

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

WILLIAM RODRÍGUEZ RODRÍGUEZ;
ARYNETTE RIVERA OLIVERA; and,
INNOVA HOME SOLUTIONS, INC.,

Plaintiffs,

v.

CODE GREEN SOLAR PUERTO RICO,
LLC; CODE GREEN SOLAR, LLC;
CHARLES KARTSAKLIS; SUNNOVA
ENERGY CORPORATION,

Defendants.

CIVIL No.

RE: Breach of Contract; Deceit and
Error in Contracting; Damages; and
Restitution

Plaintiffs Demand Trial by Jury

COMPLAINT

TO THE HONORABLE COURT:

COME NOW Plaintiffs William Rodríguez Rodríguez (“Rodríguez”), Arynette Rivera Oliveras (“Rivera”), and Innova Home Solutions, Inc. (“Innowave”)¹ (collectively, “Plaintiffs”), through the undersigned counsels, and very respectfully, state, allege and pray as follows:

I. Nature of the Action

1. The instant action is brought by the Plaintiffs against Code Green Solar Puerto Rico, LLC (“Code Green Puerto Rico”), Code Green Solar, LLC (“Code Green”), Charles Kartsaklis (“Kartsaklis”), and Sunnova Energy Corporation (“Sunnova”) (collectively, “Defendants”), who are jointly and severally liable for breach of contract, rescission of contract, nullity of contract, torts, negligence, damages, fraud and aggravated identity theft.

¹ Innova Home Solutions, Inc., a local corporation, assigned Corporate Register Number 338360 by the Commonwealth of Puerto Rico’s Department of State, was *formally* named Innowave Energy, Inc. Plaintiffs amended the corporation’s name subject to the terms of the “Asset Purchase Agreement” which is discussed throughout this pleading.

2. The Plaintiffs allege, in synthesis, that the Defendants agreed and conspired amongst themselves to eliminate Rivera and Innowave from the rapidly developing Puerto Rico solar panels market in order to take over their business and market share. The strategy they executed in order to complete that goal was to use Sunnova's leverage over the Plaintiffs to strangle them economically and threatening to take adverse actions against them, forcing them to sell Innowave's assets at a discounted price.

3. The result of the Defendants' conduct was that Rivera ended up selling Innowave's assets and liabilities to Code Green Puerto Rico. While executing the documents of the forced sale, Code Green Puerto Rico, Code Green, and Kartsaklis conspired and agreed to change and changed some of the schedules of the final agreement (titled "Asset Purchase Agreement"), thus altering – behind the Plaintiffs' back and without their knowledge – the assumed liabilities schedule the parties had agreed to. Code Green Puerto Rico, Code Green, and Kartsaklis covered their deceit by never providing the Plaintiffs a copy of the complete executed Asset Purchase Agreement, along with its schedules and exhibits.

4. Further and besides the Defendants deceit, Code Green Puerto Rico also defaulted on essentially all its obligations under the Asset Purchase Agreement and, along with Kartsaklis, refused to answer Plaintiffs' multiple communication attempts. In consequence, the Plaintiffs rescinded the Asset Purchase Agreement.

5. Defendants' actions caused and continue to cause serious damages to Plaintiffs. The Defendants fully knew that their conduct would cause such damages and they intended the same, since by strapping Rivera and Innowave in debt and monies collections actions, they assured themselves that the Plaintiffs could not return to the market to compete with them.

6. Plaintiffs request this Honorable Court, among other things, to: (1) order Code Green Puerto Rico to return the considerations exchanged as part of the agreement, along with the fruits and interests generated by the same; (2) declare the Asset Purchase Agreement null for error and deceit; and, (3) order the Defendants to compensate the Plaintiffs for their economic damages, as well as their mental and emotional suffering.

II. Jurisdiction and Venue

7. This Honorable Court has jurisdiction to entertain this civil action pursuant to 28 U.S.C. § 1332, since the Plaintiffs are all citizens of the Commonwealth of Puerto Rico and all the Defendants are citizens of other states of the United States of America, and the amount in controversy exceeds \$75,000.00. The citizenship of the limited liability corporations is that of its members.

8. Venue is proper in the instant case as all the claims arise from events that occurred and are occurring within the jurisdiction of this Court in the Commonwealth of Puerto Rico.

III. Demand for Jury Trial

9. Plaintiffs demand a jury trial on all causes of action pleaded in this case.

IV. The Parties

10. Plaintiffs Rodríguez and Rivera are natural persons, of legal age, married, and residents of Yauco, Puerto Rico.

11. Plaintiff Innowave is a for profit corporation, in good standing and duly organized to do business in Puerto Rico. Innowave's address is HC 01 Box 6813, Guayanilla, Puerto Rico 00656.

12. Defendant Code Green Puerto Rico is, by information and belief, a for profit

limited liability company with its principal place of business in the Commonwealth of Puerto Rico. Its members are residents of the State of New Jersey.

13. Defendant Code Green is, by information and belief, a for profit limited liability company with its principal place of business in the state of New Jersey, USA. Its members are residents of the State of New Jersey.

14. Defendant Kartsaklis is a natural person, of legal age, President of Code Green and Code Green Puerto Rico, and a resident of the State of New Jersey, USA.

15. Defendant Sunnova is, by information and belief, a for profit Delaware corporation, with its principal place of business at 24 East Greenway Plaza, Suite 1515, Houston, Texas 77046.

V. Statement of Facts

16. Innowave was incorporated on May 8, 2014 to participate in the renewable energy market by engaging in the sale and installation of solar panels to homeowners and businesses. Plaintiff Rivera is Innowave's sole shareholder. Rodriguez was a sales consultant for Innowave.

17. Innowave started its business in Yauco, Puerto Rico, with a small operation of approximately four (4) employees.

18. Electric solar systems and technology are notoriously expensive and the general public impression is that they are only available to those who have significant disposable capital. However, Innowave's business model solved that problem by providing local homeowners and businesses with such systems without any upfront costs to them. In exchange for not having to invest any money on the system, but reaping the financial benefits of lower utility bills, the homeowner and/or business owners could lease the solar electric system from a third-party entity that financed the project, over the course for twenty-five (25) years. In sum, the financier would

own the system and lease payments were covered by purchasing all of electricity produced by the system from that third-party during the term of the lease. Upon the expiration of the lease agreement, the homeowner and/or business would then own system.

19. Sunnova is in the business of financing third-party-owned residential solar energy systems and it was a key component of the Plaintiffs' business model. Basically, and although there are other companies that provide such financing in the United States, by the year 2015 Sunnova provided all of the financing for Innowave's projects and controlled over 95% of that market. That financing was used to cover sales efforts, design services, the purchase of solar panels and other hardware, as well as installation, connection and other related fixed costs.

20. According to Sunnova, it is active in twenty-three (23) states and territories including Puerto Rico, the U.S. Virgin Islands, Guam and Saipan. In all of those markets Sunnova identifies local installation partners, such as Innowave, which sell, install and maintain rooftop systems on homes and businesses.

21. On June 17, 2014, Innowave and Sunnova executed a Channel Partner Agreement for the marketing, installation and leasing of solar systems. According to the Channel Partner Agreement, Innowave was to market, develop, sell, design, engineer, procure, construct, install, and test solar systems for homeowners and businesses, whereas Sunnova would finance the projects, and pay Innowave for its goods and services according to the following "Milestones & Payment Schedule:"

Milestone	Payment (as percentage of Contact Amount)
Contract	Zero Percent (0%)
Notice to Proceed	Thirty percent (30%)
Substantial Completion of a Solar System	Sixty percent (60%)
Final Completion of a Solar System	Ten percent (10%)

22. Innowave's operation was very successful. Its sales amounted to approximately ten million dollars (\$10,000,000.00) during the first six (6) months of operation. That success was possible because of Innowave's grass roots sales efforts, which targeted a previously unserved market of homeowners and small businesses desperately seeking relief from the excessively high electric power costs on the island.

23. On September 4, 2014, Innowave moved its operations to Mayagüez, Puerto Rico, and expanded them, having approximately 40 employees and 80 independent contractors. Its business was growing exponentially. Sunnova took notice and insisted that Innowave continue to expand.

24. During the first trimester of 2015, the Puerto Rico Electric Power Authority ("PREPA") changed the procedure for interconnection of homeowners' and businesses' solar

systems to its grid. The new procedure lengthened the timeframe for the “Milestone and Payment Schedule” agreed by Sunnova and Innowave.

25. In response to PREPA’s new procedure, on March 25, 2015, Sunnova and Innowave executed an Amendment to Channel Partner Agreement in order to modify the payment schedule to Innowave. Sunnova and Innowave amended the “Milestone and Payment Schedule” as follows:

Milestone	Payment (as percentage of Contract Amount)
Contract	Five percent (5%)
Notice to Proceed	Thirty five percent (35%)
Substantial Completion of a Solar System	Fifty percent (50%)
Final Completion of a Solar System	Ten percent (10%)

26. The Amendment to Channel Partner Agreement required Innowave to expand its operations further by engaging additional employees for its work force and increasing its inventory of solar panels. To this end, Sunnova made a prepayment to Innowave of \$1,477,525.00. Sunnova would offset the prepayment from the amount owed to Innowave for the Final Completion of a Solar System milestone.

27. Also on March 25, 2015, Sunnova and Innowave executed an important agreement titled WDC Puerto Rico, Inc. DBA Warren del Caribe Supplement to Channel Partner Agreement (the “Warren Supplement”). Subject to that agreement, Sunnova would directly pay WDC Puerto Rico, Inc. d/b/a Warren del Caribe (“Warren”) – Innowave’s main solar panels supplier – for the equipment and materials supplied by Warren to Innowave in connection with the work the latter performed for Sunnova. According to the Warren Supplement, Sunnova would deduct the direct payments to Warren for a particular project from the monies owed to Innowave as to that specific project in the substantial completion and final completion milestones.

28. In compliance with the agreement to expand its operations, Innowave created and integrated new work posts to its operations, contracted additional employees, constructed a new warehouse to store the required extended inventory in Mayagüez, Puerto Rico, and opened additional offices in the Santander Tower in Guaynabo, Puerto Rico, to take care more effectively of the greater San Juan area customers.

29. After expanding the operations as required by the Amendment to Channel Partner Agreement, Innowave’s sales of solar systems in Puerto Rico reached sixteen million dollars (\$16,000,000.00). At that point Innowave became the leader in the home solar systems industry in the Commonwealth of Puerto Rico.

30. By April of 2015, Innowave was doing so well that it began lowering the twenty-five (25) year fixed price for the purchase of the electricity produced by the solar electric systems. However, that created serious and immediate strife with Sunnova. Sunnova financed all of the participants in the industry and it imparted clear instructions to hold back on providing discounts.

31. Despite Innowave's growth and positive results, Sunnova started to default on its payment obligations under the Amendment to Channel Partner Agreement. Instead of making payments that met the terms of the "Milestone and Payment Schedule," it was making much lower payments.

32. Then, on October 12, 2015, Sunnova unilaterally changed the "Milestone and Payment Schedule" agreed by the parties as follows:

Milestone	Payment (as percentage of Contract Amount)
Contract	Zero percent (0%)
Notice to Proceed	Sixty percent (60%)
Substantial Completion of a Solar System	Thirty percent (30%)
Final Completion of a Solar System	Ten percent (10%)

33. This unilaterally imposed payment schedule change disregarded the economic effects that PREPA's new procedures had on the solar systems industry.

34. Although this payment schedule change affected Innowave's cash flow and finances, Innowave continued operating and performing its duties under the Channel Partner Agreement and the Amendment to Channel Agreement.

35. Innowave was number one in the local industry, welling more projects for Sunnova than any other local installation partner.

36. Sunnova continued defaulting on its payment obligations, even after its unilateral payment schedule change. Sunnova was holding the payments owed to Innowave purposefully, in order to strangle it economically.

37. In late October 2015, while still withholding the full payments owed to Innowave, John Bates, Sunnova's Senior Vice President of Operations, contacted Mr. Alex K. Philip a/k/a Chandy ("Philip"), Innowave's general manager, to introduce to him a potential buyer for Innowave.

38. As Innowave's general manager, Philip was responsible for all dealings with Sunnova. That role was also assigned to him because he was the only member of Innowave's staff who was fluent in the English language and therefore it was easy for him to communicate with Sunnova's staff.

39. Sunnova's sudden October approach with a buyer was unexpected, since Innowave was not for sale at the time, and Plaintiff Rivera – Innowave's only shareholder – had not thought of selling her shares and/or Innowave's assets.

40. Upon information and belief, at the time Sunnova owed Innowave approximately \$19,907,406.50 in concept of accounts receivable.

41. While withholding the full payments owed to Innowave, Sunnova started to seriously pressure Rivera to sell Innowave's operations and persisted in its efforts to introduce Innowave to potential buyers. Sunnova introduced Innowave to WindMar Group in early October and Code Green in late October.

42. WindMar Group was a local company, which provided services similar to those

of Innowave. Said company was honest and forthright with Innowave and let Plaintiffs know that they were only interested in acquiring Innowaves' assets, nothing else. Thus, nothing ever came of those negotiations and they were over in early October.

43. Code Green was one of Sunnova's installation partners in New Jersey.

44. Sunnova threatened to terminate its Channel Partner Agreement with Innowave if Plaintiffs did not sell the company to one of the potential buyers it had introduced them to, and distanced itself from Innowave to the point it stopped remitting any payments.

45. Plaintiffs where nervous. Sunnova's conduct was seriously affecting their cash flow and they were worried that Sunnova was going to terminate the Channel Partner Agreement.

46. Pressured by Sunnova, Plaintiffs agreed to meet with personnel from Code Green in order to explore the possibility of selling Innowave. Sunnova coordinated a meeting between Code Green and Innowave at the latter's headquarters in Mayagüez, Puerto Rico. During Code Green's visit, Chad Rogers (Sunnova's Vice President of Sales Fulfillment) ("Rogers") asserted that Innowave's operations were malfunctioning and that Sunnova was considering whether to cancel the solar system projects procured, sold, and developed by Innowave that were in the process of completion. Rogers' assertion as to Innowave's operations were false and ill intentioned. Notice that Innowave was complying with its obligations and daily operations, despite Sunnova's default as to the payment schedule. In addition to Rogers, Kartsaklis and Philip were also present in that meeting.

47. At this moment, it was clear to Plaintiffs that they needed to abide Sunnova's desire and sell Innowave to Code Green before Sunnova cancelled the pending solar system projects and/or terminated the Channel Partner Agreement, in the same manner it had stopped

remitting the payments owed to Innowave. It is noteworthy that at the time Sunnova was the only third-party entity providing financing for the type of solar electric system project sold by Innowave.

48. In consequence, soon thereafter, Rodríguez met with Kartsaklis in order to discuss the preliminary terms of the sale of Innowave to Code Green. Kartsaklis extended an initial offer in the following terms: Code Green would buy a majority interest in Innowave for \$300,000.00, and Rivera would retain minority interest in Innowave, with a right to participate in dividends. In addition, Kartsaklis offered Rodríguez a full time job in Innowave for six months after the execution of the sale.

49. In this meeting Rodríguez informed Kartsaklis of Innowave's diminished cash flow, due to Sunnova's noncompliance with the payment schedule. Kartsaklis, however, required Innowave to satisfy the commissions owed to Innowave's sales personnel so that Code Green could continue with the same personnel once the sales transaction was completed and it took over the operations. Innowave's payment of the commissions to its sales personnel would deplete its already fragile finances, a possibility that Rodríguez specifically revealed to Kartsaklis.

50. Plaintiffs satisfied these commissions, as required by Kartsaklis in order to complete Innowave's purchase in the terms described above, in consideration of the initial offer and because Kartsaklis informed Rodríguez that, with the sale, Code Green would assume the control and responsibility of Innowave's debts and obligations, including operational and payroll costs pending the negotiations. These considerations were in addition to the \$300,000.00 offered.

51. Kartsaklis recommended Rodríguez to accept this initial offer for Innowave's sale because he had witnessed how Sunnova had previously cancelled all the pending solar system projects procured, designed and sold by a company that had refused to sell its operations to Code

Green at Sunnova's whim.

52. As a matter of fact, Sunnova continued holding the payments owed to Innwave during the negotiations with Code Green in order to bleed Innwave's cash flow and force Plaintiffs to sell Innwave and/or its assets to Code Green.

53. As a matter of example, between August and October of 2015, Innwave sold approximately four million dollars (\$4,000,000) per month in contracts, while Sunnova made it average monthly payments of five hundred thousand dollars (\$500,000) to Innwave.

54. However, during November of 2015, in order to truly strangle Innwave, it paid only six thousand dollars (\$6,000.00).

55. Sunnova agreed and conspired with Code Green, Code Green Puerto Rico and Kartasklis, to withhold payments to Innwave and subsequently pay Code Green all the sums owed to Innwave as soon the sale materialized. Further, upon information and belief, the Defendants made sure to halt the information flow to Innwave regarding Innwave's sales figures in order to create the appearance that Sunnova owed Innwave far less than it did.

56. Upon information and belief, Innwave's accounts receivable at the time of the Closing amounted to \$19,704,406.50. Meanwhile, during October and November of 2015 Sunnova represented to Innwave and Rivera that their accounts receivables were \$9,807,676.77.

57. On October 26, 2015, Kartsaklis (as Code Green's President) and Rivera (as Innwave's sole shareholder) signed a proposed transaction letter to "enter into a mutually beneficial strategic transaction, creating greater shareholder value to respective shareholders of [Code Green] and Innwave." On even date, Kartsaklis (as Code Green's President) and Rivera (as Innwave's sole shareholder) signed a confidentiality agreement to cover the confidential information that would be disclosed as part of the analysis for the proposed transaction.

58. In mid-November 2015, Kartsaklis and Rodríguez had a second meeting in which Kartsaklis reduced the initial offer to \$130,000.00, supposedly because Code Green had covered a payment of Innowave's payroll and commissions in the amount of \$170,000.00. In addition, Kartsaklis alleged Code Ground had discovered a debt owed by Innowave to Warren.

59. Eventhough the alleged Warren debt was Sunnova's responsibility and Kartsaklis had previously stated that Code Green would assume all payroll and operations costs pending the negotiation of the Innowave sales transaction, Kartsaklis and Rodríguez agreed to reduce Innowave's sales price to \$200,000.00. The remaining considerations stayed the same.

60. Code Green entrusted the drafting of the sales transaction documents to an attorney of a medium size law firm in San Juan.

61. After exchanging initial drafts, Code Green and Plaintiffs agreed Code Green Puerto Rico would acquire Innowave's assets and certain liabilities.

62. Code Green Puerto Rico was organized on November 18, 2015.

63. Between November 19, 2015 and November 25, 2015, Code Green and Code Green Puerto Rico's attorneys (2 counsels, a male partner and a female associate) uploaded to the law firms' cloud storage and sharing system 27 folders containing schedules, which would be executed on the day of the transaction closing ("the Closing") and serve as attachments to the Asset Purchase Agreement.

64. Among those folders was one containing two (2) schedules, *to wit*, a "FW 47 – Payroll Register – Innowave Energy, Inc. (00229280xA0984).PDF" uploaded on November 23rd, and a "Copy of Liabilities – 2015 (1) (00229443xA0984).XLSX" uploaded on November 25th. Included among the schedules was the "Assumed Liabilities Schedule," which listed twenty-eight (28) Innowave liabilities that Code Green and Code Green Puerto Rico had agreed to

assume. These liabilities totaled \$2,531,640.11.²

65. On November 24, 2016, Code Green and Code Green Puerto Rico's lead attorney e-mailed Rivera an updated version of the agreement to be signed by the parties, as well as the exhibits and schedules to be executed and delivered at the Closing. In his e-mail, that attorney advised Rivera that an associate from the firm would further communicate with Plaintiffs' staff regarding any pending documentation. No further documents were provided.

66. Code Green, Code Green Puerto Rico and Kartsaklis scheduled the Closing for November 25, 2015 (the Wednesday prior to the Thanksgiving holiday) at 4:00 pm in the offices of Code Green and Code Green Puerto Rico's attorneys. Plaintiffs were not advised that counsel could represent them during the Closing.

67. Rivera and Rodríguez arrived at the scheduled time. However, Kartsaklis arrived after 6:00 pm. Rivera and Rodríguez were not provided with copies of the documents that were to be executed during the waiting time. That same day the "Assumed Liabilities Schedule" was again uploaded and to this day is still present on the law firm's cloud storage and sharing system.

68. After Kartsaklis arrived, Code Green and Code Green Puerto Rico's lead counsel provided Rivera, Rodríguez and Kartsaklis with copies of the final version of the written agreement to be executed.

69. Rivera, Rodríguez, and Kartsaklis proceeded immediately to review the written agreement, prior to executing it.

70. Plaintiffs requested that the lead attorney perform certain changes to the agreement. Kartsaklis and the lead attorney resented Plaintiffs' request stating that it was late (6:30 pm by then) on Thanksgiving's eve, and there was no administrative personnel at the law

² As of 7:58 PM on September 15, 2016, the law firms' cloud storage and file sharing system still contained Schedule 1.03 showing that Code Green Puerto Rico had assumed liabilities totaling \$2,531,640.11.

firm to make the editions to the agreement.

71. Nevertheless, Plaintiffs' editions were incorporated to the agreement.

72. Plaintiffs were not provided with copies of the schedules to the agreement for review prior to executing them.

73. Close to 7:00 pm, the documents to be executed were distributed partially on top of each other on a conference table. The documents were placed independently inside over thirty (30) folders.

74. The first document to be executed was the Asset Purchase Agreement between Plaintiffs and Code Green Puerto Rico, dated November 25, 2015.

75. Afterwards, Rivera, Rodríguez, and Kartsaklis started to place their initials on the exhibits and schedules to the Asset Purchase Agreement. Since there were over one hundred (100) documents for initialing, Code Green and Code Green Puerto Rico's attorneys expedited the process by providing the document to Kartsaklis, who would, in turn, place his initials on the documents as they were handed to him. Kartsaklis would return the document to the associate, who would then provide the document to Rivera and identify the place where she should place her initials. Afterwards, Rivera would hand the document to Rodríguez, for his initialing.

76. Code Green and Code Green Puerto Rico's attorneys did not afford Rivera, Rodríguez, and/or Kartsaklis the opportunity to review the schedules as part of the "expedited" initialing process. Kartsaklis, Code Green, Code Green Puerto Rico, and their attorneys represented to Plaintiffs that review of the schedules was unnecessary because they were exactly the same documents that had been negotiated and that had been uploaded to the law firms' cloud system, and were still available there for inspection.

77. In addition to Code Green and Code Green Puerto Rico's attorneys, Rivera,

Rodríguez, and Kartsaklis, Philip was also present during the Closing.

78. After Plaintiffs and Kartsaklis (on behalf of Code Green Puerto Rico) executed the Asset Purchase Agreement and initialized the schedules, at approximately 9:00 pm, the lead attorney asked Kartsaklis if he had brought something on Sunnova's behalf.

79. At this point, Kartsaklis brought out a document from a folder and informed Rivera and Rodríguez they needed to sign it in order to receive the check for the payment due at the Closing, which amounted to \$100,000.00. To Plaintiffs' surprise, the document was a general release from Sunnova. Since signing this document was a condition for receiving the payment that was due to them, Rivera signed it. In consideration thereto, Kartsaklis handed Plaintiffs the check.

80. Before leaving Code Green and Code Green Puerto Rico's attorneys' office, right after the Closing, Plaintiffs requested a copy of the executed Asset Purchase Agreement and the exhibits and schedules thereto. The lead attorney informed Plaintiffs that they would receive a bound copy of these documents within thirty (30) days, when the final payment was due.

81. As per the Asset Purchase Agreement, Code Green Puerto Rico purchased the following assets from Innowave (the "Purchased Assets"):

- a. tangible personal property;
- b. all inventions, including the name "Innowave Energy, Inc" and the d/b/a name "Innowave Energy" and all derivations and good will associated with the name;
- c. an array of contracts to be assumed by Code Green
- d. accounts receivable for \$9,807,676.77;
- e. security and other deposits, as well as prepaid expenses and parts inventory;

- f. causes of actions, rights or claims against third parties related to the Purchased Assets;
- g. permits, licenses and similar rights used in connection with Innowave's business;
- h. the rights of non-competition, non-solicitation, or other restrictive covenants provided to Innowave by employees, contractors or third parties;
- i. books, records, files, correspondence, lists, plans, inventories and the like, excluding employment records.

82. In exchange for the Purchased Assets, Code Green Puerto Rico was required to:

- a. pay the purchase price of \$370,000.00, which consisted of an advance payment of \$170,000.00 (Code Green's previous payment of Innowave's payroll and commissions), the payment of \$100,000.00 at the Closing (subject to Rivera's signature of Sunnova's general release), and a final payment of \$100,000.00, due thirty (30) days after the Closing;
- b. assume certain liabilities amounting to \$2,531,640.11 (the "Assumed Liabilities").

83. In addition, and among other things, Code Green Puerto Rico agreed to pay Rodríguez a monthly fee of \$6,000.00 for consulting services for a six-month period after the Closing, and assume Plaintiffs' automobile financial leases as well as commercial space leases in Mayagüez and the greater San Juan area (in Guaynabo).

84. In early December 2015, Plaintiffs started to receive insistent collection calls from: (a) the landlords of the Mayagüez's central office and warehouse, and the Guaynabo offices; (b) the financial institutions with the lease agreements in connection with Innowave's

company cars; (c) suppliers; and (d) collection agencies on behalf of utility services. In every case, the monies owed were Code Green Puerto Rico's responsibility, as per the Asset Purchase Agreement.

85. Rodríguez tried to contact Defendants by e-mailing and calling Kartsaklis directly, in order to make himself available to them for the transition period and to inquire as to the status of the payments to suppliers, service providers, leases and rents, as to which Plaintiffs had been receiving insistent collection efforts.

86. Kartsaklis never responded to Rodríguez's e-mails and answered only one phone call, but hung up immediately after the initial exchanger of pleasantries. Kartsaklis never replied to this telephone call.

87. Rivera contacted Code Green and Code Green Puerto Rico's lead attorney to request Plaintiffs' copy of the executed Asset Purchase Agreement and the exhibits and schedules thereto. On December 18, 2015, a legal assistant from the law firm, sent Rivera a digital copy of the main document of Asset Purchase Agreement, excluding its exhibits and schedules.

88. On December 18, 2015, Rivera forwarded the legal assistant's communication to the lead attorney. In her e-mail, Rivera specifically requested a new meeting to finalize the asset purchase and informed him that Code Green Puerto Rico had not assumed the contracts it was required to under the executed Asset Purchase Agreement. Rivera informed the lead attorney of Plaintiffs' efforts to communicate with Kartsaklis, to no avail.

89. Plaintiffs' attempts at communicating with Code Green Puerto Rico through its President and Chief Executive Office, Kartsaklis, and lawyers received no response.

90. Plaintiffs' continued to receive collection phone calls and letters, which

threatened to take legal actions against them for their alleged non-payment.

91. By late December 2015 it was clear to Plaintiffs that, in addition to ignoring them, Code Green Puerto Rico was defaulting its obligations under the Asset Purchase Agreement. Specifically, by late December 2015, Code Green Puerto Rico had defaulted on the final \$100,000.00 payment, the second installment of Rodríguez's consulting fee, the assumption of the contracts, and the payment of several of the Assumed Liabilities.

92. In addition to Code Green Puerto Rico's non-compliance, Defendants continued enacting sales contracts with their clients under Rivera's name, using her electronic signature. This course of action continued until, at least, January 31, 2016, totaling, at least, \$7,888,037.19 in sales.

93. After Code Green Puerto Rico acquired Innowaves' assets, Sunnova desisted on its threats to terminate the Channel Partner Agreement and cancel the pending solar system projects. By information and belief, Sunnova changed the milestones and payment schedule in Code Green Puerto Rico's favor.

94. As a matter of fact, between February and April of the year 2016, Sunnova paid Code Green over \$7,800,000.00 of Innowave's money.

95. On March 5, 2016, Rivera addressed a formal request to Kartsaklis, in representation of Code Green Puerto Rico, for the \$100,000.00 payment due. Rivera informed Kartsaklis and Code Green Puerto Rico of the breach of the Asset Purchase Agreement, and Plaintiffs' intention to rescind it if the situation was not cured within a ten-day period.

96. Code Green Puerto Rico's breach of contract continues at the filing of the instant complaint.

97. In May 2016, Code Green and Code Green Puerto Rico's lead attorney informed

counsel for Plaintiffs that Code Green Puerto Rico had not assumed any liabilities as part of the Asset Purchase Agreement. Further, he provided counsel for Plaintiffs with a digital copy of an “assumed liabilities schedule” with the word “NONE”. This document was not approved by Plaintiffs, does not reflect the agreement between Plaintiffs, Kartsaklis, Code Green and Code Green Puerto Rico, was never uploaded to law firms’ cloud storage system with the remaining documents to be executed at the Closing, and was not reviewed or examined by Plaintiffs during the Closing. Further, that document sent by the lead attorney contradicts the agreements reached by the parties and the contents of the “Assumed Liabilities Schedule” which should have been executed and which to this date is still on the law firm’s cloud storage and sharing system.³ If the lead attorney’s representations are true and the document provided to counsel for Plaintiffs is authentic, then upon information and belief, someone must have intentionally switched the documents in order to prejudice Plaintiffs.⁴

98. On June 1, 2016, Inelpro Corp. filed a complaint against Innowave and Code Green Puerto Rico for the payment of one of the Assumed Liabilities, which as per the Asset Purchase Agreement is Code Green Puerto Rico’s responsibility.

99. Further, on August 22, 2016, Warren also filed suit against Innowave and Rivera seeking payment for the solar panels and equipment provided and which Sunnova had agreed to pay. Said debt had also been assumed by Code Green Puerto Rico pursuant to the Asset Purchase Agreement and its “Assumed Liabilities Schedule.”

³ As of 7:58 PM on September 15, 2016, the law firms’ cloud storage and file sharing system still contained Schedule 1.03 showing that Code Green Puerto Rico had assumed liabilities totaling \$2,531,640.11. The law firm’s cloud and file sharing system contains no “assumed liabilities schedule” with the word “NONE.”

⁴ Discovery essential as to this matter, since this information would be under the control and custody of the Defendants.

VI. Causes of Action

First Cause of Action – Breach of Contract

100. The preceding paragraphs 1 through 99 are hereby incorporated herein as though fully set forth and are made part of this paragraph.

101. This cause of action arises under Article 1077 of the Puerto Rico Civil Code, 31 Laws of PR Ann. § 3052, and is asserted against Code Green Puerto Rico.

102. Pursuant to Article 1077 of the Puerto Rico Civil Code, id., the right to rescind the obligations is implied in mutual obligations. Therefore, when one of the parties to a contract fails to comply with its obligations under the same, the person prejudiced by that breach may rescind the obligation, and demand an indemnification for the damages and payment of interests.

103. Code Green Puerto Rico failed to comply with the following obligations arising under the Asset Purchase Agreement:

- a. the final payment of the asset purchase price of \$100,000.00;
- b. the payment of consulting fees to Rodríguez, totaling \$30,000.00;
- c. the assumption of the financial vehicle lease contracts;
- d. the payment of the Assumed Liabilities, totaling \$2,531,640.11.

104. In light of Code Green Puerto Rico's breach of contract, Plaintiffs rescinded the Asset Purchase Agreement on September 15, 2016.

105. In consequence, Plaintiffs hereby demand Code Green Puerto Rico to return all the considerations exchanged as part of the Asset Purchase Agreement, to wit:

- a. Innowave's tangible personal property;
- b. Innowave's inventions, including the name "Innowave Energy, Inc" and the d/b/a name "Innowave Energy" and all derivations and good will associated

with the name;

- c. Innowave's contracts to be assumed by Code Green
- d. Innowave's accounts receivable for \$9,807,676.77;
- e. Innowave's security and other deposits, as well as prepaid expenses and parts inventory;
- f. Innowave's causes of actions, rights or claims against third parties related to the Purchased Assets;
- g. Innowave's permits, licenses and similar rights used in connection with Innowave's business;
- h. Innowave's rights of non-competition, non-solicitation, or other restrictive covenants provided to Innowave by employees, contractors or third parties;
- i. Innowave's books, records, files, correspondence, lists, plans, inventories and the like;
- j. any other previous Innowave property in Code Green Puerto Rico's possession.

106. In addition, Plaintiffs demand Code Green Puerto Rico to pay for the damages caused by its breach of contract, as well as the interests.

WHEREFORE, the Plaintiffs request this Honorable Court to enter judgment against Code Green Puerto Rico as follows: (a) ordering Code Green Puerto Rico to return to the Plaintiffs the considerations exchanged as part of the Asset Purchase Agreement identified in paragraph 105 above; (b) in the amount of \$9,807,676.77 corresponding to the accounts receivable co; (c) in the amount of \$15,600,000.00, for the damages suffered by the Plaintiffs by reason of Code Green Puerto Rico's noncompliance, including the damages to the Plaintiffs'

credit and the emotional damages suffered by Rivera; (d) for all legal interests to be calculated from the Closing (November 25, 2015) onwards; (e) award all costs of litigation; (g) award attorney's fees; and, (g) for such other and further relief as this Honorable Court may deem just and proper.

Second Cause of Action – Deceit and Error in Contracting

107. The preceding paragraphs 1 through 106 are hereby incorporated herein as though fully set forth and are made part of this paragraph.

108. This cause of action arises under Articles 1217, 1218, 1220 and 1221 of the Puerto Rico Civil Code, 31 Laws of PR Ann. §§ 3404, 3405, 3407 & 3408, and is asserted against Code Green Puerto Rico.

109. Pursuant to Article 1217 of the Puerto Rico Civil Code, 31 Laws of PR Ann. § 3403, consent given by error or deceit (“dolo”) is void. Deceit (“dolo”) occurs when the words or insidious machinations of one of the parties to the contract induces the other party to execute an agreement that it would not have otherwise entered into. 31 Laws of PR Ann. § 3408.

110. Article 1220 of the Puerto Rico Civil Code provides that intimidation of one of the contracting parties by a third party annuls the obligation. 31 PR Laws Ann. § 3407.

111. A contract is void when the deceit (“actuación dolosa”) of a third party results in error by the party that is deceived. In such case, the error of the prejudiced party renders the contract void. Rivera v. Sucesión Díaz Luzunaris, 70 D.P.R. 181 (1949).

112. Defendants agreed to oust the Plaintiffs from the solar panel systems market, in order to take over their operations. To this end, Sunnova purposefully and unilaterally changed the milestones and payment schedule it had agreed with Plaintiffs, and started defaulting as to its payment obligations, even after the new schedule. These actions strangled Plaintiffs

economically, making them an easy target for Defendants' plan to take over Plaintiffs' operations. In addition, Sunnova actively threatened Plaintiffs as to terminating the Channel Partner Agreement and cancelling the pending solar system projects. Sunnova even asserted at the early stages of the asset purchase negotiations that Innowave was worthless, since Sunnova could terminate all of its agreements in a whim. Kartsaklis, who repeatedly told Rodríguez he had witnessed similar actions on behalf of Sunnova with regards to other companies, reinforced these threats.

113. Had it not being for the economic distress provoked by Sunnova's default as to the payment schedules, Sunnova's threats to terminate the Channel Partner Agreement and cancel the pending solar system projects, and its public comments as to Innowave's worth, Plaintiffs would have never sold Innowave's assets.

114. Defendants' comments and insidious machinations, which induced Plaintiffs to enter into the Asset Purchase Agreement, constitute deceit. Code Green Puerto Rico's and Kartsaklis' actions constitute deceit that render the Asset Purchase Agreement void. Sunnova's deceit resulted in Plaintiffs' error as to the object and substance of the Asset Purchase Agreement, thus rendering it void.

115. In addition, Code Green Puerto Rico's and Kartsaklis' changing of the "Assumed Liabilities" schedule during the Closing constitutes deceit on their part, which renders the Asset Purchase Agreement null and void.

116. This fraudulent change, in turn, provoked an error on the Plaintiffs' part as to the substance and object of the Asset Purchase Agreement, which renders it null and void.

117. In consequence, the Plaintiffs hereby demand Code Green Puerto Rico to return the considerations provided and exchanged as part of the Asset Purchase Agreement, to wit:

- a. Innowave's tangible personal property;
- b. Innowave's inventions, including the name "Innowave Energy, Inc" and the d/b/a name "Innowave Energy" and all derivations and good will associated with the name;
- c. Innowave's contracts to be assumed by Code Green
- d. Innowave's accounts receivable for \$9,807,676.77;
- e. Innowave's security and other deposits, as well as prepaid expenses and parts inventory;
- f. Innowave's causes of actions, rights or claims against third parties related to the Purchased Assets;
- g. Innowave's permits, licenses and similar rights used in connection with Innowave's business;
- h. Innowave's rights of non-competition, non-solicitation, or other restrictive covenants provided to Innowave by employees, contractors or third parties;
- i. Innowave's books, records, files, correspondence, lists, plans, inventories and the like;
- j. any other previous Innowave property in Code Green Puerto Rico's possession.

WHEREFORE, the Plaintiffs request this Honorable Court to enter judgment against Code Green Puerto Rico as follows: (a) declaring the Asset Purchase Agreement null; (b) ordering Code Green Puerto Rico to return to the Plaintiffs the considerations exchanged as part of the Asset Purchase Agreement identified in paragraph 117 above; (c) in the amount of \$9,807,676.77, corresponding to the accounts receivable; (d) for all legal interest to be calculated

from the Closing (November 25, 2015) onwards; (e) award all costs of litigation; (f) award attorney's fees; and, (g) for such other and further relief as this Honorable Court may deem just and proper.

Third Cause of Action – Damages

118. The preceding paragraphs 1 through 117 are hereby incorporated herein as though fully set forth and are made part of this paragraph.

119. This cause of action arises under Articles 1802 of the Puerto Rico Civil Code, 31 Laws of PR Ann. §§ 5141, and is asserted against all Defendants.

120. Pursuant to Article 1802 of the Puerto Rico Civil Code, *id.*, a person that causes damages to another because of fault or negligence is required to repair or indemnify the damages caused.

121. Defendants agreed to oust the Plaintiffs from the solar panel systems market, in order to take over their operations. To this end, Sunnova purposefully and unilaterally changed the milestones and payment schedule it had agreed with the Plaintiffs, and started defaulting as to its payment obligations, even after the new schedule. These actions strangled the Plaintiffs economically, making them an easy target for the Defendants' plan to take over the Plaintiffs' operations. In addition, Sunnova actively threatened the Plaintiffs as to terminating the Channel Partner Agreement and cancelling the pending solar system projects. Sunnova even asserted at the early stages of the asset purchase negotiations that Innovave was worthless, since Sunnova could terminate all its agreements in a whim. Kartsaklis, who repeatedly told Rodríguez he had witnessed similar actions on behalf of Sunnova with regards to other companies, reinforced these threats.

122. Defendants acted with fault and/or negligence, and these actions were the

proximate cause of the following damages experimented by Plaintiffs:

- a. damage to their credit;
- b. emotional distress and anguish;
- c. pecuniary damages, including the loss of their business and other business opportunities.

123. In consequence, the Plaintiffs hereby demand the Defendants to indemnify the damages they caused to Plaintiffs, as to which the Defendants are jointly liable.

WHEREFORE, Plaintiffs request this Honorable Court to enter judgment against all the Defendants as follows: (a) in the amount of \$17,850,000.00 to indemnify the Plaintiffs for the pecuniary and emotional damages suffered as a consequence of the Defendants' actions; (b) award all costs of litigation; (c) award attorney's fees; and, (d) for such other and further relief as this Honorable Court may deem just and proper.

Fourth Cause of Action – Damages for Fraud and Identity Theft

124. The preceding paragraphs 1 through 123 are hereby incorporated herein as though fully set forth and are made part of this paragraph.

125. This cause of action arises under Articles 1802 of the Puerto Rico Civil Code, 31 Laws of PR Ann. §§ 5141, and is asserted against Code Green Puerto Rico, Kartsaklis, and Sunnova.

126. Pursuant to Article 1802 of the Puerto Rico Civil Code, id., a person that causes damages to another because of fault or negligence is required to repair or indemnify the damages caused.

127. After the Closing, Code Green Puerto Rico, Kartsaklis and Sunnova continued enacting sales contracts with their clients under Rivera's name, using her electronic signature

without her authorization. This course of action continued until, at least, January 31, 2016, totaling, at least, \$7,888,037.19 in sales.

128. These actions on Code Green Puerto Rico's, Kartsaklis's and Sunnova's behalf constitute fraud and identity theft under 18 U.S.C. § 1028, and are the proximate cause of the following damages experimented by the Plaintiffs:

- a. damage to their credit;
- b. emotional distress and anguish;
- c. pecuniary damages, including loss of their business and other business opportunities.

129. In consequence, the Plaintiffs hereby demand Code Green Puerto Rico, Kartsaklis and Sunnova to indemnify the damages they caused to Plaintiffs, as to which Defendants are jointly liable.

WHEREFORE, Plaintiffs request this Honorable Court to enter judgment against Code Green Puerto Rico, Kartsaklis and Sunnova as follows: (a) in the amount of \$500,000.00, to indemnify the Plaintiffs for the pecuniary and emotional damages suffered as a consequence of the Defendants' actions; (b) award all costs of litigation; (c) award attorney's fees; and, (d) for such other and further relief as this Honorable Court may deem just and proper.

Fifth Cause of Action – Restitution of Monies Improperly Received

130. The preceding paragraphs 1 through 129 are hereby incorporated herein as though fully set forth and are made part of this paragraph.

131. This cause of action arises under Articles 1795, 1796, and 1801 of the Puerto Rico Civil Code, 31 Laws of P.R. Ann. §§ 5121, 5122 & 5127, and is asserted against Code Green Puerto Rico.

132. Pursuant to Article 1795 of the Puerto Rico Civil Code, 31 Laws of P.R. Ann. § 5121, if a thing is received when there was no right to claim it and which, through an error, has been unduly delivered, there arises the obligation to restore the same. In civil law, this is commonly known as the doctrine of restitution.

133. In order for the doctrine of restitution to apply, the following three requirements have to concur: (1) the payment has to be made with the intention to extinguish the obligation; (2) the payment made did not have a cause, that is, there was no legal obligation between the parties, or if such obligation existed, it was for a lesser amount than the one paid; and, (3) there was an error in the payment and it was not made by mere liberality or for any other reason. E.L.A. v. Crespo Torres, 180 D.P.R. 776, 793-794 (2011). An error in the payment is presumed when a thing which was never owed or which has already been paid for has been delivered. 31 Laws of P.R. Ann. § 5127.

134. According to this doctrine, the monies unduly received have to be restituted. Pagán Santiago v. ASR, 185 D.P.R. 341, 368 (2012). Also, when a person accepts a payment that is was not due in bad faith, legal interests must be paid. 31 Laws of P.R. Ann. § 5122.

135. One of the considerations of the Asset Purchase Agreement was that Code Green Puerto Rico was to receive Innowave's accounts receivable in the sum of \$9,807,676.77. However, upon information and belief, the accounts receivable actually received by Code Green of Puerto Rico with the signing of the Asset Purchase Agreement equals to \$19,907,406.50.

136. Sunnova transferred \$19,907,406.50 in accounts receivable to Code Green Puerto Rico, of which \$9,896,676.77 belonged to Innowave, with the intention of extinguishing its obligations as to the accounts receivable included in the Asset Purchase Agreement. The accounts receivable included in the Asset Purchase Agreement ascended only to \$9,807,676.77,

which is a lesser amount than the one transferred by Plaintiffs to Code Green Puerto Rico. Thus the transfer of \$9,896,676.77 was made by error, not by liberality.

137. In consequence, and according to the doctrine of restitution, Code Green Puerto Rico has to pay to the Plaintiffs the sum of \$9,896,676.77, which was transferred to it in excess of the amounts of accounts receivable included in the Asset Purchase Agreement. Also, because Code Green Puerto Rico acted in bad faith when it accepted the abovementioned amount, this Honorable Court must order Code Green Puerto Rico to pay legal interests over this amount.

WHEREFORE, the Plaintiffs request this Honorable Court to enter judgment against Code Green Puerto Rico as follows: (a) in the amount of \$9,896,676.77, an amount that – upon information and belief – equals the accounts receivable transferred in excess to Code Green Puerto Rico; (b) for all legal interests over said amount because of Code Green Puerto Rico's bad faith; (c) award all costs of litigation; (d) award attorney's fees; and, (e) for such other and further relief as this Honorable Court may deem just and proper.

WHEREFORE, the Plaintiffs respectfully request this Honorable Court to enter Judgment in favor of the Plaintiffs and jointly and severally against the Defendants as follows:

- A. Ordering the exchange of the considerations of the Asset Purchase Agreement because of its rescission due to Code Green Puerto Rico's breach of contract.
- B. Declaring the Asset Purchase Agreement null and void because of Defendants' deceit and error, and – in consequence – ordering the exchange of the considerations of the Asset Purchase Agreement.
- C. Finding Defendants liable in damages for taking over the Plaintiffs' business, by incurring in negligent and faulty conduct.
- D. Finding Code Green Puerto Rico, Kartsaklis and Sunnova liable in damages

for incurring in fraud and aggravated identity theft.

- E. Granting the Plaintiffs all the monetary compensations requested in this complaint, in an amount not less than \$38,054,406.50.
- F. Imposing upon the Defendants the payment of all costs and expenses incurred in this lawsuit.
- G. Granting the Plaintiffs reasonable attorney's fees.
- H. Granting the Plaintiffs any other relief that they may be entitled to as a matter of law.

RESPECTFULLY SUBMITTED.

In Guaynabo, Puerto Rico, this 16th day of September, 2016.

/s/Thomas Trebilcock Horan

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