

NO. D-1-GV-13-_____

STATE OF TEXAS,
Plaintiff,

V.

1 SOLTECH INC.; SANDRA "SANDY"
FARDI; and HOSSEIN "ZAK" FARDI,
Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION, REQUEST FOR
EX PARTE TEMPORARY RESTRAINING ORDER AND
APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIONS**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff the STATE OF TEXAS ("State" or "Plaintiff"), acting by and through the Attorney General of Texas, Greg Abbott, complains of 1 SOLTECH INC.; SANDRA "SANDY" FARDI; and HOSSEIN "ZAK" FARDI, individually, ("Defendants" or "1 SolTech"), and for cause of action would respectfully show the Court the following:

I.

DISCOVERY CONTROL PLAN

1.1 The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. CIV. P. 190.3.

1.2 This case is not subject to the restrictions of expedited discovery under TEX. R. CIV. P. 169 because:

- a. The relief sought by the State includes non-monetary injunctive relief; and
- b. The State's claims for monetary relief including penalties, consumer redress and attorneys' fees and costs are in excess of \$100,000.00 and could exceed \$1,000,000.00.

II.

DEFENDANTS AND SERVICE

2.1 Defendant 1 SOLTECH INC. is a Texas corporation doing business in Texas and throughout the United States of America. The corporation may be served with process by serving its registered agent, Mark H. How, 2027 Young Street, Dallas, TX 75201.

2.2 SANDRA "SANDY" FARDI, an individual and Texas resident, is Chief Executive Officer, President and Director of 1 SOLTECH INC. She may be served with process at her residence, 5924 Stone Meadow Drive, Plano, Texas 75093-4616 or at her usual place of business, 1 Soltech Inc., 1920 Diplomat Drive, Farmers Branch, Texas 75234.

2.3 Defendant HOSSEIN "ZAK" FARDI, an individual and Texas resident, is Executive Vice President and Director of 1 SOLTECH INC. He may be served with process at his residence, 5924 Stone Meadow Drive, Plano, Texas 75093-4616 or at his usual place of business, 1 Soltech Inc., 1920 Diplomat Drive, Farmers Branch, Texas 75234.

III.

JURISDICTION

3.1 This action is brought by Attorney General Greg Abbott, through his Consumer Protection Division, in the name of THE STATE OF TEXAS and in the public interest under the authority granted to him by Section 17.47 of the TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, TEX. BUS. & COM. CODE § 17.41 *et seq.* (West 2012)("DTPA") upon the grounds that Defendants have engaged in false, misleading and deceptive acts and practices in the conduct of trade and commerce as defined and declared unlawful by Sections 17.46(a) and (b) of the DTPA.

IV.

VENUE

4.1 Pursuant to § 17.47 (b) of the DTPA, venue of this suit lies in Travis County, Texas because 1SolTech and Defendants have done business in Travis County, Texas.

V.

PUBLIC INTEREST

5.1 Plaintiff STATE OF TEXAS has reason to believe that Defendants are engaging in, have engaged in, or are about to engage in, the unlawful practices set forth below, that Defendants have caused, and will cause adverse effects to legitimate business enterprise which conducts its trade and commerce in a lawful manner in this State. Therefore, the Consumer Protection Division of the Office of the Attorney General of Texas believes and is of the opinion that these proceedings are in the public interest.

VI.

TRADE AND COMMERCE

6.1 Defendants engaged in trade and commerce as that term is defined by § 17.45(6) of the DTPA.

VII.

ACTS OF AGENTS

- 7.1 Whenever in this Petition it is alleged that Defendants did any act, it is meant that:
- a. Defendants performed or participated in the act; or
 - b. Defendants' officers, agents, or employees performed or participated in the act on behalf of and under the authority of Defendants.

VIII.

NOTICE BEFORE SUIT

8.1 The Consumer Protection Division did not contact Defendants before suit was filed to inform them in general of these unlawful allegations because there is good cause to believe that Defendants would destroy relevant records if such prior contact were made, that such an emergency exists that immediate and irreparable injury, loss or damage would occur as a result of such delay in obtaining a temporary restraining order, and that Defendants might evade service of process if prior notice of this suit was provided.¹

IX.

NATURE OF DEFENDANTS' OPERATIONS AND STATEMENTS OF FACTS

Summary of Allegations

9.1 Defendants represent that they manufacture solar panels in Texas from components that are 90% sourced from US manufacturers. Defendants represent that the solar panels they manufacture at their Farmers Branch facility meet or exceed the requirements of the federal Buy American Act, and therefore can be used in projects that require compliance with the Act. Defendants have been in the solar panel business since 2008, and did in fact engage in large-scale manufacturing of solar panels for a period of time. However, the solar panel manufacturing industry has been dominated by cheap Chinese-manufactured panels in recent years, and Defendants could not compete. Therefore, in early 2013, Defendants formulated a plan whereby they import Chinese panels, place a 1SolTech label on the panels, and sell them to customers in the United States as "Proudly Made in the USA."

¹ Defendants Sandra Fardi and Hossein Fardi are not U.S. citizens, and have indicated an intention to leave the United States if their deceptive practices are brought to light. See Exhibit B, Affidavit of Patricia Strandberg, attached.

Specific Allegations

9.2 1SolTech was founded by Sandy Fardi and Zak Fardi in 2008, and operates in Farmers Branch, Dallas County, Texas. (Attachment 1 to Exhibit A, 1 SolTech website as accessed and printed on September 13, 2013, p. 1, or <http://1soltech.com/about-us/>.) The company manufactures and sells solar panels for residential and commercial use. (*Id.*)

1SolTech's website states the following:

"Our passion and our commitment to a clean environment, the American economy, and our customers, is what drives us to manufacture "Quality...Made in the USA." (*Id.*)

"1SolTech is a leading American manufacturer of solar modules. Manufactured in Texas, 1SolTech modules combine aesthetic and performance. We strive to source components of the highest quality in our manufacturing process." (Ex. A, Attachment 1, p. 2 or <http://1soltech.com/products/>.)

"1SolTech takes immense pride in being a Texas-based company. Having founded the company in 2008, our founders, Sandy and Zak Fardi, set out to establish an American solar panel manufacturer." (Ex. A, Attachment 1, p. 1, or <http://1soltech.com/about-us/>.)

"1SolTech products not only meet and exceed the Buy American Act (BAA) and ARRA-Compliant requirements. Our modules reflect quality, proudly Made in the USA, from engineering to component and service procurement to production, stimulating our economic growth at home." (Ex. A, Attachment 1, p. 2)

"With over 90% of components sourced from US manufacturers, 1SolTech products qualify for Ex-IM Bank financed projects." (*Id.*)

"1SolTech panels are proudly made in Texas." (Ex. A, Attachment 1, p. 3, or <http://1soltech.com/>.)

"1SolTech manufactures durable, efficient and cost-competitive American solar panels." (Ex. A, Attachment 1, p. 4.)

“Our Manufacturing Facility Customers and Potential Customers are welcome to visit our facility located in the Dallas-area.” (*Id.* p. 5.)

9.3 The 1 SolTech website includes mini-biographies of Sandra “Sandy” and Hossein “Zak” Fardi, the co-founders, officers and directors of 1 SolTech, Inc. (Ex. A, Attachment 1, p. 6, or [http://1soltech.com/leadership/.](http://1soltech.com/leadership/))

Sandra Fardi’s biography contains the following statements:

“Sandy Fardi is Co-Founder of 1SolTech and serves as the company CEO.” (*Id.*)

“Sandy led the way in the US compliant manufacturing process.” (*Id.*)

9.4 Hossein Fardi’s biography contains the following statements:

“Zak Fardi is a Co-Founder of 1SolTech and serves as the Executive Vice President.” (*Id.*)

“He has established himself as one of the industry experts in solar manufacturing, with more than 40 MW of production while at the helm of 1SolTech and has spearheaded the growth of 1SolTech.” (*Id.*)

9.5 The 1SolTech website includes descriptions of the specific solar panels that Defendants represent are manufactured at the Dallas-area facility:

- 1SOLTECH REFLECTION SERIES – 60 CELL WHT
- 1SOLTECH REFLECTION SERIES – 60 CELL BLK
- 1SOLTECH REFLECTION SERIES – 80 CELL
- 1SOLTECH HORIZON SERIES – 60 CELL
- 1SOLTECH HORIZON SERIES – 80 CELL
- 1SOLTECH SLEEK SERIES – 60 CELL
- 1SOLTECH COLOR SERIES – 60 CELL (Ex. A, Attachment 1, p. 2 or [http://1soltech.com/products/.](http://1soltech.com/products/))

9.6 The 1SolTech website includes a brochure for each of these solar panels. (Ex. A, Attachment 1, pp. 7-20, or <http://1soltech.com/wp-content/uploads/2012/09/Reflection-Series-60-Cell-WHT.pdf>; [http://1soltech.com/wp-content/uploads/2012/09/Reflection-Series-60-Cell-](http://1soltech.com/wp-content/uploads/2012/09/Reflection-Series-60-Cell-60-Cell-WHT.pdf)

BLK.pdf; <http://1soltech.com/wp-content/uploads/2012/09/Reflection-Series-80.pdf>;

<http://1soltech.com/wp-content/uploads/2012/09/Horizon-Series-60-Cell.pdf>;

<http://1soltech.com/wp-content/uploads/2012/09/Horizon-Series-80-Cell.pdf>;

<http://1soltech.com/wp-content/uploads/2012/09/Sleek-Series-60-Cell.pdf>;

<http://1soltech.com/wp-content/uploads/2012/11/Color-Series-60-Cells.pdf>.) Each brochure

includes an American flag logo, along with the statement: “MADE IN THE USA.” (*Id.*)

9.7 Each brochure also includes the following statements:

“Proud to say: Buy “Made in the USA” products with confidence. All 1SolTech modules are manufactured with pride in our Dallas/Ft Worth, TX facility using 93% components sourced from domestic manufacturers.” (*Id.*)

“1SolTech Modules:

- Qualify under the Buy American Act (BAA)
- Qualify under the American Recovery & Reinvestment Act (ARRA)” (*Id.*)

“1SolTech is a leading American manufacturer of high-quality, cost-effective solar modules.” (*Id.*)

“Just as important, 1SolTech, which manufactures its modules with primarily American components, is committed to making the US a leading manufacturer in the solar industry. When you choose 1SolTech, you choose America.” (*Id.*)

9.8 The brochures also include the representations that 1SolTech panels are “CEC listed: Modules are approved for California rebates,” and “FSEC listed: Modules are approved for Florida rebates.” (*Id.*)

9.9 The brochures include logos from the International Electrotechnical Commission (IEC) and the ETL listed logo from Intertek, thereby representing that 1SolTech panels have met performance and safety standards required by these organizations for products that bear their certification. (*Id.*)

9.10 The 1SolTech website also includes the representation that 1SolTech solar modules' performance is warrantied for 25 years, and there is a 10 year warranty for product defects in materials or workmanship. (Ex. A, Attachment 1, p. 7, or [http://1soltech.com/products/.](http://1soltech.com/products/))

9.11 The 1SolTech website includes links to public relations announcements and news articles featuring Defendants. (Ex. A, Attachment 1, p. 21, or [http://1soltech.com/news/.](http://1soltech.com/news/)) In a linked public relations announcement entitled "1 SolTech Inc. Receives UL/ETL Certification for Its Line of High-Performance Solar Photovoltaic Panels," dated February 11, 2010, there is the following quotation from Sandy Fardi, identified as co-founder and CEO of 1 SolTech, Inc.:

The superior performance and reliability of our panels, designed and produced by our skilled team of engineers and technicians, assures years of clean, carbon-free energy production. Our U.S. production facility not only meets "Buy American" initiatives, but also provides faster delivery and lower delivery costs than most of our competitors. (Ex. A, Attachment 1, p. 24, or <http://www.businesswire.com/news/home/20100211006305/en/1-SolTech-Receives-ULETL-Certification-Line-High-Performance.>)

9.12 That same public relations announcement includes the following quote from a customer of 1 SolTech, Inc., identified in the announcement as Gary Jones, president of 411 NRG in Wichita Falls, Texas:

We selected 1 SolTech to supply PV solar panels because it was important to us and our customers to source from a true U.S. manufacturer, and because of the superior technical and structural merits of the product. (*Id.*)

9.13 The announcement further states:

1 Soltech utilizes highest quality U.S. components to produce best-in-class PV modules. (*Id.*)

These American-made products are competitively-priced, guaranteed to meet or exceed performance claims, and backed by a 25-year power warranty. (*Id.*)

9.14 The 1 SolTech website includes a link to a news article published in the Dallas Business Journal dated July 24, 2013, which includes the following statements:

The website GreenTechMedia list more than 70 venture capital-funded solar companies that have closed, filed for bankruptcy or been sold off since 2010.

Many of those companies took advantage of government subsidies, incentives, grants and other programs that constantly irritate oil and gas executives.

As I learned this week, the CEO of Texas' only solar panel manufacturer agrees.

'The website is a long list of companies, most of them took advantage of some incentives and grants,' said Sandy Fardi, CEO of 1SolTech, based in Farmers Branch.

More than 60 percent of the companies closed in 2012.

'We jokingly say, as hard as the time was, that we survived in 2012 especially because we didn't get any government grants,' Fardi said. 'We have to be really self sustainable and learn to adjust to the market.'

The company is one of three domestically owned companies that manufacturers solar panels. Earlier this year, the Electric Reliability Council of Texas (ERCOT) reported that renewable energy grew by 7 percent from 2011 to 2012. Solar alone provided 133,642 megawatts of power in Texas, a 256 percent increase over 2011. But the majority of solar panels these days are made in China, Sandy Fardi said. [Sic] (Ex. A, Attachment 1, pp. 25-6, or <http://www.bizjournals.com/dallas/blog/2013/07/how-texas-only-solar-panel-maker.html?page=all>.)

9.15 The 1 SolTech website includes a link to a news article published in the Dallas Business Journal dated July 26, 2013, entitled "Dallas firm uses solar to power West Texas oil rigs." The article concerns an entrepreneur, Mark Smith, that provides solar-generated power to provide an alternate energy source to the oil-drilling industry, and includes the following statements:

[Smith] buys the panels from 1SolTech, a Farmers Branch-based company that is one of only three domestic manufacturers in the country.

1SolTech CEO Sandy Fardi said innovators such as Smith are finding new ways to use solar beyond just putting them on the roof or in a solar farm.

'We were always there to supply him with the materials because we believe in his development and tried to support him,' Fardi said. 'Now he's really growing and he's defined his technology.' (Ex. A, Attachment 1, p. 27-8, or <http://www.bizjournals.com/dallas/news/2013/07/26/dallas-man-uses-solar-to-power-west.html>.)

9.16 The 1SolTech website includes a document which is entitled "TERMS AND CONDITIONS OF SALE OF 1SOLTECH PRODUCTS." (Ex. A, Attachment 1, pp. 29-32, or <http://1soltech.com/docs/TERMS-AND-CONDITIONS-OF-SALE.pdf>.) This document includes the following terms:

Except as otherwise agreed by 1SolTech, Inc. ("Seller") in writing, the following terms and conditions ("Agreement") will apply to all orders received and all sales made by Seller. (*Id.*, p. 29.)

Buyer assumes the risk and agrees to indemnify Seller against and hold Seller harmless from all liability relating to... (ii) determining the compliance of Buyer's use of the Products with applicable laws, regulation, codes and standards. Buyer retains and accepts full responsibility for all warranty and other claims relating to, or arising from, Buyer's products which include or incorporate Products or components manufactured or supplied by Seller. (*Id.*, p. 31.)

Buyer shall inspect Products promptly upon their receipt. Unless Buyer notifies Seller in writing within thirty (30) calendar days after the receipt of Products or the rendering of services that the Products or services are nonconforming, describing the nonconformity in commercially reasonable detail, Buyer shall be deemed to have accepted the Products or services. (*Id.*)

...Seller warrants to Buyer that the Products (1) shall ...i. be free from defects in materials and workmanship for a period of five (5)

years from the date of shipment; ii. achieve at least 90% minimum specified power rating for ten (10) years from the date of shipment; and iii. achieve at least 80% of the minimum specified power rating for twenty five (25) years from the date of shipment.² (*Id.*, p. 30.)

9.17 On July 30, 2012, a complaint was filed in United States District Court in the Northern District of Texas, Dallas Division, case 3:12-cv-02585-O, *Alireza Nikmanesh vs. 1 SolTech, Inc., Sandra Fardi, and Zak Fardi*, alleging that by failing to pay overtime wages to non-exempt employees who worked more than 40 hours in any given calendar week, Defendants violated the Fair Labor Standards Act (“FLSA”). (Ex. A, Attachment 2.) Defendants filed an answer to that complaint on August 20, 2012, in which they admit, *inter alia*, that Sandra Fardi is the CEO of 1 SolTech, Inc., and as such, is substantially in control of work that occurs on behalf of SolTech, and that Zak Fardi is Executive Vice President of SolTech, and as such, is substantially in control of work that occurs on behalf of SolTech. (Ex. A, Attachment 3.)

9.18 Defendants further admit in their answer that they “are engaged in operating a United States manufacturer of solar energy panels.” (*Id.*)

9.19 In early May 2013 the Office of the Attorney General received information from the former Chief Financial Officer (“CFO”) of 1SolTech Inc. asserting that 1SolTech orders solar panels that are manufactured in China, and then labels the panels with a “Made in USA” sticker prior to shipping those panels to buyers in the United States. (Ex. B, Affidavit of Patricia Strandberg, attached.)

9.20 Patricia Strandberg served as CFO from early 2012 through sometime in early February 2013. (*Id.*) At the time she began working at 1 SolTech, Defendants did manufacture

² The warranty in the Terms and Conditions is quite different from the “Industry Leading Warranty” displayed prominently on the website. For example, the website indicates that defects in materials and workmanship are guaranteed for ten (10) years, while the Terms and Conditions limit that guarantee to five (5) years. The performance warranty is also significantly more limited in scope.

solar panels at their Texas facility. (*Id.*) However, United States-based manufacturers of solar panels struggled in 2012, in part because the Chinese “dumped” solar panels on the U.S. market. (Ex. C, attached is an article from RenewableEnergyWorld.com dated October 19, 2011, which describes a complaint filed by a coalition of U.S.-based solar panel manufacturers, alleging unfair trade practices by the Chinese. <http://www.renewableenergyworld.com/rea/news/article/2011/10/us-solar-companies-file-lawsuit-against-chinese-panelmakers>; Ex. D, attached, is an article from the New York Times dated October 12, 2012, describing tariffs imposed by the Commerce Department on panels imported from China, in part in response to that complaint. http://www.nytimes.com/2012/10/11/business/global/us-sets-tariffs-on-chinese-solar-panels.html?_r=0.)

9.21 While still serving as CFO, Ms. Strandberg participated in a meeting with Defendants Zak Fardi, Sandy Fardi, and Ali Enrique Razavi, Corporate Vice President, at 1 SolTech in the early part of January 2013. At that meeting, Defendant Zak Fardi said that in order to survive, 1 SolTech would have to buy Chinese solar panels and re-label them as Made in USA by 1 SolTech. Initially, Defendant Sandy Fardi objected to this plan. Ms. Strandberg also voiced her objections at that meeting, stating that she believed such a course of conduct would be morally and perhaps legally wrong. Mr. Razavi used a whiteboard to show the meeting participants that this plan was the only way for 1 SolTech to continue in business. (Ex. B.)

9.22 Shortly after this meeting, Ms. Strandberg was asked to prepare a purchase order for solar panels ordered from Talesun, a Chinese manufacturer of solar panels. She refused, which led to an argument with Defendant Sandy Fardi. Sandy Fardi ultimately signed the purchase order. (*Id.*)

9.23 Ms. Strandberg tendered her resignation in February of 2013. She indicated in her resignation letter that she was leaving the company for health reasons, and because of the direction in which the company was headed. (Ex. B.)

9.24 Internally, Defendants refer to the Chinese panels ordered from Talesun as “2nd Generation,” to distinguish them from the panels manufactured by 1 SolTech. (*Id.*) Defendants had planned to “flash” each panel (i.e., shine a light on the panel in order to test the wattage output) and then place the 1 SolTech label on the panel. (*Id.*)

9.25 The first large shipment of Chinese panels from Talesun was received by 1 SolTech in the spring of 2013. Attachment 1 to Exhibit B, attached, are photographs of the crated panels from China in 1 SolTech’s Farmers Branch manufacturing facility. The Talesun logo and website are visible on the outside of the crates in the photograph.

9.26 1 SolTech purchased \$2 million worth of Talesun panels in the first half of 2013. Defendants Zak and Sandy Fardi stated at company meetings that they purchased the panels from Talesun on 90-day-credit terms, and did not intend to pay for the panels in full in order to pay the Chinese back for dumping cheap panels on the U.S. market. (Ex. B.)

9.27 Several documents attached to this petition as exhibits illustrate the mechanics of the deception. On April 4, 2013, 1 SolTech sent an Order Acknowledgement and Pro Forma Invoice to Hannah Solar Government Services, LLC (“Hannah Solar”) in Charleston, South Carolina. These documents indicate that 1 SolTech received an order from Hannah Solar for 4158 “2ND GEN-265W-MONOCRYST-60CELL-WHT BACKSHEET/SLV FRAME-3 BYPASS DIODES” at \$219.95/panel, for a total purchase order of \$914,552.10. The delivery schedule indicates that 2000 of the panels will be delivered to Hannah Solar on August 20, 2013, and 1358 of the panels will be delivered September 15, 2013. The order acknowledgement and

pro forma invoice both include the statement "Thank you for Buying Made in the USA." (Ex. E.)

9.28 On April 23, 2013, Defendants sent a purchase order to Talesun Solar for 4200 "MONOCRYST MODULE 265W WHT/SLV FRAME 60-CELL" at \$190.80/panel, for a total purchase order of \$801,360.00. According to the purchase order 2800 of the panels are to be delivered between August 5-10, 2013, and 1400 are to be delivered by September 1, 2013. The International Commercial Terms ("Incoterms") of the sale are DDP, i.e., delivered duty paid. (Ex. F.)

9.29 By selling Chinese solar panels purchased from Talesun to Hannah Solar as "Made in U.S.A." 1 SolTech was able to realize a tidy profit of \$113,192.10 on this one transaction. Of course, if 1 SolTech did not in fact pay Talesun in full for the solar panels, its' profit is far higher.

9.30 An additional document illustrates the manner in which 1 SolTech seeks to mislead the U.S. buyers of the Talesun solar panels as to the panel's origin. Exhibit G is a purchase order dated March 21, 2013 from 1 SolTech to Talesun Solar is for two thousand 245W solar panels and three thousand 250W solar panels for a total purchase order of \$744,000.00. This purchase order states that there should be "No sticker inside the laminate and no logo/address on the packaging." (Ex. G.)

9.31 The Pro Forma Invoice for this purchase order sent by Talesun to 1 SolTech dated April 1, 2013 indicates that the International Commercial Terms ("Incoterms") of this sale will be DDP, i.e., delivered duty paid, and that the method of shipping will be "Ocean." (Ex. H.)

9.32 1 SolTech also participates in bid proposals, whether solely or as part of a consortium, and enters into contracts with American companies to furnish solar panels for

projects that have a “Buy American” component. It fails to disclose that it purchases panels from China on which it places 1 SolTech labels, and provides those panels to these projects as “Made in U.S.A.” In fact, 1 SolTech actively misrepresents that the panels are manufactured by 1 SolTech in Texas. For example, on May 1, 2013, 1 SolTech provided a sales quote to Dynamic Energy in Wayne, Pennsylvania, representing that it would sell “2nd Gen” (i.e., the manner in which 1 SolTech has determined to internally distinguish Chinese-manufactured solar panels from those manufactured by 1 SolTech) solar panels to Dynamic Energy for its’ ““MADE IN USA”/RAGGED HILL PROJECT.” (Ex. I.)

9.33 In addition to misrepresenting Chinese panels as American-made, Defendants sell the Chinese panels to consumers at inflated prices. In fact, this aids Defendants in their deception: Consumers expect to pay higher prices for American-made solar panels, and in fact may be required to use American-made panels by the terms of their projects. However, consumers have also come to expect a higher quality and durability from American-made panels, and lower rates of failure to meet represented standards of safety and durability. It may also prove easier to make a claim on a warranty for a panel manufactured closer to home. Recently, the New York Times reported that solar panels are failing to live up to representations regarding their output and durability. (Ex. J, or <http://www.nytimes.com/2013/05/29/business/energy-environment/solar-powers-dark-side.html?pagewanted=all>.) The Times reported that panels represented to last 25 years have been failing after two, and that “[m]ost of the concerns over quality center on China, home to the majority of the world’s solar panel manufacturing capacity.” (*Id.*) Clearly, passing Chinese-manufactured panels off as American-made could have serious negative implications for the American solar industry at large if the Chinese panels prove inferior and fail at great rates, but are believed to be American-made.

9.34 Consumers who purchased solar panels from 1 SolTech that were represented as having been manufactured at the 1 SolTech facility in Farmers Branch, Texas, and to have met certification and testing standards regarding output and safety, but were in fact manufactured in China and purchased by 1 SolTech and re-labeled, are entitled to a return of the monies paid for those panels.

9.35 Neither of the co-owners and principals of 1 SolTech are citizens of the United States. When questioned about their deceptive activity by the Chief Financial Officer, Zak Fardi indicated that he and Sandy Fardi would simply leave the country if confronted by legal authorities. (Ex. B.)

9.36 Neither Zak nor Sandy Fardi own any real estate or significant personalty in the United States. The home in which they reside is rented, and the 2013 Cadillac Escalade in which they ride is leased by 1 SolTech.

X.

VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

10.1 The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

10.2. Defendants, as alleged and detailed above, have in the course of trade and commerce engaged in false, misleading and deceptive acts and practices as declared unlawful in § 17.46(a) of the DTPA;

10.3 Defendants, as alleged and detailed above, have in the course of trade and commerce violated § 17.46(b)(1) of the DTPA by passing off goods or services as those of another;

10.4 Defendants, as alleged and detailed above, have in course of trade and commerce violated § 17.46(b)(2) of the DTPA by causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods and services;

10.5 Defendants, as alleged and detailed above, have in the course of trade and commerce violated § 17.46(b)(4) of the DTPA by using deceptive representations or designations of geographic origin in connection with goods or services;

10.6 Defendants, as alleged and detailed above, have in the course of trade and commerce violated § 17.46(b)(5) by representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;

10.7 Defendants, as alleged and detailed above, have in the course of trade and commerce violated § 17.46(b)(7) of the DTPA by representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

10.8 Defendants, as alleged and detailed above, have in the course of trade and commerce violated § 17.46(b)(12) of the DTPA by representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;

10.9 Defendants, as alleged and detailed above, have in the course of trade and commerce violated § 17.46(b)(20) of the DTPA by representing that a guarantee or warranty confers or involves rights or remedies that it does not have or involve; and

10.10 Defendants, as alleged and detailed above, have in the course of trade and commerce violated § 17.46(b)(24) of the DTPA by failing to disclose information concerning

goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

XI.

RULE 194 REQUEST FOR DISCLOSURE

11.1 Pursuant to Texas Rule of Civil Procedure 194, the State requests that Defendants disclose, within 50 days of this petition, the information or material described in Rule 194.2.

XII.

REQUEST TO CONDUCT EXPEDITED DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

12.1 Plaintiff requests leave of this Court to conduct telephonic, oral, written and other depositions of witnesses and parties prior to any scheduled Temporary Injunction Hearing and prior to Defendants' answer date. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys, if known. Plaintiff further requests that Defendants be ordered to produce documents on reasonable shortened notice prior to any scheduled Temporary Injunction hearing.

XIII.

DISGORGEMENT/RESCISSION

13.1 Defendants' assets are subject to the equitable remedy of disgorgement, which is the court-ordered relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains and benefits or profits that result from Defendants' violations of Texas law. Defendants should be ordered to disgorge all illegally obtained monies from consumers, together with all the proceeds, profits, income, interest and accessions thereto. Such disgorgement should be for the benefit of victimized consumers and the State of Texas.

13.2 All contracts obtained by Defendants in violation of the DTPA should be rescinded by order of this Court, and all ill-gotten gains, benefits or profits that Defendants obtained from such contracts should be returned to the State of Texas and consumers.

XIV.

NECESSITY OF IMMEDIATE RELIEF

14.1 Pursuant to TEX. BUS. & COM. CODE § 17.47, Plaintiff requests immediate relief by way of a Temporary Restraining Order and Temporary Injunction, as set forth in the Prayer. Under TEX. BUS. & COM. CODE § 17.47, the State is entitled to a Temporary Restraining Order “[w]henever the consumer protection division has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this subchapter, and that proceedings would be in the public interest.” § 17.47(a).

14.2 Defendants continue to submit bid proposals on projects that have a “Buy American” requirement, sometimes on their own, but typically as part of a consortium which includes partners who can build, install and service the solar power installation. Some of these projects involve contracts valued at tens of millions of dollars. On information and belief, Defendants plan to or have already submitted a bid proposal as part of a consortium for a project for the City of Denton which is valued at or around 30 million dollars, and requires that the solar panels used in the project be manufactured in Texas. The harm to the City of Denton and the consortium partners of Defendants if Chinese-manufactured panels are substituted for Texas-made, without their knowledge or consent, will be extremely difficult and costly if not impossible to rectify. Immediate injunctive relief by way of Temporary Restraining Order and Temporary Injunction is therefore necessary to prevent continuing harm prior to trial.

14.3 Defendants have indicated that they are willing to abandon the business and leave the country should their deceptive acts be discovered. Therefore, there is reason to believe that Defendants may seek to evade service of process, and that key evidence in this matter, including documents and electronic data, may be destroyed, secreted, or removed by Defendants or their agents if they are given prior notice of this suit.

14.4 Pursuant to TEX. BUS. & COM. CODE § 17.47(b), Plaintiff requests that Temporary Restraining Order be issued without prior notice to Defendants to prevent evasion of service of process and destruction, secretion, or removal of evidence by Defendants.

XV.

TRIAL BY JURY

15.1 Plaintiff herein requests a jury trial and will tender the jury fee to the Travis County District Clerk's Office pursuant to TEX. R. CIV. P. 216 and TEX. GOV'T CODE § 51.604.

XVI.

PRAYER

APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION

16.1 The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

16.2 As alleged above, Defendants have violated the DTPA and will continue to do so unless immediately restrained by this court. The entry of such an order is in the public interest.

16.3 PLAINTIFF THEREFORE PRAYS that Defendants will be cited according to law to appear and answer herein; that before notice and hearing an immediate TEMPORARY RESTRAINING ORDER be issued; that after due notice and hearing a TEMPORARY

INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued restraining and enjoining Defendants, their agents, servants, employees, and representatives from doing the acts and engaging in the practices set out in the preceding paragraphs, as well as from engaging in any of the following acts or practices:

- a. Failing to clearly and conspicuously disclose on all marketing, advertising, solicitations, or other representations of any kind of solar panels, modules, or other solar power generating equipment, products or services, the national origin of the solar panels, modules, or other solar power generating equipment, products or services;
- b. Making representations of any kind, including but not limited to verbal or written representations, that Defendants' products, including but not limited to solar panels or modules, are "Made in USA," manufactured in the United States of America, or are assembled solely or largely from components made or manufactured in the United States of America; or making other representations or this kind regarding Defendants' products, unless those representations are factual;
- c. Representing that solar panels or modules offered for sale or sold by Defendants have met certification or testing requirements of any regulatory authority or body, or any testing authority or body, unless those representations are factual;
- d. Furnishing Chinese solar panels or modules to consumers if Defendants represented to that consumer that it would be furnished solar panels or modules that were manufactured in the United States of America; and
- e. Destroying, transferring, hiding, secreting or moving to a location outside of the State of Texas any records, books, computers, ledgers, customer lists, electronic data of any kind, or any other records belonging to Defendants.

16.4 PLAINTIFF FURTHER PRAYS that upon final hearing, this Court will order Defendants:

- a. To pay civil penalties of up to \$20,000.00 per violation for each and every violation of the DTPA as authorized by TEX. BUS. & COM. CODE § 17.47(c)(1);
- b. To disgorge any ill-gotten gains;

- c. To restore all money or other property acquired by means of unlawful acts or practices, or in the alternative, to compensate identifiable persons for actual damages; and
- d. To pay all costs of Court, costs of investigation, and reasonable attorneys' fees pursuant to Section 17.47 of the DTPA and TEX. GOVT. CODE ANN. § 402.006(c).

16.5 PLAINTIFF FURTHER PRAYS for post-judgment interest and such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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