

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

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

JOSE ALBINO LUCERO JR., on Behalf of
Himself and all Others Similarly Situated,

Plaintiffs,

v.

SOLARCITY CORP.

Defendant.

Case No. 3:15-cv-05107-RS

**CLASS ACTION SETTLEMENT
AGREEMENT**

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

This Class Action Settlement Agreement (“Agreement”), is made and entered into by and between Representative Plaintiff, on behalf of himself and the Settlement Class, and SolarCity Corporation (“SolarCity”) to settle and compromise this action and settle, resolve, and discharge the Released Claims, as defined below, according to the terms and conditions herein.

RECITALS

WHEREAS, *Lucero v. SolarCity Corp.*, No. 3:15-cv-05107-RS, was filed November 6, 2015 and is currently pending before the Honorable Richard Seeborg of the U.S. District Court for the Northern District of California, alleging Defendant violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*;

WHEREAS, on June 1, 2016 a separate action, styled *Gibbs and Colby v. SolarCity Corp.*, 4:16-cv-11010-DHH (D. Mass.) (“*Gibbs*”), was filed, also alleging Defendant violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*;

WHEREAS, on July 27, 2016, counsel for Lucero filed a motion to intervene in the *Gibbs* case and to transfer it to the Northern District of California;

1 1.1.2 “Approved Claim” means a claim submitted by a Settlement Class
2 Member that: (a) is received by the Settlement Administrator or postmarked on or before the
3 Claims Deadline; (b) is fully and truthfully completed by a Settlement Class Member with all
4 information requested in the Claim Form, and in accordance with the directions on the Claim
5 Form; (c) is signed by the Settlement Class Member, physically or electronically; and (d) is
6 approved by the Settlement Administrator pursuant to the provisions of this Agreement as a valid
7 claim eligible to receive payment from the Settlement Fund under the Agreement and the Final
8 Approval Order and Judgment.

9 1.1.3 “CAFA Notice” means the notice of this Settlement to the appropriate
10 federal and state officials, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. §
11 1715, and as further described in Paragraph 7.4.

12 1.1.4 “Claims Deadline” means the date that is one hundred eighty (180) days
13 after the Notice Date.

14 1.1.5 “Claim Form” means the document to be submitted by Claimants seeking
15 payment pursuant to this Settlement, attached as Exhibit D.

16 1.1.6 “Claimant” means a Settlement Class Member who submits a Claim
17 Form.

18 1.1.7 “Class Counsel” means Bursor & Fisher, P.A, and Nathan & Associates,
19 APC.

20 1.1.8 “Court” means the U.S. District Court for the Northern District of
21 California.

22 1.1.9 “Complaint” means the operative complaint in this Litigation at the time
23 the Court enters the Preliminary Approval Order.

24 1.1.10 “Defendant” means collectively, SolarCity Corporation, as well as its past,
25 present, and future officers, directors, shareholders, employees, predecessors, affiliates, parents,
26 subsidiaries, partners, distributors, principals, insurers, administrators, agents, servants,
27

1 successors, trustees, vendors, subcontractors, alleged co-conspirators, buyers, independent
2 contractors, attorneys, representatives, heirs, executors, experts, consultants, and assigns of all of
3 the foregoing persons and entities who placed calls to the Settlement Class on behalf of
4 SolarCity Corporation.

5 1.1.11 “Defense Counsel” means Defendant’s counsel of record in the Litigation,
6 Orrick, Herrington & Sutcliffe LLP and Morrison & Foerster LLP.

7 1.1.12 “Effective Date” means the first date by which any Judgment entered
8 pursuant to the Agreement becomes Final.

9 1.1.13 “Fee Award” means the amount of attorneys’ fees and reimbursement of
10 expenses that may be awarded by the Court and that will be paid out of the Settlement Fund.

11 1.1.14 “Final” means one business day following the later of the following
12 events: (i) the expiration of three (3) business days after the time to file a motion to alter or
13 amend a judgment under Fed. R. Civ. P. 59(e) has passed without any such motion having been
14 filed; (ii) the expiration of the time in which to file an Appeal has passed without any Appeal
15 having been taken; and (iii) the resolution of any Appeal in a manner that does not reverse or
16 vacate the Final Judgment and in a manner that permits the consummation of the Settlement
17 substantially in accordance with the terms and conditions of this Agreement. Any proceeding or
18 order, or any Appeal pertaining solely to any request or order regarding the Fee Award will not
19 in any way delay or preclude the Judgment from becoming Final.

20 1.1.15 “Final Approval Hearing” means the final hearing, held after the
21 Preliminary Approval Order is issued and Settlement Class Members have been given reasonable
22 notice and an opportunity to object or to exclude themselves from the Settlement, at which the
23 Court will determine whether to finally approve the Settlement and to enter Judgment.

24 1.1.16 “Final Approval Order” means an order, providing for, among other
25 things, final approval of the Settlement.

1 1.1.17 “Internal Do Not Call List” means the list maintained by SolarCity to
2 identify those who have notified SolarCity that they do not wish to receive marketing calls from
3 SolarCity.

4 1.1.18 “Judgment” means the judgment to be entered by the Court pursuant to the
5 Settlement.

6 1.1.19 “Litigation” means *Lucero v. SolarCity Corp.*, No. 3:15-cv-05107-RS,
7 currently pending in the U.S. District Court for the Northern District of California;

8 1.1.20 “Mediator” shall mean the Hon. Morton Denlow (Ret.) of JAMS, Inc.

9 1.1.21 “Notice” means a document, substantially in the form of Exhibit A hereto,
10 and “Summary Notice” means a document substantially in the form of Exhibit B hereto, to be
11 disseminated in accordance with the Preliminary Approval Order, informing Persons who fall
12 within the Settlement Class of, among other things, the pendency of the Litigation, the material
13 terms of the proposed Settlement, and their options with respect thereto.

14 1.1.22 “Notice Date” means the first date on which the Notice is disseminated
15 pursuant to the Notice Plan.

16 1.1.23 “Notice Plan” shall mean the proposed plan of disseminating to
17 Settlement Class Members notice of the proposed Settlement and of the Final Approval
18 Hearing, as approved by the Court.

19 1.1.24 “Opt-Out Deadline” means the date that is sixty (60) days after the Notice
20 Date.

21 1.1.25 “Parties” means, collectively, Representative Plaintiff and SolarCity.

22 1.1.26 “Person” means an individual, corporation, partnership, limited
23 partnership, association, joint stock company, estate, legal representative, trust, unincorporated
24 association, government or any political subdivision or agency thereof, any business or legal
25 entity, and such individual’s or entity’s spouse, heirs, predecessors, successors, representatives,
26 and assignees.

1 1.1.27 “Preliminary Approval Order” means an order, providing for, among other
2 things, preliminary approval of the Settlement and dissemination of the Notice to the Settlement
3 Class according to the Notice Plan.

4 1.1.28 “Released Claims” shall mean any and all claims, liabilities, demands,
5 causes of action, or lawsuits of the Settlement Class Members, whether known or unknown,
6 whether legal, statutory, equitable, or of any other type or form, whether under federal, state, or
7 local law, and whether brought in an individual, representative, or any other capacity, of every
8 nature and description whatsoever that were brought in the Litigation or could have been brought
9 in the Litigation or relating in any way to telephone calls by, from, or on behalf of SolarCity to
10 Settlement Class Members, including but not limited to claims for any alleged TCPA violation or
11 any other telephone or telemarketing-related federal, state or local law, regulation or ordinance,
12 claims that in any way relate to automated calls (e.g., those made using an Automatic Telephone
13 Dialing System and/or artificial or prerecorded voice) or telemarketing calls made by or on
14 behalf of SolarCity to Settlement Class Members or telephone numbers assigned to Settlement
15 Class Members.

16 1.1.29 “Released Parties” means SolarCity, each, any and all of its past, present
17 and future heirs, executors, administrators, predecessors, successors, assigns, parent companies
18 (including Tesla Inc.), subsidiaries, divisions, joint venturers, entities in which Solar City has a
19 controlling interest, holding companies, employees, agents, consultants, marketing partners,
20 resellers, lead generators, telemarketers, independent contractors, insurers, reinsurers, directors,
21 officers, partners, principals, attorneys, accountants, financial advisors, investors, investment
22 bankers, underwriters, shareholders, auditors, legal representatives, successors in interest,
23 affiliates, trusts, and corporations; and each and all of the past, present, and future officers,
24 directors, principals, representatives, employees, agents, shareholders, attorneys, successors,
25 executors, and assigns of any of the foregoing Persons.

1 1.1.30 “Releasing Parties” means: (a) Representative Plaintiff; (b) Settlement
2 Class Members who do not timely opt out of the Settlement Class; (c) to the extent that a
3 Settlement Class Member is not an individual, all of its present, former, and future predecessors,
4 successors, assigns, parents, subsidiaries, joint ventures, and affiliates, and all employees, agents,
5 representatives, consultants, independent contractors, insurers, directors, officers, partners,
6 principals, members, attorneys, accountants, financial advisors, investors, investment bankers,
7 underwriters, shareholders, lenders, and auditors of any of the foregoing Persons; and (d) to the
8 extent the Settlement Class Member is an individual, any present, former, and future spouses, as
9 well as the present, former, and future heirs, executors, estates, administrators, representatives,
10 agents, attorneys, partners, successors, predecessors, and assigns of each of them, and any other
11 representatives of any of the foregoing Persons.

12 1.1.31 “Representative Plaintiff” means Plaintiff Jose Albino Lucero Jr.

13 1.1.32 “Settlement” means the settlement set forth in this Agreement.

14 1.1.33 “Settlement Administration Expenses” means the expenses incurred by the
15 Settlement Administrator in providing notice, processing claims, administering the Settlement,
16 and mailing checks for Approved Claims. Settlement Administration Expenses shall be paid
17 from the Settlement Fund.

18 1.1.34 “Settlement Administrator” means the settlement administrator selected by
19 agreement of the parties.

20 1.1.35 “Settlement Class” means all individuals in the United States, from
21 November 6, 2011 to the date the class notice is disseminated, who received from or on behalf of
22 Defendant: (1) one or more calls on their cellphones, or (2) at least two telemarketing calls
23 during any 12-month period where their phone numbers appeared on a National or State Do Not
24 Call Registry or Solar City’s Internal Do Not Call List more than 15 days before the calls.

25 1.1.36 “Settlement Class Member” means a person who falls within the definition
26 of the Settlement Class and who does not opt out of the Settlement as set forth in Paragraph 10.4.

1 1.1.37 “Settlement Class Period” means November 6, 2011 through the Notice
2 Date.

3 1.1.38 “Settlement Class Recovery” means the amount of the Settlement Fund
4 available for distribution to the Settlement Class, after payment of Settlement Administration
5 Expenses, any Fee Award to Class Counsel and *Gibbs* Counsel, and any approved incentive
6 award to the Representative Plaintiff and the *Gibbs* plaintiffs.

7 1.1.39 “Settlement Fund” means the fund into which SolarCity will transfer funds
8 to cover all costs, expenses, and fees associated with the Settlement according to the terms set
9 forth in this Agreement.

10 1.1.40 “Settling Parties” means, collectively, Defendant, Representative Plaintiff,
11 and all Settlement Class Members.

12 1.1.41 The plural of any defined term includes the singular, and the singular of
13 any defined term includes the plural.

14 **2. DENIAL OF WRONGDOING AND LIABILITY**

15 2.1.1 Defendant denies the material factual allegations and legal claims asserted
16 by Representative Plaintiff in the Litigation, including any and all charges of wrongdoing or
17 liability arising out of any of the conduct, statements, acts or omissions alleged, or that could
18 have been alleged, in the Litigation. Further, Defendant maintains that it has strong, meritorious
19 defenses to the claims alleged in the Litigation and that it was prepared to vigorously defend all
20 aspects of the Litigation.

21 **3. THE BENEFITS OF SETTLEMENT**

22 3.1 Class Counsel and Representative Plaintiff recognize and acknowledge the
23 expense and length of continued proceedings that would be necessary to prosecute the Litigation
24 against Defendant through trial and appeals. Class Counsel also has taken into account the
25 strength of Defendant’s defenses, difficulties in proving liability, and the uncertain outcome and
26 risk of the litigation, especially in complex actions such as this one, and the inherent delays in
27

1 such litigation. Class Counsel believes that the proposed Settlement confers substantial benefits
2 upon the Settlement Class. Based on their evaluation of all of these factors, Representative
3 Plaintiff and Class Counsel have determined that the Settlement is in the best interests of
4 Representative Plaintiff and the Settlement Class.

5 **4. SETTLEMENT TERMS**

6 4.1 Settlement Fund: Defendant agrees to provide a Settlement Fund in the amount
7 of Fifteen Million Dollars (\$15,000,000) for the purpose of making all required payments under
8 this Settlement, including payments for Approved Claims, any approved Fee Award, any
9 approved service awards, and the costs of reasonable class notice and class administration. The
10 Parties agree Defendant's maximum monetary obligation under this Agreement shall not exceed
11 \$15,000,000. In no event shall Defendant's total financial liability with respect to this
12 Agreement, the Released Claims, and the Settlement exceed \$15,000,000. Defendant shall fund
13 the Settlement Agreement as follows: within thirty (30) days of the entry of the Final Approval
14 Order (and receipt of wire instructions provided by the Settlement Administrator to Defendant
15 and an executed W-9), Defendant will transfer to the Settlement Administrator (via wire
16 instructions provided by the Settlement Administrator to Defendant) Fifteen Million Dollars
17 (\$15,000,000). Once Defendant completes this payment, its payment obligations under this
18 Agreement shall be deemed to have been fully satisfied. The Settlement Administrator will hold
19 those amounts in an interest-bearing escrow account, until such time as the Settlement
20 Administrator is authorized to use or pay those funds pursuant to the Settlement Agreement, the
21 Preliminary Approval Order, or the Final Approval Order and Judgment.

22 4.2 The Settlement Fund shall be a Qualified Settlement Fund (QSF) under Section
23 468B of the Internal Revenue Code and 26 C.F.R. § 1.468B-1, established pursuant to the
24 Preliminary Approval Order. The Settlement Administrator shall be the Administrator of the
25 QSF.

1 4.3 Payment to Settlement Class Members

2 4.3.1 Each Settlement Class Member shall be entitled to submit only one
3 claim, and only one claim can be made per telephone number, regardless of the number of
4 calls to that phone number.

5 4.3.2 Adequate and customary procedures and standards will be used by the
6 Settlement Administrator to prevent the payment of fraudulent claims and to pay only legitimate
7 claims, including, but not limited to, verifying claimed telephone calls with Defendant.

8 4.3.3 Payment will be made to Settlement Class Members who timely submit a
9 valid Claim Form by the Claims Deadline after any approved attorneys' fees, expenses, and
10 costs, any approved service awards, and costs of reasonable class notice and class administration
11 are deducted from the Settlement Fund.

12 4.3.4 Each Settlement Class Member who timely submits a valid Claim Form
13 by the Claims Deadline shall be entitled to a single payment from Defendant in an amount
14 equivalent to his or her *pro rata* share of the Settlement Fund after any approved Fee Award, any
15 approved service awards, and Settlement Administration Costs are deducted. Each Settlement
16 Class Member shall be entitled to receive an amount equal to the Settlement Class Recovery
17 divided by the total number of Approved Claims.

18 4.3.5 Payments will be made directly to the Settlement Class Member by the
19 Settlement Administrator.

20 **5. REPRESENTATIVE PLAINTIFF SERVICE AWARD**

21 5.1 Class Counsel, on behalf of Representative Plaintiff, as well as Carole Gibbs and
22 Arthur Colby (the *Gibbs* plaintiffs), shall petition the Court for incentive awards in an amount up
23 to \$5,000 apiece. In the event the Court approves the Settlement, but declines to approve
24 incentive awards in the amount requested by Class Counsel, the Settlement will nevertheless be
25 binding on the Parties and all Settlement Class Members.

1 6.5 The Fee Award, if approved by the Court, shall be paid by wire transfer from the
2 Settlement Fund within thirty (30) calendar days following the Court's final order approving the
3 Settlement and the Fee Award, only if the law firm and each attorney being paid have executed
4 the Undertaking in the form attached as Exhibit C, and provided a copy of that Undertaking to
5 the Defendant and to the Settlement Administrator, and a Form W-9 to the Settlement
6 Administrator, and also provided that Class Counsel has provided the Settlement Administrator
7 with notice of the allocation of the amounts of the payments to be made to the various firms. If
8 one or more law firms or attorneys elects not to execute the Undertaking, then that law firm's or
9 attorney's portion of the Fee Award shall be paid within five (5) calendar days of the Effective
10 Date. The Fee Award shall be paid from the Settlement Fund, and Defendant shall have no
11 additional obligation to pay for attorneys' fees, costs and/or expenses of any kind.

12 Notwithstanding the foregoing, if the Judgment or Final Approval Order is reversed, vacated,
13 modified, and/or remanded for further proceedings or otherwise disposed of in any manner other
14 than one resulting in affirmance of the Judgment in full (other than solely due to a reduction or
15 denial of the Fee Award); or if the Judgment, Final Approval Order or Settlement Agreement is
16 rescinded, voided, rendered unenforceable or terminated, in whole or in part (other than solely
17 due to a reduction or denial of the Fee Award); then each law firm or attorney who has received
18 payment of attorney's fees, expenses, and costs shall, within thirty (30) calendar days of any
19 such court action or any such event, repay the full amount of the payment received by that law
20 firm or attorney, pursuant to the terms of the Undertaking. If the amount of the Fee Award is
21 reduced after it has been paid from the Settlement Fund, then pursuant to the terms of the
22 Undertaking, each law firm or attorney shall repay to the Settlement Fund the amount of the
23 reduction applicable to that law firm's or attorney's portion of the Fee Award within thirty (30)
24 calendar days.

25 6.6 In the event of any repayment pursuant to paragraph 6.5, then liability for the
26 return of such payments will attach to each law firm and each attorney pursuant to the terms of
27

1 the Undertaking(s) executed by those law firms and attorneys. To effectuate this provision, each
2 individual attorney or law firm who receives a share of payments under this provision shall
3 execute the Undertaking in the form attached as Exhibit C.

4 6.7 The Court shall retain jurisdiction of any dispute regarding the Fee Award and
5 any repayment of any amount of the Fee Award.

6 **7. ADMINISTRATION AND NOTICE**

7 7.1 All costs and expenses of administering the Settlement and providing reasonable
8 Notice in accordance with the Preliminary Approval Order shall be paid out of the Settlement
9 Fund.

10 7.2 Responsibilities of Settlement Administrator

11 7.2.1 The Settlement Administrator will facilitate the notice process by assisting
12 the Parties in the implementation of the Notice Plan, as well as CAFA Notice, although
13 Defendant shall retain ultimate responsibility for effecting CAFA Notice within the required
14 time.

15 7.3 Class Settlement Website

16 7.3.1 The Settlement Administrator will create and maintain the Class
17 Settlement Website, to be activated within 30 days of Preliminary Approval. The Settlement
18 Administrator's responsibilities will also include securing an appropriate URL. The Class
19 Settlement Website will contain information about the Settlement and case-related documents
20 such as the Settlement Agreement, the Long-Form Notice, the Claim Form, and the Preliminary
21 Approval Order. Settlement Class Members shall have the option to file a claim electronically
22 using the Class Settlement Website.

23 7.3.2 The Class Settlement Website will terminate (be removed from the
24 internet) and no longer be maintained by the Settlement Administrator thirty (30) days after
25 either (a) the Effective Date or (b) the date on which the Settlement Agreement is terminated or
26

1 otherwise not approved in full, if the Settlement is terminated or otherwise not approved in full.
2 The Settlement Administrator will then transfer ownership of the URL to Defendant.

3 7.3.3 All costs and expenses related to the Class Settlement Website shall be
4 paid out of the Settlement Fund.

5 7.4 CAFA Notice

6 7.4.1 The Parties agree that the Settlement Administrator shall serve notice of
7 the settlement that meets the requirements of CAFA, 28 U.S.C. § 1715, on the appropriate
8 federal and state officials no later than 10 days after the filing of this Settlement Agreement with
9 the Court.

10 7.4.2 All costs and expenses related to the CAFA Notice shall be paid out of the
11 Settlement Fund.

12 7.4.3 The Settlement Administrator will file a certification with the Court
13 stating the date(s) on which the CAFA Notices were sent. Each Party will provide the other
14 Parties with any substantive responses received in response to any CAFA Notice.

15 7.5 Notice Plan

16 7.5.1 The Notice shall conform to all applicable requirements of the Federal
17 Rules of Civil Procedure, the U.S. Constitution (including the Due Process Clauses), Cal. Civ.
18 Code § 1781, and any other applicable law, and shall otherwise be in the manner and form
19 agreed upon by the Parties and approved by the Court.

20 7.5.2 To the extent that SolarCity possesses and can identify through reasonable
21 means the name and contact information for any person it believes to be a Settlement Class
22 Member, SolarCity shall provide that information to the Settlement Administrator within
23 fourteen (14) calendar days after the Court enters the Preliminary Approval Order.

24 7.5.3 Subject to Court approval, within thirty (30) days after the Court enters the
25 Preliminary Approval Order, the Settlement Administrator shall send direct notice substantially
26

1 in the form of the Summary Notice in Exhibit B, via U.S. Postal Service, to the names and
2 addresses provided by SolarCity to the Settlement Administrator.

3 7.5.4 The first date on which the Notice is disseminated pursuant to the Notice
4 Plan shall be no later than thirty (30) days after the Preliminary Approval Order is entered by the
5 Court.

6 **8. CLAIMS PROCESS**

7 8.1 Submission of Claims. Settlement Class Members must timely submit, by mail or
8 online, a valid Claim Form substantially in the form attached as Exhibit D by the Claims
9 Deadline. All Claim Forms must be postmarked or submitted to the Settlement Administrator,
10 either in hard copy form or electronically via the Settlement Website, by the Claims Deadline. A
11 valid Claim Form means a Claim Form containing all required information and which is signed
12 by the claimant and is timely submitted. Any Claim Form which is not timely submitted shall be
13 denied. In the event a Settlement Class Member submits a Claim Form by the Claims Deadline
14 but the Claim Form is not complete, then the Settlement Administrator shall give such
15 Settlement Class Member a reasonable opportunity to provide any requested missing
16 information. For any Class Member who submits a Claim Form determined by the Settlement
17 Administrator to be incomplete, the Settlement Administrator may mail a notice directly to such
18 Class Member, notifying him or her of the missing information and providing him or her with an
19 opportunity to cure (the "Cure Notice"). Class Members must cure incomplete claims on or
20 before the Effective Date.

21 8.2 Claims Processing. The Settlement Administrator shall apply the terms of this
22 Settlement Agreement and the requirements set forth in the Claim Form, and any Claim Form
23 submitted that does not meet the requirements of this Agreement or of the Claim Form is not
24 eligible to be an Approved Claim. The Settlement Administrator also shall employ reasonable
25 procedures to screen claims for abuse, fraud, or duplication, and shall deny Claim Forms where
26 there is evidence of abuse, fraud, or duplication. The Settlement Administrator's decisions
27

1 regarding the Settlement Class Members' eligibility for a claims payment shall be final. The
2 Parties, the Released Parties, and their respective counsel shall have no responsibility or liability
3 whatsoever for the Settlement Administrator's conduct, omissions, or actions.

4 8.3 Payment of Claims. Within sixty (60) days after the Effective Date or 60 days
5 after the Claims Deadline (whichever is later), or such other date as the Court may set, the
6 Settlement Administrator shall pay from the Settlement Fund all Approved Claims by check
7 made payable to the Settlement Class Member submitting each Approved Claim, which shall be
8 mailed to those Settlement Class Members via first-class mail.

9 8.4 All payments to Settlement Class Members via check will state on the face of the
10 check that the check will expire and become null and void unless cashed within ninety (90) days
11 after the date of issuance. To the extent that any checks to Settlement Class Members expire and
12 become null and void, the Settlement Administrator shall distribute the funds associated with
13 those checks on a *pro rata* basis to Settlement Class Members who submitted an Approved
14 Claim and who cashed their checks, if doing so is administratively and economically feasible
15 (i.e., those Settlement Class Members would receive a second distribution of more than \$5 after
16 costs of administration). Any remaining monies, including to the extent a second distribution is
17 not administratively feasible, shall be distributed as a *cy pres* award to the State Bar of
18 California's Access to Justice program, subject to the approval of the Court.

19 8.5 No decisions by the Settlement Administrator shall be deemed to constitute a
20 finding, admission, or waiver by Defendant as to any matter of fact, law, or evidence having any
21 collateral effect on any claim hereunder or in any other proceeding or before any other forum or
22 authority. Further, such decisions shall not be submitted to or admissible in any other
23 proceeding or before any other forum or authority.

24 **9. RELEASES**

25 9.1 Upon entry of the Judgment, Representative Plaintiff and each Settlement Class
26 Member will be deemed to have, and by operation of the Judgment will have, fully, finally, and
27

1 forever released, relinquished, and discharged the Released Parties from all Released Claims
2 against the Released Parties.

3 9.2 After entering into this Settlement Agreement, Representative Plaintiff or
4 Settlement Class Members may discover facts other than, different from, or in addition to, those
5 that they know or believe to be true with respect to the Released Claims. Representative Plaintiff
6 and Settlement Class Members expressly waive and fully, finally, and forever settle and release
7 any known or unknown, suspected or unsuspected, contingent or noncontingent claim, whether
8 or not concealed or hidden, without regard to the subsequent discovery or existence of such
9 other, different, or additional facts.

10 9.3 With respect to the Released Claims, all Settlement Class Members expressly
11 waive and relinquish any rights or benefits available to them under California Civil Code § 1542,
12 which provides:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
14 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
15 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
16 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
17 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
18 HER SETTLEMENT WITH THE DEBTOR.

17 9.4 Notwithstanding Section 1542 of the California Civil Code, or any other federal
18 or state statute or rule of law of similar effect, this Settlement Agreement shall be given full force
19 and effect according to each and all of its terms and provisions, including those related to any
20 unknown or unsuspected claims, liabilities, demands, or causes of action which are based on,
21 arise from, or are in any way connected with the Released Claims.

22 9.5 Upon entry of the Final Approval Order, Representative Plaintiff, and any
23 Settlement Class Member who does not Opt Out as set forth in Paragraph 10.4 is hereby barred
24 against bringing any action against any of the Released Parties for any of the Released Claims.

1 **10. APPROVAL PROCESS**

2 10.1 Court Approval

3 10.1.1 Within thirty days of the execution of this Agreement, Class Counsel shall
4 submit the Agreement together with its Exhibits to the Court and request that the Court grant
5 preliminary approval of the Settlement, issue a Preliminary Approval Order, and schedule a
6 hearing on whether the Settlement should be granted final approval (collectively, “Motion for
7 Preliminary Approval”).

8 10.1.2 In the Motion for Preliminary Approval, Class Counsel shall request that
9 the Court allow for a period of at least one hundred (100) days between entry of the Preliminary
10 Approval Order and the Final Approval Hearing.

11 10.1.3 The date the Motion for Preliminary Approval is filed is the date by which
12 the Settlement shall be deemed “filed” within the meaning of 28 U.S.C. § 1715.

13 10.1.4 If the Motion for Preliminary Approval is granted, Class Counsel shall be
14 responsible for asking the Court to grant final approval of the Settlement and to enter a Final
15 Approval Order and Judgment, in accordance with the date set by the Court for the Final
16 Approval Hearing.

17 10.1.5 If the Court does not enter a Preliminary Approval Order or a Final
18 Approval Order and Judgment or if the Final Approval Order is reversed, vacated, overturned, or
19 rendered void by any court, this Agreement shall terminate and be of no force or effect, except as
20 otherwise set forth in this Agreement, unless the Parties voluntarily agree to modify this
21 Agreement in the manner necessary to obtain Court approval. If this Agreement is terminated,
22 any portion of the Settlement Fund remaining, including any repayment of attorney’s fees
23 pursuant to paragraph 6.5, above, shall be returned to SolarCity. Notwithstanding any provision
24 of this Agreement, the Parties agree that any decision by any court as to any Fee Award to Class
25
26
27

1 Counsel or any service award to the Representative Plaintiff or the *Gibbs* plaintiffs, described in
2 Section 5 above, including any decision by any court to award less than the amounts sought,
3 shall not prevent the Agreement from becoming effective, prevent Final Judgment from being
4 entered, or provide any grounds for termination of the Agreement or the Settlement.
5

6 10.2 Procedures for Objecting to the Settlement

7 10.2.1 Settlement Class Members shall have the right to appear and show cause,
8 if they have any reason why the terms of this Agreement should not be given final approval,
9 subject to each of the sub-provisions contained in this section. Any objection to this Settlement
10 Agreement, including any of its terms or provisions, must be in writing, filed with the Court or
11 mailed to Class Action Clerk, United States District Court, 450 Golden Gate Avenue, San
12 Francisco, CA 94102, with a copy served on Class Counsel, Counsel for Defendant, and the
13 Settlement Administrator at the addresses set forth in the Notice, and postmarked no later than
14 the Opt-Out Deadline. Settlement Class Members may object either on their own or through an
15 attorney hired at their own expense.
16

17 10.2.2 Any objection regarding or related to the Agreement shall contain a
18 caption or title that identifies it as “Objection to Class Settlement in *Lucero v. SolarCity Corp.*,
19 No. 3:15-cv-05107-RS” and also shall contain the following information: (i) the objector’s name,
20 address, and telephone number; (ii) the name, address, and telephone number of any attorney for
21 the objector with respect to the objection; (iii) the factual basis and legal grounds for the
22 objection, including any documents sufficient to establish the basis for his or her standing as a
23 Settlement Class Member, including the date(s) and phone number(s) at which he or she
24 received call(s) covered by this Settlement; and (iv) identification of the case name, case
25 number, and court for any prior class action lawsuit in which the objector and the objector’s
26
27
28

1 attorney (if applicable) has objected to a proposed class action settlement. If an objecting party
2 chooses to appear at the hearing, no later than the Opt-Out Deadline, a notice of intention to
3 appear, either in person or through an attorney, must be filed with the Court and list the name,
4 address, and telephone number of the person and attorney, if any, who will appear.
5

6 10.2.3 A Settlement Class Member who appears at the Final Approval Hearing,
7 either personally or through counsel, may be permitted to argue only those matters that were set
8 forth in the timely and validly submitted written objection filed by such Settlement Class
9 Member. No Settlement Class Member shall be permitted to raise matters at the Final Approval
10 Hearing that the Settlement Class Member could have raised in his/her written objection, but
11 failed to do so, and all objections to the Settlement Agreement that are not set forth in a timely
12 and validly submitted written objection will be deemed waived.
13

14 10.2.4 If a Settlement Class Member wishes to present witnesses or evidence at
15 the Final Approval Hearing in support of a timely and validly submitted objection, all witnesses
16 must be identified in the objection, and true and correct copies of all supporting evidence must
17 be appended to, or filed and served with, the objection. Failure to identify witnesses or provide
18 copies of supporting evidence in this manner waives any right to introduce such testimony or
19 evidence at the Final Approval Hearing. Representative Plaintiff or Defendant or both may take
20 discovery regarding any objector, their attorney (if applicable), and the basis of any objection,
21 subject to Court approval.
22

23 10.2.5 Any Settlement Class Member who fails to comply with the applicable
24 provisions of the preceding paragraphs concerning their objection shall waive and forfeit any and
25 all rights he or she may have to object, appear, present witness testimony, and/or submit
26 evidence, shall be barred from appearing, speaking, or introducing any testimony or evidence at
27

1 the Final Approval Hearing, shall be precluded from seeking review of this Agreement by appeal
2 or other means, and shall be bound by all the terms of this Agreement and by all proceedings,
3 orders and judgments in the Litigation. By filing an objection, objectors and their counsel
4 submit to the jurisdiction of the Court for all purposes, including but not limited to subpoenas
5 and discovery.
6

7 10.3 Right to Respond to Objections

8 10.3.1 Class Counsel and the Parties shall have the right, but not the obligation,
9 to respond to any objection no later than ten (10) days prior to the Final Approval Hearing. The
10 Settling Party so responding shall file a copy of the response with the Court, and shall serve a
11 copy, by hand or overnight delivery, to the objector (or counsel for the objector).
12

13 10.4 Opt Outs

14 10.4.1 Any Settlement Class Member who does not wish to participate in this
15 Settlement must write to the Settlement Administrator stating an intention to be “excluded” from
16 this Settlement. This written request for exclusion must be sent via first class United States mail
17 to the Settlement Administrator at the address set forth in the Notice and postmarked no later
18 than the Opt-Out Deadline. A request for exclusion must be signed by the Settlement Class
19 Member, and must include the Settlement Class Member’s name, address, and the telephone
20 number that allegedly received a call by or on behalf of Defendant during the Settlement Class
21 Period, and must clearly state that the Person wishes to be excluded from the Litigation and the
22 Agreement. A request for exclusion that does not include all of this information, or that is sent
23 to an address other than that designated in the Notice, or that is not postmarked within the time
24 specified, shall be invalid, and the Person serving such a request shall be a member of the
25 Settlement Class and shall be bound as a Settlement Class Member by the Court’s Orders in this
26
27

1 Litigation and by this Agreement, if approved. The request for exclusion must be personally
2 signed by the Settlement Class Member. So-called “mass” or “class” opt-outs shall not be
3 allowed.

4
5 10.4.2 Any Person in the Settlement Class who submits a request for exclusion
6 may not file an objection to the Settlement. If a Settlement Class Member submits a written
7 request for exclusion pursuant to Paragraph 10.4.1 above, he or she shall be deemed to have
8 complied with the terms of the opt-out procedure and shall not be bound by the Agreement if
9 approved by the Court.

10 10.4.3 After Notice is disseminated, the Parties shall request and seek to obtain
11 from the Court a Final Approval Order and Judgment, which will (among other things):

- 12
13 (i) find that the Court has personal jurisdiction over all Settlement Class
14 Members and that the Court has subject-matter jurisdiction to approve the
15 Agreement, including all exhibits hereto;
- 16 (ii) approve the Settlement Agreement and the proposed Settlement as fair,
17 reasonable, and adequate as to, and in the best interests of, Settlement
18 Class Members; direct the Parties and their counsel to implement and
19 consummate the Agreement according to its terms and provisions; and
20 declare the Agreement to be binding on, and have preclusive effect on all
21 pending and future lawsuits or other proceedings maintained by or on
22 behalf of Representative Plaintiff and the Releasing Parties;
- 23 (iii) find that the Notice and the Notice Plan implemented pursuant to the
24 Agreement (1) constitute the best practicable notice under the
25 circumstances; (2) constitute notice that is reasonably calculated, under the
26 circumstances, to apprise members of the Settlement Class of the
27 pendency of the Litigation, their right to object to or exclude themselves
28 from the proposed Settlement, and to appear at the Final Approval
Hearing; (3) are reasonable and constitute due, adequate, and sufficient
notice to all Persons entitled to receive notice; and (4) meet all applicable
requirements of the Federal Rules of Civil Procedure, the Due Process
Clause of the United States Constitution, and the rules of the Court;

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

- (iv) dismiss the Action (including all individual claims and Settlement Class Member claims asserted therein) on the merits and with prejudice, without fees or costs to any Party, except as provided in the Settlement Agreement; incorporate the releases set forth above in Section 9, make those releases effective as of the date of the Final Approval Order and Judgment, and
- (v) forever discharge the Released Parties as set forth herein; permanently bar and enjoin all Settlement Class Members from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction related to the Released Claims.

11. TAXES

11.1 Settlement Class Members, Representative Plaintiff, and Class Counsel shall be responsible for paying any and all federal, state, and local taxes due on any payments made to them pursuant to the Settlement Agreement.

12. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF TERMINATION

12.1 The Effective Date of this Agreement shall be the date the Judgment has become Final, as defined in Paragraph 1.1.14.

12.2 If this Agreement is not approved by the Court or the Settlement is terminated or fails to become effective in accordance with the terms of this Agreement, the Settling Parties will be restored to their respective positions in the Litigation as of May 19, 2017. In such event, the terms and provisions of this Agreement will have no further force and effect with respect to the Settling Parties and will not be used in this Litigation or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of this Agreement will be treated as vacated.

12.3 The Parties agree to request a stay of the Litigation pending approval of the Settlement.

13. MISCELLANEOUS PROVISIONS

13.1 Cooperation of the Parties: The Parties acknowledge that it is their intent to consummate this Agreement, and they agree to cooperate to the extent reasonably necessary to

1 final disposition of the Litigation (as defined in Paragraph IV of the Stipulated Protective Order),
2 each Receiving Party must return all Protected Material to the Producing Party or destroy such
3 material, including all copies, abstracts, compilations, summaries, and any other format
4 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Class
5 Counsel and Counsel for the Defendant are entitled to retain an archival copy of all pleadings,
6 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
7 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
8 work product, even if such materials contain Protected Material. Class Counsel also will not use
9 any of the Confidential Information learned or obtained in the Action for any purpose after the
10 Effective Date.

11 13.6 Incorporation of Exhibits: Any and all Exhibits to this Agreement are material and
12 integral parts hereof and are fully incorporated herein by this reference.

13 13.7 Modification: This Agreement may be amended or modified only by a written
14 instrument signed by or on behalf of all Parties or their respective successors-in-interest.

15 13.8 Integration: This Agreement and any Exhibits attached hereto constitute the
16 entire agreement among the Parties, and no representations, warranties, or inducements have
17 been made to any Party concerning this Agreement or its Exhibits other than the representations,
18 warranties, and covenants covered and memorialized in such documents. Except as otherwise
19 provided herein, the Parties will bear their own respective costs.

20 13.9 Class Counsel's Authority: Class Counsel, on behalf of the Settlement Class, are
21 expressly authorized by Representative Plaintiff to take all appropriate action required or
22 permitted to be taken by the Settlement Class pursuant to this Agreement to effectuate its terms,
23 and are expressly authorized to enter into any modifications or amendments to this Agreement on
24 behalf of the Settlement Class.

1 13.10 Parties' Authority: Each counsel or other Person executing this Agreement or any
2 of its Exhibits on behalf of any Party hereby warrants that such Person has the full authority to
3 do so.

4 13.11 Counterparts: This Agreement may be executed in one or more counterparts. All
5 executed counterparts and each of them will be deemed to be one and the same instrument.

6 13.12 No Prior Assignments. Representative Plaintiff and Class Counsel represent,
7 covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered,
8 or purported to assign, transfer, or encumber to any person or entity any portion of any liability,
9 claim, demand, action, cause of action or rights herein released and discharged except as set forth
10 herein.

11 13.13 Binding on Assigns: This Agreement will be binding upon, and inure to the
12 benefit of, the successors and assigns of the Parties and the Settlement Class Members.

13 13.14 Publicity: Except for the notice provisions set forth in the Order of Preliminary
14 Approval and except as required by SolarCity in accordance with applicable law, rule, or
15 regulation (e.g. securities laws, rules, or regulations), each of the Class Representative, Class
16 Counsel, SolarCity, and Defendant's Counsel agrees that there will be no campaigning
17 (including on the Internet) regarding the Settlement. There will be no press release regarding the
18 Settlement, and neither side will initiate contacts with the media nor issue any public statement,
19 comment, or promotional material that references the existence or terms of the Settlement or
20 litigation against SolarCity, provided, however, that Class Counsel is permitted, in connection
21 with its law firm websites, biographies, brochures, and firm marketing materials, future
22 declarations regarding counsel's experience, and/or in speaker biographies, to state that it served
23 as counsel in this Litigation. Any party can respond to inquiries initiated by the media, and in
24 doing so may decline to comment, but otherwise shall only refer to the Class Notice and/or defer
25 to the court file in this Litigation, but shall not provide any further comment.

1 13.15 Interpretation: None of the Parties, or their respective counsel, will be deemed
2 the drafter of this Agreement or its Exhibits for purposes of construing the provisions thereof.
3 The language in all parts of this Agreement and its Exhibits will be interpreted according to its
4 fair meaning, and will not be interpreted for or against any of the Parties as the drafter thereof.

5 13.16 Voiding the Agreement: If 10,000 or more Settlement Class Members opt out of
6 the Settlement, Defendant may at its option elect to withdraw from the Settlement and void this
7 Agreement.

8 13.17 Governing Law: This Agreement and any Exhibits hereto will be construed and
9 enforced in accordance with, and governed by, the internal, substantive laws of the State of
10 California without giving effect to that State’s choice-of-law principles. The headings used
11 herein are used for the purpose of convenience only and are not meant to have legal effect.

12 13.18 No Waiver: The waiver by one Party of any breach of this Agreement by any
13 other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this
14 Agreement.

15 IN WITNESS WHEREOF, the Parties have executed and cause this Agreement to be
16 executed by their duly authorized attorneys.

17
18
19
20
21
22
23
24
25
26
27
28

Dated: July <u>10</u> , 2017	 <hr/> Lynn Miller Deputy General Counsel for SolarCity Corp. On Behalf of Defendant SolarCity Corp.
Dated: July __, 2017	<hr/> Jose Albino Lucero Jr.

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

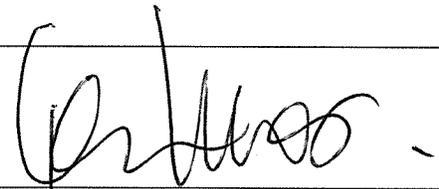
13.15 Interpretation: None of the Parties, or their respective counsel, will be deemed the drafter of this Agreement or its Exhibits for purposes of construing the provisions thereof. The language in all parts of this Agreement and its Exhibits will be interpreted according to its fair meaning, and will not be interpreted for or against any of the Parties as the drafter thereof.

13.16 Voiding the Agreement: If 10,000 or more Settlement Class Members opt out of the Settlement, Defendant may at its option elect to withdraw from the Settlement and void this Agreement.

13.17 Governing Law: This Agreement and any Exhibits hereto will be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of California without giving effect to that State’s choice-of-law principles. The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

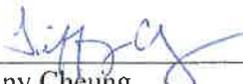
13.18 No Waiver: The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

IN WITNESS WHEREOF, the Parties have executed and cause this Agreement to be executed by their duly authorized attorneys.

Dated: July __, 2017	 <hr/> Lynn Miller Deputy General Counsel for SolarCity Corp. On Behalf of Defendant SolarCity Corp.
Dated: July <u>11</u> , 2017	 <hr/> Jose Albino Lucero Jr.

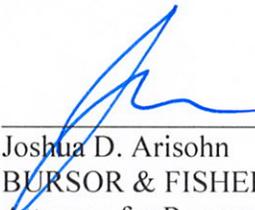
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM AND CONTENT:

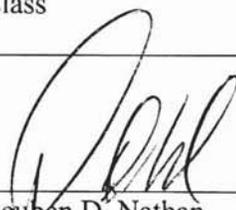
Dated: July <u>11</u> , 2017	 _____ Tiffany Cheung Morrison & Foerster LLP Attorney for SolarCity Corp.
Dated: July <u>10</u> , 2017	 _____ Elyse Eghtman ORRICK, HERRINGTON & SUTCLIFFE LLP Attorney for SolarCity Corp.
Dated: July __, 2017	 _____ Joshua D. Arisohn BURSOR & FISHER, P.A. Attorney for Representative Plaintiff and the Settlement Class
Dated: July __, 2017	 _____ Reuben D. Nathan NATHAN & ASSOCIATES, APC. Attorney for Representative Plaintiff and the Settlement Class

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

APPROVED AS TO FORM AND CONTENT:

Dated: July __, 2017	<hr/> <p>Tiffany Cheung Morrison & Foerster LLP Attorney for SolarCity Corp.</p>
Dated: July __, 2017	<hr/> <p>Elyse Echtman ORRICK, HERRINGTON & SUTCLIFFE LLP Attorney for SolarCity Corp.</p>
Dated: July <u>12</u> , 2017	 <hr/> <p>Joshua D. Arisohn BURSOR & FISHER, P.A. Attorney for Representative Plaintiff and the Settlement Class</p>
Dated: July __, 2017	<hr/> <p>Reuben D. Nathan NATHAN & ASSOCIATES, APC. Attorney for Representative Plaintiff and the Settlement Class</p>

APPROVED AS TO FORM AND CONTENT:

<p>Dated: July __, 2017</p>	<p>_____</p> <p>Tiffany Cheung Morrison & Foerster LLP Attorney for SolarCity Corp.</p>
<p>Dated: July __, 2017</p>	<p>_____</p> <p>Elyse Echtman ORRICK, HERRINGTON & SUTCLIFFE LLP Attorney for SolarCity Corp.</p>
<p>Dated: July __, 2017</p>	<p>_____</p> <p>Joshua D. Arisohn BURSOR & FISHER, P.A. Attorney for Representative Plaintiff and the Settlement Class</p>
<p>Dated: July <u>10</u>, 2017</p>	<p></p> <p>_____</p> <p>Reuben D. Nathan NATHAN & ASSOCIATES, APC. Attorney for Representative Plaintiff and the Settlement Class</p>

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

Exhibit A

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

If you received a call offering a SolarCity product between November 6, 2011 and [date], a class action settlement may affect your rights

A Federal Court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.

- A proposed settlement has been reached in a class action lawsuit called *Lucero v. SolarCity Corp.* The lawsuit alleges that marketing calls made by or on behalf of SolarCity violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”). SolarCity maintains that it did not make any unauthorized marketing calls, the lawsuit is without merit, and it was prepared to vigorously defend all aspects of it.
- You are included if, at any time between November 6, 2011 and [date], you received from or on behalf of SolarCity: (1) one or more calls on your cellphone, or (2) at least two telemarketing calls during any 12-month period where your phone number appeared on a National or State Do Not Call Registry or Solar City’s Internal Do Not Call List more than 15 days before the calls.
- If the Court approves the Settlement, you may be eligible to receive a single payment. Your payment amount will depend on how many Settlement Class Members submit valid Claim Forms. The Settlement Fund will be divided and distributed equally—sometimes referred to as “pro rata”—to all Settlement Class Members who submit a valid Claim Form after attorneys’ fees, costs and expenses, any award for the Class Representative, and notice and administration costs have been deducted.
- Please read this notice carefully. Your legal rights are affected whether you act or don’t act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT THE CLAIM FORM	The only way to receive a payment.
EXCLUDE YOURSELF	You will receive no payment, but you will retain any rights you currently have to sue the Defendant about the issues in this case.
OBJECT	Write to the Court explaining why you don’t like the Settlement.
ATTEND A HEARING	Ask to speak in Court about the fairness of the Settlement.
DO NOTHING	You won’t get a share of the Settlement benefits and will give up your rights to sue the Defendant about the issues in this case.

These rights and options—**and the deadlines to exercise them**—are explained in this Notice.

QUESTIONS? CALL [NUMBER] TOLL FREE, OR [WEBSITE]

The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be provided only after any issues with the Settlement are resolved. Please be patient.

BASIC INFORMATION

1. Why was this Notice issued?

A Court authorized this Notice to let you know about a proposed Settlement with the Defendant. You have legal rights and options that you may act on before the Court decides whether to approve the proposed Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

Judge Richard Seeborg of the U.S. District Court for the Northern District of California is overseeing this class action. The case is known as *Lucero v. SolarCity Corp.*, No. 3:15-cv-05107-RS. The person who sued is called the Plaintiff. The company he sued, SolarCity Corporation, is called the Defendant.

2. What is a class action lawsuit?

In a class action, one or more people called “Class Representatives” sue on behalf of a group of people who have similar claims. In this case, these people are together called a “Settlement Class” or “Settlement Class Members.” In a class action, the court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class. After the parties reached an agreement to settle this case, the Court recognized it as a case that may be treated as a class action for settlement purposes.

THE CLAIMS IN THE LAWSUIT AND THE SETTLEMENT

3. What is this lawsuit about?

The lawsuit alleges that the Defendant made marketing calls to consumers for the purpose of offering the Defendant’s products. The lawsuit alleges that the Defendant violated the federal Telephone Consumer Protection Act because some consumers did not agree to receive these calls. The Defendant denies the allegations and maintains that it has strong, meritorious defenses to the claims. The Settlement is not an admission of, and does not establish any, wrongdoing.

More information about the complaint in the lawsuit and the Defendant’s answer can be found in the “Court Documents” section of the Settlement website at [website].

4. Why is there a Settlement?

The Court has not decided whether the Plaintiff or the Defendant should win this case. Instead, both sides agreed to a settlement. The Class Representative and his attorneys (“Class Counsel”) believe that the Settlement is in the best interests of the Settlement Class Members.

WHO'S INCLUDED IN THE SETTLEMENT?

5. How do I know if I am in the Settlement Class?

The Court decided that this Settlement includes a Class of: all individuals in the United States, from November 6, 2011 to [date], who received from or on behalf of SolarCity: (1) one or more calls on their cellphones, or (2) at least two telemarketing calls during any 12-month period where their phone numbers appeared on a National or State Do Not Call Registry or Solar City's Internal Do Not Call List more than 15 days before the calls. Everyone who fits this description is a member of the Settlement Class.

If you received a postcard about this class action, your phone number may be one of the numbers that was called.

6. What were the allegedly unsolicited calls about?

The calls covered by this Settlement were allegedly made by or on behalf of SolarCity in an attempt to offer SolarCity products.

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

As part of the Settlement, Defendant has agreed to create a \$15,000,000 Settlement Fund. The Settlement Fund will be used to pay all valid claims, costs of administering the Settlement, attorneys' fees and costs, and any incentive payment to the Class Representative.

Under the Settlement Agreement, Settlement Class Members must request a payment by submitting by mail or online a valid Claim Form saying that they received an unauthorized call and providing all the information requested in the Claim Form. Further details are below.

HOW TO GET BENEFITS

8. How do I make a claim?

The Settlement creates a claims process. You can get the Claim Form on this website or by calling [Settlement Administrator number]. The Claim Form may be submitted online or by U.S. Mail sent to [address]. If you file a valid Claim Form and your claim is approved, you will receive a single payment. Your payment amount will depend on how many Settlement Class Members submit valid Claim Forms. The Settlement Fund will be divided and distributed equally—sometimes referred to as “pro rata”—to all Settlement Class Members who submit a valid Claim Form after attorneys' fees, costs and expenses, any award for the Class Representative, and notice and administration costs have been deducted.

The Claim Form requires you to provide your name, address, and the telephone number that you received the call(s) on. You must verify that you received at least one call from or on behalf of SolarCity regarding SolarCity's products on a United States cellular phone number between November 6, 2011 to [date], or received at least two telemarketing calls during any 12-month period

between November 6, 2011 to [date] and at least 15 days after your phone number was placed on a National, State, or SolarCity's Do-Not-Call list.

All Claim Forms must be received and properly completed by [claims deadline].

9. When will I get my payment?

The hearing to consider the final fairness of the Settlement is scheduled for [insert Final Approval Hearing date]. If the Court approves the Settlement, and after any appeals process is completed, eligible Settlement Class Members whose claims were approved will be sent a check in the mail. Please be patient. All checks will expire and become void 90 days after they are issued.

THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in this case?

Yes, the Court has appointed lawyer Scott A. Bursor of Bursor & Fisher, P.A, and Reuben D. Nathan of Nathan & Associates, APC, as the attorneys to represent you and other Settlement Class Members. These attorneys are called "Class Counsel." In addition, the Court appointed Plaintiff Jose Albino Lucero Jr. to serve as the Class Representative. He is a Settlement Class Member like you. Class Counsel can be reached by calling [number].

11. Should I get my own lawyer?

You don't need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, you will have to pay that lawyer. For example, you can ask your lawyer to appear in Court for you, at your own expense, if you want someone other than Class Counsel to represent you.

12. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees, costs, and expenses, totaling up to \$5 million, and will also request an award of up to \$5,000 each for the Class Representative and two other named plaintiffs from a similar lawsuit. The Court will determine the proper amount of any attorneys' fees, costs, and expenses to award Class Counsel and the proper amount of any award to the Class Representative. The Court may award less than the amounts requested by Class Counsel and the Class Representative, and any money not awarded from these requests will stay in the Settlement Fund to pay Settlement Class Members.

YOUR RIGHTS AND OPTIONS

13. What happens if I do nothing?

If you do nothing, you will receive no payment under the Settlement, you will be in the Settlement Class, and if the Court approves the Settlement, you will also be bound by all orders and judgments of the Court. Also, unless you exclude yourself, you won't be able to start a lawsuit or be part of any other lawsuit against the Defendant for the claims being resolved by this Settlement.

14. What happens if I ask to be excluded?

If you exclude yourself from the Settlement, you can't claim any money or receive any benefits as a result of the Settlement. You will keep your right to start your own lawsuit against the Defendant for the claims resolved in this settlement. You will not be legally bound by the Court's judgments related to the Settlement Class in this class action.

15. How do I ask to be excluded?

You can ask to be excluded from the Settlement. To do so, you must send a letter clearly stating that you want to be excluded from the Settlement in *Lucero v. SolarCity Corp.*, No. 3:15-cv-05107-RS. Your letter must also include your name, address, the phone number that you contend you received the call(s) on, and your signature. You must mail your exclusion request no later than **[objection / exclusion deadline]** to:

[Settlement Administrator Address]

You can't exclude yourself via phone, fax or email.

16. If I don't exclude myself, can I sue the Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue the Defendant for the claims being resolved by this Settlement.

17. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, do not submit a Claim Form to ask for a payment.

18. How do I object to the Settlement?

If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should deny approval by filing an objection. You can't ask the Court to order a larger settlement; the Court can only approve or deny the Settlement. If the Court denies approval, no settlement payments will be sent out, and the lawsuit will continue. If that is what you want to happen, you must object. The Court will consider your views. Your objection and supporting papers must (1) be in writing, (2) contain a caption or title that identifies it as "Objection to Class Settlement in *Lucero v. SolarCity Corp.*, Case No. 3:15-cv-05107-RS," (3) provide the additional information identified in the next paragraph, (4) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court, 450 Golden Gate Avenue, San Francisco, CA 94102, or by filing them in person at any location of the United States District Court for the Northern District of California, and (5) be filed or postmarked on or before **[Opt-Out Deadline]**. By the same date (based on postmark) you must also serve a copy on Class Counsel, Counsel for Defendant, and the Settlement Administrator at the addresses set forth in this Notice.

The objection shall contain the following information: (i) your name, address, and telephone number; (ii) the name, address, and telephone number of any attorney representing you with respect to the objection; (iii) the factual basis and legal grounds for the objection, including any documents sufficient to establish the basis for your standing as a Settlement Class Member, including the

date(s) and phone number(s) at which you received the calls covered by this settlement; and (iv) the case name, case number, and court for any prior class action lawsuit in which you and your attorney (if applicable) have objected to a proposed class action settlement.

If, in addition to submitting a written objection to the Settlement, you wish to appear and be heard at the Hearing on the fairness of the Settlement, you must file by [Opt-Out Deadline] a notice of intention to appear with the Court and list the name, address, and telephone number of the attorney, if any, who will appear on your behalf. If you choose to appear at the Hearing, you may not raise matters that you could have raised but did not raise in your written objection, and all objections that are not set forth in your written objection may be deemed waived.

Class Counsel will file with the Court and post on the Settlement website its request for attorneys' fees, costs and expenses, and incentive awards on [date].

19. What's the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class (i.e., you don't exclude yourself from the Settlement). Excluding yourself from the Settlement Class is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

20. When and where will the Court hold a hearing on the fairness of the Settlement?

A hearing has been set for [date] at [time], before the Honorable Richard Seeborg at San Francisco Courthouse, Courtroom 3, 17th floor, 450 Golden Gate Avenue, San Francisco, CA 94102. At the hearing, the Court will hear any objections, and arguments concerning the fairness of the proposed Settlement, including the amount requested by Class Counsel for attorneys' fees and expenses and the incentive awards to the Class Representative and two other named plaintiffs.

Note: The date and time of the fairness hearing are subject to change by Court Order, but any changes will be posted at the Settlement website, [website], or through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>.

21. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have, but you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as your written objection was filed or mailed on time and meets the other criteria described in the Settlement Agreement, the Court will consider it. You may also pay another lawyer to attend, but you don't have to.

22. May I speak at the hearing?

If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the hearing concerning any part of the proposed Settlement by asking to speak in your objection by following the instructions above in section 18.

GETTING MORE INFORMATION

23. Where can I get additional information?

This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at [website], by contacting Class Counsel at [phone number], by accessing the Court docket in this case through the Court's PACER system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, San Francisco Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102 between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT CONTACT THE COURT, THE JUDGE, OR THE DEFENDANT WITH QUESTIONS ABOUT THE SETTLEMENT OR CLAIMS PROCESS.

Exhibit B

LEGAL NOTICE

If you received a call offering a SolarCity product between November 6, 2011 and [date], a class action settlement may affect your rights.

A Federal Court authorized this notice.

You are not being sued.

This is not a solicitation from a lawyer.

For complete information and details, visit [website] or call [admin phone].

Your Personal Claim Number is _____.

A proposed settlement has been reached in a class action lawsuit called *Lucero v. SolarCity Corp.*, No. 3:15-cv-05107-RS, pending in the U.S. District Court for the Northern District of California. The lawsuit alleges that calls made by or on behalf of SolarCity for the purpose of offering solar products violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (TCPA). SolarCity maintains that it did not make any unauthorized marketing calls, the lawsuit is without merit, and it was prepared to vigorously defend all aspects of it. The settlement is not an admission of wrongdoing or an indication that any law has been broken.

Why am I being contacted? You may be a “Settlement Class Member” in the settlement. Settlement Class Members are all individuals in the United States, from November 6, 2011 to [date], who received from or on behalf of SolarCity: (1) one or more calls on their cellphones, or (2) at least two telemarketing calls during any 12-month period where their phone numbers appeared on a National or State Do Not Call Registry or Solar City’s Internal Do Not Call List more than 15 days before the calls.

What can I get out of the settlement? If the Court approves the settlement, SolarCity will create a \$15,000,000 settlement fund, from which eligible Settlement Class Members may receive a single payment. Your actual payment amount will depend on how many Settlement Class Members submit valid Claim Forms. The Settlement Fund will be divided and distributed equally—sometimes referred to as “pro rata”—to all Settlement Class Members who submit a valid Claim Form after attorneys’ fees, costs and expenses, any award for the Class Representative, and notice and administration costs have been deducted.

How do I get my payment? You must complete the Claim Form, available at [website]. You can also call [settlement admin phone number] for a paper copy of the Claim Form. You may only submit **one** Claim Form. ***All Claim Forms must be received and properly completed by [claims deadline].***

What are my options? You can do nothing, submit a Claim Form, or exclude yourself from the settlement. If you do nothing or submit a Claim Form, your rights will be affected. You won’t be able to sue SolarCity in a future lawsuit about the claims addressed in the settlement. If you exclude yourself, you won’t get a payment—but you’ll keep your right to sue SolarCity in a separate lawsuit on the issues covered by the settlement. You must contact the settlement administrator by mail to exclude yourself. If you do not exclude yourself, you can object to the settlement, Class Counsel’s request for fees and expenses, or the requests for incentive awards. ***All Requests for Exclusion and Objections must be postmarked or filed in person by [opt-out deadline].***

Do I have a lawyer? Yes. The Court has appointed lawyers from Bursor & Fisher, P.A. and Nathan & Associates, APC as “Class Counsel.” They represent you and other Settlement Class Members. There’s no charge for their services. You can hire your own lawyer, but you’ll need to pay your own legal fees. Jose Albino Lucero Jr. is a Settlement Class Member, and the Court has appointed him to represent the Settlement Class.

When will the Court approve the settlement? The Court will hold a final approval hearing on [date] at [time] at the San Francisco Courthouse, Courtroom 3 (17th floor), U.S. Courthouse for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102. The Court will hear any objections, determine if the settlement is fair, and consider Class Counsel’s request for fees, costs, and expenses of up to \$5 million, and an incentive award of up to \$5,000 each to the Class Representative and two other named plaintiffs in a similar lawsuit. If approval is denied, reversed on appeal, or does not become final, the case will continue, and claims will not be paid. ***Visit [website] for complete information.***

Exhibit C

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

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

JOSE ALBINO LUCERO JR., on Behalf of
Himself and all Others Similarly Situated,

Plaintiffs,

v.

SOLARCITY CORP.

Defendant.

Case No. 3:15-cv-05107-RS

**STIPULATION AND ORDER
REGARDING UNDERTAKING RE:
ATTORNEYS' FEES AND COSTS**

WHEREAS, _____ (the "Firm") desires to give an undertaking (the "Undertaking") for repayment of their award of attorney fees and costs, approved by the Court, and

WHEREAS, the Parties agree that this Undertaking is in the interests of all Parties and in service of judicial economy and efficiency.

NOW, THEREFORE, each of the undersigned, on behalf of themselves as individuals and as agents for their law firm, hereby submit themselves and their respective law firms to the jurisdiction of the Court for the purpose of enforcing the provisions of this Undertaking.

Capitalized terms used herein without definition have the meanings given to them in the Settlement Agreement.

By receiving any payments pursuant to the Settlement Agreement, the Firm and its shareholders, members, and/or partners submit to the jurisdiction of the United States District Court for the Northern District of California for the enforcement of any and all disputes relating to or arising out of the reimbursement obligation set forth herein and the Settlement Agreement.

The Firm and its shareholders, members, and/or partners are jointly and severally liable for any obligations for any repayments pursuant to this Undertaking.

1 In the event that the final Settlement Approval Order and Final Judgment or any part of it
2 is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement
3 Agreement is voided, rescinded, or otherwise terminated for any other reason, the Firm shall,
4 within thirty (30) days repay to SolarCity Corp. the full amount of the attorneys' fees and costs
5 paid to the Firm pursuant to the Settlement, including any accrued interest.

6 In the event the attorney fees and costs awarded by the Court or any part of them are
7 vacated, modified, reversed, or rendered void as a result of an appeal, the Firm shall within thirty
8 (30) days repay to the Settlement Fund the amount of the reduction applicable to that law firm's
9 or attorney's portion of the Fee Award, including any accrued interest.

10 This Undertaking and all obligations set forth herein shall expire upon finality of all direct
11 appeals of the final Settlement Approval Order and Final Judgment.

12 In the event the Firm fails to make a repayment required under this Undertaking, the Court
13 shall, upon application of SolarCity Corp., and notice to the Firm, summarily issue orders,
14 including but not limited to judgments and attachment orders against any Person jointly and
15 severally liable pursuant to this Undertaking, and may make appropriate findings for sanctions for
16 contempt of court.

17 The undersigned stipulate, warrant, and represent that they have both actual and apparent
18 authority to enter into this stipulation, agreement, and undertaking on behalf of the Firm.

19 This Undertaking may be executed in one or more counterparts, each of which shall be
20 deemed an original but all of which together shall constitute one and the same instrument.

21 Signatures by facsimile shall be as effective as original signatures.

22 The undersigned declare under penalty of perjury under the laws of the United States that
23 they have read and understand the foregoing and that it is true and correct.

24
25
26
27
28

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

IT IS SO STIPULATED:

DATED: _____, 2017

By: _____, individually and
on behalf of the Firm

By: _____, individually and
on behalf of the Firm

[PROPOSED] ORDER

The Court has considered the above Stipulation and finds that it is in the interests of all
Parties and in service of judicial economy and efficiency. Therefore,

IT IS SO ORDERED this ___ day of _____, 2017.

HON. RICHARD SEEBORG

Exhibit D

Lucero v. SolarCity Corp.,

In the United States District Court for the Northern District of California

Case No. 3:15-cv-05107-RS

Settlement Claim Form

If you are a Class Member and wish to receive a payment, your completed Claim Form must be postmarked on or before [Claims Deadline], or submitted online at [website] on or before [Claims Deadline].

Please read the full notice of this settlement (available at [website]) carefully before filling out this Claim Form.

To be eligible to receive any benefits from the settlement obtained in this class action lawsuit, you must submit your claim form online or by mail:

ONLINE: Visit [website] and submit your claim online.

MAIL: [Address]

PART ONE: CLAIMANT INFORMATION

Provide your name and contact information below. It is your responsibility to notify the Claims Administrator of any changes to your contact information after the submission of your Claim Form.

FIRST NAME

LAST NAME

STREET ADDRESS

CITY

STATE

ZIP CODE

CURRENT TELEPHONE NUMBER

TELEPHONE NUMBER(S) AT WHICH CALLS WERE RECEIVED

EMAIL ADDRESS

PART TWO: ATTESTATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the United States of America that between November 6, 2011 to [date], I received from or on behalf of SolarCity either: (1) one or more calls on my cellphone, or (2) at least two telemarketing calls during any 12-month period and my phone number appeared on a National or State Do Not Call Registry or Solar City's Internal Do Not Call List more than 15 days before the calls. I understand that my Claim Form may be subject to audit, verification, and Court review.

SIGNATURE

DATE

CLAIM FORM REMINDER CHECKLIST

Before submitting this Claim Form, please make sure you:

1. Complete all fields in the Claimant Information section of this Claim Form.
2. Sign the Attestation under penalty of perjury in Part Two. You must sign the Attestation in order to be eligible to receive settlement benefits.

Please keep a copy of your Claim Form for your records.