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15 SolarCity Corp.

16 **UNITED STATES DISTRICT COURT**  
17 **NORTHERN DISTRICT OF CALIFORNIA**  
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19 GEORGE MORRIS, on Behalf of Himself and  
20 all Others Similarly Situated,

21 Plaintiffs,

22 v.

23 SOLARCITY CORP.,

24 Defendant.  
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Case No. 3:15-cv-05107

**DEFENDANT SOLARCITY CORP.'S  
ANSWER TO PLAINTIFFS' SECOND  
AMENDED COMPLAINT**

**Hon. Richard Seeborg**  
**Action Filed: November 6, 2015**

1 Defendant SolarCity Corp. (“Defendant” or “SolarCity”), by and through its undersigned  
2 counsel, hereby responds to Plaintiffs’ Second Amended Class Action Complaint (ECF No. 68)  
3 (the “SAC”). Except as explicitly admitted herein, Defendant denies each and every allegation in  
4 the SAC. Defendant further answers the numbered paragraphs of the SAC as follows:

5 **NATURE OF ACTION**

6 1. In response to Paragraph 1 of the SAC, SolarCity denies the allegations of the first  
7 four sentences. With respect to the fifth sentence, SolarCity lacks knowledge or information  
8 sufficient to form a belief as to the length of time that Plaintiffs’ phone numbers have been listed  
9 on the National Do Not Call Registry.

10 2. In response to Paragraph 2 of the SAC, SolarCity admits that Plaintiffs have filed  
11 an action for injunctive relief and statutory damages arising under the Telephone Consumer  
12 Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”), but denies that any of Plaintiffs’ claims have  
13 merit.

14 **PARTIES**

15 3. SolarCity lacks knowledge or information sufficient to form a belief as to the truth  
16 of the allegations in Paragraph 3 of the SAC, and therefore denies them.

17 4. SolarCity lacks knowledge or information sufficient to form a belief as to the truth  
18 of the allegations in Paragraph 4 of the SAC, and therefore denies them.

19 5. SolarCity lacks knowledge or information sufficient to form a belief as to the truth  
20 of the allegations in Paragraph 5 of the SAC, and therefore denies them.

21 6. SolarCity admits the allegations in Paragraph 6 that SolarCity is a Delaware  
22 corporation with its principal place of business at 3055 Clearview Way, San Mateo CA 94402  
23 and that SolarCity designs, finances and installs solar power systems.

24 7. SolarCity lacks knowledge or information sufficient to form a belief as to the truth  
25 of the allegations in Paragraph 7 of the SAC, and therefore denies them.

26 **JURISDICTION AND VENUE**

27 8. In response to Paragraph 8 of the SAC, SolarCity admits that the Complaint  
28 purports to invoke this Court’s jurisdiction pursuant to the Class Action Fairness Act of 2005,

1 Pub. L. No. 109-2 Stat. 4 (“CAFA”), but avers that the remainder of the allegations set forth in  
2 Paragraph 8 of the SAC constitute legal contentions and conclusions to which no response is  
3 required. To the extent that a response to the allegations set forth in Paragraph 8 of the SAC is  
4 required, SolarCity lacks knowledge or information sufficient to form a belief as to the truth of  
5 the allegations and therefore denies them.

6 9. In response to Paragraph 9 of the SAC, SolarCity admits that the Court has subject  
7 matter jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. § 1331, but denies that any of  
8 Plaintiffs’ claims have merit.

9 10. In response to Paragraph 10 of the SAC, SolarCity admits that venue is proper in  
10 this District, and that its principal place of business is in this district, but denies that Plaintiffs  
11 have any bona fide claims against SolarCity. SolarCity lacks sufficient knowledge or information  
12 to form a belief as to the truth of the remaining allegations in Paragraph 10 of the SAC, and  
13 therefore denies them.

14 **FACTS COMMON TO ALL CAUSES OF ACTION**

15 **A. Allegations Related to the Telephone Consumer Protection Act Of 1991**

16 11. Paragraph 11 of the SAC purports to describe the motivation of Congress in  
17 enacting the TCPA in 1991. SolarCity lacks knowledge or information sufficient to form a belief  
18 as to the specific motivations for members of Congress to enact the TCPA in 1991 and therefore  
19 denies the allegations in Paragraph 11.

20 12. In response to Paragraph 12 of the SAC, SolarCity respectfully refers the Court to  
21 the TCPA for a complete and accurate recitation of the TCPA’s provisions, and otherwise denies  
22 the allegations of this Paragraph.

23 13. Paragraph 13 of the SAC purports to describe findings by the Federal  
24 Communications Commission (“FCC”). SolarCity respectfully refers the Court to the FCC’s  
25 official findings for a complete and accurate statement of their contents, and otherwise denies the  
26 allegations of this Paragraph.

27 14. In response to Paragraph 14 of the SAC, SolarCity respectfully refers the Court to  
28 the cited FCC Order for a complete and accurate statement of its contents, and otherwise denies

1 the allegations of this Paragraph.

2 15. In response to Paragraph 15 of the SAC, SolarCity respectfully refers the Court to  
3 the cited regulation for a complete and accurate statement of its contents, and otherwise denies  
4 the allegations of this Paragraph.

5 **B. Allegations Related to Alleged Robocalls to Plaintiff George Morris**

6 16. In response to Paragraph 16 of the SAC, SolarCity denies that Plaintiff George  
7 Morris never consented to receive telephone calls from SolarCity and never provided his  
8 residential telephone number to SolarCity. SolarCity lacks knowledge or information sufficient  
9 to form a belief as to the truth of the remaining allegations of Paragraph 16, and therefore denies  
10 them.

11 17. SolarCity lacks knowledge or information sufficient to form a belief as to the truth  
12 of the allegations in Paragraph 17 of the SAC, and therefore denies them.

13 18. SolarCity denies that SolarCity called Mr. Morris on the dates and times, and from  
14 the telephone numbers, specified in the first ten lines of the chart provided in Paragraph 18 of the  
15 SAC. SolarCity admits that SolarCity placed a live call on October 21, 2015 to a telephone  
16 number that plaintiffs' counsel asserts to belong to Mr. Morris. SolarCity denies all other  
17 allegations in Paragraph 18.

18 19. In response to Paragraph 19 of the SAC, SolarCity denies the allegations.

19 20. In response to Paragraph 20 of the SAC, SolarCity denies that it called Mr. Morris  
20 using an artificial or prerecorded voice and/or an autodialer. SolarCity lacks knowledge or  
21 information sufficient to form a belief as to the truth of the allegations as to what Mr. Morris  
22 heard when he picked up the phone on various occasions, and therefore denies those allegations.  
23 SolarCity denies the remaining allegations set forth in Paragraph 20.

24 21. In response to Paragraph 21 of the SAC, SolarCity denies that it ever greeted or  
25 communicated with Mr. Morris using a computer-generated voice imitating a live call center  
26 representative named "Rochelle." SolarCity otherwise lacks knowledge or information sufficient  
27 to form a belief as to the truth of the allegations in Paragraph 21 of the SAC and therefore denies  
28 them.

1           22. In response to Paragraph 22 of the SAC, SolarCity denies that it ever  
2 communicated with Mr. Morris using a computer-generated voice imitating a live call center  
3 representative named “Rochelle.” SolarCity otherwise lacks knowledge or information sufficient  
4 to form a belief as to the truth of the allegations in Paragraph 22 of the SAC and therefore denies  
5 them.

6           23. In response to Paragraph 23 of the SAC, SolarCity denies that it ever  
7 communicated with Mr. Morris using a computer-generated voice imitating a live call center  
8 representative named “Rochelle.” SolarCity otherwise lacks knowledge or information sufficient  
9 to form a belief as to the truth of the allegations in Paragraph 23 of the SAC and therefore denies  
10 them.

11           24. In response to Paragraph 24 of the SAC, SolarCity denies that it ever  
12 communicated with Mr. Morris using a computer-generated voice imitating a live call center  
13 representative named “Rochelle” or called Mr. Morris after being asked not to call him back.  
14 SolarCity otherwise lacks knowledge or information sufficient to form a belief as to the truth of  
15 the allegations in Paragraph 24 of the SAC and therefore denies them.

16           25. In response to Paragraph 25 of the SAC. SolarCity admits that SolarCity placed a  
17 live call on October 21, 2015 to a telephone number that plaintiffs’ counsel asserts to belong to  
18 Mr. Morris, and respectfully refers the Court to its recording of that telephone call for a complete  
19 and accurate recitation of what was communicated on that call. SolarCity otherwise denies the  
20 characterization of that telephone call, and the remaining allegations of Paragraph 25.

21           26. In response to Paragraph 26 of the SAC, SolarCity admits that it has produced  
22 documents showing that Lead Genesis provided it with the telephone number that plaintiffs’  
23 counsel asserts to belong to Mr. Morris, and otherwise denies the allegations of that Paragraph

24 **C. Allegations Related to Alleged Robocalls to Plaintiff Jose Albino Lucero Jr.**

25           27. In response to Paragraph 27 of the SAC, SolarCity denies the allegations.

26           28. SolarCity lacks knowledge or information sufficient to form a belief as to the truth  
27 of the allegations in Paragraph 28 of the SAC, and therefore denies them.

28           29. In response to Paragraph 29 of the SAC, SolarCity admits that it placed live calls

1 to a telephone number that plaintiffs' counsel asserts to belong to Mr. Lucero. SolarCity lacks  
2 knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph  
3 29 of the SAC, and therefore denies them.

4 30. In response to Paragraph 30 of the SAC, SolarCity denies the allegations.

5 31. In response to Paragraph 31 of the SAC, SolarCity admits that it called a telephone  
6 number that plaintiffs' counsel asserts to belong to Mr. Lucero and left voicemail messages on  
7 two occasions. SolarCity lacks knowledge or information sufficient to form a belief as to the  
8 truth of the allegations as to phone calls by Mr. Lucero, or what Mr. Lucero may have heard when  
9 he allegedly listened to voicemail messages and therefore denies those allegations. SolarCity  
10 otherwise denies the allegations of Paragraph 31.

11 **D. Allegations Related to Alleged Robocalls to Plaintiff David Hall**

12 32. In response to Paragraph 32 of the SAC, SolarCity denies the allegations.

13 33. SolarCity lacks the knowledge or information sufficient to form a belief as to the  
14 truth of the allegations in Paragraph 33 of the SAC, and therefore denies them.

15 34. In response to Paragraph 34 of the SAC, SolarCity admits that it placed live calls  
16 to a telephone number that plaintiffs' counsel asserts to belong to Mr. Hall. SolarCity lacks  
17 knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph  
18 34 of the SAC, and therefore denies them.

19 35. In response to Paragraph 35 of the SAC, SolarCity denies the allegations.

20 36. In response to Paragraph 36 of the SAC, SolarCity lacks knowledge or information  
21 sufficient to form a belief as to the truth of the allegations as to what Mr. Hall allegedly heard  
22 when he allegedly answered his phone, and therefore denies those allegations. SolarCity  
23 otherwise denies the remaining allegations set forth in Paragraph 36 of the SAC.

24 **D. Allegations Related to Alleged Robocalls to Class Members**

25 37. SolarCity denies the allegations set forth in Paragraph 37 of the SAC to the extent  
26 that they are directed against SolarCity. SolarCity otherwise lacks knowledge or information  
27 sufficient to form a belief as to the truth of the allegations, and therefore denies them.

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**CLASS ACTION ALLEGATIONS**

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2 38. In response to Paragraph 38 of the SAC, SolarCity admits that Plaintiffs purport to  
3 bring this action on behalf of themselves and other persons similarly situated, but denies that  
4 there are any persons similarly situated under Federal Rule of Civil Procedure 23.

5 39. In response to Paragraph 39 of the SAC, SolarCity admits that Plaintiffs propose a  
6 Robocall Class, but denies that the proposed class has any merit and otherwise denies the  
7 allegations in Paragraph 39.

8 40. In response to Paragraph 40 of the SAC, SolarCity admits that Plaintiffs propose  
9 an Autodialer Class, but denies that the proposed class has any merit and otherwise denies the  
10 allegations in Paragraph 40.

11 41. In response to Paragraph 41 of the SAC, SolarCity admits that Plaintiffs propose  
12 an Autodialer Class, but denies that the proposed class has any merit and otherwise denies the  
13 allegations in Paragraph 41.

14 42. In response to Paragraph 42 of the SAC, SolarCity admits that Plaintiffs propose a  
15 National Do Not Call Class, but denies that the proposed class has any merit and otherwise denies  
16 the allegations in Paragraph 42.

17 43. SolarCity denies that certification of a class is appropriate under Federal Rule of  
18 Civil Procedure 23 and otherwise denies the allegations of Paragraph 43 of the SAC.

19 44. In response to Paragraph 44 of the SAC, SolarCity denies the allegations.

20 45. In response to Paragraph 45 of the SAC, SolarCity denies the allegations.

21 46. In response to Paragraph 46 of the SAC, SolarCity denies the allegations.

22 47. In response to Paragraph 47 of the SAC, SolarCity denies the allegations.

23 48. SolarCity lacks sufficient knowledge or information to form a belief as to the truth  
24 of the allegations in Paragraph 48 of the SAC, and therefore denies them.

25 49. In response to Paragraph 49 of the SAC, SolarCity denies the allegations.

26 50. In response to Paragraph 50 of the SAC, SolarCity denies the allegations.

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1 **CAUSES OF ACTION**

2 **FIRST COUNT**

3 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER**

4 **PROTECTION ACT, 47 U.S.C. § 227, et seq.**

5 51. SolarCity incorporates by reference all of the above responses to Plaintiffs' SAC  
6 as though fully stated herein.

7 52. In response to Paragraph 52 of the SAC, SolarCity denies the allegations.

8 53. In response to Paragraph 53 of the SAC, SolarCity denies the allegations.

9 54. In response to Paragraph 54 of the SAC, SolarCity denies the allegations.

10 55. In response to Paragraph 55 of the SAC, SolarCity denies the allegations.

11 **SECOND COUNT**

12 **VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT,**

13 **47 U.S.C. § 227, et seq.**

14 56. SolarCity incorporates by reference all of the above responses to Plaintiffs' SAC  
15 as though fully stated herein.

16 57. In response to Paragraph 57 of the SAC, SolarCity denies the allegations.

17 58. In response to Paragraph 58 of the SAC, SolarCity denies the allegations.

18 59. In response to Paragraph 59 of the SAC, SolarCity denies the allegations.

19 60. In response to Paragraph 60 of the SAC, SolarCity denies the allegations.

20 **PRAYER FOR RELIEF**

21 61. SolarCity denies that Plaintiffs are entitled to any relief requested by Plaintiffs in  
22 their Prayer for Relief.

23 **DEFENSES**

24 Pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, SolarCity sets forth the  
25 following defenses, on personal knowledge as to its own actions and on information and belief as  
26 to the actions of others. By pleading these defenses, SolarCity does not concede that it bears the  
27 burden of proof or persuasion on any of these issues. SolarCity reserves the right to assert  
28 additional defenses in the event that discovery or further investigation demonstrates that any such



1 defense is appropriate or applicable.

2 **First Defense**

3 **(Failure to State a Claim)**

4 The SAC fails to state a claim for which relief can be granted.

5 **Second Defense**

6 **(Prior Express Consent)**

7 Plaintiffs' claims are barred in whole or in part because SolarCity had prior express  
8 consent from Plaintiffs to dial Plaintiffs' phone numbers and, as such, no violations occurred.

9 **Third Defense**

10 **(No ATDS or Prerecorded Calls)**

11 Plaintiffs' claims are barred in whole or in part because SolarCity did not use an  
12 "automatic telephone dialing system" and did not use an artificial or prerecorded voice.

13 **Fourth Defense**

14 **(Lack of Vicarious Liability)**

15 SolarCity is not liable for calls made by other entities or by the agents, employees,  
16 subcontractors or affiliates of other entities.

17 **Fifth Defense**

18 **(Estoppel)**

19 Plaintiffs' claims are barred in whole or in part by Plaintiffs' and class members' own  
20 conduct, actions, and inactions, which amount to and constitute an estoppel of the claims and the  
21 relief sought.

22 **Sixth Defense**

23 **(Waiver)**

24 Plaintiffs' claims are barred in whole or in part by the doctrine of waiver.

25 **Seventh Defense**

26 **(Lack of Standing)**

27 Plaintiffs' claims are barred for lack of standing.

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**Eighth Defense**

**(Release)**

Plaintiffs' claims are barred, in whole or in part, by releases, express and implied, granted or authorized.

**Ninth Defense**

**(Due Process)**

To the extent the TCPA is applied against SolarCity in this case to impose upon SolarCity liability in circumstances that SolarCity could not have reasonably avoided and/or damages that would be grossly disproportional to any actual harm caused by the alleged activity, the TCPA violates the Due Process Clause of the Fifth Amendment to the United States Constitution. While Plaintiffs are not entitled to any relief in this case as against SolarCity, and the case is not suitable to proceed as a class action, a class of individuals entitled to statutory damages would impose extraordinary liability upon SolarCity, grossly disproportionate to any actual harm alleged.

**Tenth Defense**

**(Eighth Amendment)**

To the extent the TCPA is applied against SolarCity in this case to impose liability that would be grossly disproportional to any actual harm caused by the alleged activity, the TCPA violates the Eighth Amendment to the United States Constitution, which prohibits excessive fines. While Plaintiffs are not entitled to any relief in this case as against SolarCity, and the case is not suitable to proceed as a class action, a class of individuals entitled to statutory damages would impose extraordinary liability upon SolarCity, far in excess of any actual harm alleged.

**Eleventh Defense**

**(Unclean Hands)**

Plaintiffs' claims are barred in whole or in part by the doctrine of unclean hands.

**Twelfth Defense**

**(Established Business Relationship)**

Plaintiffs' claims are barred in whole or in part, based upon an established business relationship.

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**Thirteenth Defense**

**(Safe Harbor)**

Plaintiffs’ claims are barred in whole or in part, by the safe harbor as set forth in 47 C.F.R. § 64.1200(c).

**PRAYER FOR RELIEF**

WHEREFORE, Defendant prays that the Court determine and adjudge as follows:

1. That this action cannot be maintained as a class action;
2. That the SAC be dismissed, with prejudice and in its entirety;
3. That Plaintiffs take nothing by the SAC, and that judgment be entered against Plaintiffs and in favor of SolarCity;
4. That SolarCity be awarded its costs of suit and reasonable attorneys’ fees; and
5. That the Court award SolarCity such other and further relief as the Court deems just and proper.

**JURY DEMAND**

SolarCity demands a trial by jury of all issues so triable pursuant to Federal Rule of Civil Procedure 38.

Dated: June 15, 2016

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