

1 Jerome S. Fortinsky (N.Y. Bar # 2195972)
SHEARMAN & STERLING LLP
2 599 Lexington Avenue
New York, NY 10022
3 Telephone: (212) 848-4000
Facsimile (212) 848-7179
4 Email: jfortinsky@shearman.com

5 *pro hac vice* application pending

6 Mikael A. Abye (SBN 233458)
SHEARMAN & STERLING LLP
7 Four Embarcadero Center, Suite 3800
San Francisco, CA 94111-5994
8 Telephone: (415) 616-1100
Facsimile: (415) 616-1199
9 Email: mabye@shearman.com

10 Attorneys for Defendant Suntech America, Inc.

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION

15 THE SOLYNDRA RESIDUAL TRUST, BY
16 AND THROUGH ITS LIQUIDATING
TRUSTEE, R. TODD NEILSON,

17 Plaintiff,

18 v.

19 SUNTECH POWER HOLDINGS CO., LTD.,
20 SUNTECH AMERICA, INC., TRINA SOLAR
LIMITED, TRINA SOLAR (U.S.), INC.,
21 YINGLI GREEN ENERGY HOLDING
COMPANY LIMITED, YINGLI GREEN
22 ENERGY AMERICAS, INC.,

23 Defendants.

Case No. 12-cv-5272-SBA (EDL)

**DEFENDANT SUNTECH AMERICA,
INC.'S ANSWER TO PLAINTIFF
SOLYNDRA RESIDUAL TRUST'S
AMENDED COMPLAINT**

DEMAND FOR JURY TRIAL

1 Defendant Suntech America, Inc. (“Suntech America”)¹ hereby submits its Answer and
2 Affirmative Defenses in response to Plaintiff Solyndra Residual Trust’s Amended Complaint (the
3 “Complaint”).

4 **SUMMARY OF THE ACTION**

5 1. To the extent that paragraph 1 contains Plaintiff’s characterization of its own claims
6 and draws legal conclusions, no response is required. To the extent that a response is required,
7 Suntech America denies all material allegations in paragraph 1.

8 2. Suntech America admits that its indirect parent, Suntech Holdings, completed an
9 initial public offering (“IPO”) of American Depositary Shares (“ADSs”) in December 2005, and
10 these ADSs were at one time traded on the New York Stock Exchange. Suntech America denies
11 all remaining material allegations in paragraph 2.

12 3. Suntech America admits that a *New York Times* article purporting to be based on an
13 interview with former Suntech Holdings’ former CEO states: “Suntech, to build market share, is
14 selling solar panels on the American market for less than the cost of materials, assembly, and
15 shipping.” Suntech America denies all remaining material allegations in paragraph 3.

16 4. Suntech America admits that the prices for which it sold solar panels to its
17 customers generally declined between 2008 and 2011, and that Suntech Holdings’ former CEO
18 was at one time a board member of a Chinese trade association. Suntech America denies all
19 remaining allegations in paragraph 4.

20 5. To the extent that paragraph 5 contains Plaintiff’s characterization of its own
21 claims and draws legal conclusions, no response is required. To the extent that a response is
22 required, Suntech America denies all material allegations in paragraph 5.

23 6. To the extent that paragraph 6 contains factual allegations to which Suntech
24 America is required to respond, Suntech America does not deny those allegations.

25 7. To the extent that paragraph 7 contains Plaintiff’s characterization of its own claims
26 and draws legal conclusions, no response is required. To the extent that a response is required,

27 ¹ Suntech Power Holdings Co., Ltd. (“Suntech Holdings”) is not required to answer the operative complaint in this
28 matter because it is subject to a litigation stay due to bankruptcy proceedings pending in the Southern District of New
York.

1 Suntech America denies all allegations in paragraph 7.

2 **JURISDICTION AND VENUE**

3 8. To the extent that paragraph 8 states legal conclusions, no response is required. To
4 the extent that any response is required to the allegations in paragraph 8, Suntech America denies
5 all material allegations contained therein.

6 9. Suntech America admits that it has an office in San Francisco, California and that it
7 transacts business in the Northern District of California. To the extent paragraph 9 states legal
8 conclusions, no response is required. To the extent that any additional response is required to the
9 allegations in paragraph 9, Suntech America denies all additional allegations contained therein.

10 10. To the extent paragraph 10 states legal conclusions, no response is required. To the
11 extent that any response is required to the allegations in paragraph 10, Suntech America denies all
12 material allegations contained therein.

13 11. To the extent paragraph 11 states legal conclusions, no response is required. To the
14 extent that any response is required to the allegations in paragraph 11, Suntech America denies all
15 allegations contained therein on the grounds it lacks knowledge or information sufficient to form a
16 belief as to the truth or falsity of the statements concerning Plaintiff's business.

17 **PARTIES**

18 12. Suntech America denies all material allegations contained in paragraph 12 on the
19 grounds that it lacks knowledge or information sufficient to form a belief as to the truth or falsity
20 of the statements concerning Plaintiff's business.

21 13. Suntech America denies all material allegations contained in paragraph 13 on the
22 grounds that it lacks knowledge or information sufficient to form a belief as to the truth or falsity
23 of the statements concerning Plaintiff's business.

24 14. Suntech America admits that Suntech Holdings is a Cayman Islands corporation;
25 solar panel sales by Suntech Holdings' and its affiliates (collectively, the "Suntech Group")
26 increased between 2005 and 2011 in the United States; on December 14, 2005, Suntech Holdings
27 listed its ADSs on the New York Stock Exchange under the symbol "STP"; Suntech Holdings
28 completed an IPO of 30,337,000 ADSs on December 14, 2005; Suntech Holdings closed a public

1 offering of 23 million ADSs on May 28, 2009. Members of the Suntech Group were respondents
2 in the Commerce matter and involved in the ITC matter. To the extent that any further response is
3 required to allegations contained in this paragraph and/or footnote 1, Suntech America denies all
4 such allegations.

5 15. Suntech America admits that it is an indirect wholly-owned subsidiary of Suntech
6 Holdings; it is incorporated in Delaware; it has an office in San Francisco, California; it works
7 with Suntech Holdings to sell solar panels; at one time Anlin Ting-Mason served as its Chief
8 Financial Officer; at one time Anlin Ting-Mason served as the Chief Financial Officer of Suntech
9 Holdings; at one time Andrew Beebe served as Chief Commercial Officer for Suntech Holdings;
10 and Wuxi Suntech Power Co., Ltd. was made a subsidiary of Suntech Holdings in connection with
11 the Suntech Holdings IPO. To the extent that any further response is required to the allegations
12 contained in this paragraph, Suntech America denies all such allegations.

13 16. Suntech America denies the allegations contained in paragraph 16 and footnote 2
14 on the grounds that it lacks knowledge or information sufficient to form a belief as to the truth or
15 falsity of the facts alleged therein.

16 17. Suntech America denies the allegations contained in paragraph 17 on the grounds
17 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
18 facts alleged therein.

19 18. Suntech America denies the allegations contained in paragraph 18 on the grounds
20 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
21 facts alleged therein.

22 19. Suntech America denies the allegations contained in paragraph 19 on the grounds
23 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
24 facts alleged therein.

25 **CO-CONSPIRATORS**

26 20. To the extent paragraph 20 states legal conclusions, no response is required. To the
27 extent that any response is required to the allegations in paragraph 20, Suntech America denies all
28 material allegations contained therein.

1 21. Suntech America admits that Suntech Holdings' CEO was at one time a board
2 member of the China New Energy Chamber of Commerce. Suntech America denies all remaining
3 material allegations in paragraph 21.

4 22. Suntech America denies that any members of the Suntech Group were involved in
5 any "conspiracy" with co-defendants. Suntech America denies the additional allegations
6 contained in paragraph 22 on the grounds that it lacks knowledge or information sufficient to form
7 a belief as to the truth or falsity of the facts alleged therein.

8 23. Suntech America admits that members of the Suntech Group were involved with
9 financial transactions with the China Development Bank, Bank of China, and the Export-Import
10 Bank of China; Suntech Holdings reported in its 20-F for the fiscal year ended December 31, 2011
11 that members of the Suntech Group had short-term bank borrowings and that they had historically
12 been able to obtain extensions of some of these facilities shortly before they matured; Commerce
13 determined that members of the Suntech Group received an interest-rate based subsidy in
14 connection with bank loans; and a spokesperson for a member of the Suntech Group was quoted in
15 the press as stating that the Suntech Group had access to up to \$7.33 billion in loans from China
16 Development Bank that could be used for capacity expansion. Suntech America denies all
17 remaining allegations in paragraph 23.

18 24. Suntech America admits that members of the Suntech Group purchased polysilicon
19 from Chinese polysilicon manufacturers and Commerce determined that members of the Suntech
20 Group received a small subsidy in connection with polysilicon purchased from Chinese
21 polysilicon manufacturers. Suntech America denies all remaining allegations in paragraph 24.

22 **RELEVANT PRODUCT AND GEOGRAPHIC MARKETS**

23 25. To the extent paragraph 25 states legal conclusions, no response is required. To the
24 extent that any response is required to the allegations in paragraph 25, Suntech America denies all
25 material allegations contained therein.

26 26. Suntech America admits that commercial and industrial rooftops are a resource for
27 generating renewable solar electricity. Suntech America denies all additional allegations
28 contained in paragraph 26 on the grounds it lacks knowledge or information sufficient to form a

1 belief as to the truth or falsity of the statements concerning Plaintiff's business.

2 27. Suntech America denies the allegations contained in paragraph 27 on the grounds it
3 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
4 statements concerning Plaintiff's business.

5 28. Suntech America denies the allegations contained in paragraph 28 on the grounds it
6 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
7 statements concerning Plaintiff's business.

8 29. Suntech America admits that there is rooftop area in the United States that could
9 potentially be equipped with solar panels. Suntech America denies all additional allegations
10 contained in paragraph 29 on the grounds it lacks knowledge or information sufficient to form a
11 belief as to the truth or falsity of the statements contained therein.

12 30. Suntech America denies the allegations contained in paragraph 30 on the grounds it
13 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
14 statements concerning Plaintiff's business.

15 31. Suntech America denies the allegations contained in paragraph 31.

16 32. Suntech America admits it sold solar panels that were installed on commercial
17 rooftops and that it believes that Plaintiff and co-defendants also sold panels that were installed on
18 commercial rooftops. Suntech America denies all additional allegations contained in paragraph 29
19 on the grounds it lacks knowledge or information sufficient to form a belief as to the truth or
20 falsity of the statements relating to Plaintiffs and co-defendants' respective businesses.

21 33. To the extent that paragraph 33 states legal conclusions, no response is required.
22 Suntech America admits that it operates in the United States and that ITC and Commerce have
23 jurisdiction over the United States. Suntech America denies all additional allegations contained in
24 paragraph 33.

25 34. Suntech America admits that it has an affiliate which operated a manufacturing
26 facility in the United States. Suntech America denies the additional allegations contained in
27 paragraph 34 on the grounds it lacks knowledge or information sufficient to form a belief as to the
28 truth or falsity of the facts alleged in paragraph 34 as they relate to the other defendants in this

1 matter.

2 35. To the extent paragraph 35 states legal conclusions, no response is required. To the
3 extent that any response is required to the allegations in paragraph 35, Suntech America denies all
4 material allegations contained therein.

5 36. To the extent that paragraph 36 states legal conclusions, no response is required.
6 Suntech America admits that customers generally have specific system requirements to meet their
7 specific needs. To the extent paragraph 36 alleges that panels sold for residential or utility use are
8 not used for commercial rooftop systems, Suntech America denies that allegation. To the extent a
9 further response is required to the allegations in paragraph 36, Suntech America denies all material
10 allegations contained therein.

11 37. To the extent that paragraph 37 states legal conclusions, no response is required.
12 With regard to the allegations contained in paragraph 37 relating to Plaintiff's business, Suntech
13 America denies those allegations on the grounds it lacks knowledge or information sufficient to
14 form a belief as to the truth or falsity of the statements concerning Plaintiff's business. To the
15 extent a further response is required to the allegations in paragraph 37, Suntech America denies all
16 material allegations contained therein.

17 38. To the extent that paragraph 38 states legal conclusions, no response is required.
18 Suntech America admits that solar panel technology is evolving. To the extent a further response
19 is required to the allegations in paragraph 38, Suntech America denies all material allegations
20 contained therein.

21 39. Suntech America admits that an effective sales force, a workforce with mastery of
22 the technical aspects of the business, a strong intellectual property portfolio, and regulatory
23 knowledge to understand and help customers maximize renewable energy subsidies and incentives
24 are factors that help companies selling solar panels sell panels. Suntech America denies all
25 remaining allegations contained in paragraph 39.

26 40. Suntech America denies the allegations contained in paragraph 40.

27 41. To the extent that paragraph 41 contains factual allegations to which Suntech
28 America is required to respond, Suntech America denies those allegations.

1 42. To the extent that paragraph 42 contains factual allegations to which Suntech
2 America is required to respond, Suntech America does not deny those allegations.

3 43. To the extent that paragraph 43 contains factual allegations to which Suntech
4 America is required to respond, Suntech America does not deny those allegations.

5 44. To the extent that paragraph 44 contains factual allegations to which Suntech
6 America is required to respond, Suntech America does not deny those allegations.

7 45. To the extent that paragraph 45 contains factual allegations to which Suntech
8 America is required to respond, Suntech America does not deny those allegations.

9 46. To the extent that paragraph 46 contains factual allegations to which Suntech
10 America is required to respond, Suntech America does not deny those allegations.

11 47. To the extent that paragraph 47 contains factual allegations to which Suntech
12 America is required to respond, Suntech America does not deny those allegations.

13 48. To the extent that paragraph 48 contains factual allegations to which Suntech
14 America is required to respond, Suntech America does not deny those allegations.

15 49. To the extent that paragraph 49 contains factual allegations to which Suntech
16 America is required to respond, Suntech America does not deny those allegations.

17 50. To the extent that paragraph 50 contains factual allegations to which Suntech
18 America is required to respond, Suntech America does not deny those allegations.

19 51. Suntech America lacks knowledge or information sufficient to form a belief as to
20 the truth or falsity of the facts alleged in paragraph 51 as they relate to the characteristics of
21 Plaintiff's panel system. To the extent a response is required, Suntech America admits the
22 remaining material allegations in paragraph 51.

23 52. Suntech America denies that polysilicon used in the solar industry must be more
24 highly refined than the polysilicon used in other applications. To the extent a further response is
25 required, Suntech America admits the remaining material allegations in paragraph 52.

26 53. Suntech America admits that the prices for polysilicon generally declined during
27 the time period relevant to the ITC matter and that fact was raised before the ITC. To the extent a
28 further response is required, Suntech America denies all additional allegations in paragraph 53.

1 54. Suntech America admits that the ITC stated in its Preliminary Determination that
2 the “total costs of raw material as a unit of net sales increased,” but denies that the ITC “rejected”
3 Defendants’ assertion that polysilicon prices had declined. In fact, in the very same paragraph of
4 the ITC Preliminary Determination cited by Plaintiffs, the ITC agrees that “the record indicates
5 that the price of polysilicon declined” over the period in question, consistent with Defendants’
6 argument. To the extent a further response is required, Suntech America denies all additional
7 allegations in paragraph 54.

8 55. Suntech America denies the allegations contained in paragraph 55 on the grounds
9 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
10 facts contained therein.

11 56. Suntech America denies the allegations contained in paragraph 56 on the grounds
12 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
13 facts contained therein.

14 57. Suntech America denies the allegations contained in paragraph 57 on the grounds
15 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
16 facts contained therein.

17 58. Suntech America denies the allegations contained in paragraph 58 on the grounds
18 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
19 facts contained therein.

20 59. Suntech America denies the allegations contained in paragraph 59 on the grounds
21 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
22 facts contained therein.

23 60. Suntech America denies the allegations contained in paragraph 60 on the grounds
24 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
25 facts contained therein.

26 61. Suntech America denies the allegations contained in paragraph 61 on the grounds
27 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
28 facts contained therein.

1 62. Suntech America lacks knowledge or information sufficient to form a belief as to
2 the truth or falsity of the facts alleged in paragraph 62 as they relate to the characteristics of
3 Plaintiff's or co-defendants' panel systems. Suntech America denies the remaining allegations in
4 paragraph 62.

5 63. Suntech America denies the allegations contained in paragraph 63 on the grounds
6 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
7 facts contained therein.

8 64. Suntech America denies the allegations contained in paragraph 64 on the grounds
9 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
10 facts contained therein.

11 65. Suntech America denies the allegations contained in paragraph 65 on the grounds
12 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
13 facts contained therein.

14 66. Suntech America denies the allegations contained in paragraph 66 on the grounds
15 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
16 facts contained therein.

17 67. Suntech America denies the allegations contained in paragraph 67 on the grounds
18 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
19 facts contained therein.

20 68. Suntech America denies the allegations contained in paragraph 68 on the grounds
21 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
22 facts contained therein.

23 69. Suntech America denies the allegations contained in paragraph 69 on the grounds
24 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
25 facts contained therein.

26 70. Suntech America denies the allegations contained in paragraph 70 on the grounds
27 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
28 facts contained therein.

1 71. Suntech America denies the allegations contained in paragraph 71 on the grounds
2 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
3 facts contained therein.

4 72. Suntech America denies the allegations contained in paragraph 72 on the grounds
5 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
6 facts contained therein.

7 73. Suntech America denies the allegations contained in paragraph 73 on the grounds
8 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
9 facts contained therein as they relate to Plaintiff's sales. To the extent any further response is
10 required to the allegations in paragraph 73, Suntech America denies all material allegations
11 contained therein.

12 74. Suntech America denies the allegations contained in paragraph 74.

13 75. Suntech America denies the allegations contained in paragraph 75.

14 76. Suntech America denies the allegations contained in paragraph 76.

15 77. Suntech America denies the allegations contained in paragraph 77.

16 78. Suntech America admits that the prices for which it sold solar panels to its
17 customers generally declined between 2008 and 2011. Suntech America denies all remaining
18 allegations in paragraph 78.

19 79. Suntech America admits that market prices for solar panels generally declined
20 between 2008 and 2011. Suntech America denies all remaining allegations in paragraph 79.

21 80. Suntech America denies the allegations contained in paragraph 80.

22 81. To the extent that paragraph 81 contains factual allegations to which Suntech
23 America is required to respond, Suntech America denies those allegations.

24 82. Suntech America denies the allegations contained in paragraph 82.

25 83. Suntech America admits that demand for solar panels in the United States generally
26 increased between 2006 and 2011. Suntech America denies all additional allegations contained in
27 paragraph 83 on the grounds that it lacks knowledge or information sufficient to form a belief as to
28 the truth or falsity of the facts contained therein.

1 84. Suntech America admits that in June 2009 Reuters reported that Suntech Holdings'
2 then Chief Strategy Officer, Steven Chan, stated that the U.S. solar market was poised to triple in
3 2010. Suntech America denies the remaining allegations in paragraph 84.

4 85. Suntech America admits that demand for solar panels in the United States generally
5 increased between 2006 and 2011, prices generally declined during this period, and it sought to
6 gain market share. Suntech America denies all additional allegations contained in paragraph 85.

7 86. Suntech America denies the allegations contained in paragraph 86.

8 87. Suntech America admits that the former chairman of Suntech Holdings was at one
9 time a board member of China New Energy. Suntech America denies all remaining allegations in
10 paragraph 87.

11 88. Suntech America denies the allegations contained in paragraph 88.

12 89. Suntech America admits that the former chairman of Suntech Holdings has spoken
13 at the China New Energy International Forum. Suntech America denies all remaining allegations
14 in paragraph 89.

15 90. Suntech America denies the allegations contained in paragraph 90 on the grounds
16 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
17 facts contained therein.

18 91. Suntech America admits that the former chairman of Suntech Holdings participated
19 in China New Energy meetings. Suntech America denies any of these meetings were used to form
20 a conspiracy or make any illegal agreements. Suntech America denies all remaining allegations
21 contained in paragraph 91 on the grounds that it lacks knowledge or information sufficient to form
22 a belief as to the truth or falsity of the facts contained therein.

23 92. Suntech America denies that it or any member of the Suntech Group made any
24 agreements to lower prices uniformly with its competitors. Suntech America denies all remaining
25 allegations contained in paragraph 92 on the grounds that it lacks knowledge or information
26 sufficient to form a belief as to the truth or falsity of the facts contained therein.

27 93. Suntech America admits that the former chairman of Suntech Holdings participated
28 in China New Energy meetings. Suntech America denies any of these meetings were used to form

1 a conspiracy or make any illegal agreements. Suntech America denies all remaining allegations
2 contained in paragraph 93 on the grounds that it lacks knowledge or information sufficient to form
3 a belief as to the truth or falsity of the facts contained therein.

4 94. Suntech America denies that it or any member of the Suntech Group made any
5 agreements to lower prices uniformly with its competitors. Suntech America denies all remaining
6 allegations contained in paragraph 94 on the grounds that it lacks knowledge or information
7 sufficient to form a belief as to the truth or falsity of the facts contained therein.

8 95. Suntech America admits that the former chairman of Suntech Holdings participated
9 in China New Energy meetings. Suntech America denies any of these meetings were used to form
10 a conspiracy or make any illegal agreements. Suntech America denies all remaining allegations
11 contained in paragraph 95 on the grounds that it lacks knowledge or information sufficient to form
12 a belief as to the truth or falsity of the facts contained therein.

13 96. Suntech America denies that it or any member of the Suntech Group made any
14 agreements to lower prices uniformly with its competitors. Suntech America denies all remaining
15 allegations contained in paragraph 96 on the grounds that it lacks knowledge or information
16 sufficient to form a belief as to the truth or falsity of the facts contained therein.

17 97. Suntech America admits that the former chairman of Suntech Holdings participated
18 in China New Energy meetings. Suntech America denies that any of these meetings were used to
19 form a conspiracy or make any illegal agreements. Suntech America denies all remaining
20 allegations contained in paragraph 97 on the grounds that it lacks knowledge or information
21 sufficient to form a belief as to the truth or falsity of the facts contained therein.

22 98. Suntech America denies the allegations contained in paragraph 98 on the grounds
23 that it lacks knowledge or information sufficient to form a belief as to what statements were made
24 by the “informant.”

25 99. Suntech America denies the allegations contained in paragraph 99 on the grounds
26 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
27 facts contained therein.

28 100. Suntech America lacks knowledge or information sufficient to form a belief as to

1 the truth or falsity of the alleged statements of the U.S. Energy Information Administration. To
2 the extent that paragraph 100 contains factual allegations to which Suntech America is required to
3 respond, Suntech America denies those allegations.

4 101. Suntech America denies the allegations contained in paragraph 101 on the grounds
5 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
6 facts contained therein.

7 102. Suntech America admits that demand for solar panels in the United States generally
8 increased between 2006 and 2011. Suntech America denies that it or any member of the Suntech
9 Group were part of any conspiracy. Suntech America denies all remaining allegations contained
10 in paragraph 102 on the grounds that it lacks knowledge or information sufficient to form a belief
11 as to the truth or falsity of the facts contained therein.

12 103. Suntech America denies the allegations contained in paragraph 103 on the grounds
13 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
14 facts contained therein.

15 104. Suntech America denies the allegations contained in paragraph 104 on the grounds
16 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
17 facts contained therein.

18 105. Suntech America denies the allegations contained in paragraph 105 on the grounds
19 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
20 facts contained therein.

21 106. Suntech America denies the allegations contained in paragraph 106 on the grounds
22 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
23 facts contained therein.

24 107. Suntech America denies the allegations contained in paragraph 107 on the grounds
25 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
26 facts contained therein.

27 108. Suntech America denies the allegations contained in paragraph 108.

28 109. Suntech America denies the allegations contained in paragraph 109 and footnote 5.

1 110. Suntech America admits that the ITC concluded that for a specific time period the
2 U.S. solar industry was injured by reason of imports of crystalline silicon photovoltaic cells and
3 modules from China. To the extent a further response is required, Suntech America denies all
4 remaining allegations in paragraph 110.

5 111. Suntech America admits that Suntech Holdings reported in its 20-F for the fiscal
6 year ended December 31, 2011 that members of the Suntech Group had short-term bank
7 borrowings and that they had historically been able to obtain extensions of some of these facilities
8 shortly before they matured. Suntech America denies all remaining allegations in paragraph 111.
9 Suntech America also denies the allegations in footnote 6 on the grounds that it lacks knowledge
10 or information sufficient to form a belief as to the truth or falsity of the facts contained therein.

11 112. Suntech America denies the allegations contained in paragraph 112 on the grounds
12 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
13 facts contained therein.

14 113. Suntech America admits that a spokesperson for a member of the Suntech Group
15 was quoted in the press as stating that the Suntech Group had access to up to \$7.33 billion in loans
16 from China Development Bank that could be used for capacity expansion. Suntech America
17 denies all remaining allegations in paragraph 113.

18 114. Suntech America denies that it or any members of the Suntech Group participated
19 in the conspiracy alleged in paragraph 114. Suntech America denies all remaining allegations
20 contained in paragraph 114 on the grounds that it lacks knowledge or information sufficient to
21 form a belief as to the truth or falsity of the facts contained therein.

22 115. Suntech America denies that it or any members of the Suntech Group participated
23 in the conspiracy alleged in paragraph 115. Suntech America denies all remaining allegations
24 contained in paragraph 115 on the grounds that it lacks knowledge or information sufficient to
25 form a belief as to the truth or falsity of the facts contained therein.

26 116. Suntech America admits that Suntech Holdings reported in its 20-F for the fiscal
27 year ended December 31, 2011 that, in July 2011, a member of the Suntech Group entered into a
28 one and a half year credit facility agreement with Bank of China with a maximum borrowing

1 amount of \$436.5 million. Suntech America denies that it or any members of the Suntech Group
2 participated in the conspiracy alleged in paragraph 116. Suntech America denies the remaining
3 allegations contained in paragraph 116 on the grounds that it lacks knowledge or information
4 sufficient to form a belief as to the truth or falsity of the facts contained therein.

5 117. Suntech America denies that it or any members of the Suntech Group participated
6 in the conspiracy or illegal activities alleged in paragraph 117. Suntech America denies the
7 remaining allegations contained in paragraph 117 on the grounds that it lacks knowledge or
8 information sufficient to form a belief as to the truth or falsity of the facts contained therein.

9 118. Suntech America denies the allegations contained in paragraph 118 on the grounds
10 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
11 facts contained therein.

12 119. Suntech America admits that members of the Suntech Group purchased polysilicon
13 from Chinese polysilicon manufacturers and Commerce determined that members of the Suntech
14 Group received a small subsidy in connection with polysilicon purchased from Chinese
15 polysilicon manufacturers. Suntech America denies all remaining allegations in paragraph 119.

16 120. Suntech America denies being involved in “extensive litigation” described in
17 paragraph 120. Suntech America denies the remaining allegations contained in paragraph 120 on
18 the grounds that it lacks knowledge or information sufficient to form a belief as to the truth or
19 falsity of the facts contained therein.

20 121. Suntech America denies that it or any members of the Suntech Group participated
21 in the conspiracy or illegal activities alleged in paragraph 121. Suntech America admits that
22 members of the Suntech Group purchased silicon wafers from Shunda Holdings under a wafer
23 supply agreement. To the extent Suntech America is required to further respond to the allegations
24 of paragraph 121, Suntech America denies those allegations.

25 122. Suntech America denies the allegations contained in paragraph 122 on the grounds
26 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
27 facts contained therein.

28 123. Suntech America denies conspiring, price-fixing, or committing any other illegal

1 acts described in paragraph 123. To the extent a further response is required to paragraph 123,
2 Suntech America denies the allegations in paragraph 123.

3 124. To the extent that paragraph 124 contains factual allegations to which Suntech
4 America is required to respond, Suntech America does not deny those allegations.

5 125. To the extent that paragraph 125 contains factual allegations to which Suntech
6 America is required to respond, Suntech America does not deny those allegations.

7 126. To the extent that paragraph 126 contains factual allegations to which Suntech
8 America is required to respond, Suntech America does not deny those allegations.

9 127. To the extent that paragraph 127 contains factual allegations to which Suntech
10 America is required to respond, Suntech America does not deny those allegations.

11 128. To the extent that paragraph 128 contains factual allegations to which Suntech
12 America is required to respond, Suntech America does not deny those allegations.

13 129. Suntech America admits that a member of the Suntech Group was a respondent in
14 the Commerce investigation. Suntech America denies the remaining allegations contained in
15 paragraph 129, including footnote 8, on the grounds that it lacks knowledge or information
16 sufficient to form a belief as to the truth or falsity of the facts contained therein.

17 130. To the extent that paragraph 130 contains factual allegations to which Suntech
18 America is required to respond, Suntech America does not deny those allegations.

19 131. Suntech America admits that Commerce preliminarily found “critical
20 circumstances” with regard to Chinese manufacturers as a class. Suntech America denies all
21 remaining allegations in paragraph 131.

22 132. Suntech America admits that Commerce concluded that members of the Suntech
23 Group sold panels for less than fair value and that the U.S. industry was injured. To the extent any
24 further response is required, Suntech America denies all remaining allegations in paragraph 132.

25 133. To the extent that paragraph 133 contains factual allegations to which Suntech
26 America is required to respond, Suntech America does not deny those allegations.

27 134. Suntech America admits that Commerce imposed a weighted average dumping
28 margin of 31.73% on members of the Suntech Group and weighted average dumping margins of

1 18.32% and 25.96% as to Trina and Yingli. Suntech America denies all remaining allegations in
2 paragraph 134.

3 135. To the extent a response is required, Suntech America denies the allegations in
4 paragraph 135.

5 136. To the extent that paragraph 136 contains factual allegations to which Suntech
6 America is required to respond, Suntech America does not deny those allegations.

7 137. To the extent that paragraph 137 contains factual allegations to which Suntech
8 America is required to respond, Suntech America does not deny those allegations.

9 138. To the extent paragraph 138 contains factual allegations to which Suntech America
10 is required to respond, Suntech America denies these allegations.

11 139. To the extent paragraph 139 contains factual allegations to which Suntech America
12 is required to respond, Suntech America denies these allegations.

13 140. Suntech America denies the allegations contained in paragraph 140 on the grounds
14 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
15 facts contained therein.

16 141. Suntech America admits that, on December 16, 2011, the ITC found: “there is a
17 reasonable indication that an industry in the United States is materially injured by reason of
18 imports from China of crystalline silicon photovoltaic cells and modules that are alleged to be sold
19 in the United States at less than fair value (LTFV) and subsidized by the Government of China.”
20 Suntech America denies any further characterization of this finding by Plaintiff in paragraph 141.

21 142. To the extent that paragraph 142 contains factual allegations to which Suntech
22 America is required to respond, Suntech America does not deny those allegations.

23 143. To the extent that paragraph 143 contains factual allegations to which Suntech
24 America is required to respond, Suntech America does not deny those allegations.

25 144. To the extent that paragraph 144 contains factual allegations to which Suntech
26 America is required to respond, Suntech America does not deny those allegations.

27 145. Suntech America admits that the ITC stated in its Preliminary Determination that
28 the “total costs of raw material as a unit of net sales increased” and denies that the ITC “rejected”

1 Defendants' assertion that polysilicon prices had declined. To the extent a further response is
2 required, Suntech America denies all additional allegations in paragraph 145.

3 146. Suntech America admits that the ITC preliminarily found an increase in value of
4 411.7% in its Preliminary Determination. To the extent that paragraph 146 contains additional
5 factual allegations to which Suntech America is required to respond, Suntech America denies
6 those allegations.

7 147. Suntech America admits that the ITC's Preliminary Determination found "a
8 reasonable indication that an industry in the United States is materially injured by reason of
9 allegedly dumped and subsidized imports of [solar] cells and panels from China," but denies that
10 the ITC found Suntech liable for "predation" or any other antitrust offense, and denies all
11 remaining all allegations contained in paragraph 147.

12 148. Suntech America admits that on November 30, 2012, the ITC Commissioners
13 transmitted their final determination to Commerce, and that six Commissioners voted to impose
14 countervailing duties. Suntech America denies the remainder of the allegations contained in
15 paragraph 148 on the grounds that it lacks knowledge or information sufficient to form a belief as
16 to the truth or falsity of the facts contained therein.

17 149. To the extent that paragraph 149 contains factual allegations to which Suntech
18 America is required to respond, Suntech America does not deny those allegations.

19 150. To the extent that paragraph 150 contains factual allegations to which Suntech
20 America is required to respond, Suntech America does not deny those allegations.

21 151. Suntech America denies the allegations contained in paragraph 151 on the grounds
22 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
23 facts contained therein.

24 152. Suntech America denies the allegations contained in paragraph 152 on the grounds
25 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
26 facts alleged therein as they relate to companies that allegedly became insolvent or shuttered
27 operations.

28 153. Suntech America denies the allegations contained in paragraph 153 on the grounds

1 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
2 facts alleged therein.

3 154. Suntech America denies the allegations contained in paragraph 154 on the grounds
4 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
5 facts alleged therein.

6 155. Suntech America admits that some solar panel companies have gone out of
7 business. To the extent paragraph 155 states legal conclusions, no response is required. To the
8 extent that any additional response is required to the allegations in paragraph 155, Suntech
9 America denies all remaining allegations contained therein.

10 156. Suntech America admits that market prices for solar panels generally declined in
11 the period of 2008 to 2011. Suntech America lacks knowledge or information sufficient to form a
12 belief as to the truth or falsity of the facts alleged in paragraph 156 as they relate allegations about
13 Plaintiff's lost sales. To the extent paragraph 156 states legal conclusions, no response is required.
14 To the extent that any additional response is required to the allegations in paragraph 156, Suntech
15 America denies all material allegations contained therein.

16 157. Suntech America denies the allegations contained in paragraph 157 on the grounds
17 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
18 facts contained therein.

19 158. Suntech America denies the allegations contained in paragraph 158 on the grounds
20 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
21 facts contained therein.

22 159. Suntech America denies that it tortiously interfered with Plaintiff's agreements.
23 Suntech America denies the remaining allegations contained in paragraph 159 on the grounds that
24 it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the facts
25 contained therein.

26 160. Suntech America denies the allegations contained in paragraph 160 on the grounds
27 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
28 facts contained therein.

1 161. Suntech America admits that a *New York Times* article purporting to be based on an
2 interview with the former CEO of Suntech Holdings states: “Suntech, to build market share, is
3 selling solar panels on the American market for less than the cost of materials, assembly, and
4 shipping.” Suntech America denies all remaining material allegations in paragraph 161.

5 162. Suntech America denies the allegations contained in paragraph 162 on the grounds
6 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
7 facts contained therein.

8 163. Suntech America admits that Suntech Holdings reported a net loss of
9 approximately \$1 billion in its SEC Form 20-F for the year ending December 31, 2011. Suntech
10 America denies the remaining allegations in paragraph 163 on the grounds it lacks knowledge or
11 information sufficient to form a belief as to the truth or falsity of the facts alleged therein.

12 164. Suntech America denies the allegations in paragraph 164.

13 165. Suntech America denies the allegations contained in paragraph 165 on the grounds
14 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
15 facts contained therein.

16 166. Suntech America denies the allegations contained in paragraph 166, including
17 footnote 12, on the grounds that it lacks knowledge or information sufficient to form a belief as to
18 the truth or falsity of the facts contained therein.

19 167. Suntech America denies the allegations contained in paragraph 167 on the grounds
20 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
21 facts contained therein.

22 168. To the extent a response is required, Suntech America denies the allegations in
23 paragraph 168 on the grounds that it lacks knowledge or information sufficient to form a belief as
24 to the truth or falsity of the facts contained therein.

25 169. To the extent a response is required, Suntech America denies the allegations in
26 paragraph 169 on the grounds that it lacks knowledge or information sufficient to form a belief as
27 to the truth or falsity of the facts contained therein.

28 170. To the extent a response is required, Suntech America denies the allegations in

1 paragraph 170 on the grounds that it lacks knowledge or information sufficient to form a belief as
2 to the truth or falsity of the facts alleged therein.

3 171. Suntech America denies the allegations in paragraph 171.

4 172. Suntech America denies having driven manufacturers out of business. Suntech
5 America denies the remaining allegations contained in paragraph 172 on the grounds that it lacks
6 knowledge or information sufficient to form a belief as to the truth or falsity of the facts contained
7 therein.

8 173. Suntech America admits that Suntech Holdings' reported net revenue was
9 approximately \$1.7 billion in 2009 and \$3.1 billion in 2011 and that Suntech Holdings attributed
10 the increase to "strong growth of the sales of [its] PV products which more than offset the decline
11 of average selling price." Suntech America denies all remaining allegations in paragraph 173.

12 174. Suntech America denies the allegations contained in paragraph 174 on the grounds
13 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
14 facts contained therein.

15 175. Suntech America denies the allegations contained in paragraph 175 on the grounds
16 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
17 facts contained therein.

18 176. Suntech America denies having committed any illegal conduct. Suntech America
19 denies the remaining allegations contained in paragraph 176 on the grounds that it lacks
20 knowledge or information sufficient to form a belief as to the truth or falsity of the facts contained
21 therein.

22 177. Suntech America denies the allegations contained in paragraph 177 on the grounds
23 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
24 facts contained therein.

25 178. Suntech America lacks knowledge or information sufficient to form a belief as to
26 the truth or falsity of the facts alleged in paragraph 178 as they relate to the products offered by
27 companies other than Suntech America. To the extent that any additional response is required to
28 the allegations in paragraph 178, Suntech America denies all material allegations contained

1 therein.

2 179. To the extent a response is required, Suntech America denies the allegations in
3 paragraph 179.

4 180. To the extent a response is required, Suntech America denies the allegations in
5 paragraph 180.

6 181. Suntech America denies that it is not interested in profit and denies that average
7 Suntech Group top executive compensation more than doubled in 2010. Suntech America denies
8 the remaining allegations in paragraph 181 on the grounds that it lacks knowledge or information
9 sufficient to form a belief as to the truth or falsity of the facts contained therein.

10 182. Suntech America denies the allegations relating to the Suntech Group in paragraph
11 182. Suntech America denies the remaining allegations in paragraph 182 on the grounds that it
12 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the facts
13 contained therein.

14 183. Suntech America denies the allegations in paragraph 183.

15 184. Suntech America denies the allegations contained in paragraph 184 as they relate to
16 Plaintiff's customer agreements on the grounds that it lacks knowledge or information sufficient to
17 form a belief as to the truth or falsity of the facts contained therein. To the extent paragraph 184
18 states legal conclusions, no response is required. To the extent that any additional response is
19 required to the allegations in paragraph 184, Suntech America denies all material allegations
20 contained therein.

21 185. Suntech America denies the allegations contained in paragraph 185 as they relate to
22 Plaintiff's customer agreements on the grounds that it lacks knowledge or information sufficient to
23 form a belief as to the truth or falsity of the facts contained therein. To the extent paragraph 185
24 states legal conclusions, no response is required. To the extent that any additional response is
25 required to the allegations in paragraph 184, Suntech America denies all material allegations
26 contained therein.

27 186. Suntech America denies the allegations contained in paragraph 186 on the grounds
28 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the

1 facts contained therein.

2 187. Suntech America denies the allegations contained in paragraph 187 as they relate to
3 Plaintiff's customer agreements on the grounds that it lacks knowledge or information sufficient to
4 form a belief as to the truth or falsity of the facts contained therein. To the extent paragraph 187
5 states legal conclusions, no response is required. To the extent that any additional response is
6 required to the allegations in paragraph 187, Suntech America denies all material allegations
7 contained therein.

8 188. Suntech America denies the allegations contained in paragraph 188 on the grounds
9 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
10 facts contained therein.

11 189. Suntech America denies the allegations contained in paragraph 189 as they relate to
12 Plaintiff's customer agreements on the grounds that it lacks knowledge or information sufficient to
13 form a belief as to the truth or falsity of the facts contained therein. To the extent paragraph 189
14 states legal conclusions, no response is required. To the extent that any additional response is
15 required to the allegations in paragraph 189, Suntech America denies all material allegations
16 contained therein.

17 190. Suntech America denies the allegations in paragraph 190.

18 191. Suntech America denies the allegations contained in paragraph 191 on the grounds
19 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
20 facts contained therein as they relate to communications between the other Defendants and
21 Plaintiff's customers. Suntech America denies all remaining allegations in paragraph 191.

22 192. Suntech America denies the allegations contained in paragraph 192 on the grounds
23 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
24 facts contained therein.

25 193. Suntech America denies the allegations contained in paragraph 193 on the grounds
26 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
27 facts contained therein.

28 194. Suntech America denies the allegations contained in paragraph 194, including

1 footnotes 13 and 14, on the grounds that it lacks knowledge or information sufficient to form a
2 belief as to the truth or falsity of the facts contained therein.

3 195. Suntech America denies the allegations contained in paragraph 195 on the grounds
4 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
5 facts contained therein.

6 196. Suntech America denies the allegations contained in paragraph 196 on the grounds
7 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
8 facts contained therein.

9 197. Suntech America denies the allegations contained in paragraph 197 on the grounds
10 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
11 facts contained therein as they relate to communications between Plaintiff and a third party. To
12 the extent paragraph 197 alleges that Suntech America tortiously interfered with Plaintiff's
13 contracts, Suntech America denies those allegations.

14 198. Suntech America denies the allegations contained in paragraph 198 on the grounds
15 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
16 facts contained therein. To the extent paragraph 198 alleges that Suntech America tortiously
17 interfered with Plaintiff's contracts, Suntech America denies those allegations.

18 199. Suntech America denies the allegations contained in paragraph 199 on the grounds
19 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
20 facts contained therein.

21 200. Suntech America denies the allegations contained in paragraph 200 on the grounds
22 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
23 facts contained therein.

24 201. Suntech America denies the allegations contained in paragraph 201 on the grounds
25 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
26 facts contained therein. To the extent paragraph 201 alleges that Suntech America tortiously
27 interfered with Plaintiff's contracts, Suntech America denies those allegations.

28 202. Suntech America denies the allegations contained in paragraph 202 on the grounds

1 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
2 facts contained therein. To the extent paragraph 202 alleges that Suntech America tortiously
3 interfered with Plaintiff's contracts, Suntech America denies those allegations.

4 203. Suntech America denies the allegations contained in paragraph 203 on the grounds
5 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
6 facts contained therein. To the extent paragraph 203 alleges that Suntech America tortiously
7 interfered with Plaintiff's contracts, Suntech America denies those allegations.

8 204. Suntech America denies the allegations contained in paragraph 204 on the grounds
9 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
10 facts contained therein as they relate to transactions between the other Defendants and Plaintiff's
11 customers. Suntech America denies all remaining allegations in paragraph 204.

12 205. Suntech America denies the allegations contained in paragraph 205 on the grounds
13 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
14 facts contained therein.

15 206. Suntech America denies the allegations contained in paragraph 206 on the grounds
16 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
17 facts contained therein.

18 207. Suntech America denies the allegations contained in paragraph 207 on the grounds
19 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
20 facts contained therein.

21 208. Suntech America denies the allegations contained in paragraph 208 on the grounds
22 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
23 facts contained therein.

24 209. Suntech America denies the allegations contained in paragraph 209 on the grounds
25 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
26 facts contained therein.

27 210. Suntech America denies the allegations contained in paragraph 210 on the grounds
28 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the

1 facts contained therein. To the extent paragraph 210 alleges that Suntech America tortiously
2 interfered with Plaintiff's contracts, Suntech America denies those allegations.

3 211. Suntech America denies the allegations contained in paragraph 211 on the grounds
4 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
5 facts contained therein. To the extent paragraph 211 alleges that Suntech America tortiously
6 interfered with Plaintiff's contracts, Suntech America denies those allegations.

7 212. Suntech America denies the allegations contained in paragraph 212 on the grounds
8 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
9 facts contained therein. To the extent paragraph 212 alleges that Suntech America tortiously
10 interfered with Plaintiff's contracts, Suntech America denies those allegations.

11 213. Suntech America denies the allegations contained in paragraph 213 on the grounds
12 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
13 facts contained therein. To the extent paragraph 213 alleges that Suntech America tortiously
14 interfered with Plaintiff's contracts, Suntech America denies those allegations.

15 214. Suntech America denies the allegations contained in paragraph 214 on the grounds
16 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
17 facts contained therein. To the extent paragraph 214 alleges that Suntech America tortiously
18 interfered with Plaintiff's contracts, Suntech America denies those allegations.

19 215. Suntech America denies the allegations contained in paragraph 215 on the grounds
20 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
21 facts contained therein. To the extent paragraph 215 alleges that Suntech America tortiously
22 interfered with Plaintiff's contracts, Suntech America denies those allegations.

23 216. Suntech America denies the allegations contained in paragraph 216 as they relate to
24 Plaintiff's funding or losses on the grounds that it lacks knowledge or information sufficient to
25 form a belief as to the truth or falsity of the facts contained therein. To the extent paragraph 216
26 states legal conclusions, no response is required. To the extent that any additional response is
27 required to the allegations in paragraph 216, Suntech America denies all material allegations
28 contained therein.

1 217. Suntech America denies the allegations in paragraph 217.

2 **COUNT I**

3 218. To the extent a response is required to paragraph 218, Suntech America denies
4 these allegations.

5 219. Paragraph 219 states no facts to which Defendant is required to respond.

6 220. To the extent a response is required to paragraph 220, Suntech America denies
7 these allegations.

8 221. To the extent a response is required to paragraph 221, Suntech America denies
9 these allegations.

10 222. To the extent a response is required to paragraph 222, Suntech America denies
11 these allegations.

12 223. To the extent a response is required to paragraph 223, Suntech America denies
13 these allegations.

14 224. To the extent a response is required to paragraph 224, Suntech America denies
15 these allegations.

16 225. To the extent a response is required to paragraph 225, Suntech America denies
17 these allegations.

18 226. To the extent a response is required to paragraph 226, Suntech America denies
19 these allegations.

20 227. To the extent a response is required to paragraph 227, Suntech America denies
21 these allegations.

22 **COUNT II**

23 228. To the extent a response is required to paragraph 228, Suntech America denies
24 these allegations.

25 229. Paragraph 219 states no facts to which Defendant is required to respond.

26 230. To the extent a response is required to paragraph 230, Suntech America denies
27 these allegations.

28 231. To the extent a response is required to paragraph 231, Suntech America denies

1 these allegations.

2 232. To the extent a response is required to paragraph 232, Suntech America denies
3 these allegations.

4 233. To the extent a response is required to paragraph 233, Suntech America denies
5 these allegations.

6 234. To the extent a response is required to paragraph 234, Suntech America denies
7 these allegations.

8 235. To the extent a response is required to paragraph 235, Suntech America denies
9 these allegations.

10 236. To the extent a response is required to paragraph 236, Suntech America denies
11 these allegations.

12 237. To the extent a response is required to paragraph 237, Suntech America denies
13 these allegations.

14 **COUNT III**

15 238. To the extent a response is required to paragraph 238, Suntech America denies
16 these allegations.

17 239. Paragraph 239 states no facts to which Defendant is required to respond.

18 240. Paragraph 240 states no facts to which Defendant is required to respond.

19 241. Suntech America admits that it is engaged in business in California. Suntech
20 America denies all remaining material allegations in paragraph 241.

21 242. To the extent a response is required to paragraph 242, Suntech America denies
22 these allegations.

23 243. To the extent a response is required to paragraph 243, Suntech America denies
24 these allegations.

25 244. To the extent a response is required to paragraph 244, Suntech America denies
26 these allegations.

27 245. To the extent a response is required to paragraph 245, Suntech America denies
28 these allegations.

1 interfered with Plaintiff's economic advantage, Suntech America denies those allegations.

2 256. Suntech America denies the allegations in paragraph 256.

3 257. Suntech America denies the allegations contained in paragraph 257 on the grounds
4 that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
5 facts contained therein. To the extent paragraph 257 alleges that Suntech America tortiously
6 interfered with Plaintiff's economic advantage, Suntech America denies those allegations.

7 258. To the extent a response is required to paragraph 258, Suntech America denies
8 these allegations.

9 **PRAYER FOR RELIEF**

10 259. The Prayer for Relief does not contain allegations of law or fact that require a
11 response by Suntech America. To the extent that a response is required, Suntech America denies
12 the allegations of the Prayer for Relief. Suntech America denies that Plaintiff is entitled to any
13 relief whatsoever.

14 **DEMAND FOR JURY TRIAL**

15 260. Suntech America hereby demands a trial by jury on all issues upon which trial by
16 jury may be had.

17 **AFFIRMATIVE DEFENSES**

18 261. Suntech America asserts the following affirmative defenses without assuming the
19 burden of proof or persuasion as to such defenses that would otherwise rest on Plaintiff.

20 **FIRST AFFIRMATIVE DEFENSE**

21 262. Plaintiff's claims are barred, in whole or in part, under the doctrine of preemption.

22 **SECOND AFFIRMATIVE DEFENSE**

23 263. Plaintiff's claims are barred, in whole or in part, under the doctrine of laches.

24 **THIRD AFFIRMATIVE DEFENSE**

25 264. Plaintiff's claims are barred, in whole or in part, by the applicable statute of
26 limitations.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOURTH AFFIRMATIVE DEFENSE

265. Plaintiff’s claims are barred in whole or in part by the doctrines of waiver, estoppel, or unclean hands.

FIFTH AFFIRMATIVE DEFENSE

266. Plaintiff’s claims are barred in whole or in part, because to the extent that any agent of Suntech America engaged in any unlawful act or omission, any such act or omission would have been committed by individuals acting *ultra vires*.

SIXTH AFFIRMATIVE DEFENSE

267. Plaintiff’s claims are barred, in whole or in part, to the extent that Plaintiff seeks damages that are duplicative of damages sought in other actions.

SEVENTH AFFIRMATIVE DEFENSE

268. Plaintiff is precluded from recovering damages, in whole or in part, for failure to mitigate its alleged damages.

DEFENSES RESERVED

269. The foregoing affirmative defenses are raised by Suntech America without waiver of any other defenses that may come to light during the discovery proceedings in this case or otherwise. Suntech America hereby reserves the right to amend or supplement its Answer to assert any other related defenses as they become available.

270. Suntech America adopts by reference any defense, not otherwise expressly set forth herein, that is or will be pleaded by any other defendant in this matter.

