

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

IN RE:

POWER HOME SOLAR, LLC,

Debtor,

CLAUDE MUMPOWER, et al.,

Plaintiffs

v.

POWER HOME SOLAR, LLC, et al.,

Defendants.

Chapter 7

Case No. 22-50228

Adv. Proc. No. 23-03005

**DEFENDANTS SUNLIGHT FINANCIAL LLC’S AND CROSS RIVER BANK’S
JOINT MOTION TO COMPEL ARBITRATION AND MOTION TO DISMISS
THE FIRST AMENDED ADVERSARY CLASS ACTION COMPLAINT**

NOW COME Defendants Sunlight Financial LLC (“Sunlight”) and Cross River (“Cross River”) (collectively, the “Defendants”), by and through counsel, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, Rule 7012 of the Federal Rules of Bankruptcy Procedure, and Local Rules 9013-1 and 9013-2, move this Court for an Order compelling arbitration as to the Plaintiffs alleging claims against Cross River or Sunlight who entered agreements requiring Plaintiffs to arbitrate such claims. Additionally, as further described in Defendants’ Memorandum filed contemporaneously with this Motion, Defendants move this Court for an Order dismissing the claims of the Plaintiffs asserting claims against Cross River or Sunlight who did not enter agreements containing arbitration provisions.

This 30th day of June, 2023.

/s/ Locke Beatty

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic notification on those parties registered with this Court's CM/ECF system to receive notices for this case.

/s/ Locke Beatty

R. Locke Beatty

Counsel for Defendants

Sunlight Financial, LLC and Cross River Bank

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Defendant Sunlight Financial LLC (“Sunlight”) and Defendant Cross River Bank (“Cross River”) submit this Memorandum in support of their Joint Motion to Compel Arbitration and Motion to Dismiss the First Amended Adversary Class Action Complaint (the “Amended Complaint”).

I. SUMMARY OF THE ACTION

Sunlight arranged financing from certain lenders, including Cross River, for the purchase of residential solar power systems. Nearly all Plaintiffs asserting claims against Sunlight or Cross River in this proceeding entered into an agreement to arbitrate claims relating to their purchases. Thus, their claims must be stayed because the Federal Arbitration Act directs courts to compel arbitration where, as here, a valid agreement to arbitrate exists and the claims at issue fall within the scope of that agreement. For the remaining Plaintiffs who did not execute arbitration agreements, their claims must be dismissed because they lack standing and cannot establish reliance or causation.

II. STATEMENT OF FACTS

A. Plaintiffs purchased solar power systems.

Before Defendant Power Home Solar, LLC (“Power Home”) declared bankruptcy, it sold and installed residential solar power systems directly to individual customers. Plaintiffs—all Power Home customers—signed contracts with Power Home to install solar panel systems at their residences. ECF No. 34 (“FAC”) ¶ 3. Of the eighty-nine Plaintiffs,¹ eighty-four entered loan agreements with financial institutions to finance the purchase of their systems. *Id.* ¶ 69-78. Twenty-eight Plaintiffs allege that Sunlight arranged financing for their purchases from third-party

¹ This number does not include three individuals (Jeffrey Rickard, Antwain Carey, and Trisha Carey) described as “Plaintiffs” (FAC ¶¶ 70-71), but not listed in the caption.

lenders (collectively, the “Arbitration Plaintiffs”).² *Id.* at ¶¶ 23, 67, 76. No Plaintiffs allege they received financing directly from Sunlight, nor could they. Of the twenty-eight Arbitration Plaintiffs, eight allege that they received financing from third-party lender, Cross River (“Cross River Plaintiffs”).³ All named Plaintiffs reside in Virginia or North Carolina. *Id.* ¶ 3.

Plaintiffs allege that Power Home’s salespersons made two types of misrepresentations to them during the sales and financing process. First, Plaintiffs allege that Power Home misrepresented to Plaintiffs their eligibility for a federal tax credit related to the effectiveness and efficiency of the system. *Id.* ¶¶ 41-52. Second, Plaintiffs allege that Power Home misrepresented the price of the system. *Id.* ¶¶ 30, 37-39, 53-56. Specifically, Plaintiffs allege that Power Home represented that it would receive all proceeds from the loan as the purchase price, when, in fact, the lender that originated the loan kept a portion of the proceeds as a “hidden” fee. *Id.* ¶¶ 39, 55.

Other than alleging that Sunlight “arranged” the financing, *id.* ¶¶ 67, 76, Plaintiffs do not allege that Sunlight was directly involved in this process or that Sunlight or its employees made any of the alleged misrepresentations that form the basis for their claims. Plaintiffs likewise do

² The Arbitration Plaintiffs are Lesley Jackson, Daniel Jackson, Kim L. Larsen, Scott Larsen, Joshua Dickey, Margaret Fleshman, Kathy Roberson, Carl Steinhart, Lashanda Theodore, Wilson Theodore, Elizabeth Mank, Heather Wilson Medlin, Dumont Jones, Jeanette Jones, Kami Jordy, Ashley Shelley, Anthony Ward, Daniel Roberts, Anthony Fucci, Teresa Ciccone, Michael Craighead, Jerry Watson, Erin Ray, Marc Kennedy, Vichitra Prasongphime, Ashley Sustek, Matt Sustek, and Richard Harrell. FAC ¶ 76. Three other individuals, Eric Medlin, Jacob Green, and Emily Yeatts, purport to state claims against Sunlight (*id.* ¶¶ 69, 80), but do not claim to have signed any loan agreement involving Sunlight. Accordingly, their claims fail for reasons set forth separately below. *See infra*, Section IV.

³ The Cross River Plaintiffs are a subset of the Arbitration Plaintiffs. They include Kim L. Larsen, Scott Larsen, Joshua Dickey, Margaret Fleshman, Kathy Roberson, Carl Steinhart, Lashanda Theodore, and Wilson Theodore. FAC ¶ 73. Two other individuals, Jacob Green and Emily Yeatts, purport to state claims against Cross River (*id.* ¶ 69) but did not sign any loan agreement with Cross River. Accordingly, their claims fail for reasons set forth separately below. *See infra*, Section IV.

not allege that Cross River made any of the alleged misrepresentations that form the basis for their claims.

B. The Arbitration Plaintiffs agreed to arbitrate any claims against Sunlight and Cross River.

The Arbitration Plaintiffs allege that they executed two contracts when purchasing their solar panel systems: an installation agreement with Power Home (the “Contractor Agreement”) and a loan agreement with a lender (“the Loan Agreement”). *Id.* ¶ 30.⁴ The Loan Agreement for each Arbitration Plaintiff contains an arbitration provision whereby each Arbitration Plaintiff agreed to arbitrate any claims relating to, among other things, the loan or the purchase of the solar panel system (“the Arbitration Provision”). Ex. A, Declaration of Justin Carpenter (“Carpenter Decl.”) ¶¶ 31-38. Each Loan Agreement emphasizes the existence of the Arbitration Provision above the signature line in capitalized and bolded font:

BY SIGNING BELOW, YOU AGREE TO THE TERMS OF THIS NOTE, INCLUDING THE ADDITIONAL TERMS AND CONDITIONS BELOW AND IN THE ATTACHED ARBITRATION PROVISION.

Id. ¶ 29. Below the signature line, each Loan Agreement also states that:

THE ARBITRATION PROVISION ATTACHED AS EXHIBIT A WILL HAVE A SUBSTANTIAL IMPACT ON YOUR RIGHTS IN THE EVENT OF A DISPUTE BETWEEN YOU AND US OR BETWEEN YOU AND CONTRACTOR. FOR EXAMPLE, WE (OR CONTRACTOR) MAY REQUIRE YOU TO ARBITRATE ANY CLAIM YOU INITIATE. IF SO, YOU WILL NOT HAVE THE RIGHT TO A JURY TRIAL OR THE RIGHT TO PARTICIPATE IN A CLASS ACTION IN COURT OR IN ARBITRATION.

Carpenter Decl. ¶ 30. Exhibit A of each Loan Agreement contains the Arbitration Provision. It states that “[u]nless prohibited by applicable law, you and we agree that either party may elect to

⁴ In the case of the Cross River Plaintiffs, the lender was Cross River. FAC ¶ 73.

require arbitration of any Claim under this Provision.” *Id.* at ¶ 33. The provision defines “Claim” to mean:

any claim, dispute or controversy between you and us (or any Related Party) that arises from or relates in any way to this Note (including any amendment, modification or extension of this Note), the Contractor Agreement, the work performed by the Contractor or a subcontractor; the System, including maintenance and servicing of the System; the arrangements between and among us, Sunlight and the Contractor; any of our marketing, advertising, solicitations and conduct relating to your request for credit or the System; our collection of any amounts you owe; or our disclosure of or failure to protect any information about you.

Id. at ¶ 34. The Loan Agreement defines “us” to mean the lender and expressly identifies Sunlight as one of the “Related Parties.” *Id.* at ¶ 36. The Arbitration Provision also includes a class-action waiver:

IF YOU OR WE ELECT TO ARBITRATE A CLAIM, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO: (i) HAVE A COURT OR A JURY DECIDE THE CLAIM . . . (iii) PARTICIPATE IN A CLASS ACTION IN COURT OR IN ARBITRATION, EITHER AS A CLASS REPRESENTATIVE, CLASS MEMBER OR CLASS OPPONENT . . . (v) JOIN OR CONSOLIDATE CLAIM(S) INVOLVING YOU WITH CLAIMS INVOLVING ANY OTHER PERSON.

Id. at ¶ 37.

C. After Power Home filed for bankruptcy, the Arbitration Plaintiffs ignored their agreements to arbitrate by filing this lawsuit.

Power Home filed a Chapter 7 bankruptcy petition on October 7, 2022. *In re Power Home Solar, LLC*, Case No. 22-50228, United States Bankruptcy Court for the Western District of North Carolina. ECF No. 1. Plaintiffs then filed the original complaint in this Court on March 10, 2023.⁵ *Id.* They filed the Amended Complaint on May 3, 2023. FAC. They seek to represent a nationwide class of individuals “who signed a contract with Power Home for the installation of a

⁵ The Arbitration Plaintiffs failed to comply with the notice-and-cure provision in their Loan Agreements that required them to give Sunlight written notice of their claims and an opportunity to resolve them without a formal proceeding. Carpenter Decl. ¶ 38.

photovoltaic solar power system at their residence in a transaction where at least one of the Defendant financial entities was involved in the sale process.” *Id.* ¶ 100. They allege claims against Sunlight and Cross River for violations of the Racketeering Influenced Corrupt Organizations (“RICO”) Act, Virginia Consumer Protection Act (“VCPA”), North Carolina Unfair and Deceptive Trade Practices Act (“UDTPA”), and fraud. *See id.* ¶¶ 111-57. In addition, they allege a Truth in Lending Act (“TILA”) claim against Cross River. *Id.* ¶¶ 158-69.⁶

III. MOTION TO COMPEL ARBITRATION

Sunlight and Cross River hereby move to stay the Arbitration Plaintiffs’ claims pending arbitration. Each Arbitration Plaintiff agreed to arbitrate any claims against Sunlight or Cross River related to their Loan Agreements and purchases of Power Home systems.

A. LEGAL STANDARD

The Federal Arbitration Act (“FAA”) states that “[a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy . . . arising out of such a contract [or] transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. The FAA directs federal courts to “rigorously enforce agreements to arbitrate.” *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987). “[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983). A party seeking to compel arbitration “bears the burden of proving that a valid arbitration agreement exists” and such a “burden . . . is not high.” *Campbell v. Five Star Quality Care - N. Carolina, LLC*, No. 3:21-CV-95-FDW-DCK, 2021 WL 5442221, at *2 (W.D.N.C. Nov. 19, 2021). The party opposing arbitration “bears the burden of proving that

⁶ Plaintiffs do not assert a TILA claim against Sunlight. FAC ¶¶ 158-69.

the claims at issue are unsuitable for arbitration.” *Id.* (citation omitted). That burden requires the opposing party to “unequivocally deny that there was an arbitration agreement and produce evidence to substantiate the denial.” *Id.* (citation omitted).

The FAA applies here because the Loan Agreements at issue affect interstate commerce. *Rota-McLarty v. Santander Consumer USA, Inc.*, 700 F.3d 690, 697 (4th Cir. 2012) (the FAA “operates to enforce an arbitration provision included in “a contract evidencing a transaction involving [interstate] commerce.”). In the Fourth Circuit, “the FAA does not impose a burden upon the party invoking the FAA to put forth specific evidence proving the interstate nature of the transaction.” *Id.* Nonetheless, the Loan Agreements fall well within the FAA’s ambit because the Arbitration Plaintiffs’ “reliance upon funds from a foreign source in a transaction is sufficient to implicate the FAA.” *Id.*; *United States ex rel. Red Hawk Contracting, Inc. v. MSK Constr., Inc.*, No. 1:16CV1183, 2018 WL 2121625, at *3 (M.D.N.C. May 8, 2018) (“The multistate nature of [a] business is itself evidence of a transaction involving interstate commerce.”) (internal quotations omitted). The relevant lenders are located in California, Florida, and New Jersey. The Arbitration Plaintiffs are residents of Virginia and North Carolina. The Loan Agreements thus affect interstate commerce and the FAA applies.

B. ARGUMENT

A court must “compel arbitration under [the FAA] if: (i) the parties have entered into a valid agreement to arbitrate, and (ii) the dispute in question falls within the scope of the arbitration agreement.” *Chorley Enters., Inc. v. Dickey’s Barbecue Restaurants, Inc.*, 807 F.3d 553, 563 (4th Cir. 2015). In the context of an adversary proceeding, the bankruptcy court must further consider whether “Congress intended to grant comprehensive jurisdiction [over the claims at issue] to bankruptcy courts.” *In re Oaktree Med. Ctr., P.C.*, 640 B.R. 649, 661 (Bankr. D.S.C. 2022) (quoting *Moses v. CashCall, Inc.*, 781 F.3d 63, 71 (4th Cir. 2015)). The litmus test for

congressional intent in the bankruptcy context is whether a claim is a “core” claim in a bankruptcy proceeding. *In re McPherson*, 630 B.R. 160, 168 & n.6 (Bankr. D. Md. 2021).

Here, the Court should compel arbitration because (1) the Arbitration Plaintiffs entered into a valid agreement to arbitrate disputes against Sunlight and Cross River; (2) their claims fall within the scope of the Arbitration Provisions; and (3) their claims are not core to Power Home’s bankruptcy and therefore the arbitration provisions are not superseded by this Court’s jurisdiction.

1. The Loan Agreements contain valid agreements to arbitrate.

Each Loan Agreement contains a valid Arbitration Provision. To determine whether an arbitration provision is valid, a court will “apply ordinary state law principles governing the formation of contracts.” *Chorley Enters.*, 807 F.3d at 563. Courts apply the choice-of-law rules of the forum state “to determine which state’s substantive law applies to [an] [a]rbitration [a]greement.” *Malamatis v. ATI Holdings, LLC*, No. CV ELH-21-2226, 2022 WL 1591406, at *14 (D. Md. May 19, 2022); accord *Klein v. Verizon Commc’ns, Inc.*, 674 F. App’x 304, 308 (4th Cir. 2017) (explaining that the forum state’s choice-of-law rules govern which state law applies to arbitration clause); see also *In re Mason*, 600 B.R. 765, 772 (Bankr. E.D.N.C. 2019) (explaining that “bankruptcy courts . . . apply their forum states’ choice of law principles”).

Here, the forum state is North Carolina. “North Carolina generally honors contractual choice-of-law provisions.” *Sunbelt Residential Acquisitions, LLC v. Crowne Lake Assocs., Ltd. P’ship*, No. 1:20-CV-401, 2021 WL 512228, at *3 n.3 (M.D.N.C. Feb. 11, 2021). Two exceptions exist to this general rule: (a) “[where] the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties’ choice”; or (b) “[where] application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest . . . in the determination of the particular issue.” *Soc. Enter., LLC v. S. Belle Organics, LLC*, No. 7:20-CV-166, 2022 WL 4084414, at *5 (E.D.N.C. Sept. 6,

2022) (enforcing choice-of-law provision). No factors are present here that warrant departing from the governing law that the parties selected in the Loan Agreements.

a) The Loan Agreements contain choice-of-law clauses selecting California, Florida, New Jersey, or Virginia law.

Each Loan Agreement signed by the Arbitration Plaintiffs contains a choice-of-law provision (“COL”). Those provisions fall into three categories: (1) COLs that select California law; (2) COLs that select Florida law; and (3) COLs that select either the law of New Jersey or the borrower’s state of residence, depending on the circumstances.

Most of the Arbitration Plaintiffs signed Loan Agreements with a California COL.⁷ Their agreements state:

GOVERNING LAW: Lender is located in California. Lender makes all credit decisions, disburses loan proceeds, and services loans in California. Subject to applicable law and any limits specified in the **STATE NOTICES AND VARIATIONS** section of this Note, **this Note is governed by federal law, and in the absence of applicable federal law, the law of the state of California.**

Carpenter Decl. ¶ 26. Two Arbitration Plaintiffs signed Loan Agreements with a Florida COL.⁸

Their agreements state:

GOVERNING LAW AND VENUE: Lender is located in Florida. Lender makes all credit decisions, disburses loan proceeds, and services loans in Florida. Subject to applicable law and any limits specified in the **STATE NOTICES AND VARIATIONS** section of this Note, **this Note is governed by federal law, and in the absence of applicable federal law, the law of the state of Florida.**

⁷ The following Arbitration Plaintiffs have a California COL: Elizabeth Mank, Teresa Ciccone, Heather Wilson Medlin, Dumont Jones, Jeanette Jones, Kami Jordy, Ashley Shelley, Anthony Ward, Daniel Roberts, Anthony Fucci, Michael Craighead, Jerry Watson, Erin Ray, Marc Kennedy, Vichitra Prasongphime, Ashley Sustek, Matt Sustek, and Richard Harrell. Carpenter Decl. ¶ 26.

⁸ The following Arbitration Plaintiffs have a Florida COL: Lesley Jackson and Daniel Jackson. Carpenter Decl. ¶ 27.

Id. ¶ 27. Finally, eight Arbitration Plaintiffs signed Loan Agreements that select New Jersey law for “matters including, but not limited to, interest, late fees and returned check fees” and the law of the state of the borrower’s state of residence for “other matters.”⁹ Each of these plaintiffs resides in Virginia,¹⁰ and their agreements contain the following provision:

GOVERNING LAW: Cross River Bank is located in the State of New Jersey and this Note will be entered into in the State of New Jersey. This Note shall be governed by: (1) federal law and the law of the state of New Jersey regarding matters including, but not limited to, interest, late fees and returned check fees; (2) the Federal Arbitration Act regarding the ARBITRATION PROVISION; and (3) certain laws of the state where the Residence is located regarding other matters.

Id. ¶ 28. Therefore, either New Jersey or Virginia law governs the validity of these provisions. While it is debatable whether the enforceability of an arbitration provision is a “matter[] including, **but not limited to** interest, late fees and returned check fees” or an “other matter,” the distinction is unimportant here. *Id.* (emphasis added). As discussed below, there are no material differences between the two states’ governing principles of contract formation. *See infra*, Section III.B.1.c).

b) *North Carolina choice-of-law rules permit this Court to apply the laws of California, Florida, New Jersey, and Virginia.*

No exception exists here that would cause a North Carolina court to reject the parties’ choice-of-law clause. All four states have a “substantial relationship” to their respective transactions, and none would impose a law contrary to the “policy of a state” with a “materially greater interest” in the outcome. *Soc. Enter.*, 2022 WL 4084414, at *5. California has a substantial relationship to the transactions governed by Loan Agreements with a California COL because, in each case, the lender is in California. Carpenter Decl. ¶ 26. The same is true for the Loan

⁹The following Arbitration Plaintiffs have this COL: Kim L. Larsen, Scott Larsen, Joshua Dickey, Margaret Fleshman, Kathy Roberson, Carl Steinhart, Lashanda Theodore, and Wilson Theodore. Carpenter Decl. ¶ 28. This list includes all the Cross River Plaintiffs. FAC ¶ 73.

¹⁰ *Id.* ¶ 13 (Dickey); *id.* ¶ 14 (Fleshman); *id.* ¶ 15 (Roberson); *id.* ¶ 16 (Steinhart); *id.* ¶ 17 (Larsens); *id.* ¶ 22 (Theodores).

Agreements selecting Florida law because the lender for those agreements is in Florida. *Id.* at ¶ 27. Both New Jersey and Virginia have a substantial relationship to transactions governed by the final COL category because, in each case, the lender is in New Jersey and the borrower resides in Virginia. Carpenter Decl. ¶¶ 13-17, 22, 28.¹¹ Accordingly, the Court should enforce the choice-of-law provisions and look to the laws of California, Florida, New Jersey, and Virginia to determine if the Arbitration Provisions are valid.

c) The Arbitration Provisions are valid under California, Florida, New Jersey, and Virginia law.

The Arbitration Provisions are valid because they satisfy the elements of contract formation under California, Florida, New Jersey, and Virginia law. Under each state's law, the elements of contract formation include offer, acceptance, and consideration. *Levy v. Only Cremations for Pets, Inc.*, 57 Cal. App. 5th 203, 211 (2020) (explaining that contract formation requires "mutual assent . . . through the medium of offer and acceptance . . . and consideration").¹² Here, each element is met.

First, as to an offer, the Loan Agreement represented the lender's offer of terms for financing the purchase of a Power Home solar system. Second, as to acceptance, each Arbitration Plaintiff manifested his or her acceptance to the Loan Agreement's terms, including the Arbitration

¹¹ To the extent that the Arbitration Plaintiffs were to argue that North Carolina has a greater interest in this dispute, and therefore, should apply its own law, that argument would be unpersuasive. As explained in notes 12 to 16 **Error! Bookmark not defined.** below, the principles of contract formation in North Carolina are similar to those in California, Florida, New Jersey, and Virginia, and therefore application of the law of any of those states would not be contrary to the policy of North Carolina.

¹² Florida, New Jersey, and Virginia also require these elements. *Ferguson v. Carnes*, 125 So. 3d 841, 842 (Fla. Dist. Ct. App. 2013) (stating that the elements of contract formation include offer, acceptance, and consideration); *Goldfarb v. Solimine*, 245 N.J. 326, 339 (2021) (same); *Montagna v. Holiday Inns, Inc.*, 221 Va. 336, 346 (1980) (same). So does North Carolina. *Barbee v. Johnson*, 190 N.C. App. 349, 355 (2008) ("To form a valid contract there must be an offer and an acceptance, supported by adequate consideration.").

Provision, by signing the document. *Marenco v. DirecTV LLC*, 233 Cal. App. 4th 1409, 1417 (2015) (explaining that “[a] party’s acceptance of an agreement to arbitrate” may be shown by the “party sign[ing] the agreement”).¹³ The fact that the Arbitration Plaintiffs signed their Loan Agreements electronically (rather than by hand) makes no difference. Cal. Civ. Code § 1633.7 (“A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.”).¹⁴ Indeed, each Loan Agreement emphasizes the presence of the Arbitration Provision both above and below the signature line in bolded, capitalized font. Carpenter Decl. ¶¶ 29, 30. Third, as to consideration, the lender agreed to lend the funds that allowed the Arbitration Plaintiffs to purchase the Power Home solar systems they desired in exchange for their promise to repay those loans and abide by the other terms of the Loan Agreement, including the Arbitration Provision. Such an exchange of promises constitutes valid consideration. *See Steiner v. Thexton*, 48 Cal. 4th 411, 420-21 (2010) (explaining consideration generally requires a “a benefit or prejudice that . . . induced the promisor’s promise”).¹⁵ Thus, the Arbitration Provisions are valid and enforceable.

¹³ Courts in Florida, New Jersey, and Virginia also hold that a signature shows acceptance. *D.L. Peoples Grp., Inc. v. Hawley*, 804 So. 2d 561, 563 (Fla. Dist. Ct. App. 2002) (so holding); *Yale Materials Handling Corp. v. White Storage & Retrieval Sys., Inc.*, 573 A.2d 484, 486 (N.J. Super. App. Div. 1990) (same); *Fidler v. Accent Pers., Inc.*, 11 Va. Cir. 278 (1988) (same). Courts in North Carolina reach the same conclusion. *Martin v. Vance*, 133 N.C. App. 116, 124 (N.C. App. 1999) (enforcing agreement to arbitrate because plaintiff was “charged with knowledge of and assent to the agreement which she signed.”).

¹⁴ The law is the same in Florida, New Jersey, Virginia, and North Carolina. Fla. Stat. Ann. § 668.004; N.J. Stat. Ann. § 12A:12-7; Va. Code Ann. § 59.1-501.7.; N.C. Gen. Stat. Ann. § 66-317.

¹⁵ Courts in Florida, New Jersey, and Virginia also hold that a bargained-for exchange of promises constitutes sufficient consideration. *See Cintas Corp. No. 2 v. Schwalier*, 901 So. 2d 307, 309 (Fla. Dist. Ct. App. 2005) (defining consideration); *Seaview Orthopaedics ex rel. Fleming v. Nat’l Healthcare Res., Inc.*, 841 A.2d 917, 921 (N.J. Super. App. Div. 2004) (same); *Brewer v. First Nat. Bank of Danville*, 202 Va. 807, 815 (1961) (same). Courts in North Carolina also so hold. *Elliott v. Enka-Candler Fire & Rescue Dep’t, Inc.*, 213 N.C. App. 160, 163 (2011) (defining consideration).

d) Sunlight and Cross River can enforce the Arbitration Provisions.

Cross River is a party to the Loan Agreements for the Cross River Plaintiffs, and Sunlight, as a “Related Party” within the meaning of the Arbitration Provisions, is entitled to enforce the provision against all Arbitration Plaintiffs. *See* Carpenter Decl. ¶ 34. Even though Sunlight did not sign any of the Loan Agreements, it may enforce the Arbitration Provisions because the parties to them expressed their intent to benefit Sunlight and allow it to enforce the Arbitration Provision by defining Sunlight as a “Related Party,” *Cione v. Foresters Equity Servs., Inc.*, 58 Cal. App. 4th 625, 637 (1997) (holding that non-signatory could compel arbitration as a third-party beneficiary where the contract containing the provision referenced the non-signatory), and because the Arbitration Plaintiffs’ claims against Sunlight “make reference to and presume the existence of” the underlying Loan Agreements. *Mance v. Mercedes-Benz USA*, 901 F. Supp. 2d 1147, 1157 (N.D. Cal. 2012) (holding that non-signatory could compel arbitration under an equitable estoppel theory).¹⁶

2. This dispute falls within the scope of the Arbitration Provisions because it relates to the Loan Agreements and Power Home systems.

The Arbitration Plaintiffs’ claims fall within the scope of the Arbitration Provisions because they encompass any dispute relating to the Loan Agreement or Power Home systems. In determining the scope of an arbitration clause, a “heavy presumption of arbitrability exists.” *Mey v. DIRECTV, LLC*, 971 F.3d 284, 292 (4th Cir. 2020). That presumption requires a court to

¹⁶ Courts in Florida, New Jersey, Virginia, and North Carolina recognize similar rules. *Tyman v. Ford Motor Co.*, 521 F. Supp. 3d 1222, 1227–30 (S.D. Fla. 2021) (explaining that non-signatories can compel arbitration under third-party beneficiary and equitable estoppel theories); *McLean v. HSBC Fin. Corp.*, No. CV 15-8974, 2016 WL 5796865, at *3 (D.N.J. Oct. 3, 2016) (same); *Barber v. Charlotte Motor Speedway, LLC*, No. 1:13CV99, 2014 WL 6686730, at *4 (M.D.N.C. Nov. 26, 2014) (same); *Davis v. Young & Assocs., Inc.*, No. 1:20CV00061, 2021 WL 4191384, at *6 (W.D. Va. Sept. 15, 2021) (same for third-party beneficiary theory); *Decisive Analytics Corp. v. Chikar*, 75 Va. Cir. 337 (2008) (same for equitable estoppel theory).

“resolve a dispute about the scope of an arbitration agreement in favor of arbitration, unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.” *Id.* (citation omitted). “Doubts are resolved in favor of coverage.” *Granados v. Lendingtree LLC*, No. 3:22-CV-00504, 2023 WL 1481545, at *2 (W.D.N.C. Feb. 2, 2023) (quoting *Krueger v. Angelos*, 26 F.4th 212, 217 (4th Cir. 2022)). *Id.* A “broad” arbitration clause “embrace[s] every dispute between the parties having a significant relationship to the contract regardless of the label added to the dispute.” *Mathis v. Lendmark Fin. Servs., LLC*, No. 7:16-CV-355-FL, 2017 WL 3088376, at *3 (E.D.N.C. July 20, 2017) (citation omitted). An arbitration clause is “broad” where it provides for the arbitration of “any dispute *arising out of or related to* [an] underlying contract.” *Mey*, 971 F.3d at 293 (emphasis added).

Here, there is no doubt that the parties agreed to a broad arbitration clause that would govern disputes like this one. The parties agreed to arbitrate “any claim, dispute or controversy between you and us (or any Related Party)¹⁷ . . . that *arises from or relates in any way to*” a range of disputes, including as relevant here: (1) the “Note,” defined as the promissory note relating to the Loan Agreement; (2) the “System,” defined as the solar energy system or storage equipment the customer purchased; (3) “the arrangements between and among us, Sunlight and the Contractor”; and (4) “any of our marketing, advertising, solicitations and conduct relating to your request for credit or the System.” Carpenter Decl. ¶ 34 (emphasis added). The provision covers “claims of every kind and nature,” including those based on statutory and common law, and disputes that “seek relief of any type,” including damages and injunctive relief. *Id.* at ¶ 35.

¹⁷ “Us” is defined to mean the lender and “Related Party” is defined to include Sunlight. Carpenter Decl. ¶ 36.

Therefore, any dispute relating to the Loan Agreement, the Power Home systems, and any representations made about them, falls with the scope of the Arbitration Provision.

The Arbitration Plaintiffs' claims here relate to the Loan Agreement, their Power Home purchases, and Power Home's alleged representations about those systems, and thus fall within the scope of the Arbitration Provision. The gravamen of the Amended Complaint is that Power Home and its alleged agents, which Plaintiffs allege include Cross River and Sunlight, made misrepresentations about the Power Home systems, and specifically about the fees included in their price, the purchaser's eligibility for tax credits, and the effectiveness and efficiency of the system. FAC ¶¶ 123-26 (RICO); *id.* at ¶¶ 135-37 (VCPA); *id.* at ¶¶ 143-45 (UDTPA), ¶¶ 150-55 (fraud); ¶¶ 161-68 (TILA). None of the Arbitration Plaintiffs' claims arises from anything other than their Power Home purchases or Loan Agreements. Furthermore, the Arbitration Plaintiffs seek damages and injunctive relief, *id.* at Prayer for Relief ¶¶ 1-5, 7-13, both of which the provision expressly covers. For these reasons, the Arbitration Plaintiffs' claims fall within the scope of the Arbitration Provision, and this Court should compel arbitration.¹⁸

3. All claims in this dispute are “non-core” claims that require arbitration.

That all claims in this action are “non-core” claims further compels the conclusion that this

¹⁸ In addition, this Court should enforce the class action waiver in the Arbitration Provision, which precludes the Arbitration Plaintiffs from initiating a class action proceeding. Carpenter Decl. ¶ 37. The Supreme Court has recognized that class action waivers in arbitration agreements are fully enforceable and pose no obstacle to arbitration. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 352 (2011) (holding that state rule disallowing class action waivers in arbitration clauses was inconsistent with the FAA); *see also Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 233-34 (2013) (upholding class action waiver and explaining that Rule 23 does not “establish an entitlement to class proceedings for the vindication of statutory rights”); *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 684 (2010) (holding that parties cannot be forced to arbitrate on a class-wide basis absent “a contractual basis for concluding that the party agreed to do so”). Thus, this Court should require arbitration of the individual claims and dismiss, or at least stay, the class claims against Cross River and Sunlight.

Court must stay the action pending arbitration. If a claim presented in a bankruptcy action is a core claim, “the bankruptcy court has the discretion to withhold arbitration.” *In re Oaktree*, 640 B.R. at 661 (citing *CashCall*, 781 F.3d at 71-72). If it is not, “it generally must be submitted to arbitration.” *In re Barker*, 510 B.R. 771, 777 (Bankr. W.D.N.C. 2014); *see also CashCall*, 781 F.3d at 83 (Gregory, J., concurring) (“[B]ankruptcy courts generally have no discretion to refuse to arbitrate a non-core claim.”).

The “narrow” circumstances in which bankruptcy courts’ discretion allows them to retain arbitrable claims do not include cases that present “the mere possibility of generic litigation-related exigencies, inherent in the act of litigating in another forum,” even if there were some potential adverse impact on the core proceeding “such as inefficient delay, duplicative proceedings, or collateral estoppel effect.” *Id.* at 86. Accordingly, bankruptcy courts routinely compel to arbitration claims that have only a tenuous connection to the underlying bankruptcy case. *See id.* at 82; *In re McPherson*, 630 B.R. at 177, 179 (bifurcating core claims from non-core contract and FDCPA claims and compelling non-core claims to arbitration); *In re Kiskaden*, 571 B.R. 226, 238 (Bankr. E.D. Ky. 2017) (compelling to arbitration non-core FDCPA, consumer protection, and fraud claims when those claims were “grounded solely in state or federal non-bankruptcy law that Debtor could pursue without having filed bankruptcy”).

The relevant statute provides a list of “core proceedings,” which includes, as relevant here, the “allowance or disallowance of claims *against the estate* and counterclaims *by the estate* against persons filing claims against the estate.” 28 U.S.C. §157(b)(2) (emphases added) (defining “core proceeding”). Here, the claims against Sunlight and Cross River are not brought “against the estate” or “by the estate,” but instead are claims by third parties against another third party. They do not otherwise satisfy any part of the “core proceeding” definition. *Id.*

Moreover, the Arbitration Plaintiffs allege that the events giving rise to their claims all took place before the underlying bankruptcy. FAC ¶¶ 123-26 (RICO); *id.* at ¶¶ 135-37 (VCPA); *id.* at ¶¶ 143-45 (UDTPA), ¶¶ 150-55 (fraud); ¶¶ 161-68 (TILA). Such claims “are generally non-core.” *In re S. Autotronics, Inc.*, No. 98-36577-S, 1999 WL 33954641, at *2 (Bankr. E.D. Va. Oct. 27, 1999). And courts in the Fourth Circuit regularly categorize consumer protection claims, fraud claims, and other state law claims against non-debtor entities as “non-core” claims and compel arbitration of them on that basis. *In re McPherson*, 630 B.R. at 175 (violation of a federal consumer protection statute); *In re Geostellar, Inc.*, 614 B.R. 669, 675 (Bankr. N.D.W. Va. 2020) (fraud and other state law claims); *In re Barker*, 510 B.R. at 779 (fraud, UDTPA, and other state law claims).

The only conceivable effect that the Arbitration Plaintiffs’ non-core claims could have on the bankruptcy would be to reduce the amount potentially recoverable from the estate through an actual damages claim. That hypothetical interaction with Plaintiffs’ bankruptcy claims—not even the bankruptcy estate itself—is far too tenuous a connection to the bankruptcy to override the strong policy favoring arbitration. *See CashCall*, 781 F.3d at 87 (Gregory, J. concurring); *Kiskaden*, 571 B.R. at 235.

In sum, because Plaintiffs’ claims are “non-core” claims, this action “must be submitted to arbitration.” *In re Barker*, 510 B.R. at 777.

C. CONCLUSION

For these reasons, this Court should grant the Motion to Compel and stay further proceedings pending arbitration. *See Hodge v. Toyota Motor Credit Corp.*, No. 1:22-CV-00001, 2022 WL 2195022, at *7 (W.D.N.C. June 17, 2022) (staying action pending arbitration after granting motion to compel); *Kahuna Grp., LLC v. Bunker Cap., LLC*, No. 3:19-CV-552, 2020 WL 4194843, at *3 (W.D.N.C. July 21, 2020) (same).

IV. MOTION TO DISMISS

As addressed above, the Amended Complaint includes Plaintiffs that assert claims against Sunlight and Cross River but did not sign Loan Agreements containing Arbitration Provisions. Eric Medlin claims to have arranged financing through Sunlight along with his wife, Heather Wilson Medlin (ECF No. 34-1, Eric Medlin Decl. ¶ 5), but the Amended Complaint does not include him among the Plaintiffs who signed credit contracts arranged by Sunlight. FAC ¶ 76. Nor is he listed as a co-borrower on Heather Wilson Medlin's Loan Agreement. Ex. A, Carpenter Decl. ¶ 24 & Ex. 21. Jacob Green and Emily Yeatts claim that they were "supposed to" arrange financing with Cross River through Sunlight, but never did. FAC ¶ 69 & ECF No. 34-1, Green & Yeatts Decl. ¶ 5. All three Plaintiffs arguably attempt to assert RICO, VCPA, UDTPA, and fraud claims against Sunlight. Green and Yeatts arguably attempt to assert those same claims plus the TILA claim against Cross River.¹⁹

To the extent that any of these Plaintiffs intend to seek relief from Sunlight or Cross River, their claims are irreparably deficient and should be dismissed with prejudice. Since none of them signed a Loan Agreement for funding from Cross River, or arranged by Sunlight, they lack Article III standing. Similarly, they cannot show that Cross River or Sunlight caused any of the harm that they suffered, and therefore cannot establish the causation element of their RICO, VCPA, UDTPA, and fraud claims. Finally, their VCPA, UDTPA, and fraud claims fail because they cannot show reliance on a deceptive act, practice, or misrepresentation made by Sunlight or Cross River.

A. LEGAL STANDARD

Federal Rule of Bankruptcy Procedure 7012(b) provides that Federal Rule of Civil Procedure 12(b) applies in adversary proceedings. Where a defendant argues that a plaintiff has

¹⁹ Eric Medlin claims to have received financing through another lender and not Cross River. ECF No. 34-1, Eric Medlin Decl. ¶ 5

failed to allege facts sufficient to establish subject matter jurisdiction under Rule 12(b)(1), “the court must view all well-pleaded allegations in the complaint as true under the same standard as a Rule 12(b)(6) motion.” *In re Platinum Corral, LLC*, No. 21-00833-5, 2021 WL 4695327, at *3 (Bankr. E.D.N.C. Oct. 7, 2021) (citation omitted). “[T]he burden of establishing subject matter jurisdiction is on the Plaintiff, the party asserting jurisdiction.” *In re James*, No. 20-50263, 2020 WL 6891913, at *3 (Bankr. M.D.N.C. Oct. 23, 2020).

“The standard of review on a motion to dismiss for failure to state a claim under Rule 12(b)(6) is to test the sufficiency of the complaint, not to decide the merits of the action.” *In re Gause*, 525 B.R. 35, 37 (Bankr. M.D.N.C. 2014). “A complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face.” *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

B. ARGUMENT

1. Medlin, Green, and Yeatts lack standing.

Medlin, Green, and Yeatts cannot establish the necessary Article III standing to sue Sunlight. Article III standing is a “jurisdictional prerequisite” in a bankruptcy adversary proceeding. *In re Parmetex, Inc.*, 199 F.3d 1029, 1030 (9th Cir. 1999). The three “irreducible” elements of standing are that “[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

The injury-in-fact element requires the plaintiff to demonstrate a “concrete and particularized” harm. *Id.* at 340. An injury is not particularized if it concerns the rights of someone other than the plaintiff himself. *Id.* And an injury is not concrete unless it “actually exist[s].” *Id.* The traceability element requires the plaintiff to show “a causal connection between the injury and the defendant’s conduct complained of by the plaintiff.” *Disability Rts. S.C. v. McMaster*, 24 F.4th

893, 901 (4th Cir. 2022) (internal brackets omitted). In other words, “the plaintiff must be able to demonstrate that the alleged harm was caused by the defendant, as opposed to the independent action of some third party[.]” *Id.*

Eric Medlin’s potential claims against Sunlight fail the injury-in-fact element. Because only his wife—and not Eric Medlin himself—signed a Loan Agreement for financing arranged by Sunlight, whatever injury arose out of that Loan Agreement befell Medlin’s wife alone. *Spokeo*, 578 U.S. at 339 (“For an injury to be particularized, it must affect the plaintiff in a personal and individual way.”). Accordingly, that injury concerns the rights of someone other than Eric Medlin, and thus does not actually exist with respect to Eric Medlin. His potential injury is therefore neither concrete nor particularized.²⁰

Green and Yeatts’ potential claims fail the traceability element. The FAC alleges that Sunlight and Cross River were involved in the claims at issue only insofar as they financed, or arranged financing of, their residential solar power systems. Green and Yeatts admit in their shared declaration that they did not obtain financing. ECF No. 34-1, Green & Yeatts Decl. ¶ 5. As a result, Sunlight and Cross River played no part in their purchase of residential solar power systems and there can be no “causal connection between the injury and [Sunlight’s] conduct.” *Disability Rts. S.C.*, 24 F.4th at 901 (holding that plaintiffs’ alleged injury was not traceable to defendant where defendant had not “taken any action” to cause it); *Ocwen Loan Servicing, LLC v. Foodman Hunter & Karres, PLLC*, No. 3:13-CV-697, 2015 WL 13842547, at *10 (W.D.N.C. Sept. 9, 2015)

²⁰ Alternatively, if the Court determines that Eric Medlin’s claims against Sunlight can survive because he was a third-party beneficiary of the Loan Agreement that his wife signed (or for any other reason), it follows that the Loan Agreement’s Arbitration Provision binds him. *See supra*, Section III.B.1.d). Either Mr. Medlin has a claim against Sunlight related to Mrs. Medlin’s Loan Agreement, in which case arbitration is required, or he is not a party to that Loan Agreement and cannot state a claim related to it. It is one or the other. Thus, if the Court finds that Eric Medlin has a claim at all, it should compel arbitration of his and his wife’s claims against Sunlight.

(dismissing claims for lack of traceability where plaintiff had not shown “its injury was caused by the actions of [d]efendants without the independent action of some third part[y]”). Since Medlin, Green, and Yeatts lack standing to sue Sunlight and Cross River in federal court, the Court must dismiss their potential claims.

2. Green and Yeatts cannot establish causation.

Similarly, causation is an essential element of Green and Yeatts’ claims against Sunlight and Cross River for fraud and violations of RICO, VCPA, and UDTPA. *Hemi Grp., LLC v. City of New York, N.Y.*, 559 U.S. 1, 9 (2010) (civil RICO claims require but-for and proximate causation); *Mock v. Boczar*, 64 Va. Cir. 260, *2 (2004) (ruling after bench trial that VCPA claim failed because, among other things, plaintiff did not establish causation); *Barbour v. Fid. Life Ass’n*, 361 F. Supp. 3d 565, 573 (E.D.N.C. 2019) (“To establish a violation of the UDTPA, a plaintiff must show “(1) an unfair or deceptive act or practice, (2) in or affecting commerce, and (3) which proximately caused injury to plaintiffs.”); *Pleasant Valley Promenade v. Lechmere, Inc.*, 120 N.C. App. 650, 664 (1995) (causation is element of fraud in North Carolina); *Murray v. Hadid*, 238 Va. 722, 730 (1989) (causation is element of fraud in Virginia).

Because Green and Yeatts did not sign a Loan Agreement for which Cross River provided financing, or for which Sunlight arranged financing, Cross River and Sunlight played no role in their purchase or installation of residential solar power systems. Cross River and Sunlight therefore did not cause any of their alleged injuries.

3. Green and Yeatts cannot establish reliance.

Green and Yeatts’s fraud, VCPA, and UDTPA claims all require them to show that they relied on a misrepresentation or deceptive act by Cross River or Sunlight. *Cooper v. GGGR Invs., LLC*, 334 B.R. 179, 188 (E.D. Va. 2005) (“[T]he VCPA requires a claimant to show reliance.”); *Bumpers v. Cmty. Bank of N. Virginia*, 367 N.C. 81, 88 (2013) (UDTPA claims “require a plaintiff

to demonstrate reliance on the misrepresentation”); *Jared & Donna Murayama 1997 Tr. v. NISC Holdings, LLC*, 284 Va. 234, 246 (2012) (fraud claims require reasonable reliance in Virginia); *Pleasant Valley Promenade*, 120 N.C. App. At 664 (fraud claims require reasonable reliance in North Carolina).

Once again, it is impossible for Green and Yeatts to have relied on any misrepresentation or deceptive act by Cross River or Sunlight because they did not sign a Loan Agreement or otherwise interact with Cross River or Sunlight. Indeed, they state in their declaration that they never even received any financing documents. Green & Yeatts Decl. ¶ 5. Power Home’s salesperson—not anyone from Cross River or Sunlight—made the only statements described in their declaration on which they could have relied. *See id.* ¶¶ 7-8, 11. Accordingly, Green and Yeatts cannot show, as is necessary to state a fraud, VCPA, or UDTPA claim, that they relied on any misrepresentation or deceptive act by Cross River or Sunlight.

C. CONCLUSION

In sum, to the extent that Medlin, Green, and Yeatts assert any claims against Cross River or Sunlight, none should proceed. Medlin’s claim either fails for lack of standing or should be arbitrated along with his wife’s claim. Green and Yeatts’s claims fail for (1) lack of standing; (2) lack of causation as to their fraud, RICO, VCPA, and UDTPA claims; and (3) lack of reliance as to their fraud, VCPA, and UDTPA claims.

CONCLUSION

For the reasons set out above, the Court should grant the Motion to Compel and stay further proceedings pending arbitration.²¹ To the extent that Medlin, Green, and Yeatts assert

²¹ Should the court deny the Motion to Compel and retain jurisdiction of the matter, Sunlight and Cross River reserve the right to seek dismissal of the Amended Complaint as to the Arbitration Plaintiffs for failure to state a claim and to assert other defenses.

causes of action that cannot be arbitrated, the Court should grant the Motion to Dismiss with prejudice because their claims are irreparably flawed.

This 30th day of June, 2023.

/s/ Locke Beatty

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

IN RE:

POWER HONE SOLAR, LLC,

Debtor,

CLAUDE MUMPOWER, et al.,

Plaintiffs

v.

POWER HOME SOLAR, et al.,

Defendants.

Chapter 7

Case No. 22-50228

Adv. Proc. No. 23-03005

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic notification on those parties registered with this Court's CM/ECF system to receive notices for this case.

/s/ Locke Beatty
R. Locke Beatty

Counsel for Defendant Sunlight Financial, LLC

Exhibit A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

IN RE:

POWER HOME SOLAR, LLC,

Debtor,

CLAUDE MUMPOWER, et al.,

Plaintiffs

v.

POWER HOME SOLAR, LLC, et al.,

Defendants.

Chapter 7

Case No. 22-50228

Adv. Proc. No. 23-03005

**DECLARATION OF JUSTIN CARPENTER IN SUPPORT OF
SUNLIGHT'S MOTION TO COMPEL ARBITRATION**

I, Justin Carpenter, declare as follows:

1. I am a Managing Director and Associate General Counsel at Sunlight Financial LLC ("Sunlight"). I am over twenty-one (21) years of age and am competent to testify in this matter. I am authorized to submit this declaration on behalf of Sunlight.
2. Through my employment with Sunlight, I am familiar with its books and records and record-keeping policies. I have gained personal knowledge and experience regarding the Long-Term Loan Agreements and Promissory Notes executed between customers and lenders to finance the purchase of Power Home solar panel systems ("Loan Agreements"). The facts set forth herein are based on both my personal knowledge of Sunlight's operations and records available to me as they are kept in the ordinary course of business.
3. I certify that the Sunlight records attached hereto are true and correct copies of

Sunlight's original records. These records were made and kept in the regular course of Sunlight's business, at or near the time of the acts or events recorded therein, and were recorded by or from information transmitted by persons having knowledge of the information reflected in the records.

I. The Loan Agreements

4. On April 3, 2020, borrower Daniel Roberts executed a Loan Agreement to finance the purchase of a Power Home solar energy system. His address listed on the Loan Agreement is in Virginia. Attached hereto as **Exhibit 1** is a true and correct copy of Roberts' Loan Agreement.

5. On May 12, 2020, borrower Anthony Ward executed a Loan Agreement to finance the purchase of a Power Home solar energy system. His address listed on the Loan Agreement is in Virginia. Attached hereto as **Exhibit 2** is a true and correct copy of Ward's Loan Agreement.

6. On June 25, 2020, borrower Dumont Jones and co-borrower Jeanette Jones executed a Loan Agreement to finance the purchase of a Power Home solar energy system. Their address listed on the Loan Agreement is in Virginia. Attached hereto as **Exhibit 3** is a true and correct copy of Jones' Loan Agreement.

7. On July 9, 2020, borrower Anthony Fucci and co-borrower Donna Sandoval executed a Loan Agreement to finance the purchase of a Power Home solar energy system. Their address listed on the Loan Agreement is in Virginia. Attached hereto as **Exhibit 4** is a true and correct copy of Fucci and Sandoval's Loan Agreement.

8. On July 28, 2020, borrower Jerry Watson executed a Loan Agreement to finance the purchase of a Power Home solar energy system. His address listed on the Loan Agreement is

in Virginia. Attached hereto as **Exhibit 5** is a true and correct copy of Watson's Loan Agreement.

9. On September 1, 2020, borrower Marc Kennedy executed a Loan Agreement to finance the purchase of a Power Home solar energy system. His address listed on the Loan Agreement is in Virginia. Attached hereto as **Exhibit 6** is a true and correct copy of Kennedy's Loan Agreement.

10. On September 8, 2020, borrower Ashley Sustek and co-borrower Matt Sustek executed a Loan Agreement to finance the purchase of a Power Home solar energy system. Their address listed on the Loan Agreement is in Virginia. Attached hereto as **Exhibit 7** is a true and correct copy of the Susteks' Loan Agreement.

11. On October 8, 2020, borrower Kami Jordy executed a Loan Agreement to finance the purchase of a Power Home solar energy system. Her address listed on the Loan Agreement is in Virginia. Attached hereto as **Exhibit 8** is a true and correct copy of Jordy's Loan Agreement.

12. On February 3, 2021, borrower Erin Ray executed a Loan Agreement to finance the purchase of a Power Home solar energy system. Her address listed on the Loan Agreement is in Virginia. Attached hereto as **Exhibit 9** is a true and correct copy of Ray's Loan Agreement.

13. On March 14, 2021, borrower Joshua Dickey executed a Loan Agreement to finance the purchase of a Power Home solar energy system. His address listed on the Loan Agreement is in Virginia. Attached hereto as **Exhibit 10** is a true and correct copy of Dickey's Loan Agreement.

14. On March 27, 2021, borrower Margaret Fleshman executed a Loan Agreement to finance the purchase of a Power Home solar energy system. Her address listed on the Loan

Agreement is in Virginia. Attached hereto as **Exhibit 11** is a true and correct copy of Fleshman's Loan Agreement.

15. On April 6, 2021, borrower Kathy Roberson executed a Loan Agreement to finance the purchase of a Power Home solar energy system. Her address listed on the Loan Agreement is in Virginia. Attached hereto as **Exhibit 12** is a true and correct copy of Roberson's Loan Agreement.

16. On April 23, 2021, borrower Carl Steinhart executed a Loan Agreement to finance the purchase of a Power Home solar energy system. His address listed on the Loan Agreement is in Virginia. Attached hereto as **Exhibit 13** is a true and correct copy of Steinhart's Loan Agreement.

17. On May 14, 2021, borrower Kim Larsen and co-borrower Scott Larsen executed a Loan Agreement to finance the purchase of a Power Home solar energy system. Their address listed on the Loan Agreement is in Virginia. Attached hereto as **Exhibit 14** is a true and correct copy of Larsens' Loan Agreement.

18. On May 21, 2021, borrower Michael Craighead executed a Loan Agreement to finance the purchase of a Power Home solar energy system. His address listed on the Loan Agreement is in Virginia. Attached hereto as **Exhibit 15** is a true and correct copy of Craighead's Loan Agreement.

19. On June 5, 2021, borrower Ashley Shelley executed a Loan Agreement to finance the purchase of a Power Home solar energy system. Her address listed on the Loan Agreement is in Virginia. Attached hereto as **Exhibit 16** is a true and correct copy of Shelley's Loan Agreement.

20. On August 30, 2021, borrower Vichittra Prasongphime executed a Loan

Agreement to finance the purchase of a Power Home solar energy system. Her address listed on the Loan Agreement is in North Carolina. Attached hereto as **Exhibit 17** is a true and correct copy of Prasangphime's Loan Agreement.

21. On September 8, 2021, borrower Richard Harrell executed a Loan Agreement to finance the purchase of a Power Home solar energy system. His address listed on the Loan Agreement is in Virginia. Attached hereto as **Exhibit 18** is a true and correct copy of Harrell's Loan Agreement.

22. On October 15, 2021, borrower Wilson Theodore and co-borrower Lashanda Theodore executed a Loan Agreement to finance the purchase of a Power Home solar energy system. Their address listed on the Loan Agreement is in Virginia. Attached hereto as **Exhibit 19** is a true and correct copy of the Theodores' Loan Agreement.

23. On March 18, 2022, borrower Elizabeth Mank and co-borrower Teresa Ciccone executed a Loan Agreement to finance the purchase of a Power Home solar energy system. Their address listed on the Loan Agreement is in Virginia. Attached hereto as **Exhibit 20** is a true and correct copy of Mank's and Ciccone's Loan Agreement.

24. On April 5, 2022, borrower Heather Wilson Medlin executed a Loan Agreement to finance the purchase of a Power Home solar energy system. Her address listed on the Loan Agreement is in Virginia. Attached hereto as **Exhibit 21** is a true and correct copy of Medlin's Loan Agreement.

25. On August 3, 2022, borrower Lesley Jackson and co-borrower Daniel Jackson executed a Loan Agreement to finance the purchase of a Power Home solar energy system. Their address listed on the Loan Agreement is in North Carolina. Attached hereto as **Exhibit 22** is a true and correct copy of the Jacksons' Loan Agreement.

II. The Choice-of-Law Provisions

26. Plaintiffs Teresa Ciccone, Michael Craighead, Anthony Fucci, Richard Harrell, Dumont Jones, Jeanette Jones, Kami Jordy, Marc Kennedy, Elizabeth Mank, Heather Wilson Medlin, Vichitra Prasongphime, Erin Ray, Daniel Roberts, Ashley Shelley, Ashley Sustek, Matt Sustek, Anthony Ward, and Jerry Watson executed Loan Agreements that contained the following choice-of-law provision:

GOVERNING LAW: Lender is located in California. Lender makes all credit decisions, disburses loan proceeds, and services loans in California. Subject to applicable law and any limits specified in the **STATE NOTICES AND VARIATIONS** section of this Note, **this Note is governed by federal law, and in the absence of applicable federal law, the law of the state of California.**

27. Plaintiffs Lesley Jackson and Daniel Jackson executed Loan Agreements that contained the following choice-of-law provision:

GOVERNING LAW AND VENUE: Lender is located in Florida. Lender makes all credit decisions, disburses loan proceeds, and services loans in Florida. Subject to applicable law and any limits specified in the **STATE NOTICES AND VARIATIONS** section of this Note, **this Note is governed by federal law, and in the absence of applicable federal law, the law of the state of Florida.**

28. Plaintiffs Kim-Loan Larsen, Scott Larsen, Joshua Dickey, Margaret Fleshman, Kathy Roberson, Carl Steinhart, Lashanda Theodore, and Wilson Theodore executed Loan Agreements that contained the following choice-of-law provision:

GOVERNING LAW: Cross River Bank is located in the State of New Jersey and this Note will be entered into in the State of New Jersey. This Note shall be governed by: (1) federal law and the law of the state of New Jersey regarding matters including, but not limited to, interest, late fees and returned check fees; (2) the Federal Arbitration Act regarding the **ARBITRATION PROVISION**; and (3) certain laws of the state where the Residence is located regarding other matters.

III. The Arbitration Provisions

29. The Loan Agreement for each Arbitration Plaintiff¹ stated above the signature line in capitalized and bolded font that:

BY SIGNING BELOW, YOU AGREE TO THE TERMS OF THIS NOTE, INCLUDING THE ADDITIONAL TERMS AND CONDITIONS BELOW AND IN THE ATTACHED ARBITRATION PROVISION.

30. The Loan Agreement for each Arbitration Plaintiff stated below the signature line in in capitalized and bolded font that:

THE ARBITRATION PROVISION ATTACHED AS EXHIBIT A WILL HAVE A SUBSTANTIAL IMPACT ON YOUR RIGHTS IN THE EVENT OF A DISPUTE BETWEEN YOU AND US OR BETWEEN YOU AND CONTRACTOR. FOR EXAMPLE, WE (OR CONTRACTOR) MAY REQUIRE YOU TO ARBITRATE ANY CLAIM YOU INITIATE. IF SO, YOU WILL NOT HAVE THE RIGHT TO A JURY TRIAL OR THE RIGHT TO PARTICIPATE IN A CLASS ACTION IN COURT OR IN ARBITRATION.

31. The Loan Agreement for each Arbitration Plaintiff contained an arbitration provision in Exhibit A (“Arbitration Provision”).

32. The Arbitration Provision for each Arbitration Plaintiff stated that it “shall be governed by the FAA.”

33. The Arbitration Provision for each Arbitration Plaintiff stated that: “[u]nless prohibited by applicable law, you and we agree that either party may elect to require arbitration of any Claim under this Provision.”

¹ The “Arbitration Plaintiffs” are Lesley Jackson, Daniel Jackson, Kim L. Larsen, Scott Larsen, Joshua Dickey, Margaret Fleshman, Kathy Roberson, Carl Steinhart, Lashanda Theodore, Wilson Theodore, Elizabeth Mank, Heather Wilson Medlin, Dumont Jones, Jeanette Jones, Kami Jordy, Ashley Shelley, Anthony Ward, Daniel Roberts, Anthony Fucci, Teresa Ciccone, Michael Craighead, Jerry Watson, Erin Ray, Marc Kennedy, Vichitra Prasongphime, Ashley Sustek, Matt Sustek, and Richard Harrell.

34. The Arbitration Provision for each Arbitration Plaintiff defined “Claim” to mean:

any claim, dispute or controversy between you and us (or any Related Party) that arises from or relates in any way to this Note (including any amendment, modification or extension of this Note), the Contractor Agreement, the work performed by the Contractor or a subcontractor; the System, including maintenance and servicing of the System; the arrangements between and among us, Sunlight and the Contractor; any of our marketing, advertising, solicitations and conduct relating to your request for credit or the System; our collection of any amounts you owe; or our disclosure of or failure to protect any information about you.

35. The Arbitration Provision for each Arbitration Plaintiff further provided that:

‘Claim’ is to be given the broadest reasonable meaning and includes claims of every kind and nature, including but not limited to, initial claims, counterclaims, cross-claims and third-party claims, and claims based on constitution, statute, regulation, ordinance, common law rule (including rules relating to contracts, torts, negligence, fraud or other intentional wrongs) and equity. It includes disputes that seek relief of any type, including damages and/or injunctive, declaratory or other equitable relief.

36. The Arbitration Provision for each Arbitration Plaintiff defined “us” to mean the lender and expressly identified Sunlight as one of the “Related Parties.”

37. The Arbitration Provision for each Arbitration Plaintiff included the following language:

IF YOU OR WE ELECT TO ARBITRATE A CLAIM, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO: (i) HAVE A COURT OR A JURY DECIDE THE CLAIM . . . (iii) PARTICIPATE IN A CLASS ACTION IN COURT OR IN ARBITRATION, EITHER AS A CLASS REPRESENTATIVE, CLASS MEMBER OR CLASS OPPONENT . . . (v) JOIN OR CONSOLIDATE CLAIM(S) INVOLVING YOU WITH CLAIMS INVOLVING ANY OTHER PERSON.

38. The Arbitration Provision for each Arbitration Plaintiff included the following language:

Before a Complaining Party asserts a Claim in any Proceeding (including as an individual litigant or as a member or representative of any class or proposed class), the Complaining Party shall give the Defending Party: (i) a Claim Notice providing at least 30 days’ written notice of the Claim and explaining in reasonable detail the nature of the Claim and any supporting facts; and (ii) a reasonable good faith opportunity to resolve the Claim on an individual basis without the necessity of a Proceeding.

Under 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

This the 30th day of June, 2023



Justin Carpenter
Managing Director; Associate General Counsel
Sunlight Financial LLC