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23

EIGHTH CAUSE OF ACTION

24

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

25

(Against all Defendants)

26

27 149. MR. MCCAFFREY realleges and incorporates by reference paragraphs 1
28 through 148, as though set forth in full.

PRAYER FOR RELIEF

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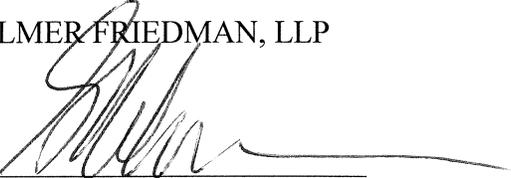
WHEREFORE, Plaintiff MICHAEL MCCAFFREY prays for judgment against

Defendants as follows:

1. General damages in an amount to be proved at trial;
2. Special damages in an amount to be proved at trial;
3. Punitive damages in an amount appropriate to punish Defendants and to make an example of Defendants to the community;
4. Penalties;
5. Reasonable attorneys' fees;
6. Costs of suit;
7. Interest;
8. For such other relief as the Court deems proper.

DATED: June 23, 2015

HELMER FRIEDMAN, LLP

By: 
Gregory D. Helmer, P.C.

Attorneys for Plaintiff
MICHAEL MCCAFFREY

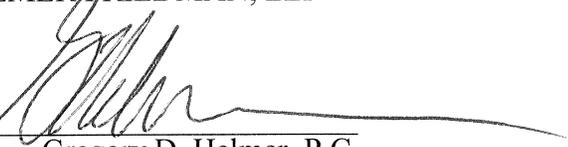
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PLAINTIFF'S DEMAND FOR JURY TRIAL

Plaintiff MICHAEL MCCAFFREY hereby demands a trial by jury.

DATED: June 23, 2015

HELMER FRIEDMAN, LLP

By: 
Gregory D. Helmer, P.C.

Attorneys for Plaintiff
MICHAEL MCCAFFREY