

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

**In re:**

**Power Home Solar, LLC**

**Debtor(s).**

**Chapter 7**

**Case No. 22-50228**

**CLAUDE MUMPOWER, ET AL., for  
themselves and all others similarly  
situated,**

***Plaintiffs,***

**v.**

**POWER HOME SOLAR, LLC, ET AL.,**

***Defendant.***

**Adversary Proceeding  
No. 23-03005**

**Judge: J. Craig Whitley**

**DEFENDANT SOLAR MOSAIC LLC'S  
MOTION TO COMPEL ARBITRATION AND STAY**

NOW COMES Defendant Solar Mosaic LLC (“Solar Mosaic”), by counsel, moves to compel arbitration of Plaintiffs’ First Amended Adversary Class Action Complaint. For the reasons stated in the accompanying Memorandum in Support of Motion to Compel Arbitration, this Court should stay this adversary proceeding and compel Plaintiffs to individually pursue their claims in arbitration.

This the 30<sup>th</sup> day of June, 2023.

/s/ Amy Pritchard Williams

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served by electronic notification on those parties registered with the United States Bankruptcy Court, Western District of North Carolina ECF system to receive notices for this case on June 30, 2023.

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**Adversary Proceeding  
No. 23-03005**

**Judge: J. Craig Whitley**

**DECLARATION OF JEFF ROTHENBERG IN SUPPORT OF DEFENDANT SOLAR  
MOSAIC LLC'S MOTION TO COMPEL ARBITRATION AND STAY**

I, Jeff Rothenberg, hereby declare the following:

1. I am Senior Director of Credit Operations at Solar Mosaic LLC, as successor in interest to Solar Mosaic, Inc. (“Mosaic”). I submit this declaration in support of Mosaic’s Motion to Compel Arbitration in the above-captioned proceedings. I have been employed by Mosaic since December 10, 2018, as Director of Credit Operations. From my experience at the company and my duties as Sr. Director of Credit Operations, I am familiar with Mosaic’s platform, business model, and business agreements. I have personal knowledge of the facts stated herein and would and could testify competently thereto if called as a witness in this matter.

2. In my capacity with Mosaic, I am personally familiar with and have access to the systems of records maintained by Solar Mosaic. My familiarity with these systems arises from my personal use of each. Mosaic maintains a computerized system of records, which allows a user to access data stored by Mosaic in an electronic database pertaining to customer accounts. Mosaic also maintains a system of records that allows a user to access a database of electronically scanned records pertaining to a customer’s account, including electronic applications and account agreements. Such records are entered into Mosaic’s database at or about the time of the events stated therein by persons with knowledge of the transactions, and are maintained by Mosaic in the course of its regularly conducted business activity.

3. Among the records prepared and maintained in the manner described above are Mosaic’s business records relating to Plaintiffs Sylvia Bland, Brian Baumgardner, Jason Schieber, Denise Henderson, Philip Joiner, and Paul Campbell, III (“Mosaic Plaintiffs”), including the Home Solar Loan Documents (“Contract”) to which the Mosaic Plaintiffs agreed as a condition of obtaining the loan proceeds to finance the acquisition and installation of solar panels.

4. Based on information and belief, the Mosaic Plaintiffs entered into residential solar program agreements with Debtor Power Home Solar, LLC for the purchase and installation of solar panels (“Solar Project”).

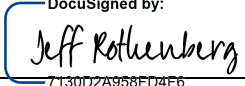
5. To finance the Solar Project, the Mosaic Plaintiffs obtained loans from Mosaic by executing a loan agreement, i.e., individual versions of the Contract, with Mosaic. True and correct copies of the Mosaic Plaintiffs’ Contracts with Mosaic are attached hereto as **Exhibit 1** (Plaintiff Bland), **Exhibit 2** (Plaintiff Baumgardner), **Exhibit 3** (Plaintiff Schieber), **Exhibit 4** (Plaintiff Henderson), **Exhibit 5** (Plaintiff Joiner), and **Exhibit 6** (Plaintiff Campbell, III) (personal and financial information has been redacted to protect Mosaic Plaintiffs’ privacy). It is Mosaic’s regular business practice to have consumers sign Home Solar Loan Documents electronically via the website [www.DocuSign.com](http://www.DocuSign.com). I have reviewed the account documents associated with the Mosaic Plaintiffs’ accounts and confirmed that this practice was followed here.

6. The copies of Mosaic Plaintiffs’ Home Solar Loan Agreements attached hereto as Exhibits 1–6 were maintained by Solar Mosaic in the ordinary course of business and are part of Solar Mosaic’s member account electronic records relating to Mosaic Plaintiffs’ loans.

7. The Home Solar Loan Documents attached hereto as Exhibits 1-6 contain a Home Solar Loan Agreement (“HSLA”). Section 16 of the HSLA contains an arbitration agreement. The Mosaic Plaintiffs’ electronic signature appears on the final page of their respective arbitration agreements.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 28<sup>th</sup>, 2023  
Phoenix, Arizona

DocuSigned by:  
  
7130D2A958FD4F6...  
\_\_\_\_\_  
Jeff Rothenberg  
Senior Director of Credit Operations  
Solar Mosaic LLC

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT SOLAR MOSAIC LLC'S  
MOTION TO COMPEL ARBITRATION AND STAY**

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Defendant Solar Mosaic LLC (“Solar Mosaic”)<sup>1</sup>, by and through its attorneys, Troutman Pepper Hamilton Sanders LLP, files this Memorandum of Law in Support of its Motion to Compel Arbitration.<sup>2</sup> For the reasons set forth herein, the Court should grant Defendant’s motion and compel arbitration of the claims raised against it.

### **PRELIMINARY STATEMENT**

Solar Mosaic moves to compel arbitration of the claims brought against it by Plaintiffs Herman Bland, Sylvia Bland, Brian Baumgardner, Jason Schieber, Denise Henderson, Philip Joiner, and Paul Campbell, III (together, “Mosaic Plaintiffs”).<sup>3</sup> All of the Mosaic Plaintiffs’ claims against Solar Mosaic are subject to the binding arbitration provision contained within their Home Solar Loan Agreement (“Mosaic Loan Agreement”) with Solar Mosaic, which also contains an express waiver of their putative class action claims against Mosaic.

The Mosaic Plaintiffs obtained a loan from Solar Mosaic to finance the purchase and installation of solar panels on their homes under the Mosaic Loan Agreements.<sup>4</sup> The Mosaic

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<sup>1</sup> Solar Mosaic LLC is the successor in interest of Solar Mosaic, Inc., the entity erroneously named in Plaintiffs’ Complaint.

<sup>2</sup> Solar Mosaic brings this Motion to Compel Arbitration as an initial threshold matter for the Court to consider. *See 1 Foot 2 Foot Ctr. for Foot & Ankle Care, P.C. v. DavLong Bus. Sols., LLC*, 631 F. Supp. 2d 754, 756 (E.D. Va. 2009) (“Courts have traditionally entertained certain types of pre-answer motions—such as a motion to compel arbitration as a sufficient responsive pleading despite its absence from Federal Rule of Civil Procedure 12(b), which concerns responsive pleadings.”). Solar Mosaic brings this Motion without prejudice to arguments it has as to why this case should be dismissed. If this Court denies Solar Mosaic’s Motion to Compel Arbitration, it plans to file a Motion to Dismiss pursuant to Federal Rule 12(b)(6) at that time.

<sup>3</sup> Solar Mosaic seeks to compel arbitration of all claims brought against it in this adversary proceeding. The Mosaic Plaintiffs are the only Plaintiffs who have pleaded claims against Solar Mosaic or who allege any type of relationship with Solar Mosaic. *See* Am. Compl. ¶¶ 72, 78. Therefore, Mosaic limits its request to compel arbitration to the claims brought by the Mosaic Plaintiffs.

<sup>4</sup> Plaintiff Herman Bland did not execute a Mosaic Loan Agreement. However, Mr. Bland is nevertheless bound by the Mosaic Loan Agreement’s arbitration provision: (1) based on his spousal relationship with Plaintiff Sylvia Bland; (2) because Mr. Bland concedes he is subject to a credit contract with Solar Mosaic, *see* Am. Compl. ¶ 72; and (3) because he continued to benefit from the Mosaic Loan Agreement’s terms. Any alleged claims Mr. Bland has should be compelled to arbitration or should be dismissed because he has no agreement with Mosaic.

Plaintiffs have sued Solar Mosaic in this adversary proceeding for alleged wrongs arising from these transactions. The arbitration provision in the Mosaic Loan Agreement provides that any “Claim” between the Mosaic Plaintiffs and Solar Mosaic, at the election of any party, shall be resolved by binding arbitration and that the arbitration clause is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.* (“FAA”). The FAA “declare[s] a national policy favoring arbitration of claims that parties contract to settle in that manner.” *Preston v. Ferrer*, 552 U.S. 346, 353 (2008). Here, the Mosaic Plaintiffs and Mosaic unambiguously agreed to resolve these disputes via arbitration, and Solar Mosaic has declared its election to arbitrate. Solar Mosaic hereby moves to enforce the Mosaic Loan Agreements’ arbitration clauses and to compel the Mosaic Plaintiffs to arbitrate these disputes. Because these claims are non-core, the Court is required to send these claims to arbitration under the FAA. Even if the Court were to conclude that the claims are core, the Court should exercise its discretion to grant this motion.

For these reasons, and as set forth below, Solar Mosaic respectfully requests that the Court: (1) stay all of the Mosaic Plaintiffs’ claims against Solar Mosaic; and (2) compel the Mosaic Plaintiffs to arbitrate their claims against Solar Mosaic consistent with the Mosaic Loan Agreements’ arbitration provisions.

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The Fourth Circuit has recognized that “five theories arising out of common law principles of contract and agency law could provide the basis for binding nonsignatories to arbitration agreements: 1) incorporation by references; 2) assumption; 3) agency; 4) veil piercing/alter ego; and 5) estoppel.” *International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 417 (4th Cir. 2000) (internal citations omitted). Mr. Bland is bound to the Mosaic Loan Agreement under the “agency” and “estoppel” theories. *See id.* Mrs. Bland acted as agent for Mr. Bland in signing the Mosaic Loan Agreement. Further, Mr. Bland would be estopped from avoiding arbitration of his claims under the Mosaic Loan Agreement because he has pled that he “signed credit contracts with Mosaic.” *See* Am. Compl. ¶ 72; *see also International Paper*, 206 F.3d at 418 (“A nonsignatory is estopped from refusing to comply with an arbitration clause when it receives a direct benefit from a contract containing an arbitration clause.”) (internal citations omitted).

## FACTUAL BACKGROUND

Between 2017 and 2021, Defendant Solar Mosaic provided third-party financing to customers who purchased solar energy systems from debtor Power Home Solar, LLC. Declaration of Jeff Rothenberg (“Rothenberg Dec.”) ¶¶ 5-6; Am. Compl. ¶ 18. Only seven of the Plaintiffs in this action—Herman Bland, Sylvia Bland, Brian Baumgardner, Jason Schieber, Denise Henderson, Philip Joiner, and Paul Campbell, III—financed the acquisition and installation of a solar energy system through Solar Mosaic. Am. Compl. ¶¶ 72, 78. In order to receive a loan from Solar Mosaic, these borrowers were presented with, and required to review and sign, a Mosaic Loan Agreement which set forth the parties’ respective rights and responsibilities and generally governed the terms of the relationship between these borrowers and Solar Mosaic.<sup>5</sup> Rothenberg Dec. ¶ 5.

Each Mosaic Loan Agreement included an arbitration provision, which was demarcated in a separate section of the Agreement with the bolded title “**ARBITRATION AGREEMENT**,” and with pertinent provisions appearing in bold, capital letters. Rothenberg Dec., Ex. 1-6, at 17. The Arbitration Agreement informed each borrower that he or she had the right to reject the arbitration agreement without affecting or altering any of the Loan Agreement’s other terms. *Id.* at 19. In relevant part, the arbitration provision reads as follows:

**PLEASE READ THE FOLLOWING ARBITRATION TERMS CAREFULLY AS THEY WILL HAVE A SUBSTANTIAL IMPACT ON HOW LEGAL CLAIMS YOU AND WE HAVE AGAINST EACH OTHER ARE RESOLVED.** If either you or we

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<sup>5</sup> Consideration of each Plaintiffs’ Mosaic Loan Agreement is appropriate because when determining a motion to compel arbitration, the Court may consider matters outside of the Complaint. *Campbell v. Five Star Quality Care - N. Carolina, LLC*, No. 3:21-CV-95, 2021 WL 5442221, at \*2 (W.D.N.C. Nov. 19, 2021). In addition, “[a] document that is not attached or explicitly incorporated by reference, but that is authentic and integral to the complaint” may be considered in connection with preliminary motions. *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 164–66 (4th Cir. 2016). Here, the Mosaic Loan Agreements are “integral to the complaint,” *id.*, because Plaintiffs claim that the Mosaic Loan Agreements themselves, and representations related to the transactions subject to those Agreements, are the subject of their claims. Am. Compl. ¶¶ 6, 7, 53–56, 81–93, 123–124, 135, 150–155, 158–169.

elect to arbitrate a Claim rather than have a court (a judge or a jury) decide the Claim, it will be resolved by individual (not class or class-wide) binding arbitration in accordance with the terms specified in this Arbitration Agreement.

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**Definition of “Claim.”** A “Claim” is any claim, dispute or controversy between you and us, whether preexisting, present or future, which arises out of or related to the Loan Agreement, any prior agreement you have had with us, the events leading up to your loan (for example, any disclosures, advertisements, promotions or oral or written statements made by us), any product or service provided by us or third parties in connection with your loan, any transaction conducted with us, the collection or amounts you owe us and the manner or collection or the relationship between you and us.”

The term “Claim” has the broadest possible meaning. It includes initial claims, counterclaims, cross-claims, third-party claims and federal, state, local and administrative claims and claims which arose before the effective date of this Arbitration Agreement. It also includes disputes based upon contract, tort, consumer rights, fraud and other intentional torts, constitution, statute, regulation, ordinance, common law and equity and claims for money damages and injunctive or declaratory relief.

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**Federal Arbitration Act.** The parties agree and acknowledge that the Loan Agreement evidences a transaction involving interstate commerce and, therefore, the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (“FAA”) shall govern the interpretation and enforcement of this Arbitration Agreement and proceedings pursuant thereto. To the extent state law is applicable under the FAA, the Resident state law will apply.

**Class Action Waiver.** Notwithstanding any other provision of the Loan Agreement, if either you or we elect to arbitrate a Claim, neither you nor we will have the right: (a) to participate in a class action, private attorney general action or other representative action in court or in arbitration, either as a class representative or class member; or (b) to join or consolidate Claims with claims of any other persons. No arbitrator shall have authority to conduct any arbitration in violation of this provision or to issue any relief that applies to any person or entity other than you and/or us individually.

The parties acknowledge that the Class Action Waiver is material and essential to the arbitration of any disputes between them and is non-severable from this Arbitration Agreement. If the Class Action Waiver is limited, voided or found unenforceable, then the parties’ Arbitration Agreement (except for this sentence) shall be null and void with respect to such proceeding, subject to the right to appeal the limitation or invalidation of the Class Action Waiver. The parties acknowledge and agree that under no circumstances will a class action be arbitrated.

*Id.* at 17-18 (emphasis in original).

### LEGAL STANDARD

The FAA provides that arbitration agreements “*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 (emphasis added). Because Congress enacted the FAA to reverse “centuries of judicial hostility to arbitration agreements” and place them “upon the same footing as other contracts,” *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 511 (1974) (internal marks and citation omitted), the FAA not only permits private parties to agree to arbitrate their disputes, but *requires* a reviewing court to place such agreements on equal footing with other contracts by compelling arbitration whenever there exists a valid agreement to arbitrate the dispute at hand, *Dean Witter Reynolds v. Byrd*, 470 U.S. 213, 219–220 (1985). Indeed, the FAA compels such a strong presumption of arbitrability that “any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.” *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25, 103 S.Ct. 927, 941, 74 L.Ed.2d 765 (1983).

When ruling on a motion to compel arbitration, courts in the Fourth Circuit consider two “gateway” issues: (1) “whether a valid agreement to arbitrate exists between the parties,” and (2) whether the specific dispute falls within the substantive scope of that agreement.” *Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 938 (4th Cir.1999). These questions are governed by state law governing contract formation, *id.*; *Adkins v. Lab. Ready, Inc.*, 303 F.3d 496, 501 (4th Cir. 2002), and are analyzed under the summary judgment standard. *See Chorley Enters. v. Dickey’s Barbecue Rests., Inc.*, 807 F.3d 553, 563–64 (4th Cir. 2015). Thus, if there is no genuine dispute of material fact regarding the parties’ agreement to arbitrate the dispute at hand, arbitration must be compelled. *See Fed. R. Civ. P. 56(a); accord Moses H. Cone Memorial Hosp.*, 460 U.S. at 24–25.

## **ARGUMENT**

### **I. THE COURT SHOULD COMPEL THIS DISPUTE TO ARBITRATION.**

All claims asserted in this litigation against Solar Mosaic must be compelled to arbitration pursuant to the FAA’s strong presumption in favor of arbitration because Plaintiffs’ relationships with Solar Mosaic are all governed by contracts that contain valid arbitration agreements and because those claims all fall squarely within the scope of that agreement. Further, arbitration is appropriate in this adversary proceeding because there is no inherent conflict between arbitration on the one hand and the Bankruptcy Code and administration of the Power Home estate on the other.

#### **A. The FAA Applies to This Dispute.**

The FAA applies to all contracts “involving interstate commerce,” 9 U.S.C. § 2—a phrase that must be construed broadly to “reach[] not only the actual physical interstate shipment of goods but also contracts relating to interstate commerce.” *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 401 n. (1967). “Congress’ Commerce Clause power ‘may be exercised in individual cases without showing any specific effect on interstate commerce’ if in the aggregate the economic activity in question would represent ‘a general practice . . . subject to federal control.’ Only that general practice need bear on interstate commerce in a substantial way.” *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 56–57 (2003). In other words, for a contract to “involv[e] interstate commerce,” it must be related to activity “subject to federal control.” *Id.*; see also *Maryland v. Wirtz*, 392 U.S. 183, 196–97 n.27 (1968).

The FAA applies this this dispute because the Mosaic Loan Agreements clearly “involve[e] interstate commerce.” 9 U.S.C. § 2. Indeed, Congress has the authority to, and does in fact regularly regulate the sale and financing of solar panels—for example, by requiring that financing

contracts related to those transactions comply with the FTC’s Holder Rule. *See* 16 C.F.R. § 433.1. Accordingly, the FAA and its strong presumption in favor of arbitration apply here. *See Moses H. Cone Memorial Hosp.*, 460 U.S. at 24–25.

Applying the FAA to this dispute is also consistent with the parties’ agreement and expectations. Specifically, the Mosaic Loan Agreement’s arbitration provision contains a choice of law provision, which provides that “[t]he parties agree and acknowledge that the Loan Agreement evidences a transaction involving interstate commerce and, therefore, the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (“FAA”) shall govern the interpretation and enforcement of this Arbitration Agreement and proceedings pursuant thereto.” Rothenberg Dec., Ex. 1-6, at 17. This Court applies North Carolina choice-of-law rules. *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”). Because courts in North Carolina “will give effect to a contractual provision agreeing to a particular body of substantive law, *Triad Packaging, Inc. v. SupplyOne, Inc.*, 925 F. Supp. 2d 774, 786 (W.D.N.C. 2013), *aff’d*, 597 F. App’x 734 (4th Cir. 2015) (citation omitted), the parties’ choice of law provision here provides an independent basis for applying the FAA and its strong presumption in favor of arbitration to this dispute.

## **B. The FAA Compels Arbitration of This Dispute**

When ruling on a motion to compel arbitration governed by the FAA, a court begins by considering two threshold questions. First, it must decide “whether a valid agreement to arbitrate exists between the parties.” *Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 938 (4th Cir.1999). If

such an agreement exists, it must consider “whether the specific dispute falls within the substantive scope of that agreement.” *Id.* For the following reasons, the answer to both threshold questions in this case is “yes”; accordingly, this Court should apply the FAA’s strong presumption in favor of arbitrability and grant this motion.

First, the arbitration agreement contained in each Mosaic Loan Document is valid. Under Virginia law,<sup>6</sup> a valid contract is formed by “acceptance of an offer, as well as valuable consideration.” *Montagna v. Holiday Inns, Inc.*, 221 Va. 336, 269 S.E.2d 838, 844 (Va. 1980). And although “[t]he agreement must identify the subject matter and essential terms with reasonable certainty,” a contract will only be deemed ambiguous if it may be understood in more than one way.” *McNeil v. Haley S., Inc.*, No. 3:10CV192, 2010 WL 3670547, at \*4 (E.D. Va. Sept. 13, 2010) (citation omitted). At bottom, “Virginia contract law requires a plain reading of a contract where the language therein is unambiguous.” *Pitchford v. Oakwood Mobile Homes, Inc.*, 124 F. Supp. 2d 958, 961 (W.D. Va. 2000).

Here, the Mosaic Plaintiffs all acknowledge that they had “a credit contract directly with the lender”—here, Solar Mosaic. Am. Compl. ¶ 30. Those contracts—*i.e.*, the Mosaic Loan Agreements—contained an arbitration provision requiring all claims arising from or related to the contract or conduct related thereto to be arbitrated upon either party’s election. That provision was written in plain, understandable English, contained bolded and capitalized text to highlight its important terms, and provided each customer with the option to opt-out of its provisions without altering any remaining terms of the contract. *See* Rothenberg Dec., Ex. 1-6, at 17-18. By signing

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<sup>6</sup> Virginia law applies because the Mosaic Loan Agreements’ choice of law provision contained with the arbitration clause provides that, “To the extent state law is applicable under the FAA, the Residence state law will apply.” *Triad Packaging, Inc.*, 925 F. Supp. 2d at 786. Here, all the Plaintiffs with Solar Mosaic Loans reside in Virginia, making that state’s law applicable.

the Agreement, each customer with a Solar Mosaic loan therefore agreed to be bound by the unambiguous arbitration provision—rendering it valid and enforceable here. *See McNeil*, 2010 WL 3670547, at \*5 (compelling arbitration because parties signed an “unambiguous[ ]” arbitration agreement requiring arbitration of employment-related disputes and “[n]o other objectively reasonable interpretation [of the agreement] exists”); *Hawk Advisers, Inc. v. Gillenwater*, No. 7:18-CV-00145, 2018 WL 2306899, at \*4 (W.D. Va. May 18, 2018) (unambiguous arbitration provision valid under Virginia state law).

Second, all of the claims asserted against Solar Mosaic fall squarely within the scope of that arbitration provision. Specifically, the arbitration agreement defines a “Claim” subject to elective arbitration as “ha[ving] the broadest possible meaning,” and specifically includes claims “based upon contract, tort, . . . fraud . . . statute . . . common law and equity and claims for money damages and injunctive or declaratory relief,” that “arises[ ] out of or relate[ ] to the Loan Agreement . . . [or] the events leading up to your loan (for example, any disclosures, advertisements, promotions or oral or written statements made by us).” *Rothenberg Dec., Ex. 1-6*, at 17. As against Solar Mosaic, the Mosaic Plaintiffs assert three statutory claims—for violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), the Virginia Consumer Protection Act (“VCPA”), and the Truth in Lending Act (“TILA”)—and one common-law claim for fraud, Am. Compl. ¶ 9—which all fall squarely within this expressly broad definition. Further, these claims are all obviously “relate[d] to the Loan Agreement” and, specifically “disclosures” made by Solar Mosaic and/or its agent concerning the purchase of solar panels financed by those loans. *See, e.g., Am. Compl. ¶¶ 6, 7, 53–56, 81–93, 123–124, 135, 150–155, 158–169*. Finally, in terms of remedy, the Mosaic Plaintiffs seek money damages and injunctive relief, both of which are also expressly covered by the arbitration agreements. *Am. Compl. at 34 – 36*. In other words,

because the Mosaic Plaintiffs have raised claims relating directly to transactions governed by the Mosaic Loan Agreements and have purported to support those claims with factual allegations related to those same Agreements, all of their claims are covered by, and subject to, the broad arbitration provision contained therein. *See O'Sullivan Films, Inc. v. Precision Roll Grinders, Inc.*, No. CIV.A. 5:09-CV-00062, 2010 WL 1956726, at \*2 (W.D. Va. May 13, 2010) (compelling arbitration of claims that “arose under” and “b[ore] a significant relationship to” the contract pursuant to arbitration clause’s “broad” language); *see also J.J. Ryan & Sons v. Rhone Poulenc Textile, S.A.*, 863 F.2d 315, 321 (4th Cir.1988) (characterizing arbitration clause covering “[a]ll disputes arising in connection with” a contract as “broad”).

The Mosaic Plaintiffs’ execution of the Mosaic Loan Agreements indicates their assent to the arbitration agreement contained therein, and the claims they assert in this litigation fall squarely within the scope of that agreement. Therefore, this Court should compel arbitration of the claims asserted against Solar Mosaic pursuant to the FAA and the parties’ arbitration agreement.

**C. There Is No Inherent Conflict Between Arbitration of Plaintiffs’ Claims And The Bankruptcy Code.**

The fact that Plaintiffs filed their claims against Mosaic as an adversary proceeding in Power Home’s bankruptcy case does not change the fact that arbitration is required under parties’ agreement. *See supra* pp. 9-13. As explained above, the FAA “establishes ‘a liberal federal policy favoring arbitration agreements,’” that “*requires* courts to ‘rigorously’ . . . enforce arbitration agreements according to their terms.” *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1621, 200 L.Ed.2d 889 (2018) (citations omitted). This “heavy presumption” in favor of arbitration, *Levin v. Alms and Assoc., Inc.*, 634 F.3d 260, 266 (4th Cir. 2011), may only be overridden by a “contrary congressional demand,” *Shearson/Am. Express Inc. v. McMahon*, 482 U.S. 220, 226, 107 S.Ct. 2332, 96 L.Ed.2d 185 (1987). Whether Congress intended to override the FAA turns on “(1) the

text of the statute; (2) its legislative history; and (3) whether there is ‘an inherent conflict between arbitration and the underlying purposes [of the statute at issue.]’” *In re Oaktree Med. Ctr., P.C.*, 640 B.R. 649, 661 (Bankr. D.S.C. 2022) (quoting *id.* at 227) (alteration in original). The party opposing arbitration bears the heavy burden of showing that Congress “clear[ly] and manifest[ly],” *Epic Sys.*, 138 S. Ct. at 1261, “intended to preclude a waiver of judicial remedies for statutory rights at issue,” *Shearson/Am. Express Inc.*, 482 U.S. at 227.

**1. Non-core claims *must* be submitted to arbitration.**

In the context of bankruptcy, therefore, the operative question is whether arbitration—which is designed to prioritize “efficient, streamlined procedures” that “reduc[e] the cost and increas[e] the speed of dispute resolution, *AT&T Mobility LLC v. Concepcion*, 563 U.S. 321, 131 S.Ct. 1740, 1749, 179 L.Ed.2d 742 (2011)—conflicts with the Bankruptcy Code’s “animating purpose of facilitating the efficient reorganization of an estate through the “[c]entralization of disputes concerning a debtor’s legal obligations,” *Moses v. CashCall, Inc.*, 781 F.3d 63, 70 (4th Cir. 2015) (quoting *Phillips v. Congelton, LLC (In re White Mountain Mining Co.)*, 403 F.3d 164, 170 (4th Cir. 2005)). This Court and other courts in the Fourth Circuit have held that there is no inherent conflict between enforcing the FAA and the Bankruptcy Code as a matter of law when the claims at issue are non-core. *See, e.g., In re Barker*, 510 B.R. 771, 776 (Bankr. W.D.N.C. 2014); *In re Oaktree Med. Ctr., P.C.*, 640 B.R. 649, 663 (Bankr. D.S.C. 2022); *MDC Innovations, LLC v. Hall*, 726 F. App’x 168, 171 (4th Cir. 2018).

Specifically, when deciding whether an inherent conflict exists, “courts generally ask first if a cause of action is core or non-core.” *In re Barker*, 510 B.R. 771, 776 (Bankr. W.D.N.C. 2014). This Court and others in the Fourth Circuit have held that where a valid arbitration exists, a non-core cause of action “generally *must* be submitted to arbitration.” *In re Barker*, 510 B.R. 771, 776

(Bankr. W.D.N.C. 2014) (emphasis added) (compelling arbitration of state law claims deemed non-core because they “do not arise under a provision of the Bankruptcy Code”). In contrast, a bankruptcy court may (but is not required to) decline to compel arbitration over *core* claims, but only when “the facts and circumstances” present an “inherent conflict between arbitration and the purposes of the Bankruptcy Code . . . in [that] case.” *Id.* at 776, 778 (alteration and omission in original); *In re Oaktree Med. Ctr., P.C.*, 640 B.R. 649, 663 (Bankr. D.S.C. 2022) (“If the State Law Claims are non-core, the Court has no discretion to withhold arbitration over these causes of action. If the State Law Claims are core, the Trustee has not met his burden of demonstrating that arbitration of such constitutionally core claims inherently conflicts with the purposes of the Bankruptcy Code to permit the Court to exercise its discretion to refuse arbitration.”).

**2. The Mosaic Plaintiffs’ claims are all non-core claims.**

Here, the Mosaic Plaintiffs’ four causes of action against Solar Mosaic are all *non-core*; thus, this court “does not have the discretion to decline to enforce” the parties’ valid and binding arbitration agreement. *See Oaktree*, 640 B.R. at 661. A core proceeding is one that is “created by the Bankruptcy Code, and which lacks existence outside the context of bankruptcy.” *MDC Innovations, LLC v. Hall*, 726 F. App’x 168, 171 (4th Cir. 2018). 28 U.S.C. § 157(b) contains a non-exhaustive list of such matters, which include, for example, “matters concerning the administration of the estate,” “counterclaims by the estate against persons filing claims against the estate,” and other proceedings unique to a bankruptcy such as preferences, discharge objections and plan confirmation. *See* 28 U.S.C. § 157(b). In contrast, a “non-core” claim is one that is merely “related to” a case arising under the Bankruptcy Code, a characteristic that turns on “whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.” *MDC*, 726 F. App’x at 171.

The Supreme Court added nuance to the core-claim analysis in *Stern v. Marshall*, holding that a claim must be both *statutorily* core—*i.e.*, the type of claim referenced in 28 U.S.C. § 157—and *constitutionally* core—meaning a claim that “stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process,” *Stern v. Marshall*, 564 U.S. 462, 499, 131 S. Ct. 2594, 180 L.Ed.2d 475 (2011)—for a bankruptcy court to have the authority to enter a final judgment over the claim. But “[i]f claim is statutorily core but constitutionally non-core, it must be treated “as if it were statutorily non-core.” *In re Oaktree Med. Ctr., P.C.*, 640 B.R. 649, 662 (Bankr. D.S.C. 2022) (quoting *CashCall*, 781 F.3d at 70).

The Mosaic Plaintiffs raise four claims against Solar Mosaic, premised on theories of both direct and derivative liability—for violations of RICO, the VCPA, TILA, and for common law fraud. *See* Compl. ¶¶ 96, 126, 153, 177. As an initial matter, none of these claims constitute statutorily core proceedings under 28 U.S.C. § 157(b)(2), which are limited to those that arise *uniquely* in the bankruptcy context. 28 U.S.C. § 157(b)(2). Additionally, none of these claims are based on “any right expressly created by the Bankruptcy Code,” nor form any “part of the claims-allowance process.” *In re Caceres*, 2023 WL 2543713, at \*58 (Bankr. W.D.N.C. 2023). Rather, they all are based on state and federal laws, “would exist outside of [Power Home’s] bankruptcy[,] and could just as easily be pursued in other venues.” *In re Caceres*, 2023 WL 2543713, at \*58. Additionally, the Mosaic Plaintiffs’ claims are “entirely rooted in [Mosaic’s] *pre-petition* conduct,” making their connection to the underlying bankruptcy proceeding even more tenuous. *See id.* (emphasis added). And finally, Solar Mosaic has not participated in Power Homes’ underlying bankruptcy case—it is not a current creditor of Power Homes, nor has it submitted a claim against the estate. *See In re Barker*, 510 B.R. at 779 (claims were non-core in part because the defendant “is not a current creditor of Debtor, and . . . has not submitted a claim

against the estate.”). For these multiple reasons, the Mosaic Plaintiffs’ causes of action against Solar Mosaic are non-core, and “*must* be submitted to arbitration.”<sup>7</sup> *In re Barker*, 510 B.R. at 776, *see supra* pp. XX.

**3. Arbitration is required even if the Court concludes that any claims are core.**

Even if the Mosaic Plaintiffs’ claims against Solar Mosaic are found to be core, arbitration is nevertheless required because “the facts and circumstances” of this case do not present an “inherent conflict between arbitration and the purposes of the Bankruptcy Code.” *In re Barker*, 510 B.R. at 776, 778. Indeed, when presented with core claims, the Court has the discretion to deny arbitration only when arbitration “would inherently undermine the Bankruptcy Code’s animating purpose of facilitating efficient reorganization of an estate through the centralization of disputes concerning a debtor’s legal obligations.” *Moses v. CashCall, Inc.*, 781 F.3d 63, 83 (4th Cir. 2015)). Here, arbitration of the Mosaic Plaintiffs’ four claims would not “prejudice . . . the administration of the bankruptcy case,” nor would it have a “negative impact on the determination of bankruptcy issues.” *In re Barker*, 510 B.R. at 779. Rather, arbitration would *enhance* the policies underlying the Bankruptcy Code by permitting the parties to expeditiously and cost-effectively resolve these disputed issues and preserving this Court’s limited judicial resources. *Id.* (noting that arbitration would “be helpful to the Court” and the parties because the Court would be able to “address any bankruptcy implications of the arbitrator’s decision concerning the state law claims” after arbitration had ended). Further, any possibility that arbitration of these claims

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<sup>7</sup> Courts have routinely characterized similar claims as non-core and compelled arbitration of those claims on that basis alone. *See, e.g., Hays & Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 885 F.2d 1149, 1156 (3d Cir. 1989) (compelling arbitration of RICO claim deemed non-core); *In re Kiskaden*, 571 B.R. 226, 239 (Bankr. E.D. Ky. 2017) (state-law consumer protection act claim); *In re Rozell*, 357 B.R. 638, 643 (Bankr. N.D. Ala. 2006) (TILA).

may have *some* impact on the administration of Power Home's estate is insufficient to create a conflict between arbitration and bankruptcy. *See In re Dixon*, 428 B.R. 911, 916 (Bankr. N.D. Ga. 2010) (potential that arbitration of claim requiring determination of validity of lien could "impact" debtor's bankruptcy plan did not justify denial of arbitration of otherwise statutorily and constitutionally non-core claim). Here, it is clear that the estate will not be prejudiced by the arbitration of claims against Solar Mosaic, specifically, in any way. Because there is no conflict between arbitration and the Bankruptcy Code with respect to these claims, this Court is not permitted to retain jurisdiction over claims the parties have jointly agreed to resolve through arbitration. *See In re Oaktree Med. Ctr., P.C.*, 640 B.R. at 663; *supra* pp. 14-16.

**D. Plaintiffs Have Waived Their Class Claims.**

Finally, the Mosaic Plaintiffs claims cannot proceed as a class action against Solar Mosaic because, pursuant to the arbitration agreement, they all waived their right to assert class claims against Solar Mosaic in the event that Solar Mosaic elects to arbitrate. Specifically, they agreed that:

if either you or we elect to arbitrate a Claim, neither you nor we will have the right: (a) to participate in a class action, private attorney general action or other representative action in court or in arbitration, either as a class representative or class member; or (b) to join or consolidate Claims with claims of any other persons. No arbitrator shall have authority to conduct any arbitration in violation of this provision or to issue any relief that applies to any person or entity other than you and/or us individually.

Rothenberg Dec., Ex. 1-6, at 17. The Supreme Court has recognized that class action waivers in arbitration agreements are fully enforceable and pose no obstacle to arbitration. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 351-352 (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, 231-232 (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”). Because these Plaintiffs have all waived their rights to participate in a class action, they are barred from proceeding with class claims against Solar Mosaic. *Id.*

## **II. IF PLAINTIFFS’ CLAIMS ARE COMPELLED TO ARBITRATION, THEIR CLAIMS IN THIS ACTION MUST BE STAYED.**

Section 3 of the FAA requires a court to stay “any suit or proceeding” pending arbitration of “any issue referable to arbitration under an agreement in writing for such arbitration.” 9 U.S.C. § 3. In the Fourth Circuit, “[t]his stay-of-litigation provision is mandatory.” *Adkins v. Lab. Ready, Inc.*, 303 F.3d 496, 500 (4th Cir. 2002). Accordingly, “[i]f the issues in the case are within the contemplation of the arbitration agreement . . . there is no discretion vested in the district court to deny the stay.” *United States v. Bankers Ins. Co.*, 245 F.3d 315, 319 (4th Cir. 2001).

A stay of all claims against Solar Mosaic in these proceedings is required because there exists a valid arbitration agreement governing these claims. *See supra* pp. 6-10. Accordingly, this Court must compel arbitration of these claims and, consequently, stay those claims in this proceeding pending the outcome of that arbitration. *See Bankers*, 245 F.3d at 319.

## **CONCLUSION**

For the foregoing reasons, Solar Mosaic respectfully requests that this Court compel all claims against Solar Mosaic to arbitration and stay those claims in these proceedings pending the outcome of arbitration.

This the 30<sup>th</sup> day of June, 2023.

/s/ Amy Pritchard Williams

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served by electronic notification on those parties registered with the United States Bankruptcy Court, Western District of North Carolina ECF system to receive notices for this case on June 30, 2023.

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