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

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| IN RE:<br><br>POWER HOME SOLAR, LLC<br><br>Debtor. | Chapter 7<br><br>Case No.: 22-50228 |
| CLAUDE MUMPOWER, *et al.*, for themselves and all others similar situated,<br><br>Plaintiffs,<br><br>v.<br><br>POWER HOME SOLAR, LLC, *et al.*,<br><br>Defendants. | Adversary Proceeding No. 23-03005<br><br>Judge: J. Craig Whitley |

**DEFENDANT GOODLEAP, LLC'S MEMORANDUM IN**
**SUPPORT OF ITS MOTION TO COMPEL ARBITRATION**

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## I. INTRODUCTION[1]

Defendant GoodLeap, LLC ("GoodLeap") entered into loan agreements with forty-two (42) of the adversarial proceeding Plaintiffs (the "GoodLeap Plaintiffs") to finance the purchase and installation of residential solar panel systems. Each Loan Agreement contained a valid and binding arbitration provision. The Federal Arbitration Act directs courts to compel arbitration when there is a valid agreement to arbitrate and the claims at issue fall within the scope of the agreement. Further, in the bankruptcy context, courts must compel arbitration for non-core claims, and courts have discretion to compel arbitration for core claims.

GoodLeap and the GoodLeap Plaintiffs unambiguously agreed to arbitrate the threshold issue of arbitrability and agreed to arbitrate the disputes contained in the First Amended Complaint (the "FAC"). The claims at issue are non-core, as they do not relate to the estate itself or the estate's administration, and arbitration of the claims would not present a conflict with the underlying purpose of the Bankruptcy Code. For these reasons, GoodLeap respectfully requests that the Court compel the GoodLeap Plaintiffs to arbitrate their claims against GoodLeap consistent with their Loan Agreements and dismiss or stay all the GoodLeap Plaintiffs' claims.

## II. FACTUAL BACKGROUND

Prior to filing for bankruptcy protection, Power Home, LLC ("Power Home"), sold and installed residential solar panel systems directly to consumers. Plaintiffs individually entered into installation contracts with Power Home Solar for such residential solar panel systems. (FAC ¶ 3, ECF No. 3.) The forty-two GoodLeap Plaintiffs allege they entered into loan agreements (the

[1] GoodLeap brings this Motion to Compel Arbitration as an initial threshold matter for the Court to consider and does so without prejudice to arguments for dismissal that it may raise in a subsequent motion to dismiss should this Motion to Compel Arbitration be denied. *See Lyons v. PNC Bank, N.A.*, 618 F. Supp. 3d 238, 242 (D. Md. 2022) (noting that 12(b)(6) arguments are not waived by filing a motion to compel arbitration).

"Loan Agreements") with GoodLeap to finance the purchase and installation of these residential solar panel systems. (*Id.* ¶ 71; **Exhibit A**, Declaration of Matt Dawson ("Dawson Dec.") ¶ 13.)

The FAC alleges that Power Home's salespersons made several misrepresentations during sales pitches for the solar panels. (FAC ¶ 41.) Specifically, Plaintiffs contend that salespersons misled Plaintiffs regarding the efficiency and effectiveness of the solar panel systems and the nature and amount of the available federal solar tax credit. (*Id.* ¶¶ 41-51.) Plaintiffs further allege that Power Home inflated the price of the solar panel systems above a reasonable price and that the price included a "hidden fee" to the credit-entity Defendants, including GoodLeap. (*Id.* ¶¶ 53-55, 60.) The FAC argues that the loan amounts exceed the amount paid to Power Home, and the delta between the two amounts constituted the "hidden fee." (*Id.* ¶¶ 39, 55.)

The GoodLeap Plaintiffs allege that they entered into Loan Agreements with GoodLeap. (*Id.* ¶¶ 22, 30.) These Loan Agreements had to be reviewed and signed to receive a loan from GoodLeap. (Dawson Dec. ¶¶ 4-12.) The Loan Agreements governed the terms of the relationship between the borrower and GoodLeap and set forth the parties' respective rights and responsibilities. Section 15 of each Loan Agreement contains an arbitration provision in which the parties agree to arbitrate "all claims and disputes arising out of or relating to [the Loan Agreement]." (*See* **Exhibit B**, Loan Agreement § 15; Dawson Dec. ¶¶ 14-15.) Section 15 further states that "[t]he arbitrator shall also decide any issues relating to the making, validity, enforcement, or scope of this arbitration agreement, arbitrability, defenses to arbitration including unconscionability, or the validity of the jury trial, class action or representative action waivers." (Loan Agreement § 15.) The provision also contained a class waiver, stating "unless you opt out of arbitration, you also agree to waive any right to bring or participate in a class or representative action in court or in arbitration." (*Id.*) All of the GoodLeap Plaintiffs' Loan Agreements contained identical arbitration provisions, and none of the GoodLeap Plaintiffs opted out of the arbitration provision. (Dawson Dec. ¶ 18.)

The Loan Agreement requires borrowers to initial after the arbitration provision. (Loan Agreement § 15.) The Loan Agreement states, "**BY PLACING YOUR INITIALS BELOW THIS NOTICE YOU CERTIFY THAT YOU HAVE READ AND AGREE TO SECTION 15 IN ITS ENTIRETY**." (*Id.* (emphasis in original).)

On October 7, 2022, Power Home filed for Chapter 7 bankruptcy protection. *In re Power Home Solar, LLC*, No. 22-50228 (Bankr. W.D.N.C.). Thereafter, eighty-nine (89) Plaintiffs (including the 42 GoodLeap Plaintiffs) instituted this purported class action adversary proceeding against Power Home, its CEO, GoodLeap, and several other credit-entity Defendants. In the FAC, the GoodLeap Plaintiffs allege violations of the Racketeering Influenced Corrupt Organizations Act ("RICO"), the Virginia Consumer Protection Act ("VCPA"), the North Carolina Unfair and Deceptive Trade Practices Act ("UDTPA"), the Truth in Lending Act ("TILA") and allege common law fraud. Because GoodLeap's Loan Agreements include enforceable and binding arbitration and class action waiver provisions, the FAC must be dismissed.

## III. LEGAL STANDARDS

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 (emphasis added). Courts must "rigorously enforce agreements to arbitrate," *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987), and "any 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 – North Carolina, LLC*, No. 3:21-cv-95, 2021 WL 5442221, at *2 (W.D.N.C. Nov. 19, 2021). The party opposing arbitration "bears the burden of proving that the claims at issue are unsuitable for arbitration." *Id.* That burden requires the opposing party to "unequivocally deny that there was an arbitration agreement and produce evidence to substantiate the denial." *Id.* (citations omitted).

## IV. ARGUMENT

The Court should compel arbitration because the parties unambiguously delegated the threshold issue of arbitrability to the arbitrator. Further, were the Court to decide arbitrability, the GoodLeap Plaintiffs entered into valid and enforceable arbitration agreements that are subject to the FAA, there is no inherent conflict between the enforcement of the arbitration agreements and the underlying purposes of the Bankruptcy Code, and the GoodLeap Plaintiffs waived their rights to pursue a class action. As such, the Court should stay or dismiss this action. *See Choice Hotels Int'l, Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709-710 (4th Cir. 2001) ("[D]ismissal is a proper remedy when all of the issues presented in a lawsuit are arbitrable."); *In re Oaktree Med. Ctr., PC*, 640 B.R. 649, 657 (Bankr. D.S.C. 2022).

### A. The Loan Agreement Delegates Arbitrability to the Arbitrator.

As an initial matter, the arbitration provision in the GoodLeap Plaintiffs' Loan Agreements contains a delegation clause stating that "[t]he arbitrator shall also decide any issues relating to the making, validity, enforcement, or scope of this arbitration agreement, [or] arbitrability . . . ." (Ex. A § 15.) The Supreme Court has repeatedly upheld arbitration provisions that delegate the threshold issue of arbitrability to the arbitrator. *See Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 68-69 (2010) ("We have recognized that parties can agree to arbitrate 'gateway' questions of 'arbitrability,' such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy.").

A court resolving an arbitrability dispute must engage in a two-step inquiry. *See Peabody Holding Co., LLC v. United Mine Workers of Am., Intern. Union*, 665 F.3d 96, 102 (4th Cir. 2012). First, the court must "determine *who* decides whether a particular dispute is arbitrable: the arbitrator or the court." *Id.* Second, only if the court determines that it "is the proper forum in which to adjudicate arbitrability" does the court "then decide whether the dispute is, in fact, arbitrable." *Id.*

Under the first step, "the 'question of arbitrability,' is 'an issue for judicial determination **[u]nless the parties clearly and unmistakably provide otherwise**.'" *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (2002) (emphasis added) (quoting *AT & T Techs., Inc. v. Commc'n Workers*, 475 U.S. 643, 649 (1986)). Here, the parties used clear and unambiguous language to delegate the threshold issue of arbitrability to the arbitrator.

For that reason, the Court need not address the second question of whether the dispute is arbitrable, or any of the issues that flow from that decision. Moreover, were the Court to address arbitrability, for the reasons set forth below, it is clear that the dispute is arbitrable, and the parties should be compelled to arbitration.

### B. The Arbitration Clause is Valid and Enforceable.

The claims asserted against GoodLeap must be arbitrated pursuant to the FAA's strong presumption in favor of arbitration, as the Loan Agreements are valid contracts and because the claims present a dispute within the scope of the arbitration provision.

#### 1. The FAA Applies to this Dispute.

The FAA mandates the enforcement of arbitration agreements where such agreements are part of a contract or transaction involving interstate commerce. 9 U.S.C. § 2 ("an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable"); *see Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 688 (1996). The phrase "involving interstate commerce" is broadly construed 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.7 (1967).

The dispute between the GoodLeap Plaintiffs and GoodLeap clearly involves interstate commerce. The Fourth Circuit has already determined that "reliance upon funds from a foreign source in a transaction is sufficient to implicate the FAA." *Rota-McLarty v. Santander Consumer USA, Inc.*, 700 F.3d 690, 697 (4th Cir. 2012). Financing and loan agreements are "subject to federal control" through several federal statutes and regulations, hence why Plaintiffs have brought claims under TILA and seek to impose derivative liability through the Federal Trade Commission's Holder Rule. Further, the GoodLeap Plaintiffs are alleged to be Virginia and North Carolina residents, while GoodLeap is a California entity. (FAC ¶¶ 3, 15, 22.) The multistate nature of the transactions is sufficient to "involve interstate commerce." *See United States ex rel Red Hawk Contracting, Inc. v. MSK Constr., Inc.*, No. 1:16-cv-1183, 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."). Finally, application of the FAA to this dispute is consistent with the Loan Agreements and the parties' expectations. The arbitration provision explicitly states that "The Federal Arbitration Act (9 U.S.C. §§1-16) (the "FAA") shall govern this agreement to arbitrate including all arbitrability issues." (Loan Agreement § 15.) There can be no doubt the FAA and its strong presumption favoring arbitrability apply to this action. *See Moses H. Cone Memorial Hosp.*, 460 U.S. at 24-25.

### 2. The FAA Compels Arbitration of this Dispute.

When ruling on a motion to compel arbitration, a reviewing court must decide: (1) whether there is a valid arbitration agreement between the parties and (2) whether the specific dispute falls within the scope of the agreement. *Chorley Enters., Inc. v. Dickey's Barbecue Restaurants, Inc.*, 807 F.3d 553, 563 (4th Cir. 2015).

#### i. The Arbitration Agreement is Valid.

The validity of an arbitration agreement is determined by state law. *Doctor's Assocs., Inc.*, 517 U.S. at 686-87. The Loan Agreements' arbitration provision states that "federal law shall apply to all other issues that arise under federal law and applicable state law as set forth in Section 14 above shall apply to all other issues that arise under state law (without reference to a state's choice of law rules)." (Loan Agreement § 15.) Section 14 provides that "to the extent that state law applies, the substantive laws of the state where the Residence is located [apply]." (*Id.* § 14.) As such, North Carolina law applies to some GoodLeap Plaintiffs, and Virginia law applies to others.

Under both North Carolina and Virginia law, "[t]o form a valid contract there must be an offer and an acceptance, supported by adequate consideration." *Barbee v. Johnson*, 665 S.E.2d 92, 97 (N.C. Ct. App. 2008); *Montagna v. Holiday Inns, Inc.*, 269 S.E.2d 838, 844 (Va. 1980) (same). Further, both states possess strong public policies favoring arbitration. *Hightower v. GMRI, Inc.*, 272 F.3d 239, 242 (4th Cir. 2001) (citing *Martin v. Vance*, 514 S.E.2d 306, 309 (N.C. 1999)); *see McNeil v. Haley South, Inc.*, No. 3:10-cv-192, 2010 WL 3670547, at *5 (E.D. Va. Sept. 13, 2010). Here, the Loan Agreement constituted GoodLeap's offer. The GoodLeap Plaintiffs accepted this offer by signing the Loan Agreements and initialing the arbitration provisions. *E.g., Martin*, 514 S.E.2d at 310 ("One who signs a paper writing is under a duty to ascertain its contents . . . he is held to have signed with full knowledge and assent."). Further, the arbitration provision uses language that is only susceptible to one interpretation: all claims related to the agreement are subject to binding arbitration on an individual basis. (*See* Loan Agreement § 15 ("All claims and disputes arising out of or relating to this Agreement . . . shall be resolved by binding arbitration on an individual basis.").) And as for consideration, GoodLeap agreed to lend funds to the GoodLeap Plaintiffs for purchasing solar panel systems in exchange for a promise to repay the loans under the terms of the Loan Agreements.

Therefore, under both North Carolina and Virginia law, the arbitration provisions are valid and binding. Thus, the claims must be arbitrated.

**ii. The Disputes Fall Within the Scope of the Arbitration Provision.**

The GoodLeap Plaintiffs' claims fall within the scope of the arbitration provision because the provision encompasses anything related to or arising out of the Loan Agreement and the GoodLeap Plaintiffs' claims directly relate to the subject matter of the Loan Agreements.

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 "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*, 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 attached to the dispute." *Mey*, 971 F.3d at 292 (citation omitted). An arbitration clause is "broad" where it provides for the arbitration of "any controversy or claim ***arising out of or related to*** [an] Agreement." *Id*. (emphasis added).

The arbitration provision in the Loan Agreements states that "[a]ll claims and disputes ***arising out of or relating to*** this Agreement shall be resolved by arbitration on an individual basis." (Loan Agreement § 15 (emphasis added).) Further, the parties agreed that the arbitrator would decide the scope of the arbitration clause. (*Id.*) One of the central claims in the FAC is that the Loan Agreements contained a hidden fee. This "hidden fee" allegation is referenced in each of their claims. (*See* FAC ¶¶ 123-24 (RICO), 135-36 (VCPA), 143-44 (UDTPA), 150-55 (fraud), and 161-68 (TILA).) The hidden fee allegation clearly "arises out of or relates to" the Loan Agreements. The other central allegation is that the GoodLeap Plaintiffs entered into the Loan Agreements due to misrepresentations allegedly made by or on behalf of GoodLeap. (*See* FAC ¶¶ 114, 135-37, 143-45, 150, 153-55.) These allegations clearly "relate to" the Loan Agreements. Several of the GoodLeap Plaintiffs' claims seek to impose liability based on the FTC Holder Rule provision contained in the Loan Agreements. (FAC ¶¶ 3, 14, 106, 132, 146; Loan Agreement § 14.) Once again, this dispute clearly arises out of the Loan Agreements.

Because all of the GoodLeap Plaintiffs' claims arise out of or relate to the Loan Agreements, each easily falls within the scope of the Agreement's arbitration provision and must be arbitrated.

### C. There is no Inherent Conflict Between Arbitration of Plaintiffs' Claims and the Purposes of the Bankruptcy Code.

Arbitration is still required despite the GoodLeap Plaintiffs' claims being part of an adversary proceeding in a bankruptcy case. 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 (2018) (cleaned up and emphasis added). The FAA's mandate, that valid arbitration agreements must be enforced, can only be "overridden by a contrary congressional command." *Shearson/Am. Exp., Inc.*, 482 U.S. at

226-27. A "contrary congressional command" is determined by a statute's text, its legislative history, or "from an inherent conflict between arbitration and the statute's underlying purpose." *Id.* at 227. Nothing in the text or the legislative history of the Bankruptcy Code overrides the FAA. *In re Barker*, 510 B.R. 771, 777 (Bankr. W.D.N.C. 2014).

Nor does the Bankruptcy Code's underlying purpose prohibit enforcement of the Loan Agreement's arbitration provision. The "underlying purpose" of the Bankruptcy Code is "to centralize disputes over the debtor's assets and obligations in one forum" and to facilitate "efficient reorganization of an estate." *Moses v. CashCall, Inc.*, 781 F.3d 63, 72, 83 (4th Cir. 2015). As this Court previously recognized, "[i]n adjudicating whether there is an inherent conflict between arbitration and the underlying purposes of the Bankruptcy Code, courts generally ask first if a cause of action is core or non-core. If the cause of action is not core, it generally *must* be submitted to arbitration." *In re Barker*, 510 B.R. at 777 (emphasis added). If the cause of action is core, then a bankruptcy court *may* deny a motion to compel arbitration *if* the "facts and circumstances" of the case reveal (1) an inherent conflict between arbitration and the underlying purposes of the Bankruptcy Code and (2) that arbitration would make debtor-creditor rights contingent on an arbitrator's ruling rather than the bankruptcy judge. *Id.* at 778 (emphasis added and citation omitted).

**1. Plaintiffs' Claims are Non-Core and Must be Submitted to Arbitration.**

Despite the GoodLeap Plaintiff's allegation that this is a core proceeding, their claims are clearly non-core. (*See* FAC ¶ 11.) A core cause of action 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). The Bankruptcy Code contains a non-exhaustive list of core claims, *see* 28 U.S.C. § 157(b)(2), each of which arises from rights created by the Code or consist of claims that could only arise in the bankruptcy proceeding. Conversely, a non-core claim is one that is "related to" a case arising under the Bankruptcy Code and merely "could conceivably have any effect on the estate being administered in bankruptcy." *MDC Innovations, LLC*, 726 F. App'x at 171. Here, the claims against GoodLeap will not have any effect on the bankruptcy estate, which is being liquidated.

Additionally, core claims should only be treated as core claims if they are both statutorily core and constitutionally core. A claim is "statutorily core" if it is the type of claim referenced in 28 U.S.C. § 157. *Stern v. Marshall*, 564 U.S. 462, 499 (2011). Whereas, a claim is "constitutionally core" if it "stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process." *Id.* If a claim is statutorily core but constitutionally non-core, the court "must treat the claim as if it were statutorily non-core." *Moses*, 781 F.3d at 70 (citing *Exec. Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 35-36 (2014)); *see also In re Oaktree Med. Ctr., PC*, 640 B.R. at 662.

The GoodLeap Plaintiffs' claims are neither statutorily core nor constitutionally core. The specific causes of action—RICO, VCPA, UDTPA, fraud, and TILA—are not statutorily core because none relates to the "core proceedings" in 28 U.S.C. § 157(b)(2). These core proceedings are unique to the bankruptcy context and relate to the administration of the estate, claims against the estate, the property of the estate, and dischargeability. *See* 28 U.S.C. § 157(b)(2). None of the claims are based on "any right expressly created by the Bankruptcy Code" and are not "part of the claims-allowance process." *In re Caceres*, 2023 WL 2543713, at *58 (Bankr. M.D.N.C. Feb. 27, 2023). Instead, the causes of action arise from state and federal law unrelated to the Bankruptcy Code or these proceedings. At bottom, none of the GoodLeap Plaintiffs' claims arise under the Bankruptcy Code. The claims are tangentially related to Debtor Power Home, but only in the sense that they attempt to pursue claims against the Debtor simply because the Debtor has filed for bankruptcy. Otherwise, the case has nothing to do with bankruptcy law

Further, the GoodLeap Plaintiffs' claims could have been "pursued in other venues" as they relate to conduct that occurred before Power Home filed for bankruptcy, which further indicates that these claims are non-core. *See id.* Additionally, courts within the Fourth Circuit have routinely found that consumer protection and fraud claims are non-core. *In re McPherson*, 630 B.R. 160, 175 (Bankr. D. Md. 2021) (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). As such, the GoodLeap Plaintiffs' claims are non-core, and, therefore, the claims "**must** be submitted to arbitration." *In re Barker*, 510 B.R. at 776 (emphasis added).

**2. Arbitration Should Still be Compelled if the Court Determines any of the Claims are Core.**

Moreover, if any of the GoodLeap Plaintiffs' claims are determined to be core (they are not), the Court should still compel arbitration because "the facts and circumstances" do not present an inherent conflict and "debtor-creditor rights" would not be affected by arbitration. *See In re Barker*, 510 B.R. at 778. Arbitration should be compelled when "there would be no prejudice to the administration of the bankruptcy case and no negative impact on the determination of bankruptcy issues." *Id.* at 779. The GoodLeap Plaintiffs' claims are tangential to Power Home's bankruptcy, and nothing in the adjudication of their claims will impact the GoodLeap Plaintiffs' rights vis-à-vis Power Home. Arbitration would not detract from the efficient administration and liquidation of Power Home's estate." *See Moses*, 781 F.3d at 83.

Further, a bankruptcy court should compel arbitration of claims, even constitutionally core claims, when "doing so would be helpful to the court and would assist the bankruptcy court in exercising its bankruptcy jurisdiction." *In re Barker*, 510 B.R. at 778. This Court has previously stated that "[a]rbitration of underlying state law causes of action that may bear on a bankruptcy issue promotes efficiency because of streamlined procedures available in arbitration and the limitations on appellate review." *Id.* Compelling arbitration would allow the parties to quickly and efficiently adjudicate the GoodLeap Plaintiffs' claims while allowing this Court to conserve its judicial resources and focus on the bankruptcy issues in the underlying bankruptcy case.

Considering the attenuation of the GoodLeap Plaintiffs' claims to the Power Home bankruptcy, the claims in the adversarial proceeding should be arbitrated regardless of whether such claims are categorized as core or non-core.

**D. Plaintiffs Have Waived Their Right to Bring Class Claims.**

The GoodLeap Plaintiffs have brought their claims as part of a putative class action. However, these borrowers have expressly waived their right to bring claims in this manner. As such, the GoodLeap Plaintiffs must be subject to individual arbitrations.

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); *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").

The Loan Agreements' arbitration provision includes a class action waiver. The GoodLeap Plaintiffs agreed that "**UNLESS YOU OPT OUT OF ARBITRATION, YOU ALSO AGREE TO WAIVE ANY RIGHT TO BRING OR PARTICIPATE IN A CLASS OR REPRESENTATIVE ACTION IN COURT OR IN ARBITRATION.**" (Loan Agreement § 15 (emphasis in original).) Therefore, the Court should require arbitration of the individual claims and dismiss, or stay, the class claims against GoodLeap.

## V. CONCLUSION

For these reasons, as well as those that may be advanced at any hearing, the Court should compel the GoodLeap Plaintiffs to arbitrate all of their claims against GoodLeap, LLC in accordance with the terms of their Loan Agreements and to determine all issues of arbitrability.

Respectfully submitted, this 30th day of June, 2023.

**GOODLEAP, LLC**

*/s/* Kelly C. Hanley
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## CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on June 30, 2023, the foregoing document was electronically filed with the Clerk of Court and served on all counsel of record using the Court's CM/ECF system.

/s/ Kelly C. Hanley
Kelly C. Hanley
*Counsel for GoodLeap, LLC*

# EXHIBIT A

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

| | |
|---|---|
| IN RE:<br><br>POWER HOME SOLAR, LLC<br><br>Debtor. | Chapter 7<br><br>Case No.: 22-50228 |
| CLAUDE MUMPOWER, *et al.*, for themselves and all others similar situated,<br><br>Plaintiffs,<br><br>v.<br><br>POWER HOME SOLAR, LLC, *et al.*,<br><br>Defendants. | Adversary Proceeding No. 23-03005<br><br>Judge: J. Craig Whitley |

**DECLARATION OF MATT DAWSON**

I, Matt Dawson, declare as follows:

1. I am a resident of the State of California and am over the age of 18 years old. I make this declaration in support of Defendant GoodLeap, LLC's Motion to Compel Arbitration. If called as a witness, I could and would testify consistent with the following.

2. I am the Chief Revenue Officer at GoodLeap, LLC ("GoodLeap"). I am one of the custodians of business records related to loan agreements executed with GoodLeap. I have personal knowledge of the facts set forth below, except as to those matters stated upon information and belief, and as to those matters, I believe them to be true.

3. GoodLeap, formerly known as LoanPal, is a California limited liability company and financial institution that extends credit to consumers.

4. Loan agreements with GoodLeap customers are routinely made and maintained in the regular course of business. These loan agreements are prepared and signed at the time the borrower consummates the loan. These Loan agreements are executed by borrowers using DocuSign software in accordance with 15 U.S.C. § 7001. The authoritative copy of these records is held at NA3.docusign.net.

5. It is the regular practice of GoodLeap to use DocuSign to electronically and securely generate, send, execute, and retain loan documents.

6. GoodLeap uses DocuSign because its electronic signature and agreement platform is best-in-class, cloud-based, and encrypted, and because it provides a secure digital audit trail.

7. For each loan agreement sent on behalf of GoodLeap, DocuSign records the date and time a loan agreement is emailed to, viewed by, and signed by, a borrower, as well as the address to which the application is emailed.

8. For each loan agreement sent on behalf of GoodLeap, DocuSign encloses the agreement in a virtual envelope that is encrypted and assigned a unique envelope identification.

9. DocuSign sends the loan agreement to a borrower from the email address loandocs@goodleap.com on behalf of GoodLeap.

10. At sending, delivery, and signing, DocuSign confirms that the envelope containing the loan agreement is encrypted and secure.

11. DocuSign allows a borrower to choose a handwriting font for their electronic signature from a list of pre-selected styles. DocuSign also gives a borrower the option to create their own electronic signature or upload a facsimile.

12. For each loan agreement sent on behalf of GoodLeap, once a borrower

electronically signs a loan agreement, DocuSign automatically generates an encrypted Certificate of Completion, which is saved on DocuSign's secure servers. In addition, an encrypted copy of the Certificate of Completion is emailed to the borrower and GoodLeap.

13. To the best of my knowledge, information and belief, each of the forty-two "GoodLeap Plaintiffs" entered into loan agreements ("Loan Agreements") with GoodLeap to finance their purchase and installation of solar panel systems from Power Home Solar, LLC.

14. Each Loan Agreement contained an arbitration provision. **Exhibit B** to GoodLeap's Motion to Compel Arbitration is the Loan Agreement for Plaintiff Claude Mumpower. The arbitration provision and class waiver provision are contained in Section 15 of the Loan Agreement.

15. Each Loan Agreement for the GoodLeap Plaintiffs contained an arbitration provision and class waiver provision identical to Section 15 of Plaintiff Claude Mumpower's Loan Agreement.

16. The arbitration provision also includes an opt-out clause. A borrower may opt out of mandatory arbitration for claims related to the Loan Agreement within 15 days of executing the Loan Agreement by providing written notice to GoodLeap

17. To the best of my knowledge, information and belief, each GoodLeap Plaintiff signed their respective Loan Agreement and initialed below the arbitration provision.

18. To the best of my knowledge, information and belief, none of the GoodLeap Plaintiffs opted out of the arbitration provision.

19. Each Loan Agreement also contained a governing law provision identical to Section 14 of Plaintiff Claude Mumpower's Loan Agreement.

20. To the best of my knowledge, information and belief, each of the GoodLeap Plaintiffs resided in North Carolina or Virginia at the time they executed their Loan Agreement with GoodLeap.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

EXECUTED this 30th day of June.

Matt Dawson