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SOLYNDRA LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

18 THE SOLYNDRA RESIDUAL TRUST, BY
19 AND THROUGH ITS LIQUIDATING
20 TRUSTEE, R. TODD NEILSON

Plaintiff,

vs.

21
22
23 SUNTECH POWER HOLDINGS CO., LTD.,
24 SUNTECH AMERICA, INC., TRINA SOLAR
25 LIMITED, TRINA SOLAR (U.S.), INC.,
26 YINGLI GREEN ENERGY HOLDING
27 COMPANY LIMITED, YINGLI GREEN
28 ENERGY AMERICAS, INC.,

Defendants.

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

**AMENDED COMPLAINT FOR
VIOLATIONS OF § 1 OF THE SHERMAN
ANTITRUST ACT, THE CALIFORNIA
UNFAIR PRACTICES ACT, THE
CARTWRIGHT ACT, AND FOR
TORTIOUS INTERFERENCE**

JURY TRIAL DEMANDED

1 Plaintiff The Solyndra Residual Trust, by and through its Liquidating Trustee, R. Todd
2 Neilson (“Solyndra”) for its complaint against Defendants Suntech Power Holdings Co., Ltd.,
3 Suntech America, Inc. (collectively, “Suntech”), Trina Solar Limited, Trina Solar (U.S.), Inc.
4 (collectively, “Trina”), Yingli Green Energy Holding Company Limited, and Yingli Green Energy
5 Americas Inc. (collectively, “Yingli”). Suntech, Trina, and Yingli shall hereinafter collectively be
6 referred to at times as “Defendants,” and Solyndra alleges as follows:

7 SUMMARY OF THE ACTION

8 1. Solyndra brings this action against the Defendants under the antitrust laws of the
9 United States, as well as the laws of the state of California, against Defendants for engaging in
10 concerted action, the object of which was to drive Solyndra (and other United States manufacturers
11 as well) out of business. Solyndra alleges on information and belief that Defendants agreed among
12 themselves, acting in concert and not as the result of independent and competitive decision making,
13 that they would undertake to dominate the market for solar panels in the United States. In
14 furtherance of this agreement, on information and belief, Defendants, aided by certain co-
15 conspirators, agreed among themselves to coordinate the prices for and output of solar panels to be
16 sold in the United, all with the object of driving domestic United States producers/competitors from
17 the market. As more specifically alleged below, Defendants, in furtherance of their illegal scheme,
18 agreed and coordinated among themselves a plan to sell solar panels in the United States market at
19 below-cost, non-competitive prices. Solyndra possessed innovative technology that gave it a
20 competitive advantage in the commercial and industrial rooftop solar market. To eliminate the threat
21 that Solyndra posed, Defendants had to flood the United States market with their conventional flat
22 photovoltaic solar panels at prices substantially below cost, crippling the enablement of Solyndra’s
23 new technology. Defendants’ conspiracy was successful; as shown by the fact that the cartel, in a
24 relatively short period of time, was able to drive not only Solyndra out of business but a number of
25 other U.S. manufacturers as well.

26 2. Defendants initially came to the United States to raise money from American
27 investors by selling American Depositary Shares (“ADS”) on the New York Stock Exchange.
28 Incredibly, Defendants elected to deploy the capital they raised from Americans to destroy American

1 solar manufacturers, like Solyndra. To achieve this goal, Defendants employed a complex scheme,
2 in collaboration with each other and raw material suppliers and certain lenders, to flood the United
3 States solar market with solar panels at below-cost prices.

4 3. What is more, Defendants' plan to dominate the United States solar market was
5 coordinated by Defendants and enabled by trade associations and certain government-related
6 commercial entities, such that Defendants conspired to export more than 95% of their production,
7 dump their products in the United States at below-cost prices, and achieve market domination. In
8 fact, Suntech's then-CEO even admitted to the illegal conduct at issue, noting, "Suntech, to build
9 market share, is selling solar panels on the American market for less than the cost of materials,
10 assembly, and shipping."

11 4. Further to their conspiracy, the three Defendants' prices moved in tandem—falling
12 75% in four years as their massive imports hit the United States market. Consistent with their
13 unlawful concerted action, two Defendants share an address (Yingli and Trina), and the two senior-
14 most executives of Trina and Suntech work together on the board of a Chinese trade association with
15 the stated purpose of "collaboration."

16 5. Unfortunately for Solyndra and American consumers, Defendants' plan worked—
17 Defendants' concerted actions destroyed not only Solyndra, but nearly a dozen other United States
18 solar manufacturers, which have all sought bankruptcy protection.

19 6. Defendants' actions, however, have not gone unnoticed by the United States
20 Government. The Department of Commerce ("Commerce") has already determined that Defendants
21 "dumped" solar panels in the United States market at "less than fair value" such that it was necessary
22 to issue massive duties of as much as 31.73% in an attempt to even the playing field for the few
23 remaining American solar manufacturers that have not already been driven out of business.
24 Similarly, the International Trade Commission ("ITC") determined that the United States solar panel
25 manufacturers' financial condition "worsened throughout the period of investigation as the volume
26 and market share of subject imports grew, even though the industry was experiencing rapidly
27 increasing demand."

28 7. Of course, the United States governmental determinations are of little comfort to

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1 Solyndra, whose only hope of redress is through this action. By this complaint, Solyndra seeks
2 compensation for the loss of the \$1.5 billion value of its business and more which Defendants
3 destroyed.

4 **JURISDICTION AND VENUE**

5 8. This Court has jurisdiction over this action under 15 U.S.C. § 15 and 28 U.S.C. §§
6 1331 and 1337. This Court has supplemental jurisdiction over the state law claims asserted herein
7 pursuant to 28 U.S.C. § 1367 because those claims are so related to the federal claims that they form
8 part of the same case or controversy. In addition, this Court has jurisdiction over the state law
9 claims pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000 and there is
10 diversity of citizenship among the parties.

11 9. Venue is appropriate in this District under 15 U.S.C. §§ 15 and 22 and 28 U.S.C. §
12 1391(b), (c), and (d) because Defendants reside or transact business in this District, and because a
13 substantial portion of the affected interstate commerce described herein was carried out in this
14 District.

15 10. The conduct of Defendants and their co-conspirators described in this complaint was
16 within the flow of, was intended to, and did have a substantial effect on the foreign and interstate
17 commerce of the United States. Defendants’ conduct, and that of their co-conspirators, further
18 substantially affected commerce in California, and accordingly, Defendants have purposefully
19 availed themselves of California’s laws.

20 **INTRADISTRICT ASSIGNMENT**

21 11. Pursuant to Northern District of California Local Rule 3-2, this action should be
22 assigned to the Oakland Division. Solyndra LLC was headquartered in Alameda County and
23 suffered injuries in Alameda County as a result of Defendants’ actions.

24 **PARTIES**

25 12. Solyndra LLC was a manufacturer of solar panels based in Fremont, California.
26 Solyndra manufactured, shipped, managed its business, and suffered the injury described in this
27 complaint in California.

28 13. Solyndra’s solar panels, featuring cylindrical tubes deposited with a thin film

1 photovoltaic material, were targeted for commercial and industrial rooftop applications. Solyndra's
2 solar panels were designed to deliver the highest energy production per rooftop on a kilowatt hour
3 basis. Solyndra shipped its first commercial solar panels in July 2008 and increased both sales
4 volume and revenue every quarter through March 2010. More than \$300 million of Solyndra's
5 panels have been sold internationally and across the United States. Solyndra's solar panels enhance
6 sunlight collection by capturing direct, diffuse, and reflected sunlight across a 360-degree
7 photovoltaic surface. The cylindrical shape of Solyndra's modules allows them to achieve effective
8 energy generation when mounted horizontally. The horizontal mounting of Solyndra's panels also
9 allows Solyndra's panels to be positioned significantly closer together than conventional panels,
10 which require tilting and spacing, on a typical rooftop. This enables greater rooftop coverage and
11 enhanced energy production. In August 2011, Solyndra had approximately 1,100 employees in the
12 United States and Europe. As a result of the conduct detailed below, on September 6, 2011,
13 Solyndra was forced to file for Chapter 11 bankruptcy protection. Solyndra LLC is the assignee and
14 successor to all claims of Solyndra Inc. pursuant to the terms of the Asset Transfer Agreement dated
15 February 23, 2011 and by operation of law. On October 22, 2012, the Bankruptcy Court confirmed
16 a chapter 11 plan (the "Plan") in Solyndra's bankruptcy case. The effective date of the Plan was
17 November 7, 2012. Pursuant to the Plan, Solyndra's assets, including the claims and causes of
18 action asserted in this lawsuit, were transferred to a liquidating trust created under the Plan, the
19 Solyndra Residual Trust. R. Todd Neilson is the duly-appointed Liquidating Trustee of the Solyndra
20 Residual Trust. Consistent with the Plan, the Liquidating Trustee is authorized and empowered to
21 prosecute this action on behalf of the Solyndra Residual Trust.

22 14. Suntech Power Holdings Co., Ltd. ("Suntech Power") is the world's largest producer
23 of solar panels and a New York Stock Exchange listed company. While a significant amount of its
24 operations are in China, interestingly, Suntech Power is a Cayman Islands corporation. It is
25 managed from its headquarters in Wuxi, Jiangsu Province, China, and makes decisions concerning
26 pricing of its products in the United States and output. As of December 31, 2011, Suntech Power
27 had assets of \$4.5 billion, more than \$3 billion in revenues, over 17,500 employees, and delivered its
28 products to over 80 countries across the world. Due to the illegal and anticompetitive actions

1 alleged herein, its sales in the United States have gone from a negligible amount in 2005 to almost
2 \$750 million in 2011. On December 14, 2005, Suntech Power listed its ADS on the New York
3 Stock Exchange under the symbol “STP.” Suntech completed an initial public offering of 30 million
4 ADS on December 19, 2005 and an additional public offering of 23 million ADS on May 28, 2009,
5 raising three-quarters of a billion dollars. In addition, Suntech Power¹ requested to be a voluntary
6 respondent in proceedings before the ITC and Commerce in Washington, D.C. As discussed below,
7 in these proceedings, the United States government found that Suntech dumped its solar panels in the
8 United States and materially injured United States manufacturers like Solyndra.

9 15. Suntech America, Inc. (“Suntech America”) is a 100% wholly owned subsidiary of
10 Suntech Power. Suntech America is incorporated in Delaware and based in San Francisco,
11 California. Its officers overlap with Suntech Power, its financial statements are consolidated as
12 reported to the SEC, and Suntech Power and Suntech America work together to sell and dump
13 Chinese-manufactured solar panels in the United States market. For example, Andrew Beebe serves
14 as Chief Commercial Officer for Suntech Power and the head of global sales and marketing
15 operations for Suntech America. Suntech America’s Chief Financial Officer, Anlin Ting-Masonn,
16 held that same position with Suntech Power through October 10, 2012. Suntech America acts for
17 and is the alter ego of Suntech Power in the United States and with the understanding that the
18 Chinese-based entity is ultimately in control.

19 16. Trina Solar Limited (“Trina Limited”) is a leading manufacturer of photovoltaic solar
20 panels. Trina Limited is a New York Stock Exchange listed company, incorporated in the Cayman
21 Islands. It is managed from its executive offices in Changzhou, Jiangsu Province, China, and makes
22 decisions concerning pricing of its products in the United States and output. As of December 31,
23 2011, Trina Limited had \$2.8 billion in assets, more than \$2 billion in revenues, and over 14,000
24 employees. It has offices in Europe, North America, South America, and Asia. As a result of Trina
25 Limited’s aggressive and illegal approach to increasing sales in the United States, sales in the United

26 _____
27 ¹ For some years, the company operated as Wuxi Suntech Power Co., Ltd. However, in connection
28 with its incorporation in the Cayman Islands and sale of stock to the American public, Wuxi Suntech
was made a subsidiary of the holding company Suntech Power Holdings Co., Ltd., and is an alter
ego thereof. Suntech Power and its subsidiaries are hereinafter referred to collectively as “Suntech.”

1 States increased from \$13 million in 2009 to \$440 million in 2011, and its market share has climbed
2 steadily through 2012. On December 19, 2006, Trina Limited listed its ADS on the New York Stock
3 Exchange under the symbol “TSL.” Trina Limited completed its initial public offering of 5.3
4 million ADS on December 22, 2006, and follow-on offerings in July 2009 and March 2010. Trina
5 Limited wholly owns eight subsidiaries that it chose to incorporate in the United States. Trina
6 Limited² also requested to be a voluntary respondent in proceedings before the ITC and Commerce
7 in Washington, D.C. Like Suntech, the United States government has also found Trina guilty of
8 dumping its solar panels in the United States.

9 17. Trina Solar (U.S.), Inc. (“Trina U.S.”) is a 100% wholly owned subsidiary of Trina
10 Limited, and has its principal place of business in San Jose, California. Its officers overlap with
11 Trina Limited, its financial statements are consolidated as reported to the SEC, and Trina Limited
12 and Trina U.S. work together to sell and dump Chinese-manufactured solar panels in the United
13 States market. For example, Jifan Gao, the CEO of Trina Limited, also functions as the CEO of
14 Trina U.S. Trina U.S. acts for and is the alter ego of Trina Limited in the United States and with the
15 understanding that the Chinese-based entity is ultimately in control.

16 18. Yingli Green Energy Holding Company (“Yingli Solar”) is a leading solar energy
17 company and one of the largest vertically integrated manufacturers of photovoltaic solar panels.
18 Yingli Solar is a New York Stock Exchange listed company, and is incorporated in the Cayman
19 Islands. It is managed from its executive offices in Baoding, Hebei Province, China, and makes
20 decisions concerning pricing of its products in the United States and output. As of December 31,
21 2011, Yingli Solar had \$2 billion in assets, more than \$2.3 billion in revenues, and over 16,000
22 employees. It has offices in North America, Europe, Asia, and Australia. Like its co-conspirator
23 Defendants, and because of the conspiracy, Yingli Solar’s sales in the United States increased from
24 an almost negligible amount to \$340 million in 2011. Yingli’s market share has increased
25 exponentially in light of the bankruptcy of almost a dozen American solar manufacturers as the

26 _____
27 ² For some years, the company operated as Changzhou Trina Solar Energy Co., Ltd. However, in
28 connection with its incorporation in the Cayman Islands and sale of stock to the American public,
Changzhou Trina was made a subsidiary of the holding company Trina Limited, and is an alter ego
thereof. Trina Limited and its subsidiaries are hereinafter referred to collectively as “Trina.”

1 result of Defendants' anticompetitive conduct. On June 8, 2007, Yingli Solar listed its ADS on the
2 New York Stock Exchange under "YGE," and on June 13, 2007, Yingli Solar completed its initial
3 public offering of approximately 26.5 million ADS. Yingli Green Energy Holding Company sells
4 products under the brand name Yingli Solar. Yingli Solar markets itself in the United States,
5 through partnerships with U.S. Soccer and American football, among other avenues. In addition,
6 Yingli Solar also requested to be a voluntary respondent in proceedings before the ITC and
7 Commerce in Washington, D.C., and has also been found guilty of dumping its solar panels in the
8 United States.

9 19. Yingli Green Energy Americas, Inc. ("Yingli Americas") is a wholly-owned
10 subsidiary of Yingli International and is a Delaware limited liability company. Yingli Americas has
11 its principal place of business in San Francisco, California and is headquartered both in San
12 Francisco and New York City. Yingli Americas' executives overlap with Yingli Solar, its financial
13 statements are consolidated as reported to the SEC, and Yingli Solar and Yingli Americas work
14 together to sell and dump Chinese-manufactured solar panels in the United States market. Yingli
15 Americas acts for and is the alter ego of Yingli Solar in the United States and with the understanding
16 that the Chinese-based entity is ultimately in control.

17 **CO-CONSPIRATORS**

18 20. At all relevant times, various other persons, firms, and corporations, named and
19 unnamed, have participated as co-conspirators with Defendants and have performed acts in
20 furtherance of Defendants' cartel, which through the price fixing, dumping, and other unlawful
21 activity alleged herein, drove Solyndra and other American manufacturers out of business. This, in
22 turn, has left Defendants in complete domination of the United States market.

23 21. Co-conspirator China New Energy Chamber of Commerce ("China New Energy"),
24 established in 2006, is one of the leading trade associations in China for solar and other alternative
25 energy sources. The Chairman of Trina Limited and Suntech Power's Chairman/CEO both serve on
26 the board of China New Energy and Yingli is also an active member. China New Energy provided
27 significant assistance and participated in the conspiracy. As discussed in greater detail below,
28 through China New Energy, Defendants hold regular meetings, share market and industry

1 information, “collaborate,” coordinate efforts with the government, and more recently, seek to
2 combat claims of dumping on behalf of its members.

3 22. China’s National Energy Administration is and has been involved in issuing various
4 commercial directives for the Chinese solar industry. For example, its Five-Year Plan for the Solar
5 Photovoltaic Industry (the “Five-Year Plan”) sets forth the goals for solar photovoltaic (“PV”)
6 production, domestic energy consumption, and export. Importantly, the Five-Year Plan calls for the
7 promotion and expansion of China’s top PV manufacturers, such as Defendants. Focus on this
8 industry is not surprising given that Chinese companies exported \$20.2 billion worth of solar
9 products in 2010 alone. Indeed, rather than using the products manufactured in China to meet
10 China’s unquenched energy needs and environmental targets, Defendants instead, as part of their
11 conspiracy, exported their solar products (the “Export Plan”). In fact, each of the Defendants
12 exported and dumped more than 95% of their products.

13 23. As part of Defendants’ conspiracy and as part of the Export Plan, the China
14 Development Bank, the Bank of China, and the Export-Import Bank of China loaned Defendants
15 over \$17 billion at below-market rates, as described more fully below. These loans are used by
16 Defendants who then export 95% of their product and dump below-cost solar panels on the United
17 States market. Defendant Suntech has admitted that its \$7.3 billion below-market credit line is used
18 to expand capacity—all as part of Defendants’ goal of gaining market share at the expense of
19 American companies. China Development Bank, Bank of China, and the Export-Import Bank of
20 China participated in Defendants’ conspiracy and supported them in their actions. Further, through
21 an “extend and pretend” scheme, the loans are frequently rolled over with payment delayed
22 indefinitely. Such loans have been cited by Commerce as part of the illegal subsidies provided to
23 Defendants and have no legitimate business purpose. As noted by the Chief Marketing Officer of
24 another leading American solar manufacturer: “The Chinese strategy is very clear. They are
25 engaging in predatory financing, and they’re trying to drive everybody else out of the market. When
26 you’ve got free money[,] you can out-dump everybody below cost.”

27 24. Defendants are further assisted in their conspiracy by Chinese polysilicon
28 manufacturers, such as GCL-Poly Energy Holdings Limited, Jiangsu Shunda, and Daqo New Energy

1 Corp. Polysilicon is an essential raw material for the production of Defendants' solar panels.
2 Through Defendants' agreement with its co-conspirators, they are able to obtain polysilicon at prices
3 unavailable to their competitors. Following extensive litigation with Defendants, Commerce has
4 already cited Defendants' agreements with polysilicon manufacturers as part of the illegal
5 conspiracy described herein. Further, as described more fully below, Defendants used these
6 polysilicon manufacturers to conceal their true costs of production and as part of the plan by
7 Defendants and their co-conspirators to export more than 95% of their product and to drive
8 American manufacturers out of business.

9 **THE RELEVANT PRODUCT AND GEOGRAPHIC MARKETS**

10 25. The relevant market for purposes of this action is the market for the sale of
11 photovoltaic solar panels used in commercial and industrial rooftop installations (typically 1MW –
12 5MW) in the United States.

13 26. Commercial and industrial rooftops are an immense and underutilized resource for
14 generating renewable solar electricity. To take advantage of this underutilized resource, Solyndra
15 created a photovoltaic system that featured proprietary cylindrical panels. The design of Solyndra's
16 system differed from the traditional flat solar panels manufactured and sold by Solyndra's
17 competitors. Solyndra's tube design had three primary competitive advantages over its flat-panel
18 competition—(1) it collected a full 360 degrees of light, including light reflected off of the rooftop,
19 (2) its system weight was far lighter and could be installed on low-load bearing rooftops, and (3) it
20 had a lower system installation cost on a per-watt basis.

21 27. Commercial and industrial rooftop systems, such as those offered by Solyndra and
22 Defendants, are installed where power is consumed, thereby avoiding the burdensome costs of
23 maintaining a centralized electricity generation system and attendant distribution infrastructure costs.

24 28. Solyndra's panels have been utilized in hundreds of commercial and industrial
25 installations across the United States. Solyndra primarily sold its systems to value-added resellers,
26 including system integrators and roofing materials manufacturers, which then resold them to various
27 system owners, including third-party investors, manufacturers, wholesaler-distributors, big-box
28 retailers, government entities, and utility companies.

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1 29. The total commercial and industrial rooftop area viable for installation is an estimated
2 30 billion square feet in the United States, representing a potential market of approximately 200,000
3 megawatts of power. This represents more than \$200 billion of financial opportunity for rooftop
4 solar manufacturers, almost all of which is untapped.

5 30. As a real world illustration, the expected production capacity of Solyndra's completed
6 Fab 2 plant (Phase I and Phase II) would be 441 MW of panels per year. Just one year of output
7 from Solyndra's plant would have been sufficient to provide all the power needs for more than
8 46,000 homes. Over the life span of Solyndra's facility, it would have been capable of producing
9 solar panels that, over the course of their expected useful life, could have produced 506 billion
10 kilowatt-hours of electricity, enough to power every household in Oakland (158,000 households) for
11 126 years.

12 31. Specific to the commercial and industrial rooftop solar market, several important
13 factors influence what type of photovoltaic system customers choose to purchase, such as the energy
14 return that a given system yields. Building owners also typically seek to limit rooftop impact in
15 order to comply with a rooftop system's warranty requirements.

16 32. Polysilicon-based solar panels, such as those produced by Defendants, and thin film
17 panels, such as those produced by Solyndra, compete against each other in the commercial and
18 industrial rooftop marketplace. Before Defendants destroyed Solyndra, the parties were competitors
19 in the commercial and industrial rooftop photovoltaic marketplace. Both Defendants' polysilicon
20 solar panels and Solyndra's thin film solar panels are used in solar power-generation systems that are
21 mounted on commercial and industrial rooftops and convert sunlight into electricity.

22 33. The relevant geographic market is the United States. Defendants operate in this
23 marketing area. Defendants treat the United States as a single and distinct geographic market. The
24 ITC and Commerce (in actions in which Defendants are respondents) similarly have confirmed that
25 the United States is a relevant market. Likewise, Shi Zhengrong, the chief executive and founder of
26 Defendant Suntech Power, admitted that the United States is one common market.

27 34. Defendants also operate assembly and distribution plants and other operations in the
28 United States to facilitate their supply of commercial and industrial rooftop solar panels to the

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1 United States market.

2 35. The relevant product market consists of the market for the sales or marketing of
3 commercial and industrial rooftop solar photovoltaic panels to commercial and industrial rooftop
4 solar photovoltaic panel production plants (*i.e.*, sell-side), and the market for the purchase of
5 commercial and industrial rooftop solar photovoltaic panels (*i.e.*, buy-side).

6 36. Commercial and industrial rooftops require solar energy-producing systems with
7 distinct structural and spatial specifications, thereby making it impractical for non-commercial
8 rooftop market participants to purchase commercial and industrial rooftop solar systems.
9 Commercial and industrial rooftop photovoltaic systems are typically large installations (from
10 250KW to 5MW or more) that require high efficiency (given space constrained rooftops), low
11 weight, ease of installation, non-invasive mounting, and ease of maintenance. That the market for
12 commercial and industrial rooftop solar photovoltaic panels is a distinct market is confirmed by the
13 fact that it is treated as such by leading industry analysts.

14 37. Further, there are substantial barriers to entry into the production of commercial and
15 industrial rooftop solar systems. The cost alone for acquiring the necessary land and commodities,
16 and constructing the required plant facility is prohibitive. For example, Solyndra’s Fab 2 plant cost
17 over \$720 million to build. To enter into this business, one must also hire hundreds of highly
18 educated employees (virtually all of Defendants’ chief executives hold advanced degrees in science
19 or business) and invest tens of millions of dollars in research and development in order to obtain
20 scalability. Solyndra’s technology, protected by its intellectual property, posed a real and substantial
21 threat to Defendants in the commercial and industrial rooftop market. Solyndra’s better solar panel
22 system, with its lower cost of installation, created a barrier to Defendants’ complete domination of
23 the market—so long as Solyndra, and its technology, was available in the market, Defendants would
24 not have been able to dominate the commercial and industrial rooftop market.

25 38. The barriers to entry are further highlighted by the fact that technology in the
26 commercial and industrial rooftop solar photovoltaic market is constantly evolving. If a
27 competitor’s system or process fails to perform, that competitor will almost certainly fail to generate
28 sufficient revenue to support operations.

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1 39. Similarly, to compete in the commercial and industrial rooftop market, a competitor
2 must have a knowledgeable and effective sales force, a workforce with a mastery of the technical
3 aspects of the business, a strong intellectual property portfolio, and the regulatory knowledge to
4 understand and help customers maximize renewable energy subsidies and incentives.

5 40. Defendants occupy a dominant position in the United States commercial and
6 industrial rooftop solar market, enabling them to exercise their market power as oligopolists. In
7 2011—before Defendants drove a host of United States solar manufacturers out of business and
8 further increased their market share—Defendants collectively controlled 52% of the entire United
9 States solar market. Individually, Suntech, Trina, and Yingli controlled at least 20%, 17%, and 15%
10 respectively of that market in 2011. Critically, in the commercial and industrial rooftop market—
11 where First Solar with its 20% overall industry market share does not even compete—Defendants’
12 market power is even greater, at well over 65%, as both Solyndra and Energy Conversion Devices,
13 Inc. (a United States manufacturer also predominately targeting rooftop system installations) were
14 forced into bankruptcy, with Suntech, Trina, and Yingli controlling at least 25%, 21%, and 19%
15 respectively of the commercial and industrial rooftop market. In 2012, Defendants’ market share has
16 only increased as the conspiracy continued and additional American companies failed.

17 **FACTUAL ALLEGATIONS**

18 **Solar Energy Industry**

19 **A. Background of Solar Technology**

20 41. Facing a worldwide energy crisis, America has collectively looked for ways to
21 manage consumption of fossil fuels, such as oil, coal, and gas, and to simultaneously conserve the
22 world’s natural resources through sustainable and renewable energy solutions. Foremost among
23 these solutions is harnessing the sun’s energy through solar power.

24 42. Solar power is generally defined as the conversion of sunlight into electricity using
25 either PV or indirectly through concentrated solar power (“CSP”).³ PV solar power utilizes the
26 photovoltaic effect in which photons of light excite electrons into a higher state of energy, causing
27 them to act as carriers for an electric current. With PV technology, the energy of light is converted

28 ³ CSP is a relatively small part of the solar energy market and is not the subject of this dispute.

1 directly into electricity. CSP uses lenses and mirrors to concentrate dispersed sunlight into a beam
2 of light that can produce heat to turn a turbine and thus generate electricity.

3 43. Historically and through to the present, PV is a much more common method of
4 producing solar energy than CSP. Common PV materials include monocrystalline silicon,
5 polycrystalline silicon (also called polysilicon), amorphous silicon, copper indium gallium diselenide
6 (“CIGS”), and cadmium telluride.

7 44. One of these PV materials will be contained in a solar cell, the building block of a PV
8 solar energy system. Multiple solar cells make up a solar panel.⁴ Multiple solar panels, in turn,
9 make up an array. A single solar panel may be sufficient to power a small device, such as a
10 telephone, but an array of multiple panels is required for mass consumption, such as for a building.

11 45. Most PV solar energy is “grid-connected,” meaning that it is connected to the electric
12 grid. In these instances, an inverter is required to convert DC power from the solar panels to AC
13 power used in the grid. There is a smaller market for “off grid” PV solar power, to power things
14 such as recreational vehicles, electric cars, and emergency telephones.

15 **B. Traditional Polysilicon-Based Solar Energy**

16 46. Traditionally, solar panels are comprised of flat polysilicon-based solar cells
17 constructed into a plane. An array of traditional flat solar panels is shown in Figure A below.



27 **Figure A**

28 ⁴ Solar panels are also sometimes referred to as solar modules.

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47. To maximize the direct capture of sunlight, traditional solar panels are often installed on a tilted mounting device, as shown in Figure A above. Further, to maximize efficiency and avoid shadowing, traditional solar panels must be spaced apart across the rooftop or installation surface.

48. To maximize collection, stationary traditional solar panels are usually installed in a southward orientation in the Northern Hemisphere and northward in the Southern Hemisphere. However, a traditional solar panel can really maximize collection only if it is installed on a rotating system that allows the panel to track the sun across the sky. Otherwise, the solar panel sacrifices energy collection and efficiency by being stationary. Such rotating systems are typically heavy, require substantial mounting hardware, and are generally not suitable for rooftop applications.

49. Traditional panels also face issues with high winds. Because those panels are flat, wind will flow off of one panel to the underneath of the next panel, causing lift, as shown in Figure B.

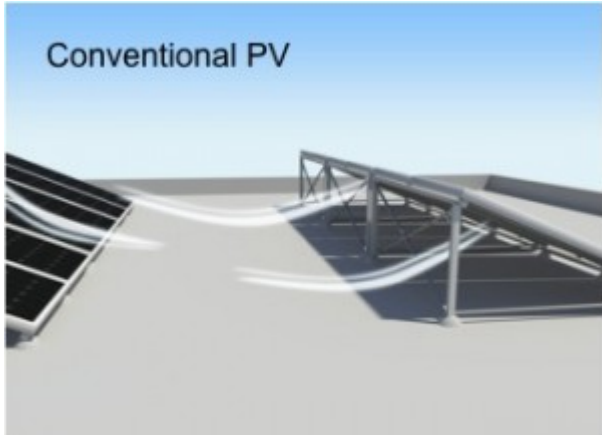


Figure B

50. To prevent a traditional panel from physically lifting off a building’s roof, the panel must be anchored to the roof. Traditional solar panels are anchored with either ballast or through a rooftop mounting system, which penetrates the roof’s membrane. Traditional flat solar panels also are subject to heavy down forces as wind presses against their surface.

51. Because traditional solar panels require these mounting specifications, there are often limitations on the types of buildings that can accommodate them. For example, historically protected buildings often do not permit penetration of their roofs. Furthermore, building warranties can be voided and leakage can result from rooftop penetration. Most commercial and industrial

1 buildings are value-engineered, i.e., built with only sufficient load bearing capability as required by
2 local code and environmental conditions. Such buildings typically do not have enough incremental
3 load bearing capacity to allow a traditional flat-panel solar system with its attendant mounting
4 system to be installed. The light weight and wind flow-thru characteristics of the Solyndra panel
5 system were ideal for these value-engineered rooftops.

6 **C. The Market for Polysilicon**

7 52. Polysilicon is used as a raw material in a number of technologically advanced
8 industries, such as the semiconductor industry and the solar industry. The polysilicon used in the
9 solar industry must be more highly refined than the polysilicon used in other applications. In 2006,
10 for the first time, more than half of the world's polysilicon supply was used in PV solar panels.
11 Polysilicon is one of the crucial and most expensive components in the manufacture of Defendants'
12 solar panels.

13 53. During the ITC's investigation, Defendants attempted to evade responsibility for their
14 predatory pricing scheme by claiming that the decline in selling prices was nothing more than the
15 result of declining polysilicon prices, a raw material input.

16 54. The ITC rejected this argument—finding that the “total costs of raw materials as a
17 unit of net sales increased”; and thus that Defendants could not use the declining price of polysilicon
18 as an explanation for the dumping of solar panels in the United States.

19 **D. Solyndra's Revolutionary Technology**

20 55. In the mid-2000s, Solyndra developed an innovative solar PV system: CIGS-based
21 thin film solar cells in a cylindrical shape. By arranging a series of cylindrical modules in a panel
22 with spaces between each module, system arrays could be installed with significantly reduced
23 balance-of-system costs. Both the material used and its shape presented a threat to the traditional
24 and long-dominant flat polysilicon-based panels manufactured and sold by Defendants.

25 56. Each Solyndra module is made up of concentric cylindrical tubes, the inner tube of
26 which is completely covered with CIGS-based thin film materials and is scribed to create
27 approximately 150 solar cells across the length of the module. The concentric cylindrical tube
28 design allows the module to be filled with a proprietary optical coupling agent (“OCA”), a fluid that

1 has an index of refraction matched with the outer glass. By filling the modules with this OCA, most
2 light which strikes the outer tube is redirected to the photovoltaic material on the surface of the inner
3 tube, maximizing the conversion efficiency. The cylindrical module design also incorporates a
4 hermetic seal on each end to create a leak-tight seal, thus isolating the active solar cell materials
5 from moisture and resulting degradation. A diagram of Solyndra’s cylindrical module is presented
6 in Figure C.

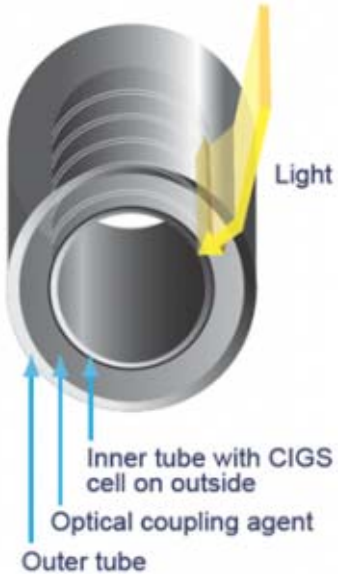


Figure C

17 57. Each of Solyndra’s solar panels consists of an aluminum frame packed with 40
18 cylindrical modules of the type described above. One of Solyndra’s solar panels is depicted in
19 Figure D below. This size of solar panel allows Solyndra’s panel to be easily lifted by two people,
20 thus making installation much easier and less expensive than of a traditional flat panel.



Figure D

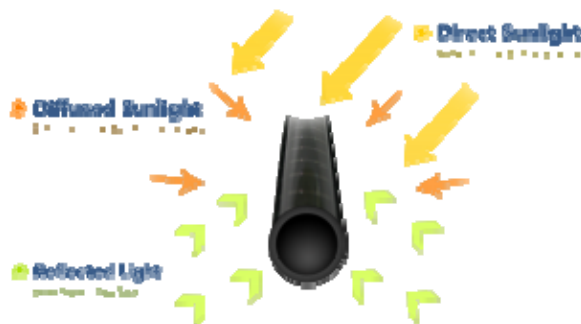
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1 58. Solyndra's panel installations had numerous advantages over the traditional PV
2 systems manufactured by Defendants, including higher electricity output per rooftop, reduced
3 balance-of-system costs, easier installation, lower weight, minimized rooftop impact, and less
4 maintenance. In addition, Solyndra's tubes:

- 5 a. Are able to absorb energy from any direction (direct, diffused, and reflected);
- 6 b. Always have some portion of their surface facing towards the sun;
- 7 c. Allow wind to blow through the panels; and
- 8 d. Allow dirt, snow and other sediments to fall off instead of accumulating.

9 59. Solyndra's cylindrical design maximizes energy absorption and collection efficiency.
10 Traditional PV panels can only collect sunlight from one side of the panel. Solyndra's panels,
11 consisting of tubes of PV cells, can collect sunlight from 360 degrees of the PV cells.

12 60. Unlike traditional flat PV panels, Solyndra's cylindrical design also allows for the
13 collection of diffused and reflected light, as shown in Figure E below.



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20 **Figure E**

21 61. When placed on a light-colored reflective roof, Solyndra's panels collect up to 20%
22 more sunlight than traditional flat PV panels.

23 62. Because traditional PV panels, like those produced by Defendants, are flat, there is a
24 peak collection time depending on the location of the sun in relation to the direction the panels have
25 been mounted. During the rest of the day, traditional solar panels do not collect maximum direct
26 sunlight. Solyndra's design reduces this "off peak" limitation. Indeed, the cylindrical nature of
27 Solyndra's product allows it to collect direct sunlight through most of the day because part of each
28 tube is always facing the sun.

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1 63. The cylindrical nature of Solyndra’s product also greatly reduces its wind resistance.
2 Solyndra’s panels require no rooftop mounts to withstand winds of up to 130 miles per hour. Unlike
3 a traditional solar panel, a strong wind will not create lift, nor will it add to the functional weight of
4 the building. Instead, wind will pass through the cylinders, as shown in Figure F.

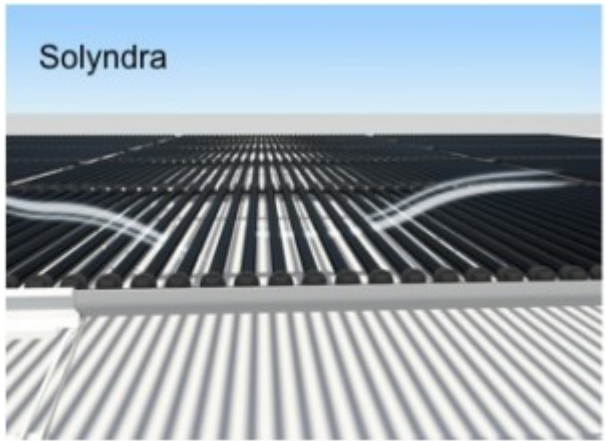


Figure F

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12 64. Like with the wind, Solyndra’s cylinders also allow for light snow to pass through the
13 solar panels instead of accumulating on top. The snow that accumulates underneath Solyndra’s
14 panels actually increases the reflected light that can be absorbed from the CIGS film on the
15 underneath of the cylinder.
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17 65. Dirt, rain, and other airborne particles also fall through the cylinders, preventing
18 build-up that reduces the efficiency of a traditional solar panel. In fact, the energy loss due to soiling
19 of Solyndra’s panels is half that of traditional flat solar panels.

20 66. Solyndra’s panels also work best when packed closely together. In contrast to the
21 traditional panels that must be spaced apart across the installation surface to avoid shadowing and to
22 maximize efficiency, Solyndra’s panels can produce more electricity per rooftop on an annual basis.

23 67. Unlike traditional panels with expensive and complex installation, Solyndra’s panels
24 can be installed with one-third as much labor, in one-third of the time, for one half of the cost.
25 Because of the lower cost of installation, Solyndra initially charged a price premium of
26 approximately 25% and was competitive on a rooftop installation with the pricing offered by
27 traditional solar panel manufacturers, including Defendants, until Defendants’ conspiracy
28 overwhelmed Solyndra. Despite these design advantages and initial price premium, Defendants and

1 their co-conspirators were nonetheless able to drive Solyndra into bankruptcy through their
2 anticompetitive conduct.

3 68. The light weight and minimally invasive installation system of Solyndra's panels
4 allowed for installation on a wide range of rooftops, including older buildings. For example,
5 Solyndra's solar panels were installed without penetrating the roof. The relative low weight of a
6 Solyndra panel system allowed for installation on many load-constrained commercial and industrial
7 rooftops.

8 69. In 2010, Solyndra was recognized by the Massachusetts Institute of Technology's
9 TECHNOLOGY REVIEW as one of the "50 Most Innovative Companies in the World." It was also
10 listed by the WALL STREET JOURNAL in its review, "The Next Big Thing: Top 50 Venture Backed
11 Companies."

12 70. In addition, Solyndra's technology and business model attracted extensive Silicon
13 Valley and global investor support with over \$1.2 billion invested. Similarly, after a lengthy loan
14 application process, the federal government lent Solyndra \$535 million.

15 **E. Orders Pour In for Solyndra's Groundbreaking Solar Panels.**

16 71. The 100 Series was the first type of Solyndra panel to roll off the assembly line.
17 These were first produced in September 2007 and by January 2008, samples were ready for
18 certification. Solyndra 100 Series panels were being shipped from California by April 2008.

19 72. In July 2010, Solyndra began shipping a new product, the 200 Series. This product
20 had wider spacing of modules, thus increasing the power per module by approximately 11%. The
21 200 Series panels eliminated the need to ground the modules and were linked together in arrays
22 without screws. The net result was a significant reduction in system installation labor time and cost.

23 73. Solyndra's panels made a big splash in the market. For example, in 2009, Solyndra
24 sold 30.48 MW of solar panels. In 2010, Solyndra sold 87% more—57.02 MW. Before
25 Defendants' price fixing, dumping, and anticompetitive scheme impacted its business, Solyndra had
26 contracted with multiple customers for hundreds of megawatts of sales worth hundreds of millions of
27 dollars.

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Defendants’ Conspiracy

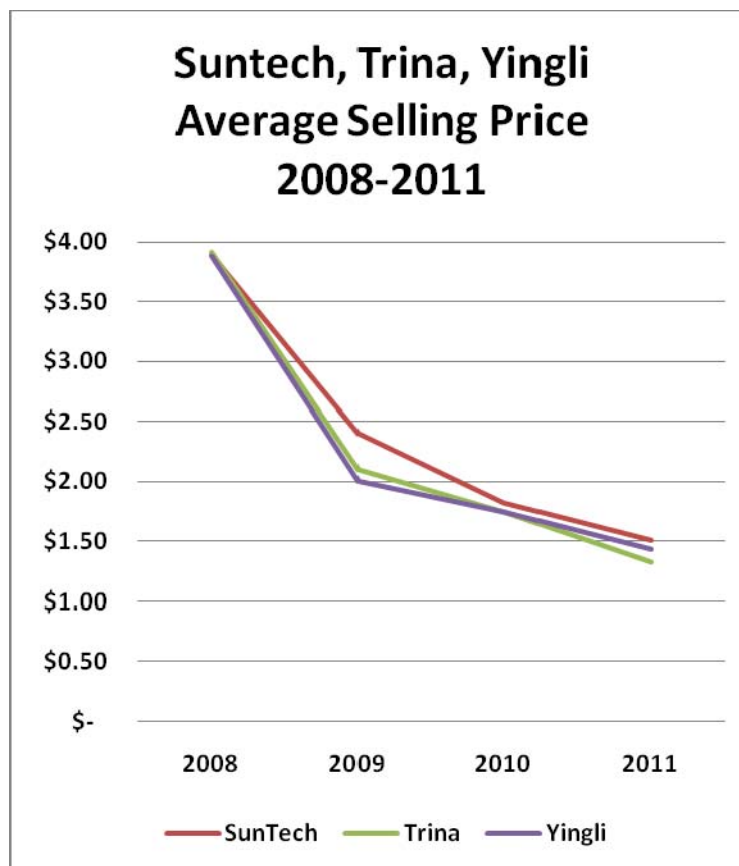
74. Recognizing that they could not keep pace with the innovation presented by Solyndra’s technology, Defendants entered into a conspiracy with each other and, encouraged by national and local policies directing commercial growth and dominance in the United States market, with key suppliers and lenders to drive American solar manufacturers out of business through the price fixing, dumping, and unlawful activity described herein. The success of this plan can be measured by the sheer number of bankruptcies filed by United States solar manufacturers over the past several years.

75. Solyndra represented the perfect target for Defendants’ conspiracy. As an emerging technology start-up company, it had yet to reach its financial potential. And, the illegal acts of Defendants’ cartel ensured Solyndra never would meet that potential.

76. Consistent with national and local five-year plans relating to Defendants’ commercial activity, Defendants conspired together and among themselves to eliminate competition from the United States market through the price fixing, dumping, and other illegal acts alleged herein. Defendants also tortiously interfered with Solyndra’s agreements.

77. As demonstrated in the chart below, all three Defendants began dumping products in the United States market *at the exact same time* and in markedly parallel form. The timing and remarkable similarity of Defendants’ pricing behavior completely belies any claim of independent action.

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Figure G

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78. In those years demonstrated above, each of the three Defendants “coincidentally” cut their prices by 61% to 66%.

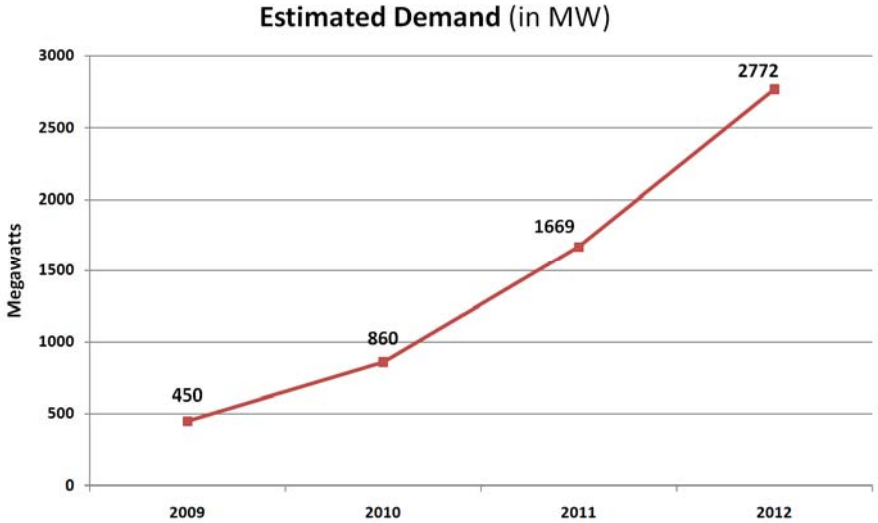
79. Defendants had the market power to control prices and restrict output. In fact, Solyndra and other American solar manufacturers had to reduce prices in order to have any hope of surviving against Defendants’ illegal practices. Ultimately, as Defendants continued to illegally dump below-cost product in the United States market, Solyndra and other manufacturers were forced out of the market.

80. In contrast to the American and European companies that were acting independently and competing fairly, Suntech, Trina, and Yingli acted together to dominate the United States commercial and industrial rooftop market and drive Solyndra and other American solar companies out of business.

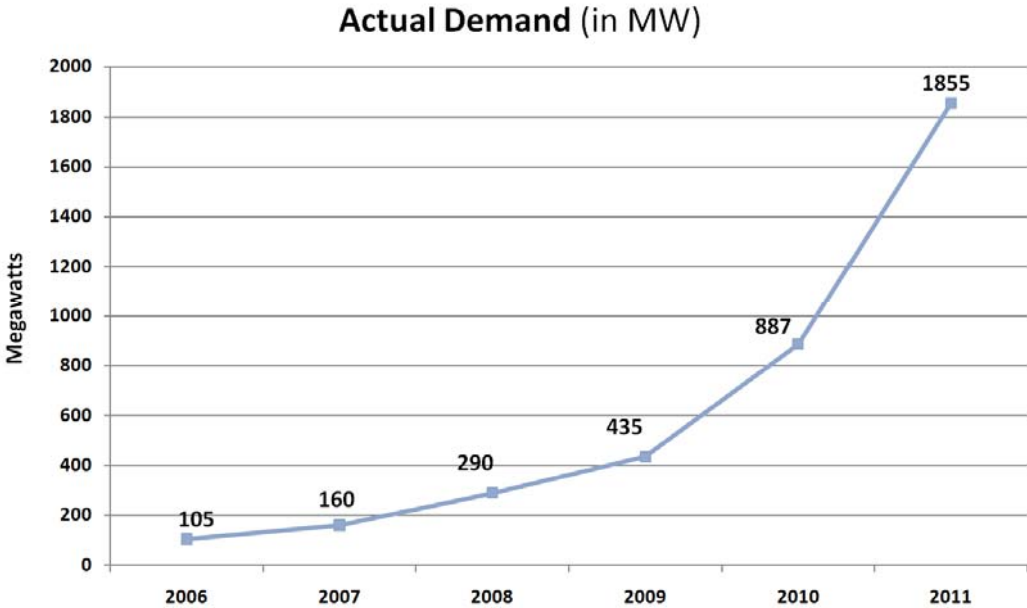
81. Defendants also acted contrary to rational economic rules. Economic theory dictates that, all else equal, a rational actor in the market will increase prices when demand is increasing in

1 order to maximize his profits.

2 82. In early 2009, demand in the United States market was expected to increase
3 significantly through 2012, as set forth below.



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13 83. Reality matched these expectations and United States demand for solar panels has
14 almost doubled every year since 2007.



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26 84. Furthermore, even Defendants themselves expected demand to increase. For
27 example, in June 2009, Suntech’s Chief Strategy Officer planned for the United States market to
28 triple in 2010.

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1 85. At a time when demand was rising, and Defendants recognized that demand was
2 rising, Defendants curiously began to slash their prices in an effort to aggressively capture market
3 share and drive competition from the marketplace.

4 86. Defendants also used their trade association, China New Energy, to fix prices at
5 artificially low rates and to flood the market with an over-supply of polysilicon solar panels. As part
6 of China New Energy’s stated goals, Defendants “collaborated” amongst themselves—“We
7 encourage a spirit of cooperation and collective assistance amongst our members.”

8 87. According to China New Energy, it takes its role in providing valuable information
9 about activities in all areas of “new energy” very seriously. For that purpose, regular meetings are
10 held between members’ top executives and others to discuss “cooperation and collaborative efforts
11 between the members.” As noted above, the chairmen of Suntech and Trina serve on the board of
12 China New Energy, and the chairman of Yingli serves as a director. Following various meetings
13 facilitated through China New Energy, prices for solar panels fell and Defendants continued to
14 export more than 95% of their production.

15 88. Upon information and belief, China New Energy provided a vehicle through which
16 Defendants “cooperated and collaborated” to develop a pricing and output strategy to dominate the
17 United States market. This trade association was utilized as part of Defendants’ overall plan to
18 ensure American solar manufacturers, particularly Solyndra, are driven out of the market.

19 89. Defendants were able to meet and communicate at the annual China New Energy
20 International Forum (the “Forum”), the signature event of China New Energy. The chairmen of
21 Suntech, Trina, and Yingli have been featured speakers at the Forum numerous times since its
22 inception in 2006.

23 90. After each Forum, prices for each of the Defendants fell dramatically.

24 91. For example, the second Forum was held December 11-12, 2007, at the Xizhou
25 Garden Hotel in Wuxi City. The Forum brought together the conspirators and others in order to
26 “hold communications” and to “build the platform of summit-level exchanges and cooperation.” Shi
27 Zhengrong, Chairman and CEO of Suntech, and Gao Jifan, Chairman and CEO of Trina, appeared at
28 these events, and Zhengrong specifically discussed making Chinese solar producers into the

1 “world’s outstanding brand.”

2 92. Upon information and belief, leaders from Suntech, Trina, and Yingli met at this
3 Forum, discussed prices, and agreed to lower prices uniformly. Following that meeting, solar panel
4 prices for each of the Defendants fell approximately 40%.

5 93. The third Forum was held on November 27-28, 2008, at the Beijing Diaoyutal
6 Guesthouse. Shi Zhengrong and Gao Jifan, along with Ding Qiang, Vice Chairman of Tianwei
7 Group (an entity that shares ownership of one of Yingli’s primary operating subsidiaries) all
8 attended this meeting. In addition, they participated in discussions concerning developing “High-
9 end dialogue between top leaders of PV enterprises.”

10 94. Upon information and belief, leaders from Suntech, Trina, and Yingli met at this
11 Forum, discussed prices, and agreed to lower prices uniformly. Following that meeting, solar panel
12 prices for each of the Defendants fell another 18%.

13 95. The fourth Forum was held on January 20-22, 2010, at the National Convention
14 Center in Beijing. It was a gathering of industry leaders with the admitted goal of promoting
15 “cooperation.” Again, Shi Zhengrong, Gao Jifan, and Ding Qiang all attended.

16 96. Upon information and belief, leaders from Suntech, Trina, and Yingli met at this
17 Forum, discussed prices, and agreed to lower prices uniformly. Following that meeting, solar panel
18 prices for each of the Defendants fell an additional 20%.

19 97. As leaders of China New Energy, Defendants also met regularly at quarterly
20 chairmen’s meetings, annual council meetings, and regular general meetings. These meetings
21 provided additional opportunities to coordinate and continue Defendants’ cartel that drove Solyndra
22 and other American manufacturers out of business through the price fixing, dumping, and
23 anticompetitive scheme alleged herein.

24 98. Furthermore, according to an informant, during 2010 and 2011, sales executives at
25 Trina and Suntech regularly traveled, met, and socialized—conduct inconsistent with independent
26 action by Defendants.

27 99. In addition to furthering their conspiracy through China New Energy and through
28 regular meetings of top sales executives, Trina and Yingli share the same corporate headquarters

1 address in the Cayman Islands. In fact, Trina’s CEO holds over 242 million shares of Trina stock,
2 worth over \$5.68 billion, in a Cayman Islands trust of which he is the settler and sole member.

3 100. Each Defendant also demonstrated a common course of dealing and agreement
4 through their exporting 95% or more of their production and flooding the United States market,
5 rather than selling in their own domestic market. This massive level of export simply defies all logic
6 in light of China’s huge need not just for energy, but clean energy. According to the United States
7 Energy Information Administration, China leads the world in energy consumption, with its use
8 doubling in just the last decade. Rather than meeting these needs through solar energy or other
9 domestically produced forms of energy, China instead has become the world’s second largest
10 importer of oil—preferring to import the energy it needs while selling below-cost products in the
11 United States that could fulfill at least part of its energy demands. Defendants’ agreement is further
12 demonstrated through the Export Plan to flood the United States market with solar panels and for the
13 co-conspirators to fund those efforts through below-market rate and “extend and pretend” loans
14 (which were ultimately determined to be illegal), and preferential polysilicon pricing (which was
15 also ultimately determined to be illegal).

16 101. Defendants’ actions shocked even the most seasoned analysts studying the industry,
17 who predicted only a fraction of the price declines forced by Defendants’ predatory conduct. For
18 example, a leading solar analyst (FBR Capital Markets) observed that “product prices are falling
19 more than expected” in 2009. These predictions were not mere guesswork. Rather, analysts
20 examined regulatory trends, production, and buying patterns. They also interviewed key employees
21 at the selling companies (like Solyndra and other solar companies) and the largest developers of
22 solar projects (such as Phoenix Solar).

23 102. Consistent with many high-tech industries, leading analysts predicted solar panel
24 prices to decline by approximately 5% per year. Instead, Defendants’ conspiracy caused prices to
25 drop precipitously and suddenly. In 2008, prices for solar panels were approximately \$3.30 per watt,
26 but by November 2011, they were down to near \$1 per watt, a 70% decrease.

27 103. In explaining the market to Solyndra, one analyst wrote that Defendants set prices at
28 “irrationally low” levels.

1 104. Other analysts reached the same conclusion—on August 13, 2009, Barclays Capital
2 explained that Yingli adopted a “strategy of gaining market share at the expense of profitability.”

3 105. According to an informant, Trina regularly sold its product at below-cost prices in the
4 United States. Trina U.S., which functioned as the United States distribution arm of Trina Limited,
5 obtained panels from Trina Limited at a set price to sell into the United States. This price, which
6 was approximately \$1.09 in 2011, represented Trina U.S.’s costs. According to an informant, at
7 least \$30 million of the informant’s \$50 million in sales for 2011 were below this \$1.09 cost,
8 including a 10 MW sale to Seaboard Solar in Connecticut and a 30 MW sale to a Corona Capital
9 Partners project in Idaho.

10 106. In fact, Trina had an entire procedure in place to seek and obtain permission to sell
11 solar panels below cost. A Trina salesman seeking to make the below-cost sale would ask
12 permission of the Trina U.S. controller. The controller would then speak with the Chief Commercial
13 Officer of Trina U.S., who in turn, would speak to Trina Limited’s CEO and Chairman, Gao Jifan
14 and obtain permission for the below-cost sale. Such permission was routinely sought and regularly
15 obtained from Gao Jifan, who is the same Trina executive who conspired with other Defendants at
16 China New Energy forums discussed above.

17 107. Furthermore, Trina structured its sales bonus system to reward sheer volume of
18 panels sold, not the dollar value or profitability of the panel sales. This provides a further incentive
19 for salesmen to make the sale, at any price, even sales at prices below costs.

20 108. Defendants’ conspiracy was aided by various other co-conspirators. Through the
21 assistance and cooperation of these companies and organizations, Defendants conspired together to
22 hide the true costs of producing their solar panels, make concerted output and below-cost pricing
23 decisions, and ultimately eliminate Solyndra and other American manufacturers from the market.

24 109. In addition to China New Energy, Defendants’ co-conspirators include the China
25 Development Bank, the Export-Import Bank of China, and the Bank of China. The co-conspirators
26 bolstered Defendants’ ability to price PV solar panels at a predatory level by providing preferential
27 loans at below-market rates to Defendants.⁵ By bearing these costs, the co-conspirators participated

28 ⁵ These loans by Defendants’ co-conspirators were used to fuel the conspiracy. They were allocated

1 in and assisted Defendants with their illegal scheme to flood the United States market with below-
2 cost solar panels.

3 110. Indeed, the United States government has already determined that the United States
4 solar energy industry was injured by reason of this loan scheme and Defendants' unlawful dumping.

5 111. For example, through a scheme known as "extend and pretend" the co-conspirator
6 banks roll over loans from year to year, rather than requiring payment when the loans are due.
7 Suntech, which has nearly \$1.6 billion in loans due this year, has banked on the "extend and
8 pretend" scheme, intending to roll over most of its loans until (at least) 2013.⁶

9 112. The International Herald Tribune reported that in 2010 and 2011, Defendants' co-
10 conspirator, the China Development Bank, alone extended more than \$34 billion in credit to China's
11 solar companies. Included among this total are \$5.3 billion to Defendant Yingli, \$7.3 billion to
12 Defendant Suntech, and \$4.4 billion to Defendant Trina.

13 113. Suntech's spokesman Rory Macpherson admitted that Suntech's below-market \$7.3
14 billion line of credit could be used to expand capacity—and thus gain market share in the growing
15 and valuable United States market where its panels were shipped.

16 114. The Export-Import Bank of China provides seller credits and other financing for
17 products, such as PV solar panels listed on the Government of China's "Catalogue of Chinese High-
18 Tech Products *for Export*." Consistent with the commercial directives of the Five-Year Plan and
19 Defendants' strategy of exporting more than 95% of their product from China, the Export-Import
20 Bank of China has assisted Defendants in their conspiracy by providing highly concessional
21 financing and below-market interest rates, thereby concealing the true costs of Defendants' solar
22 panels.

23 115. The Export-Import Bank of China participated in Defendants' conspiracy and
24 supported their actions by, for example, entering into various loans for more than \$151 million with

25 consistent with Defendants and their co-conspirators' plan to export more than 95% of their
26 production, and to bear such costs so as to allow Defendants to carry out their illegal scheme.

27 ⁶ For example, a Lazard Capital Markets analysis from June 2009 expressed concern about the size
28 of Yingli's credit facilities, especially those with short-term maturities. It turns out that because of
this "extend and pretend" scheme, the analysts did not need to worry because such costs were
concealed, and not borne by Defendant Yingli directly.

1 Yingli, and over \$40 million with Trina. Yingli itself admitted that it had received significant
2 financing from Export-Import Bank of China at “below-market” interest rates. And, Trina’s Chief
3 Financial Officer, Terry Wang, explained that the loan from Export-Import Bank of China would be
4 used for market expansion, including increasing Trina’s market share in the United States.

5 116. In September 2009, Bank of China, another government-owned bank specializing in
6 development of China’s foreign trade, entered into agreements with Trina and Suntech to further
7 Defendants’ conspiracy to export more than 95% of their production and to sell below costs. These
8 agreements included credit facilities for Trina and Suntech worth \$322 million and \$436.5 million,
9 respectively.

10 117. While Defendants’ financial statements for 2011 demonstrate losses as they illegally
11 dumped product in the United States, the true situation was even worse, as there were significant
12 additional costs that were concealed as a result of co-conspirators bearing part of the costs of the
13 conspiracy. Just considering the \$4.4 billion of loans that Defendants reported in 2011, if these
14 loans were below-market by just 2%, Defendants were able to under report (and avoid paying)
15 interest expense of more than \$89 million during 2011 alone. More importantly, the “extend and
16 pretend” loans, by way of the perpetual deferral of repayment, provided key operating capital that
17 allowed Defendants to sustain irrational operating losses while they dumped their products in the
18 United States.

19 118. As noted by the Chief Marketing Officer of another leading American solar
20 manufacturer: “The Chinese strategy is very clear. They are engaging in predatory financing, and
21 they’re trying to drive everybody else out of the market. When you’ve got free money[,] you can
22 out-dump everybody below cost.”

23 119. Chinese polysilicon manufacturers, such as GCL-Poly Energy Holdings Limited,
24 Jiangsu Shunda, and Daqo New Energy Corp., also assisted and furthered Defendants’ agreement to
25 export more than 95% of their product and to drive American manufacturers out of business. As
26 noted by Commerce in its March 20, 2012 decision, “[a]ll the producers of polysilicon purchased by
27 [Defendants]” participated in and assisted Defendants with the scheme to manufacture solar panels
28 and ship them to the United States market at below-cost prices. This preliminary determination was

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1 affirmed and made final on October 10, 2012.

2 120. For example, to assist Trina in hiding the true costs of producing solar panels and to
3 enable it to dump below-cost products on the United States market, co-conspirator GCL-Poly Energy
4 Holdings Limited and Trina have entered into a below-cost agreement for polysilicon. Following
5 extensive litigation with Defendants, Commerce has already cited these agreements for below-cost
6 polysilicon as part of the illegal conspiracy.

7 121. Similarly, Jiangsu Shunda, a subsidiary of Shunda Holdings Co. Ltd., and Suntech are
8 in the middle of a 13-year silicon wafer supply agreement. Through this agreement, Jiangsu Shunda
9 is participating in Defendants’ conspiracy by providing Suntech polysilicon at below-market prices.
10 Again, the costs of this conspiracy which, in this instance, are being borne by Jiangsu Shunda, must
11 be factored into Defendants’ total costs.

12 122. Yingli sources much of its polysilicon from Jiangsu Province’s Daqo New Energy
13 Corp. Like with Suntech, Yingli has obtained this polysilicon at below-market prices as a result of
14 Daqo New Energy Corp.’s participation in Defendants’ conspiracy to drive all American competitors
15 out of the market.

16 123. Defendants and their co-conspirators drove Solyndra and other American
17 manufacturers out of business through the price fixing, dumping, and other unlawful acts alleged
18 herein. This, in turn, has left Defendants in complete domination of the United States market.

19 **Threatened by Solyndra’s Revolutionary Technology,**

20 **Chinese Manufacturers Dump Below-Cost Products on the Market**

21 **A. The Department of Commerce and the International Trade Commission Find**
22 **Defendants Dumped Solar Panels on the United States Market to the Injury of**
23 **American Producers**

24 ***1. Background of the Petition***

25 124. In the fall of 2011, the ITC and Commerce initiated investigations (collectively, the
26 “U.S. Government Action”) into allegations that Chinese manufacturers, including Defendants,
27 received illegal subsidies and illegally dumped solar panels on the United States market, which

28 //

1 injured United States manufacturers, including Solyndra.⁷

2 125. The ITC and Commerce employ standardized procedures when investigating these
3 types of claims. For example, the ITC forms a team of experts to advise the ITC Commissioners. In
4 the U.S. Government Action, these experts included a senior investigator, a supervisory investigator,
5 an industry analyst, two economists, an accountant, attorney, and statistician.

6 126. These experts drafted questionnaires seeking information from foreign producers,
7 such as Defendants, on subjects ranging from general questions about the company's operations in
8 its home market and in the United States to detail regarding the company's capacity, production,
9 shipments within the home market, exports to the United States and other foreign markets, and
10 inventory. Other questionnaires seek similar information from domestic producers, importers, and
11 purchasers of the subject merchandise. Commerce similarly relies upon questionnaires seeking
12 information such as the corporate structure and business practices of the respondents and the
13 quantity and volume of sales in the United States and foreign markets.

14 127. Both Commerce and the ITC hold hearings on the subject petition. The ITC hears
15 live argument and witness testimony in what is described by the ITC as "a forum for fact finding."
16 At these hearings, the Commissioners can ask questions of the ITC's experts and the witnesses, and
17 it is not unusual for these questions and answers to account for a majority of the hearing.

18 128. In the U.S. Government Action, there were two such hearings; one on November 8,
19 2011, when senior executives from all three companies testified. All three Defendants were
20 represented by counsel. The Defendants also submitted briefs and provided oral argument at the
21 hearing in defense of their business practices. There was a second hearing on October 3, 2012, again
22 attended by Defendants' top executives and counsel.

23 129. Each Defendant voluntarily thrust itself into the U.S. Government Action by
24 requesting to be considered a voluntary respondent, although the proceeding went forward focused
25 on the two largest producers/exports (by aggregate value), Suntech and Trina.⁸

26 _____
27 ⁷ Under the statutory framework and relevant case law, the ITC determines whether there was injury
28 to United States industry and Commerce determines whether dumping or subsidies have occurred.
Commerce is also charged with imposing the antidumping or countervailing duty orders.

⁸ Yingli requested to be considered as a voluntary respondent, responded to questionnaires, was

1 **2. Commerce Issues Ruling that Defendants Illegally Dumped Products on the**
2 **United States Market.**

3 130. Based on its investigation, Commerce found that Defendants and other Chinese
4 manufacturers of solar panels dumped product in the United States market at less than fair value.
5 Commerce assigned to each of Suntech, Trina, and Yingli a weighted average dumping margin of up
6 to 31%. Commerce initially made a preliminary determination of these findings on May 25, 2012.
7 After five additional months of study and analysis, this determination was affirmed and made final
8 on October 10, 2012.

9 131. “On January 27, 2012, the Department [of Commerce] determined that *critical*
10 *circumstances* exist with respect to imports of solar cells from the PRC for [Defendants], finding
11 that there have been *massive imports* of subject merchandise over a relatively short period of time by
12 these entities.” In other words, Commerce determined that knowing an adverse ruling was
13 forthcoming, Defendants intentionally doubled-down on their scheme and further flooded the United
14 States market before the tariffs were to take effect.

15 132. Commerce entered an adverse decision against Defendants, finding that: (i)
16 Defendants sold their solar panels in the United States for less than a fair price; and (ii) the United
17 States industry was materially injured as a result.

18 133. Commerce also determined a “dumping margin”—which is the amount by which the
19 normal value exceeds the export price or constructed export price of the subject merchandise.

20 134. Commerce imposed weighted average dumping margins to Suntech, Trina, and Yingli
21 of 31.73%, 18.32%, and 25.96% respectfully. Critically, this means that Defendants would have
22 sold their panels in their home market of China (if China were a market economy) for up to 31%
23 *more* than the price at which they dumped those panels in the United States market. While these are
24 significant dumping margins, because the China government “withheld information and impeded the
25 investigation,” the real injury is undoubtedly even more acute.

26 135. The trans-Pacific shipping costs of these large and weighty solar panels were not
27 included in Commerce’s calculation, making this finding even more profound.

28 represented by counsel, and provided live testimony, just like Suntech and Trina.

1 **3. Commerce Finds That Defendants Received Massive Illegal Subsidies**

2 136. Commerce also determined that massive countervailable subsidies are being illegally
3 provided to Defendants. Specifically, Commerce found that Defendants' costs were being
4 "subsidized" and that the United States market was materially injured as a result thereof. In its final
5 determination, issued October 10, 2012, Commerce determined that illegal subsidies accounted for
6 14.78%, 15.97%, and 15.24% of Suntech, Trina, and Yingli's respective prices.

7 137. Based on the parties' submissions, Commerce determined, among other things, that
8 Defendants had obtained: (i) polysilicon at less than adequate remuneration, (ii) preferential loans at
9 below-market rates, (iii) land for less than adequate remuneration, and (iv) other countervailable
10 subsidies.

11 138. The illegal provision of these subsidies has distorted Defendants' financial
12 statements. As one leading analyst explained, Defendants' reported margins are buoyed by
13 subsidized equipment, raw materials, and free loans.

14 139. When these illegal subsidies are accounted for, as they must be, Defendants' 2011
15 and 2012 losses are even more dramatic.

16 140. Finally, the preferential loans received by Defendants were not available to American
17 solar companies. Thus, while the United States has various initiatives for encouraging the solar
18 industry, those programs are available to both domestic and foreign solar manufacturers, including
19 Defendants.⁹ Ironically, United States taxpayer dollars that go towards funding solar energy
20 initiatives have been used by Defendants to drive Solyndra and other American companies out of
21 business.

22 **4. The ITC Finds that United States Industry Has Been Harmed by**
23 **Defendants' Dumping**

24 141. In addition to the Commerce findings, on December 16, 2011, the ITC also
25 determined that the solar manufacturing industry in the United States has been materially injured by
26 reason of the subsidized Chinese solar panels that are sold at less than fair value in the United States.

27 142. After examination of the record, the ITC found that Defendants' products were sold

28 ⁹ As an example, Suntech received millions of dollars from the United States government.

1 at lower prices than the comparable domestic product in 18 of 19 quarterly comparisons.¹⁰

2 143. The ITC also noted several instances “where the domestic industry lost sales to low-
3 priced imports.” Additionally, the ITC reported that fifteen of the sixteen domestic producers “have
4 reduced their prices of [solar] cells and panels in order to compete with prices of [Chinese] imports
5 since January 2008.”

6 144. The ITC’s decision specifically found that the “*pervasive underselling*” by
7 Defendants allowed them “to gain market share at the expense of the domestic industry.”

8 145. Ultimately, the ITC rejected Defendants’ arguments that the decline in prices was
9 attributable to the decline in polysilicon prices.¹¹ Instead, the ITC found that the total cost of raw
10 materials increased, and Defendants’ irrationally low prices were the result of unlawful dumping.

11 146. In addition, the ITC found that the value of imported solar panels from China rose
12 411.7% from 2008 to 2010, far outpacing the increase in American consumption for that same
13 period.

14 147. Because of the sales lost to Defendants’ predation and the subsequent loss of market
15 share, the ITC found that “there is a reasonable indication that an industry in the United States is
16 materially injured by reason of allegedly dumped and subsidized imports of [solar] cells and panels
17 from China.”

18 148. On November 30, 2012, the ITC Commissioners, at the conclusion of their thirteen
19 month investigation, transmitted their final determination to Commerce. These Commissioners have
20 over 110 combined years of experience in international trade law, ranging from drafting trade
21 legislation to prosecuting and defending these cases in private and government legal practice to
22 advising Commerce and the ITC on such trade disputes. All six Commissioners voted against

23 _____
¹⁰ The exact data has been redacted in the publicly available versions of these decisions.

24 ¹¹ The plunging prices charged by Defendants in the United States market are not attributable to
25 discrepancies in labor costs, either. The National Renewable Energy Laboratory estimates that
26 Chinese producers have an inherent cost advantage of no greater than 1% compared to United States
27 producers. This is more than offset by their cost disadvantage of 5% when shipping costs are
28 included. THE NEW YORK TIMES reported that the chief executive of Nature Elements Capital, a
Chinese clean energy investment company based in Beijing, attributes the low cost of Chinese
products not to inexpensive labor in China, but rather to free or subsidized land from local
governments, extensive tax breaks, and other state assistance.

1 Defendants.

2 149. The ITC's final determination affirmed its preliminary findings, namely that domestic
3 producers lost sales, revenue, and market share due to the "significant underselling" by Defendants.

4 150. As described by the ITC:

5 The United States International Trade Commission (USITC) today determined
6 that a U.S. industry is materially injured by reason of imports of crystalline
7 silicon photovoltaic cells and modules from China that the U.S. Department of
8 Commerce (Commerce) has determined are subsidized and sold in the United
9 States at less than fair value. All six Commissioners voted in the affirmative.
10 As a result of the USITC's affirmative determinations, Commerce will issue
11 antidumping and countervailing duty orders on imports of these products from
12 China.

13 151. The validity of the ITC's determination is borne out by the sheer number of bankrupt
14 solar companies and shuttered plants. According to the Coalition for American Solar
15 Manufacturing, "At least twelve domestic U.S. manufacturers have shut down plants, declared
16 bankruptcy, or staged significant layoffs since 2010."

17 152. Solyndra, Energy Conversion Devices, Inc., SpectraWatt, Inc., Evergreen Solar, Inc.,
18 and BP Solar are just some of the companies that have become insolvent or shuttered operations in
19 the United States as a result of Defendants' illegal cartel.

20 153. Evergreen Solar ("Evergreen"), a Massachusetts-based solar power manufacturer,
21 filed for Chapter 11 bankruptcy in August 2011. Executives from Evergreen attributed its demise to
22 the subsidies illegally provided to Chinese competitors, such as Defendants.

23 154. Abound Solar ("Abound") also filed for Chapter 11 bankruptcy in July 2012.
24 Abound was a producer of cadmium telluride thin film solar products based in Colorado. According
25 to Abound's former chief executive, Abound simply could not compete with the flood of Chinese
26 panels sold below costs.

27 155. Numerous other American companies and plants have been forced out of the solar
28 market because of Defendants' illegal scheme, as shown in the table below:

Company	Status
Solyndra LLC (California)	Bankrupt
Energy Conversion Devices Inc. (Michigan)	Bankrupt
SpectraWatt, Inc. (New York)	Bankrupt
Evergreen Solar, Inc. (Massachusetts)	Bankrupt
Abound Solar (Colorado)	Bankrupt
BP Solar (Maryland)	Halted production at Frederick, Maryland plant in Spring 2011
Solon Corporation (Germany)	Closed U.S. facility in Arizona
Solar World (Oregon)	Closed California facility
Amonix (California)	Closed Nevada facility

156. American companies, competing fairly, just could not keep pace with plummeting prices set by Defendants as they flooded the American market. Defendants' price fixing, dumping, and unlawful activity pushed wholesale solar panel prices down sharply. In fact, in multiple instances, Solyndra lost sales to Defendants who were offering solar panels at irrationally low prices.

157. In October 2010, Solyndra bid on two large scale projects and lost out on both to Yingli's solar panels priced below cost. One, a project at Holyoke Mall in Massachusetts, was estimated to bring in approximately \$5 million to Solyndra. But, Solyndra lost out to Yingli's panels which were dumped at a price of approximately \$1.60 per watt.

158. Solyndra lost another multi-million dollar opportunity at Cranberry Mall in Pennsylvania in October 2010. Again, Yingli dumped below-cost solar panels at approximately \$1.60 per watt. Solyndra simply could not afford to match these prices.

159. As more fully described in paragraphs 184 to 215 below, Solyndra also lost millions of dollars in sales due to Defendants' tortious interference with Solyndra's agreements and business relationships.

160. As the chief marketing officer of a top United States manufacturer of solar panels explained, "If something isn't done [about the Chinese predatory practices], no one will be making solar PV in the U.S."

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1 **B. Other Indications that Defendants Sold Below-Cost Solar Panels in the United**
2 **States**

3 **1. *Defendants Admit to Participating in This Illegal Scheme.***

4 161. An August 2009 NEW YORK TIMES article reported that Suntech’s founder and then-
5 CEO Dr. Shi Zhengrong even admitted to Suntech’s participation in Defendants’ predatory pricing
6 scheme. Specifically, Dr. Shi confessed that: “*Suntech, to build market share, is selling solar*
7 *panels on the American market for less than the cost of materials, assembly, and shipping.*”

8 162. Trina’s Chairman and CEO, who regularly attends China New Energy meetings, also
9 recently admitted in an Earnings Call that Trina and its surviving competitors had been engaged in
10 “irrational pricing practices.”

11 163. Indeed, each Defendant suffered massive losses in 2011 as the scheme reached its
12 zenith. Suntech suffered a net loss of \$1 billion in 2011, Yingli of \$510 million, and Trina of \$37
13 million.

14 **2. *Further Evidence Demonstrates Defendants Sold Solar Panels Below Costs.***

15 164. During the course of Defendants’ conspiracy, they consistently sold panels at prices
16 well below costs in order to eliminate Solyndra and other American competition.

17 165. By early July 2009, Photon Consulting Group, one of the leading solar market
18 analysis and research firms, estimated Yingli’s 2009 costs to be at least \$2.52 per watt. At the same
19 time, Yingli was selling panels for \$1.70 per watt.

20 166. Likewise, Solyndra calculated Suntech’s cost from its reported financials in May
21 2009 and found Suntech’s costs to be at least \$2.31 per watt.¹² Solyndra’s customers, however, were
22 purchasing Suntech panels well below this cost during this time frame.

23 167. Finally, consistent with the ITC and Commerce findings, Trina suffered massive
24 losses in 2011 as it dumped its product in the United States market at prices below cost. Commerce
25 specifically determined that Trina was underselling in the United States by 18.32%.

26 _____
27 ¹² Defendants’ true costs are further obscured by the number of products and geographic markets
28 into which Defendants sell their panels. Further, costs of co-conspirators are not included in these
calculations. In short, Defendants’ “reported” costs are not an accurate reflection of true costs to sell
a solar panel in the United States market.

1 168. Solyndra personnel were perplexed at how Defendants were able to report positive
2 gross margins in their earnings reports when costs were this high and prices were this low. In truth,
3 Defendants were hiding much of their true costs through the assistance of their co-conspirators.

4 169. Third-party analysts like Deutsche Bank observed that Defendants have employed
5 various “accounting tricks” that enabled them to re-allocate their COGS below the pricing line. And
6 there are undoubtedly additional costs that were buried by Defendants.

7 170. Much the same, industry analysts reported that the margins reported in Defendants’
8 financials were due to subsidized manufacturing equipment and raw materials. In fact, one analyst
9 described the price set by Defendants as “irrationally low.”

10 **C. After Knocking Solyndra and Other American Manufacturers Out of Business,**
11 **Defendants Stand Alone in the United States Rooftop Market.**

12 171. Defendants’ unlawful conduct has paid dividends. Through the unlawful activity
13 alleged herein, Defendants’ cartel has destroyed a dozen major United States (and other European)
14 solar manufacturers, including Solyndra, and essentially eliminated all American and European
15 technologies from the market.

16 172. Defendants’ share of the United States rooftop market soared to more than 65% by
17 the end of 2011. In fact, with all the recent bankruptcies of United States solar manufacturers,
18 Defendants’ market share increases with each solar manufacturer they drive out of business.

19 173. Defendants’ success in capturing market share as a result of their unlawful conduct is
20 demonstrated by the fact that Suntech’s total net revenue remarkably jumped \$1.5 billion in two
21 years, from \$1.6 billion in 2009 to \$3.1 billion in 2011. Suntech even admitted in its SEC filings
22 that this enormous increase was due to its success in dumping solar panels, attributing it to “the
23 strong growth of the sales of our PV products which more than offset the decline of average selling
24 price.”

25 174. As the WALL STREET JOURNAL reported in a September 2012 article “Sun Peaks
26 Through in Solar: Overseas Suppliers *Trounce U.S. Panel Makers* but Installations are *Soaring*”:
27 “The solar-power business is expanding quickly in the U.S. But the growth isn’t coming from
28 U.S. solar [panel] manufacturing.” Instead, the growth is coming from Chinese-made panels

1 installed in the United States.

2 175. As Representative Edward J. Markey, the ranking Democrat on the National
3 Resources Committee explained, “China knows that the global solar market is worth trillions of
4 dollars over the coming decade, and they have developed a sophisticated campaign to dominate this
5 industry.”

6 176. Defendants’ illegal conduct described herein has further deprived consumers of
7 technological choice and innovative technology options. Before Defendants’ unlawful conduct
8 started bearing fruit, consumers in the commercial rooftop market had three options available to
9 them: (i) Solyndra’s CIGS-based thin film solar cells in a cylindrical shape; (ii) Energy Conversion
10 Devices’ lightweight, flexible solar laminate panels; and (iii) Defendants’ traditional polysilicon
11 solar panels. As a result of Defendants’ unlawful conduct, there is only one option: Defendants’
12 traditional polysilicon solar panels.

13 177. For example, Solyndra’s revolutionary technology drastically reduced the weight and
14 wind resistance of solar panels so that they could be used on a broader range of commercial rooftops.
15 Solyndra’s solar panels reduced the total balance-of-system costs so that installed solar systems
16 could compete with traditional forms of energy, such as coal and natural gas.

17 178. Energy Conversion Devices, another American company that Defendants have run
18 out of business, also offered consumers another technological choice. Before falling prey to
19 Defendants’ scheme, Energy Conversion Devices produced flexible thin-film solar laminates that
20 could be simply laid out upon a roof. Like with Solyndra’s product, Energy Conversion Device’s
21 solar panels were lightweight and impervious to high winds, neither of which can be said about
22 Defendants’ traditional solar panels. In addition, Energy Conversion Device’s solar panels could be
23 affixed to sloped or curved roofs.

24 179. Unlike Solyndra and other American companies, Defendants’ solar panels
25 represented, and still represent, the most basic technology available in the market. And, now with
26 Solyndra and Energy Conversion Devices, and essentially all American innovation, driven out of
27 business, American consumers have largely one choice in the rooftop market. Yet, Defendants’
28 traditional solar panels come with certain undesirable attributes, including greater weight, more

1 complex installations, less efficiency, and limited application. Even China itself, in its Five Year
2 Plan, has admitted that the American consumers have serious quality concerns with Chinese-made
3 solar panels.

4 180. American consumers are further harmed, not only by the loss of choice, but by the
5 loss of innovation caused by Defendants' illegal conduct. According to research by the National
6 Renewable Energy Laboratory, of 270 recent breakthroughs in solar technology, over 70% were
7 made in the United States and over 20% were made by European firms. *None have been made by*
8 *any Chinese solar manufacturer.*

9 181. Defendants undoubtedly have the ability to profit from their unlawful scheme and
10 market share of over 65%. As discussed at paragraph 37 above, and including the high costs of
11 building a manufacturing plant (nearly \$1 billion), there are significant barriers to entry into the solar
12 manufacturing market. Defendants, as part of China's non-market economy, however, may have
13 little interest in short-term profit. Instead, a primary motivation of Defendants at this time is to
14 maximize employment and executive compensation. For example, despite suffering massive losses
15 in 2011, Yingli has recently announced the hiring of at least an additional 2,000 employees,
16 representing an 8% increase in its workforce. In addition, Defendants' executives have gained
17 significant compensation that is not linked to the profitability of the company—the compensation
18 paid to Suntech's top executives more than doubled in 2010 at the same time that Suntech's market
19 share increased by a third. In addition, as demonstrated by the Five Year Plan, the growth of
20 China's solar industry remains a primary strategic goal.

21 182. Further, as described herein, Defendants are highly subsidized by the co-conspirators
22 named herein and by other entities within China. Defendants are receiving billions of dollars in
23 "extend and pretend" loans, discounts on polysilicon and other illegal subsidies. Even recently, and
24 after suffering short-term losses, co-conspirator China Development Bank has loaned Suntech \$32
25 million more, and the Chinese government has announced additional financial support for Yingli and
26 Trina.

27 183. Defendants' unlawful acts drove Solyndra and other American manufacturers out of
28 business. This, in turn, has left Defendants in complete domination of the United States market, and

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1 they will be able to charge prices for solar panels that are ultimately higher than they would have
2 been but for Defendants’ wrongful conduct.

3 **Defendants’ Tortious Interference Caused Massive Damage to Solyndra**

4 184. Prior to being driven out of business by Defendants, Solyndra entered into a number
5 of potentially lucrative and substantial customer agreements. These agreements were the subject of
6 lengthy negotiations and built upon a foundation of well-developed business and personal
7 relationships between Solyndra and its customers. For this reason, each agreement was unique and
8 differed with respect to duration, quantity, price, and degree of commitment.

9 185. At the time these customer agreements were initially entered into, they were carefully
10 drafted to accurately reflect the reasonable expectations of both parties regarding how much they
11 would purchase or sell based upon current and anticipated market conditions. Unfortunately, over
12 time, and as a direct result of Defendant’s unlawful conduct, including the predation and interference
13 described herein, market prices eroded faster than Solyndra’s customers (and market analysts for that
14 matter) ever imagined they would.

15 186. Some of the biggest solar integrators, installers, and distributors were customers of
16 Solyndra, including Alwitra GmbH & Co. Klaus Gobel, Carlisle Syntec, Inc.,
17 EBITSCHenergietechnik GmbH, GeckoLogic, Phoenix Solar AG, Solar Power, Inc., SunConnex
18 B.V., SunSystems S.p.A., and Umwelt Sonne Energie GmbH. Solyndra’s sales personnel spent
19 hundreds of hours, took dozens of international flights, and spent millions in marketing dollars to
20 cultivate these precious and valuable relationships.

21 187. Solyndra produced and manufactured solar panels for these and other customers in its
22 Fremont, California plant. It suffered injury in California as a result of Defendants’ tortious
23 interference.

24 188. Solyndra’s agreements with each of these customers was widely publicized through
25 press releases, newspaper articles, and otherwise in the solar industry trade. In fact, all but three of
26 these customers were specifically identified in Solyndra’s S-1 statement, which was publicly filed
27 with the SEC.

28 189. Each of these customer agreements were not initially terminable at will, but rather

1 had a specified termination date, usually five years after commencement of the agreement. Over
2 time, these agreements were renegotiated in the face of Defendants' wrongful conduct.

3 190. Specifically, Defendants aggressively and repeatedly interfered with Solyndra's
4 agreements and business relationships, dumping products and cutting prices below costs on a month-
5 to-month basis, defying logic and any normal and reasonable business practice.

6 191. Due to Defendants' tortious interference, Solyndra lost sales from these customers
7 and others. Indeed, Solyndra's distributor/installer customers were told by Defendants that if they
8 continued to honor their customer agreements to purchase Solyndra's solar panels, other
9 distributors/installers, using Defendants' dumped panels, would undersell them, thereby effectively
10 threatening the customer's existence.

11 **A. Carlisle**

12 192. Carlisle Syntec, Inc. ("Carlisle") is a leading manufacturer and installer of roofing
13 systems for commercial customers. Carlisle is headquartered in Carlisle, Pennsylvania.

14 193. Carlisle entered into an agreement with Solyndra on November 11, 2008, for a period
15 of five years.

16 194. The following volumes and prices were set forth in the parties' agreement:

Year	Price (per Wp) (\$)	MCV ¹³ (MW)	ACV ¹⁴ (MW)	Agreed Volume (\$ in millions)
2008	3.80	0.06		0.23
2009	3.69	3.50	3.50	12.92
2010	3.50	15.00		52.50
2011	3.25	31.00		100.75
2012	3.04	47.00		142.88
TOTAL		96.60	3.50	309.27

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25 ¹³ MCV is the Minimum Contracted Volume, or the specific number of MW of PV panels that
26 Solyndra committed to manufacture and sell to the customer in each year of the agreement and that
the customer agreed to purchase in the same calendar year.

27 ¹⁴ ACV is the Additional Contracted Volume, or the maximum number of additional MW (above the
28 MCV) that Solyndra could offer to a customer during a calendar year and that the customer was
obligated to purchase (or in some instances, that the customer had the option to purchase).

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1 195. While these volumes were negotiated between the parties to represent their
2 expectations, the parties were to meet at least 60 days prior to the start of the calendar year to
3 determine the Minimum Contract Volume for the following year.

4 196. The volumes and prices in the above table for 2008 and 2009 were firm
5 commitments, however, and pursuant to the agreement, Carlisle was obligated to purchase
6 approximately 4.1 MW for a total of \$13 million. Based on the parties' reasonable expectations as
7 negotiated and as set forth in the agreement, Carlisle was to purchase another 35 MW through
8 August 2011 for a total of \$119 million. In other words, Carlisle committed to purchase 39.1 MW
9 for \$132 million before Solyndra's business was destroyed.

10 197. But due to Suntech's disruption and interference, including dumping solar panels at
11 below-cost prices to Carlisle, Solyndra lost sales. Specifically, in 2009, pursuant to the parties'
12 agreement, Solyndra executives met with Carlisle employees to discuss pricing for 2010 and beyond.
13 At this meeting, in the face of Suntech's interference and as a condition of making any further sales,
14 Carlisle pressed Solyndra to sell it solar panels at prices well below those agreed upon.

15 198. As a result, Solyndra sold Carlisle fewer solar panels and at a lower price than the
16 parties had agreed to. Specifically, as a result of Defendants' tortious interference, Solyndra lost
17 *over \$110 million* in sales to Carlisle.

18 **B. GeckoLogic**

19 199. GeckoLogic GmbH ("GeckoLogic") is a solar integrator based in Wetzlar, Germany,
20 that designs and installs solar PV systems for homes, businesses, government facilities, and large
21 commercial buildings. When it signed the agreement with Solyndra in September 2008,
22 GeckoLogic had installed over 1,400 solar PV systems around the world.

23 200. Pursuant to the terms of the agreement between GeckoLogic and Solyndra,
24 GeckoLogic agreed to purchase the quantities at the prices set forth in the table below:

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Year	Price (per Wp) (€)	MCV (MW)	ACV (MW)	Agreed Volume (€in millions)
2008	2.99	0.20	0.40	0.60
2009	2.72	5.00	2.00	13.60
2010	2.48	15.00	4.00	37.20
2011	2.25	25.00	6.00	56.25
2012	2.05	36.00	8.00	73.80
TOTAL		81.00	20.00	181.45

201. The agreement between GeckoLogic and Solyndra, when it was initially drafted and signed by the parties, did include a “take or pay” clause that required GeckoLogic to pay Solyndra for the balance of any contracted volume that GeckoLogic did not purchase in any calendar year. Over time, and as a result of Defendants’ interference, however, GeckoLogic aggressively pressed Solyndra for more favorable pricing terms, forcing Solyndra to lose additional sales and revenue.

202. In summary, prior to Defendants’ interference, GeckoLogic was to purchase approximately 36.7 MW for approximately *\$111 million*¹⁵ from 2008 through August 2011.

203. As a direct result of Defendants’ interference, GeckoLogic purchased only 1.8 MW for approximately \$6.1 million from 2008 through December 2009. And GeckoLogic did not purchase any Solyndra panels after December 2009.

204. At least as early as August 2009, and despite knowledge of Solyndra’s agreement with GeckoLogic, Defendants Suntech, Trina, and Yingli were dumping solar panels at below-cost prices of approximately \$2.22 to \$2.38 per watt to GeckoLogic. These prices offered by Defendants were scheduled to decline even further in the fourth quarter of 2009.

205. Further, GeckoLogic and Yingli collaborated to further interfere with Solyndra’s agreement with GeckoLogic. As part of a Solyndra beta system, GeckoLogic installed Solyndra panels on a rooftop in Germany and a webcam was set up to monitor the performance of the Solyndra panels. At some point after installation of the panels and webcam, the webcam stopped

¹⁵ Based on an exchange rate of \$1.25 from Euro to United States Dollar through the term of the agreement.

1 transmitting data back to Solyndra.

2 206. Solyndra later learned that Yingli had interfered with Solyndra's agreement and
3 installed its panels on GeckoLogic's roof—all of which was kept secret from Solyndra.

4 207. Thus, as a result of Yingli's interference with a known Solyndra customer, Solyndra
5 lost \$105 million in sales with just this customer alone.

6 **C. Umwelt Sonne Energie GmbH**

7 208. Umwelt Sonne Energie GmbH ("USE") is a solar integrator based in Holzgerligen,
8 Germany. USE designs, builds, and services large scale solar PV systems across the European
9 Union. USE also purchases panels for sale to smaller distributors.

10 209. USE and Solyndra entered into a five year agreement on July 2, 2009. At the time the
11 parties entered into their agreement, they contemplated certain MCV and ACV at set prices through
12 2013, as set forth in the table below:

Year	Price (per Wp) (€)	MCV (MW)	ACV (MW)	Agreed Volume (€in millions)
2009	2.43	3.40	1.10	8.26
2010	2.25	7.0	3.0	15.75
2011	2.09	12.0	4.0	25.08
2012	1.96	19.0	5.0	37.24
2013	1.89	25.0	5.0	47.25
TOTAL		66.4	18.1	133.58

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20 210. The above volume and pricing terms represented Solyndra and USE's commitment to
21 each other. In total, before Defendants' interference, USE committed to purchase approximately
22 18.3 MW for \$50.7 million between 2009 and 2011.

23 211. Like with GeckoLogic and Carlisle, due to Yingli and Suntech's disruption and
24 interference, including dumping solar panels at below cost to USE, Solyndra lost sales at the agreed
25 upon prices.

26 212. Because of Defendants' interference and the changed market conditions as a result of
27 Defendants' dumping, USE purchased only 9.7 MW, or approximately half of the required and
28 contracted-for volume, from 2009 through August 2011, for a total purchase price of approximately

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1 \$29.2 million.

2 213. In addition to destroying their business, Defendants' actions cost Solyndra yet another
3 \$20+ million in just two years with regards to the USE customer relationship.

4 214. Solyndra's agreements with other companies differed in quantity, duration, price, and
5 degree of commitment; however, Defendants' interference with these relationships followed a
6 similar pattern. Despite knowledge that Solyndra had entered into agreements with the customer,
7 one or more Defendants approached the customer and offered to sell panels at below-cost prices. In
8 all instances, the customer ended up purchasing fewer panels and at a lower price than it initially
9 expected and agreed to.

10 215. Defendants' tortious interference disrupted Solyndra's customer relationships and
11 caused Solyndra to incur a substantial expense and burden to fulfill what little it could under the
12 relevant agreements. For example, Defendants' actions disrupted the parties' performance by
13 requiring Solyndra to renegotiate terms, prices, and volumes less favorable than the parties had
14 initially negotiated.

15 **As a Result of Defendants' Illegal Scheme, Solyndra Was Destroyed.**

16 216. More than \$1.7 billion was invested and loaned to Solyndra. Some of the smartest
17 money from around the world invested more than \$1.2 billion in Solyndra, with another \$500
18 million in government loans. Virtually all of this money has been lost as a result of Defendants'
19 illegal conduct described herein—the liquidation of Solyndra is expected to realize less than \$100
20 million.

21 217. As a result of the unlawful and anticompetitive acts of Defendants as alleged herein,
22 Solyndra suffered losses in excess of \$1.5 billion to the value of its business, the equity invested in
23 it, and otherwise.

24 **COUNT I: CONSPIRACY AND COMBINATION TO**
25 **DUMP PRODUCT AND FIX PRICES**

26 **(For Violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1)**

27 218. Solyndra repeats and re-alleges the allegations of the preceding paragraphs as if fully
28 set forth herein.

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1 219. Section 1 of the Sherman Antitrust Act prohibits “[e]very contract, combination in the
2 form of trust or otherwise, or conspiracy, in restraint of trade or commerce.”

3 220. Defendants knowingly and intentionally combined and conspired with each other,
4 with the co-conspirators named herein, and with others not yet identified, with the specific intent to
5 fix prices of Defendants’ solar panels at predatory levels in the United States market, to dump their
6 products in the United States market, and for the purposes of destroying fair competition in the
7 United States market.

8 221. In furtherance of Defendants’ combination and conspiracy, they collectively agreed to
9 price, offer for sale, and did sell solar panels below cost in the United States market.

10 222. Defendants’ intent in pricing their products below cost was predatory. Defendants
11 dumped below-cost products on the United States market for an illegal purpose—namely to
12 eliminate legitimate competition and to gain controlling power over the market. Defendants
13 possessed the specific intent to dump below-cost solar panels on the United States market in order to
14 drive out competition, as evidenced by their willingness to take losses in order to gain market share
15 and by their own admissions.

16 223. Defendants’ below-cost price fixing and dumping has harmed competition in the
17 United States market for commercial and industrial rooftop solar panels by reducing consumer
18 choice, stifling innovation, and undercutting other solar panel producers and forcing them into
19 bankruptcy in the past several years,

20 224. Solyndra was injured in fact by the conspiracy of Defendants and other co-
21 conspirators because, despite superior technology and a growing market for its product, Solyndra
22 was unable to match the unlawful prices offered by Defendants.

23 225. As a further result of Defendants’ conspiracy to offer prices below the true measure
24 of Defendants’ costs and to dump product on the United States market, Solyndra has declared
25 bankruptcy.

26 226. Defendants have effectively foreclosed new and potential entrants from entering the
27 market or gaining their naturally competitive market shares. The combination and conspiracy to fix
28 maximum prices and to dump product in the solar panel market in the United States violates Section

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1 of the Sherman Act.

2 227. Solyndra has suffered an antitrust injury as a direct and proximate result of the
3 combination and conspiracy between Defendants and the co-conspirators, and Defendants therefore
4 are liable for treble damages, costs, and attorneys’ fees in an amount to be proved at trial.

5 **COUNT II: COMBINATION TO DUMP PRODUCT AND FIX PRICES**

6 **(For Violation of the Cartwright Act, Cal. Bus. & Prof. Code § 16700 et seq.)**

7 228. Solyndra repeats and re-alleges the allegations of the preceding paragraphs as if fully
8 set forth herein.

9 229. California’s Cartwright Act prohibits any “combination of capital, skill or acts by two
10 or more persons for” the purpose of restraining trade, including price fixing.

11 230. Defendants knowingly and intentionally combined and conspired with each other,
12 with the co-conspirators named herein, and with others not yet identified, with the specific intent to
13 fix prices of Defendants’ solar panels at predatory levels in the United States market, to dump their
14 products in the United States market, and for the purposes of destroying fair competition in the
15 United States market.

16 231. In furtherance of Defendants’ combination and conspiracy, they collectively agreed to
17 price, offer for sale, and did sell solar panels below cost in the United States market.

18 232. Defendants’ intent in pricing their products below cost was predatory. Defendants
19 dumped below-cost products on the United States market for an illegal purpose—namely to
20 eliminate legitimate competition and to gain controlling power over the market. Defendants
21 possessed the specific intent to dump below-cost solar panels on the United States market in order to
22 drive out competition, as evidenced by their willingness to take losses in order to gain market share
23 and by their own admissions.

24 233. Defendants’ below-cost price fixing and dumping has harmed competition in the
25 United States market for commercial and industrial rooftop solar panels by reducing consumer
26 choice, stifling innovation, and undercutting other solar panel producers and forcing them into
27 bankruptcy in the past several years,

28 234. Solyndra was injured in fact by the conspiracy of Defendants and other co-

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1 conspirators because, despite superior technology and a growing market for its product, Solyndra
2 was unable to match the unlawful prices offered by Defendants.

3 235. As a further result of Defendants’ conspiracy to offer prices below the true measure
4 of Defendants’ costs and to dump product on the United States market, Solyndra has declared
5 bankruptcy.

6 236. Defendants have effectively foreclosed new and potential entrants from entering the
7 market or gaining their naturally competitive market shares. The combination and conspiracy to fix
8 maximum prices and to dump product in the solar panel market in the United States violates
9 California’s Cartwright Act.

10 237. Solyndra has suffered an antitrust injury as a direct and proximate result of the
11 combination and conspiracy between Defendants and the co-conspirators, and Defendants therefore
12 are liable for treble damages, costs, and attorneys’ fees in an amount to be proved at trial.

13 **COUNT III: PREDATORY PRICING**

14 **(For Violation of Sections 17043 and 17044 of the California Unfair Practices Act, Cal. Bus. &**

15 **Prof. Code § 17000 et seq.)**

16 238. Solyndra repeats and re-alleges the allegations of the preceding paragraphs as if fully
17 set forth herein.

18 239. California Business and Professions Code section 17043, which is part of California’s
19 Unfair Practices Act, prohibits any person engaged in business in California from selling or offering
20 to sell “any article or product at less than the cost thereof to such vendor, or to give away any article
21 or product, for the purpose of injuring competitors or destroying competition.”

22 240. California Business and Professions Code section 17044, which is part of California’s
23 Unfair Practices Act, prohibits any person engaged in business in California from selling or using
24 any article or product as a “loss leader,” defined in section 17030 as including any article or product
25 sold at less than cost where the “effect is to divert trade from or otherwise injure competition.”

26 241. Defendants are engaged in business in California, and have sold or offered to sell
27 their solar panels at below-cost prices to customers in the United States market for the purposes of
28 injuring Solyndra, destroying fair competition in the market, and gaining monopoly power.

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1 242. Defendants have sold or offered to sell their solar panels at less than cost with the
2 effect of diverting trade from and otherwise injuring competition.

3 243. Defendants have sold their solar panels as a “loss leader” because they have sold their
4 solar panels at prices less than cost and with the effect of diverting trade from and otherwise injuring
5 Solyndra and other American manufacturers.

6 244. As a result of Defendants’ predatory pricing and sales as a “loss leader,” Solyndra
7 lost its hundreds of millions of dollars in sales, ceased production, and was forced into bankruptcy.

8 245. Defendants’ predatory pricing of solar panels violates sections 17043 and 17044 of
9 the California Business and Professions Code.

10 246. Solyndra has suffered injury to its business as a result of Defendants’ sales and offers
11 to sell its solar panels below cost, and Defendants therefore are liable for treble damages, costs, and
12 attorneys’ fees in an amount to be proved at trial pursuant to California Business and Professional
13 Code section 17082.

14 **COUNT IV: TORTIOUS INTERFERENCE WITH EXISTING AGREEMENTS**

15 247. Solyndra repeats and re-alleges the allegations of the preceding paragraphs as if fully
16 set forth herein.

17 248. Solyndra entered into valid, binding agreements with the customers named herein,
18 and others not so named. These agreements were the subject of lengthy negotiations, and the
19 agreements were carefully drafted to accurately reflect the initial expectations of both parties
20 regarding how much they would purchase or sell at the negotiated prices and before Defendants’
21 wrongful interference.

22 249. The existence of these agreements was known to Defendants. In fact, Solyndra’s
23 agreements with each of the customers named herein were known to Defendants and widely
24 publicized through press releases, newspaper articles, and otherwise in the solar industry trade.

25 250. Defendants intentionally interfered with these agreements through a series of acts
26 designed to pressure Solyndra’s customers to breach their agreements with Solyndra. Indeed,
27 Solyndra’s distributor/installer customers were told that if they continued to honor their
28 commitments to purchase Solyndra’s solar panels, other distributors/installers, using Defendants’

1 dumped panels, would undersell them.

2 251. Defendants' acts caused an actual breach and/or disruption of the agreements between
3 Solyndra and its customers.

4 252. Solyndra has suffered economic damages as a direct and proximate result of
5 Defendants' tortious interference, and Defendants are therefore liable for all compensatory and
6 exemplary damages in an amount to be proven at trial.

7 **COUNT V: TORTIOUS INTERFERENCE WITH**
8 **PROSPECTIVE ECONOMIC ADVANTAGE**

9 253. Solyndra repeats and re-alleges the allegations of the preceding paragraphs as if fully
10 set forth herein.

11 254. In addition to the customer agreements discussed above, Solyndra had economic
12 relationships with a host of additional wholesalers, installers, distributors, and other potential
13 purchasers of its products. There was a good probability that Solyndra would realize future
14 economic benefit as a result of these relationships.

15 255. These business relationships were widely publicized through press releases and
16 newspaper articles and were otherwise generally known in the solar industry trade and known to
17 Defendants. Thus, Defendants knew, or should have known, of Solyndra's economically beneficial
18 relationship with the customers named herein.

19 256. Defendants intentionally interfered with Solyndra's economic relationships through a
20 series of acts designed to disrupt these relationships. Specifically, Defendants offered to sell solar
21 panels at below-cost prices to these actual or likely customers to pressure them to cease doing
22 business with Solyndra.

23 257. Defendants' acts caused an actual disruption of the economic relationships between
24 Solyndra and these actual or likely customers. As a result of Defendants' actions, Solyndra lost
25 sales, or was forced to match Defendants' below-cost prices, thereby losing money in an effort to
26 retain customers.

27 258. Solyndra has suffered economic damages as a direct and proximate result of
28 Defendants' tortious interference, and Defendants are therefore liable for all compensatory and

1 exemplary damages in an amount to be proven at trial.

2 **PRAYER FOR RELIEF**

3 Wherefore, Plaintiff prays that the Court enter judgment as follows:

- 4 A. That the conduct alleged herein constitutes an unlawful conspiracy and combination
- 5 to fix prices at predatory levels and to dump product in violation of the federal
- 6 Sherman Antitrust Act, 15 U.S.C. §§ 1;
- 7 B. That the conduct alleged herein constitutes an unlawful combination to fix prices at
- 8 predatory levels and to dump product in violation of California’s Cartwright Act, Cal.
- 9 Bus. & Prof. Code § 16700 *et seq.*;
- 10 C. That the predatory conduct alleged herein constitutes unlawful and/or unfair business
- 11 practices within the meaning of California’s Unfair Practices Act, Cal. Bus. & Prof.
- 12 Code § 17000 *et seq.*;
- 13 D. That the conduct alleged herein constitutes unlawful tortious interference with
- 14 Solyndra’s customer agreements and prospective economic advantage in violation of
- 15 California common law;
- 16 E. That judgment be entered against Defendants and in favor of Solyndra in an amount
- 17 not less than \$1.5 billion, the exact amount to be proved at trial, for damages,
- 18 penalties, and other monetary relief, and all treble damages so applicable;
- 19 F. That judgment be entered against Defendants and in favor of Solyndra for pre-
- 20 judgment and post-judgment interest;
- 21 G. That an order be entered awarding Solyndra its expenses and costs of suit, including
- 22 reasonable attorneys’ fees, to the extent allowed by law;
- 23 H. That Solyndra be awarded such other and further relief as the Court may deem just
- 24 and proper.

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Dated: February 14, 2013

WINSTON & STRAWN LLP

By: /s/ W. Gordon Dobie

Attorneys for Plaintiff
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and Northern District Local Rule 3-2(a), Plaintiff Solyndra LLC hereby demands trial by jury of all issues so triable.

Dated: February 14, 2013

WINSTON & STRAWN LLP

By: /s/ W. Gordon Dobie

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