

# **EXHIBIT A**

**EXECUTION VERSION**

**CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among Michael Dobkin (“Dobkin”) for himself and on behalf of the Settlement Class (defined below), NRG Residential Solar Solutions LLC (“NRG Residential”), and NRG Energy, Inc. (“NRG Energy,” and with NRG Residential, “NRG”) (all together, the “Parties,” or each individually, a “Party”). This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (defined below), upon and subject to the terms and conditions of this Settlement Agreement, and subject to the final approval of the Court (defined below).

**RECITALS**

A. On July 1, 2015, Dobkin filed a putative class action in the United States District Court for the District of New Jersey, captioned *Dobkin v. NRG Energy, Inc., et al.*, Case No. 3:15-cv-05089 (D.N.J.). Dobkin’s complaint alleged that NRG Energy and NRG Residential violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, by placing, or causing to be placed, unsolicited autodialed and/or prerecorded calls to consumers’ telephones regarding the sale or leasing of a residential solar panel system. (Dkt. 1.) These calls were also allegedly placed to consumers on the National Do-Not-Call Registry.

B. Shortly thereafter, Dobkin filed a Motion and Memorandum in Support of Class Certification pursuant to Federal Rule of Civil Procedure 23. (Dkt. 3.)

C. On August 21, 2015, NRG Residential and NRG Energy moved to dismiss Dobkin’s complaint pursuant to Rules 12(b)(6) and 12(b)(1) of the Federal Rules of Civil Procedure, arguing that Dobkin failed to adequately plead a violation of the TCPA and that Dobkin had not alleged a sufficient injury to satisfy Article III of the Constitution. (Dkt. 11.)

**EXECUTION VERSION**

D. On September 25, 2015, Dobkin voluntarily dismissed NRG Energy as a party defendant without prejudice. (Dkt. 25.)

E. On November 2, 2015, NRG Residential moved the Court to stay the proceedings pending the United States Supreme Court's disposition of *Spokeo, Inc. v. Robins*, No. 13-1339 (U.S.), and *Campbell-Ewald Co. v. Gomez*, No. 14-0857 (U.S.). (Dkt. 27.) The Court granted NRG Residential's motion, finding that the outcomes of the pending Supreme Court cases would affect the size and scope of the proposed class as well as the outcome of the case. (Dkt. 32.)

F. On May 23, 2016, following the Supreme Court's rulings in *Gomez* and *Spokeo*, the Court lifted the stay. (Dkt. 38.)

G. Shortly thereafter, the Parties filed a Joint Proposed Discovery Plan on July 15, 2016, in which they advised the Court that they had scheduled a private mediation on September 27, 2016. The Parties also exchanged disclosures under Rule 26(a)(1) of the Federal Rules of Civil Procedure, served written discovery on each other and certain third parties, and began exchanging documents and information relevant to their respective claims and defenses.

H. On September 27, 2016, the Parties participated in a formal mediation session with Professor Eric Green of Resolution, LLC. The Parties engaged in numerous rounds of discussions regarding their respective claims and defenses. Each side, however, had strong viewpoints regarding the substance of the claims, and although they made progress, the Parties were unable to reach a settlement at that time.

I. As a result, the Parties engaged in substantial discovery regarding Dobkin's individual claims and the potential for certification of a class under Rule 23 of the Federal Rules of Civil Procedure, including interrogatory responses, substantial document productions, and the depositions and collection of documents from various third parties.

**EXECUTION VERSION**

J. During a January 2017 telephonic discovery status conference, the Honorable Lois H. Goodman, Magistrate Judge of the United States District Court for the District of New Jersey, offered the Parties the opportunity to participate in a settlement conference before her and scheduled the conference for April 28, 2017.

K. In March 2017, the Court granted certain extensions to allow the Parties to focus on their settlement discussions. After numerous joint and ex parte telephonic settlement conferences conducted by Magistrate Judge Goodman, on July 12, 2017, the Parties attended an in-person settlement conference in Trenton, New Jersey, with Magistrate Judge Goodman. After a full-day settlement conference, with Magistrate Judge Goodman's assistance, the Parties ultimately agreed on the material terms of the Settlement.

L. Based on the discovery conducted to date and information exchanged during the Parties' settlement discussions, the Parties agree that there are approximately 317,000 Persons (defined below) within the Settlement Class (defined below).

M. Dobkin believes that the alleged violations of the TCPA asserted in this Action (defined below) have merit, and that he would have ultimately succeeded in obtaining adversarial certification of the proposed Settlement Class under Rule 23 of the Federal Rules of Civil Procedure and in prevailing on the merits at summary judgment or at trial. Nonetheless, Dobkin and Class Counsel (defined below) recognize that NRG Residential has raised factual and legal defenses in the Action that present a risk that Dobkin may not prevail, that a class might not be certified for trial, or both. Dobkin and Class Counsel also have taken into account the uncertain outcome and risks of any litigation, especially in complex actions such as this one, as well as the difficulty and delay inherent in such litigation. Therefore, Dobkin believes that it is desirable that the Released Claims be fully and finally compromised, settled, resolved with prejudice, and

**EXECUTION VERSION**

barred pursuant to the terms and conditions set forth in this Agreement.

N. Based on their comprehensive examination and evaluation of the law and facts relating to the matters at issue in the Action, Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to resolve the alleged claims of the Settlement Class and that it is in the best interests of the Settlement Class Members (defined below) to settle the claims raised in the Action pursuant to the terms and conditions set forth in this Agreement.

O. At all times, NRG Residential has denied, and continues to deny, any wrongdoing whatsoever (as had NRG Energy before it was dismissed without prejudice). Specifically, NRG Residential has denied that the calls at issue violate the TCPA or any other statute or law or that it is liable for calls made by third parties. In addition, NRG Residential maintains that it has meritorious defenses to class certification and to the claims alleged in the Action and is prepared to vigorously defend this suit. Nevertheless, taking into account the uncertainty and risks inherent in any litigation, NRG Residential has concluded that further defense of the Action would be protracted, burdensome, and expensive and that it is desirable and beneficial to fully and finally settle and terminate the Action in the manner and upon the terms and conditions set forth in this Agreement.

P. The Parties agree that all Persons within the Settlement Class shall have an individual right to exclude themselves from the Settlement, such that participation in the monetary relief provided by this Agreement shall be voluntary.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Dobkin, the Settlement Class, and NRG, by and through their respective counsel, that, subject to final approval of the Court after a hearing or hearings as provided for in this Settlement

## **EXECUTION VERSION**

Agreement, and in consideration of the benefits flowing to the Parties from the Settlement Agreement set forth herein, the Action and the Released Claims shall be fully and finally compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions set forth in this Agreement.

## **AGREEMENT**

### **1. DEFINITIONS.**

1.1 **“Action”** means the case captioned *Dobkin v. NRG Residential Solar Solutions LLC*, Case No. 3:15-cv-05089 (D.N.J.), pending in the United States District Court for the District of New Jersey.

1.2 **“Approved Claim”** means a Claim Form submitted by a Settlement Class Member that is (a) submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement, (b) fully and truthfully completed and executed, containing all of the information requested in the Claim Form, (c) signed by the Settlement Class Member, physically or electronically, affirming that the Settlement Class Member received a call regarding the sale or leasing of a residential solar panel system, and (d) verified by the Settlement Administrator (defined below).

1.3 **“Claim Form”** means the document substantially in the form attached hereto as Exhibit A, as approved by the Court. The Claim Form, to be completed by Settlement Class Members who wish to file a claim for a payment pursuant to this Agreement, shall be available in paper and electronic format. The Claim Form will require each Settlement Class Member to include the Settlement Class Member’s (a) name, (b) current U.S. mailing address (as well as his or her former U.S. mailing address if his or her current U.S. mailing address is different from the U.S. mailing address listed on the Notice (defined below) sent to the Settlement Class Member),

**EXECUTION VERSION**

(c) telephone number(s) that received the calls regarding the sale or leasing of a residential solar panel system, and (d) affirmation that the Settlement Class Member received such calls regarding the sale or leasing of a residential solar panel system.

1.4 **“Claims Deadline”** means the date by which all Claim Forms must be postmarked or submitted on the Settlement Website (defined below) to be considered timely and shall be set as a date no later than ninety (90) days after entry of Preliminary Approval (defined below), or such other date as ordered by the Court. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order (defined below), the Final Judgment (defined below), the Notice, and the Claim Form.

1.5 **“Class Counsel”** means Rafey S. Balabanian and Eve-Lynn J. Rapp of Edelson PC.

1.6 **“Class Representative”** means Michael Dobkin.

1.7 **“Court”** means the United States District Court for the District of New Jersey, the Honorable Brian J. Martinotti, District Judge, presiding, or any judge who shall succeed him as judge in this Action.

1.8 **“Effective Date”** means the first business day after which all of the events and conditions specified in paragraph 10.1 have been met and have occurred.

1.9 **“Escrow Account”** means a separate interest-bearing escrow account to be established by the Settlement Administrator, from which all payments out of the Settlement Fund (defined below), including for Approved Claims made by the Settlement Class Members, Settlement Administration Expenses (defined below), any incentive award to the Class Representative, and any Fee Award (defined below) to Class Counsel, will be made. The Escrow Account shall be established under terms acceptable to Dobkin and NRG at a depository

**EXECUTION VERSION**

institution insured by the Federal Deposit Insurance Corporation and that has total assets of at least five hundred million dollars (\$500,000,000.00) and a short-term deposit rating of at least P-1 (Moody's) or A-1 (Standard & Poor's). The money in the Escrow Account shall be invested in the following types of accounts and/or instruments and no other: (a) demand deposit accounts and/or (b) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less. The costs of establishing the Escrow Account shall be deducted from the Settlement Fund. Any interest earned on the Escrow Account shall be considered part of the Settlement Fund.

1.10 **“Fee Award”** means the amount of reasonable attorneys' fees and reimbursable expenses and costs awarded by the Court to Class Counsel from the Settlement Fund.

1.11 **“Final Approval Hearing”** means the hearing before the Court where the Parties will request the Final Judgment to be entered by the Court approving the Settlement Agreement, and the Court will determine the Fee Award and the incentive award to the Class Representative.

1.12 **“Final Judgment”** means the order(s) and judgment to be entered by the Court approving the Settlement Agreement, determining the Fee Award and the incentive award to the Class Representative, and dismissing the Action with prejudice, whether materially in the form provided for herein as Exhibit F or in an alternative form to which the Parties have consented.

1.13 **“NRG's Counsel”** means Andrew C. Glass and Gregory N. Blase of K&L Gates LLP.

1.14 **“Notice”** means the notice of this proposed Class Action Settlement Agreement and Final Approval Hearing, which is to be sent to the Settlement Class substantially in the manner set forth in this Agreement and substantially in the form of Exhibit B or C (and upon request Exhibit D) attached hereto.



**EXECUTION VERSION**

1.15 **“Objection/Exclusion Deadline”** means the date by which a written objection to this Settlement Agreement must be filed with the Court or a request for exclusion submitted by a Person within the Settlement Class must be postmarked or submitted on the Settlement Website (defined below), which shall be designated as a date no later than ninety (90) days after entry of Preliminary Approval, or such other date as ordered by the Court.

1.16 **“Parties”** means Michael Dobkin and the Settlement Class, on the one hand, and NRG Residential Solar Solutions LLC and NRG Energy, Inc., on the other.

1.17 **“Person”** shall mean, without limitation, any entity or individual and their spouses, heirs, predecessors, successors, representatives, and assigns.

1.18 **“Plaintiff”** means Michael Dobkin.

1.19 **“Preliminary Approval”** means the order entered by the Court preliminarily approving the Settlement (defined below), certifying the Settlement Class for settlement purposes, approving the form of the Notice, and directing that Notice be disseminated to the Settlement Class.

1.20 **“Preliminary Approval Order”** means the proposed order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, approving the form of the Notice, and directing Notice to the Settlement Class, to be submitted to the Court in the form set forth in Exhibit E in conjunction with Dobkin’s motion for preliminary approval of the Agreement.

1.21 **“Preliminary Approval Hearing”** means the hearing before the Court where the Parties will request that the Settlement be preliminarily approved, that the Settlement Class be certified for settlement purposes, that the form of the Notice be approved, and that Notice be disseminated to the Settlement Class.

**EXECUTION VERSION**

1.22 **“Released Claims”** means all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, which the Releasing Parties (defined below) have or may have (including “Unknown Claims” as defined below), against any or all of the Released Parties (defined below) (a) arising from or in any way related to calls made by the Released Parties to Persons within the Settlement Class; (b) that the Released Parties violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), the regulations promulgated under the TCPA, federal or state do-not-call laws or regulations, or other state law, or (c) alleged in any complaint filed in this case or any other case in which any person has filed claims under the TCPA, the regulations promulgated under the TCPA, federal or state do-not-call laws or regulations, or other state law against any of the Released Parties.

1.23 **“Released Parties”** means NRG Residential, NRG Energy, any lead generator that called a Person within the Settlement Class, and any direct or indirect parents, wholly or majority-owned subsidiaries, affiliated and related entities, predecessors, successors, assigns, subsequent purchasers, and whole or partial entity purchasers, partners, and privities of NRG Residential, NRG Energy, or any lead generator that called a Person within the Settlement Class, and any of their respective present and former directors, officers, employees, shareholders, agents, representatives, attorneys, accountants, and insurers, and all persons acting by, through, under or in concert with them, or any of them.

1.24 **“Releasing Parties”** means Dobkin, the Settlement Class Members, and each of their respective successors, assigns, legatees, heirs, attorneys, and personal representatives.

1.25 **“Settlement”** means the Parties’ settlement of the Action, as set forth in this

**EXECUTION VERSION**

Agreement.

1.26 **“Settlement Administration Expenses”** means the expenses incurred by or on behalf of the Settlement Administrator in administering the Settlement, including without limitation expenses relating to identifying the Persons within the Settlement Class, establishing the Escrow Account, providing Notice, processing Claim Forms, and mailing checks for Approved Claims, as well as any expenses incurred in the sending of notice to the relevant governmental agencies pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA”), with all such expenses to be paid from the Settlement Fund.

1.27 **“Settlement Administrator”** means KCC Class Action Services, LLC, selected by NRG and approved by the Court, which shall provide Notice to the Settlement Class, process Claim Forms, and pay Approved Claims submitted by the Settlement Class Members as set forth in this Agreement.

1.28 **“Settlement Class”** means all Persons with respect to whom NRG Residential was offered a lead from a third-party lead generator as a result of the lead generator’s telephone call to such person. Based on discovery and investigation to date, there are approximately 317,000 Persons within the Settlement Class. Excluded from the Settlement Class are (a) any Judge or Magistrate Judge presiding over this action and members of their immediate families; (b) NRG Residential, NRG Residential’s subsidiaries, parents, successors, predecessors, and any entity in which NRG Residential or its parents have a controlling interest and their current or former officers, directors, agents, attorneys and employees; (c) all Persons who have had their claims against NRG Residential or NRG Energy or their respective subsidiaries, parents, successors, predecessors, and any entity in which NRG Residential or its parents have a controlling interest and their current or former officers, directors, agents, attorneys and

**EXECUTION VERSION**

employees, previously released and/or adjudicated on the merits; and (d) counsel for all Parties and members of their families.

1.29 **“Settlement Class Member”** means a Person who falls within the definition of the Settlement Class as set forth above and does not submit a valid request for exclusion.

1.30 **“Settlement Fund”** means the non-reversionary cash fund that shall be established by NRG in the total amount of seven million dollars and no cents (\$7,000,000.00) to be deposited into the Escrow Account, plus all interest earned thereon. From the Settlement Fund, the Settlement Administrator shall pay all Approved Claims made by the Settlement Class Members, Settlement Administration Expenses, any incentive award to the Class Representative, any Fee Award to Class Counsel, and any applicable taxes. The Settlement Fund shall be kept in the Escrow Account with permissions granted to the Settlement Administrator to access said funds until such time as the above-listed payments are made. The Settlement Fund includes all interest that shall accrue on the sums deposited in the Escrow Account. The Settlement Administrator shall be responsible for all tax filings with respect to any earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings. The Settlement Fund represents the total extent of NRG’s monetary obligations under this Agreement. In no event shall NRG’s total monetary obligation with respect to this Agreement exceed or be less than seven million dollars and no cents (\$7,000,000.00).

1.31 **“Settlement Website”** means the website to be created, launched, and maintained by the Settlement Administrator, and which allows for the electronic submission of Claim Forms and provides access to relevant case documents including the Notice, information about the submission of Claim Forms, and other relevant documents.

1.32 **“Unknown Claims”** means claims that could have been raised in the Action and

**EXECUTION VERSION**

that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object, or not to object to the Settlement.

**2. SETTLEMENT RELIEF.**

**2.1 Payment to Settlement Class Members.**

(a) NRG shall establish the Settlement Fund within three (3) days of the Effective Date.

(b) Settlement Class Members shall have until the Claims Deadline to submit a Claim Form. Each Settlement Class Member who submits an Approved Claim shall be entitled to a payment of a *pro rata* share of the amount remaining in the Settlement Fund after payment of all Settlement Administration Expenses, any incentive awards to the Class Representative, any Fee Award to Class Counsel, and any applicable taxes. The payment for each Approved Claim will be increased or decreased depending on the total number of Approved Claims. Each Settlement Class Member shall be entitled to submit one (1) Claim Form regardless of number of telephone calls allegedly received or telephone numbers at which the Settlement Class Member received a call. If a Settlement Class Member submits more than one (1) Claim Form, any additional Claim Form will be disregarded for the purposes of determining the *pro rata* share of the Settlement Fund due to Settlement Class Members who submit Approved Claims. A Settlement Class Member who fails to submit a Claim Form that results in an Approved Claim, including for the reasons set forth in paragraphs 6.3 and 6.4 below, forfeits any right to payment under this Settlement but, nevertheless, remains a Settlement Class Member and shall be bound by this Settlement Agreement, including the release set forth in section 3 below, if approved.

**EXECUTION VERSION**

(c) Within ninety (90) days after the Effective Date, or such other date as the Court may set, the Settlement Administrator shall pay from the Settlement Fund all Approved Claims by check and send said checks by U.S. Mail to the Settlement Class Members who submitted Approved Claims.

(d) All cash payments issued to Settlement Class Members by check will state on the face of the check that the check will expire and become null and void unless cashed within one hundred twenty (120) days after the date of issuance. No later than one hundred thirty (130) days after the issuance of the checks, the Settlement Administrator shall take all steps necessary to stop payment on any checks that remain uncashed.

(e) The funds represented by any checks issued to Settlement Class Members in accordance with this Agreement that remain uncashed after one hundred thirty (130) days after the date of issuance, as well as any other funds remaining in the Settlement Fund after payment of all Approved Claims, all Settlement Administration Expenses, the Fee Award to Class Counsel, the incentive awards to the Class Representative, and any applicable taxes, shall be distributed by additional check to Settlement Class Members with Approved Claims who cashed checks received pursuant to paragraph 2.1(c), if such distribution would result in payment of ten dollars and no cents (\$10.00) or more per recipient, or if not, such funds shall be donated to Cell Phones for Soldiers. Such distribution of funds remaining in the Settlement Fund shall occur no later than sixty (60) days after the date on which the checks issued to Settlement Class Members become null and void pursuant to paragraph 2.1(d). Any checks issued pursuant to this subparagraph shall be subject to the provisions of paragraph 2.1(d). Any funds distributed pursuant to the cy pres provision set forth in this subparagraph shall not be considered unclaimed

**EXECUTION VERSION**

property under the laws of the State of New Jersey or of any other state.

(f) If distribution of funds in the Settlement Fund by additional check occurs pursuant to paragraph 2.1(e) above, after the date on which the Settlement Administrator stops payment on such checks, the Settlement Administrator shall confirm whether any balance remains in the Settlement Fund. If the Settlement Fund balance is greater than zero, the remaining funds in the Settlement Fund shall be donated to Cell Phones for Soldiers within seven (7) days. Any funds distributed pursuant to the cy pres provision set forth in this subparagraph shall not be considered unclaimed property under the laws of the State of New Jersey or of any other state.

(g) Once the Settlement Fund balance reaches zero, the Settlement Administrator shall close the Escrow Account that contained the Settlement Fund. Within seven (7) days of the balance of the Settlement Fund reaching zero, the Settlement Administrator shall notify Class Counsel and NRG's Counsel. No later than fourteen (14) days of receiving such notice, Class Counsel shall file with the Court a Notice of Distribution of Funds, indicating that the Settlement Fund has been distributed and that no funds remain in the Escrow Account that contained the Settlement Fund.

2.2 **Certification by NRG Residential:** NRG Residential represents that it is no longer operating a business pursuant to which it purchases leads from a third-party lead generator as a result of that lead generator's telephone calls to such persons.

**3. RELEASE.**

3.1 The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims, as against all Released Parties.

3.2 Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed

**EXECUTION VERSION**

to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against each and every one of the Released Parties.

3.3 Upon the Effective Date, the Releasing Parties shall be deemed to have, and by operation of the Final Judgment shall have, intentionally, knowingly, and expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides as follows:

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

Upon the Effective Date, the Releasing Parties shall be deemed to have, and by operation of the Final Judgment shall have, intentionally, knowingly, and expressly waived any and all provisions, rights, and benefits conferred by any law of any state of the United States, or principle of common law or equity, or the law of any jurisdiction outside of the United States, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, or otherwise governs or limits a person's release of Unknown Claims.

3.4 The Releasing Parties understand and acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have. The Releasing Parties expressly accept and assume the risk of this possible difference in facts and agree that this Agreement and the Settlement remain effective despite any difference in facts. Further, the Releasing Parties agree that this waiver is an essential and material term of this Agreement and the Settlement and that without such waiver the Settlement would not have been accepted.



## **EXECUTION VERSION**

### **4. NOTICE TO THE SETTLEMENT CLASS.**

4.1 Within seven (7) days after the execution of this Settlement Agreement, NRG Residential shall produce to the Settlement Administrator the list of all names, U.S. mailing addresses, email addresses, and telephone numbers of the Persons within the Settlement Class from NRG Residential's existing business records (the "Class List"). The Settlement Administrator shall update the U.S. mailing addresses contained in the Class List through the U.S. Postal Service's National Change of Address Database prior to issuance of the Notice. The Settlement Administrator shall keep the Class List and all personal information obtained therefrom, including the identity, telephone numbers, email addresses, and U.S. mailing addresses of Persons within the Settlement Class, strictly confidential in accordance with applicable law and confidentiality agreements that it shall execute or has already executed. The Class List shall only be used in furtherance of the Settlement Agreement and for no other purpose.

4.2 Upon entry of Preliminary Approval, the Settlement Administrator shall cause the Notice describing the Final Approval Hearing, the terms of the compromise embodied in this Settlement Agreement, and the Claim Form to be disseminated to the Settlement Class as provided herein and as directed by the Court. Such notice shall comport with due process and Rule 23 of the Federal Rules of Civil Procedure, the costs of which shall be Settlement Administration Expenses.

4.3 The Notice shall include:

(a) *Direct Email Notice.* No later than thirty (30) days after the entry of Preliminary Approval, the Settlement Administrator shall send Notice by email substantially in the form attached as Exhibit B, along with an electronic link to the Claim

**EXECUTION VERSION**

Form, to all Persons within the Settlement Class for whom a valid email address is obtainable from the Class List. If no valid email address exists for a Person within the Settlement Class, or in the event that the transmission of any email notice results in a “bounce-back,” the Settlement Administrator shall send Notice by U.S. Mail pursuant to paragraph 4.3(b).

(b) *Direct Mail Notice.* No later than thirty (30) days after the entry of Preliminary Approval, the Settlement Administrator shall send Notice and accompanying Claim Form (with return postage pre-paid by postcard), substantially in the form attached as Exhibit C, by U.S. Mail through a postcard to the U.S. mailing address listed in the Class List, as updated by the Settlement Administrator through the U.S. Postal Service’s National Change of Address Database, for those Persons within the Settlement Class for whom a valid email address is not obtainable from the Class List. In the event that a postcard notice is returned as undeliverable with a forwarding address, the Settlement Administrator shall send a postcard notice to the indicated forwarding address within seven (7) days from the date of receipt of the forwarding address, provided that no such notice shall be required to be sent after thirty (30) days from the date on which the postcard notice was originally sent. In the event that a postcard notice is returned as undeliverable without a forwarding address, the Settlement Administrator shall have no further obligation. In the event that transmission of any email notice pursuant to paragraph 4.3(a) results in a “bounce-back,” the Settlement Administrator shall send a postcard notice within ten (10) days after the “bounce-back,” provided that no such notice shall be required to be sent after thirty (30) days from the date on which the email notice was originally sent.

## **EXECUTION VERSION**

(c) *Internet Notice.* Within thirty (30) days after the entry of Preliminary Approval, the Settlement Administrator will develop, host, administer and maintain a dedicated Settlement Website. The Notice on the Settlement Website shall be substantially in the form of Exhibit D attached hereto. Upon request from a Person within the Settlement Class, the Settlement Administrator will send the Person a hard copy of the Notice on the Settlement Website by U.S. Mail.

(d) *CAFA Notice.* Pursuant to 28 U.S.C. § 1715, not later than ten (10) days after the Agreement is filed with the Court, NRG, through the Settlement Administrator, shall cause to be served upon the Attorneys General of each U.S. State in which Persons within the Settlement Class reside, the Attorney General of the United States, and other required government officials, notice of the Settlement as required by law.

4.4 The Notice shall advise the Settlement Class of their rights under the Settlement, including the right to be excluded from or object to the Settlement Agreement or its terms.

4.5 Not later than fourteen (14) days after completing its obligations set forth in paragraph 4.3, the Settlement Administrator shall provide a declaration to Class Counsel and NRG's Counsel, confirming that the Settlement Administrator provided the Settlement Class with the Notice. Class Counsel shall file this declaration with the Court as part of the motion in support of final approval of the Settlement and entry of Final Judgment.

## **5. OBJECTIONS AND REQUESTS FOR EXCLUSION.**

5.1 Any Settlement Class Member who intends to object to the Settlement or this Settlement Agreement must do so in a writing signed by the objecting Settlement Class Member that includes his or her name and current U.S. mailing address (as well as his or her former U.S. mailing address if his or her current U.S. mailing address is different from the U.S. mailing

**EXECUTION VERSION**

address listed on the Notice sent to the Settlement Class Member), includes all arguments, citations, and evidence supporting the objection (including copies of any documents relied on), states that he or she is a Settlement Class Member, provides the telephone number(s) at which he or she allegedly received a call regarding the sale or leasing of a residential solar panel system, lists the name and contact information of any and all attorneys representing, advising, or in any way assisting the objecting Settlement Class Member in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection, and states whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing personally or through counsel, who must file an appearance or seek *pro hac vice* admission. Any papers submitted in support of said objection shall be received by the Court at the Final Approval Hearing only if the objecting Settlement Class Member shall, on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice, (a) file copies of such papers he or she proposes to submit at the Final Approval Hearing with the Clerk of the Court if the objection is from an objecting Settlement Class Member who is not represented by his or her own counsel, (b) file copies of such papers through the Court's CM/ECF system if the objection is from an objecting Settlement Class Member who is represented by his or her own counsel, and (c) send copies of such papers by mail, hand, or overnight delivery service to both Class Counsel and NRG's Counsel. Only Settlement Class Members who file such an objection and indicate that the objecting Settlement Class Member intends to appear at the Final Approval Hearing may be heard by the Court at the Final Approval Hearing. If a Settlement Class Member makes an objection and elects to appear at the Final Approval Hearing through counsel, the Settlement Class Member will be responsible for his or her own personal attorneys' fees and costs.

## EXECUTION VERSION

5.2 Class Counsel shall file and serve a written response to any objection filed with the Court. NRG's Counsel may, but shall not be required to, file and serve a written response to any objection filed with the Court. Responses to objections shall be filed and served no later than seven (7) days before the Final Approval Hearing. The failure to file and serve any such response shall not be deemed a concession that any objection is valid or has merit.

5.3 Any Settlement Class Member who fails on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice to file and serve a written objection pursuant to paragraph 5.1 above and as detailed in the Notice shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Settlement Agreement by appeal or other means and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding.

5.4 A Person within the Settlement Class may request to be excluded from the Settlement, and thus not become a Settlement Class Member, by sending a written request for exclusion to the Settlement Administrator postmarked on or before the Objection/Exclusion Deadline approved by the Court, which request for exclusion must be personally signed by the Person seeking to be excluded from the Settlement Class, and include his or her name and U.S. mailing address (as well as his or her former U.S. mailing address if his or her current U.S. mailing address is different from the U.S. mailing address listed on the Notice sent to the Person within the Settlement Class), the telephone number(s) at which he or she allegedly received a call regarding the sale or leasing of a residential solar panel system, the caption for the Action (i.e., *Dobkin v. NRG Residential Solar Solutions LLC*, Case No. 3:15-cv-05089 (D.N.J.)), and a statement that he or she wishes to be excluded from the Settlement Class. A request to be

**EXECUTION VERSION**

excluded that does not include all of the foregoing information, that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and Persons serving such requests shall be deemed to remain Settlement Class Members and shall be bound by this Settlement Agreement, including the release set forth in section 3 above, if approved.

5.5 Any ambiguity as to whether a request to be excluded includes the information required by paragraph 5.4 above to be valid shall be resolved by agreement of the Parties or, if the Parties cannot agree, by submission to Magistrate Judge Goodman for determination prior to the Final Approval Hearing without further right to appeal the issue.

5.6 Any Person within the Settlement Class who elects to be excluded shall not: (a) be bound by any orders of the Court in this Action or the Final Judgment; (b) be entitled to relief under this Settlement Agreement; (c) gain any rights by virtue of this Settlement Agreement; or (d) be entitled to object to any aspect of this Settlement Agreement pursuant to paragraph 5.1 above. “Mass” or “class” requests for exclusion shall not be allowed, meaning an attorney or other representative may not send a letter or other communication on behalf of Settlement Class Members seeking to opt out of the Settlement Agreement. No Person shall purport to exercise any exclusion rights of any other Person, or purport to exclude other Persons within the Settlement Class as a group, aggregate, or class involving more than one Person within the Settlement Class, or as an agent or representative. Any such purported exclusion shall be void, and Persons within the Settlement Class that are the subject of such purported exclusion shall be treated as Settlement Class Members for all purposes.

5.7 Class Counsel shall take all lawful steps necessary to minimize the number of objections filed, and neither Dobkin nor Class Counsel will encourage (a) Persons within the

**EXECUTION VERSION**

Settlement Class to request to be excluded from the Settlement, (b) Persons (including Persons within the Settlement Class) to object to the Settlement, or (c) Settlement Class Members to appeal from the Final Judgment.

**6. SETTLEMENT ADMINISTRATION.**

6.1 The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Settlement Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel and NRG's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and NRG's Counsel with information concerning Notice, administration, and implementation of the Settlement Agreement. Should the Court request, the Parties, in conjunction with the Settlement Administrator, shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a report of all amounts paid to the Settlement Class Members on account of Approved Claims.

6.2 Without limiting the foregoing, the Settlement Administrator shall:

- (a) Forward to NRG's Counsel, with copies to Class Counsel, all documents and other materials received in connection with the administration of the Settlement Agreement, including an electronic copy of such documents, within fourteen (14) days after the Claims Deadline;
- (b) Receive requests for exclusion and other requests from the Settlement

**EXECUTION VERSION**

Class and promptly provide a copy of such requests to Class Counsel and NRG's Counsel upon receipt, including any request received after the Objection/Exclusion Deadline; and

(c) Provide weekly reports to Class Counsel and NRG's Counsel, including, without limitation, reports regarding the number of Claim Forms received, the current number of Approved Claims, and the number of requests for exclusion and objections received.

6.3 The Settlement Administrator shall employ reasonable procedures to screen claims for abuse or fraud, including without limitation, by cross-referencing the information provided on the Claim Form against the Class List. The Settlement Administrator shall reject a Claim Form, or any part of a claim for a payment reflected therein, where there is evidence of abuse or fraud. The Settlement Administrator shall also reject a Claim Form that does not contain all requested information necessary to screen the claim for abuse or fraud. Only Claim Forms received from Settlement Class Members reflected on the Class List may be verified by the Settlement Administrator and become Approved Claims.

6.4 Both NRG's Counsel and Class Counsel shall have the right to challenge the acceptance or rejection of a Claim Form submitted by Settlement Class Members within fourteen (14) days of receiving the Claim Forms from the Settlement Administrator pursuant to paragraph 6.2(a) above. Any dispute as to a Claim Form, including without limitation any disagreement regarding a challenge to the validity of a Claim Form, shall be resolved by agreement of the Parties or, if the Parties cannot agree, by submission to Magistrate Judge Goodman for determination prior to the Final Approval Hearing without further right to appeal the issue.

6.5 Within seven (7) days of the deadline for the Parties to dispute a Claim Form pursuant to paragraph 6.4 above, the Settlement Administrator shall provide Class Counsel and



**EXECUTION VERSION**

NRG's Counsel with a list of all Approved Claims, a list of all Claim Forms subject to dispute, and a list of all Persons within the Settlement Class who submitted a valid request for exclusion pursuant to paragraph 5.4 above. Class Counsel shall file these lists with the Court as part of the motion in support of final approval of the Settlement and entry of Final Judgment.

6.6 In the exercise of their duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Person within the Settlement Class.

6.7 Within fourteen (14) days of the Effective Date, the Settlement Administrator shall provide Class Counsel and NRG's Counsel with notice of the final tally of Settlement Administration Expenses, which tally shall include any expenses necessary to cover remaining processes for administering the Settlement. Any dispute as to Settlement Administration Expenses shall be resolved by agreement of the Parties or, if the Parties cannot agree, by submission to Magistrate Judge Goodman without further right to appeal the issue, no later than thirty days (30) after the Effective Date. The Settlement Administrator may withdraw funds from the Settlement Fund to pay the balance of Settlement Administration Expenses (a) if there is no dispute as to Settlement Administration Expenses, no earlier than thirty-seven (37) days after the Effective Date, or (b) if there is a dispute as to Settlement Administration Expenses, at such time as the Parties resolve the dispute by agreement or as Magistrate Judge Goodman decides the issue. Under no circumstances will NRG, NRG's Counsel, Settlement Class Members, or Class Counsel be required to pay the Settlement Administrator any amounts other than those available from the Settlement Fund.

6.8 The Parties agree to make their best efforts to ensure that the costs of Notice and administration of the Settlement Agreement are as reasonable as possible.

**EXECUTION VERSION**

**7. TERMINATION OF SETTLEMENT.**

7.1 Subject to section 10 below, the Class Representative, on behalf of the Settlement Class, or NRG, shall have the right to terminate this Settlement Agreement by providing written notice of the election to do so to all other Parties hereto within ten (10) days of any of the following events: (a) if the attorney general or other authorized officer of the United States or any State, or any representative of any local, state, or federal agency or branch of government, intervenes in the Action or advises the Court in writing of opposition to the terms of the Settlement Agreement; (b) the Court's refusal to grant Preliminary Approval of this Settlement in any material respect; (c) the Court's refusal to grant final approval of this Settlement in any material respect; (d) the Court's refusal to enter the Final Judgment in this Action in any material respect; or (e) the date upon which the Final Judgment is modified or reversed in any material respect by any United States Court of Appeals or the United States Supreme Court; provided, however, that the Court's failure to approve the Fee Award or an incentive award to the Class Representative in the amounts requested shall not give either Class Counsel or the Class Representative the right to terminate this Settlement Agreement.

7.2 In addition to the circumstances set forth in paragraph 7.1 above, if more than one hundred fifty (150) Persons within the Settlement Class have properly and timely requested exclusion from the Settlement in accordance with the provisions of paragraph 5.4 above, NRG shall have, in its sole and absolute discretion, the option to terminate this Settlement by providing written notice of the election to do so to all other Parties hereto prior to the Final Approval Hearing.

**8. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER.**

8.1 Promptly after the execution of this Settlement Agreement, but no later than 30

**EXECUTION VERSION**

days after execution of this Settlement Agreement or September 25, 2017, whichever is earlier, Class Counsel shall submit this Agreement together with its exhibits to the Court and shall move the Court for entry of Preliminary Approval of the Settlement set forth in this Agreement, which shall include, among other provisions, a request that the Court:

- (a) appoint Plaintiff Michael Dobkin as representative of the Settlement Class;
- (b) appoint Class Counsel to represent the Settlement Class;
- (c) certify the Settlement Class under Fed. R. Civ. P. 23 for settlement purposes only and without prejudice to NRG's right to contest class certification if this Settlement is not approved;
- (d) preliminarily approve this Settlement for purposes of disseminating notice to the Settlement Class;
- (e) approve the form and contents of the Notice and Claim Form for dissemination to the Settlement Class, as well as the method of its dissemination to members of the Settlement Class; and
- (f) schedule a Final Approval Hearing to review objections regarding this Settlement, to consider its fairness, reasonableness, and adequacy, and the application for an award of attorneys' fees and reimbursement of expenses, and to consider whether the Court shall issue a Final Judgment approving this Settlement, granting Class Counsel's application for the Fee Award and an incentive award to the Class Representative, and dismissing the Action with prejudice.

8.2 Class Counsel shall share with NRG's Counsel a copy of the draft motion for preliminary approval of the Settlement and any supporting documents at least seven (7) days

**EXECUTION VERSION**

before any deadline to file such motion.

8.3 The Final Approval Hearing shall be set for a date no less than one hundred fifty (150) days after the entry of Preliminary Approval and no more than one hundred eighty (180) days after the entry of Preliminary Approval.

8.4 After Notice to the Settlement Class is given, but no later than seven (7) days before the Final Approval Hearing, Class Counsel shall move the Court for entry of a Final Judgment, which shall include, among other provisions, a request that the Court:

(a) find that it has personal jurisdiction over all Settlement Class Members and subject matter jurisdiction to approve this Settlement, including the Agreement and all attached exhibits;

(b) approve the Settlement and the Agreement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Settlement Agreement according to its terms and conditions; and declare the Settlement Agreement to be binding on, and have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Dobkin and all other Settlement Class Members and Releasing Parties;

(c) find that the Notice implemented pursuant to the Settlement Agreement (i) constitutes the best practicable notice under the circumstances, (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Persons within the Settlement Class of the pendency of the Action and their rights to object to or exclude themselves from this Settlement and to appear at the Final Approval Hearing, (iii) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to

**EXECUTION VERSION**

receive notice, and (iv) meets 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;

(d) find that the Class Representative and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Agreement;

(e) dismiss the Action on the merits and with prejudice, without fees or costs to any party except as provided in this Settlement Agreement;

(f) incorporate the release set forth in section 3 above, make that release effective as of the date of the Final Judgment, and forever discharge the Released Parties as set forth herein;

(g) permanently bar and enjoin all Settlement Class Members from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any lawsuit or other action in any jurisdiction based on the Released Claims;

(h) authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) that (i) shall be consistent in all material respects with the Final Judgment, and (ii) do not limit the rights of the Settlement Class Members;

(i) without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose; and

**EXECUTION VERSION**

(j) incorporate any other provisions, consistent with the material terms of this Agreement, as the Court deems necessary and just.

8.5 Class Counsel shall share with NRG's Counsel a copy of the draft motion for final approval and any supporting documents at least seven (7) days before any deadline to file such motion.

**9. CLASS COUNSEL'S ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND INCENTIVE AWARD.**

9.1 NRG agrees to pay to Class Counsel reasonable attorneys' fees and reimbursable expenses in an amount approved by the Court, to be paid from the Settlement Fund. Not later than fourteen (14) days prior to the Objection/Exclusion Deadline, Class Counsel will file a motion with the Court for an award of reasonable attorneys' fees and reimbursable expenses and costs incurred in the Action as the Fee Award. Class Counsel shall share with NRG's Counsel a copy of the draft motion for an award of reasonable attorneys' fees and reimbursable expenses and costs incurred in the Action as the Fee Award and any supporting documents at least seven (7) days before any deadline to file such motion. Without the Parties having discussed the issue of attorneys' fees payable to Class Counsel at any point during settlement negotiations, NRG agrees that it will not object or challenge, directly or indirectly, any request or award of reasonable attorneys' fees and reimbursable expenses and costs that is limited to one-third of the Settlement Fund (or \$2,333,333.33). And with no consideration from NRG, Class Counsel has agreed to limit their request for payment of reasonable attorneys' fees and reimbursable expenses and costs to no more than one-third of the Settlement Fund before accrual of any interest. Payment of the Fee Award shall be made from the Settlement Fund and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this paragraph shall remain in the Settlement Fund to be

**EXECUTION VERSION**

distributed to Settlement Class Members with Approved Claims

9.2 The Fee Award shall be payable within ten (10) days after the Effective Date, subject to Class Counsel providing all payment routing information and tax I.D. numbers for Class Counsel to the Settlement Administrator and providing IRS Forms W-9 completed and executed by the payee(s) of the Fee Award in a form acceptable to NRG. Payment of the Fee Award shall be made by wire transfer out of the Settlement Fund to Class Counsel, in accordance with wire instructions to be provided to the Settlement Administrator by Class Counsel, subject to completion and receipt of necessary forms.

9.3 In addition to any payment to which he may be entitled under this Agreement on account of an Approved Claim, and in recognition of the time and effort he expended on behalf of the Settlement Class, subject to the Court's approval, the Class Representative shall be paid from the Settlement Fund an incentive award in an amount to be determined by the Court. Without the Parties having discussed the issue of an incentive award payable to the Class Representative at any point during settlement negotiations, NRG agrees that it will not object or challenge, directly or indirectly, any request for an incentive award that is limited to five thousand dollars and no cents (\$5,000.00). And with no consideration from NRG, Class Counsel has agreed to limit the request for payment of an incentive award to the Class Representative to no more than five thousand dollars and no cents (\$5,000.00). Payment of the incentive award shall be made from the Settlement Fund and should the Court award less than the amount sought, the difference in the amount sought and the amount ultimately awarded pursuant to this paragraph shall remain in the Settlement Fund to be distributed to Settlement Class Members with Approved Claims pursuant to paragraph 2.1 above.

9.4 The Class Representative shall be paid the incentive award, as determined by the

**EXECUTION VERSION**

Court, from the Settlement Fund within ten (10) days after the Effective Date, subject to the Class Representative providing NRG's Counsel and the Settlement Administrator IRS Forms W-9 completed and executed by the payee(s) of the incentive award in a form acceptable to NRG. Payment of the incentive award to the Class Representative shall be paid by the Settlement Administrator out of the Settlement Fund by check sent in care of Class Counsel, subject to completion and receipt of necessary forms.

**10. CONDITIONS OF SETTLEMENT; EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION.**

10.1 The Effective Date of this Settlement Agreement shall not occur unless and until each and every one of the following events occurs, and shall be first business day after the date upon which the last (in time) of the following events occurs:

- (a) This Agreement has been signed by the Parties, Class Counsel, and NRG's Counsel;
- (b) The Court has entered Preliminary Approval of the Settlement;
- (c) The Court has entered an order finally approving the Settlement, following notice to the Settlement Class and a Final Approval Hearing, as provided in the Federal Rules of Civil Procedure, and has entered the Final Judgment, or a judgment substantially consistent with this Agreement;
- (d) The time expires for filing or noticing any appeal of the Court's Final Judgment approving this Settlement Agreement; and
- (e) If there is an appeal or are appeals from the Final Judgment, disposition, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration, petitions for



**EXECUTION VERSION**

review, rehearing, rehearing *en banc*, or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand).

10.2 If some or all of the conditions specified in paragraph 10.1 above are not met, or the Settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Settlement Agreement shall be canceled and terminated subject to paragraph 10.3 below, unless Class Counsel and NRG's Counsel mutually agree in writing to proceed with this Agreement. If the reason for termination is that the Court fails to approve the Settlement, the Parties agree to make good faith efforts, over a period of 30 days from the date of the Court's decision, to negotiate revisions to the Agreement to address the reasons for the Court's decision before paragraph 10.3 below takes effect. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to all other Parties, provided, however, that the Parties shall present the issue to Magistrate Judge Goodman in good faith and in order to make reasonable efforts to resolve the issue before a Party exercises the right to terminate under this provision. Notwithstanding anything herein, the Parties agree that the Court's decision as to the amount of the Fee Award or the incentive award to the Class Representative, regardless of the amounts awarded, shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination of the Agreement, provided that the amounts awarded by the Court do not exceed the amounts permitted by this Agreement.

10.3 If this Agreement is terminated or fails to become effective for the reasons set forth in paragraphs 7.1, 7.2, 10.1, or 10.2, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Judgment

## **EXECUTION VERSION**

or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement had never been entered into and, pursuant to paragraph 11.5 below, this Agreement shall not be used for any purpose whatsoever against any of the Parties. Under such circumstances, the Settlement Administrator shall return the Settlement Fund to NRG.

### **11. MISCELLANEOUS PROVISIONS.**

11.1 The Parties: (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the terms and conditions of this Agreement. Class Counsel and NRG's Counsel agree to cooperate with one another in seeking entry of a Preliminary Approval Order and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

11.2 NRG agrees not to contest certification of the Settlement Class solely for the purposes of concluding the Settlement described herein. Notwithstanding, NRG reserves all other rights and objections as to the issue of class certification.

11.3 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Dobkin and Settlement Class Members, and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Dobkin or defended by NRG, or each

**EXECUTION VERSION**

or any of them, in bad faith or without a reasonable basis.

11.4 The Parties have relied upon the advice and representation of counsel, selected by them, concerning the claims hereby released. The Parties have read and understand fully this Agreement and have been fully advised as to the legal effect hereof by counsel of their own selection and intend to be legally bound by the same.

11.5 Whether the Effective Date occurs or this Settlement Agreement is terminated, neither this Agreement nor the Settlement memorialized herein, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement:

(a) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by Dobkin, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the settlement amount of the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

(b) is, may be deemed, or shall be used, offered or received against NRG as, an admission, concession, or evidence of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

(c) is, may be deemed, or shall be used, offered, or received against Dobkin or the Settlement Class, or each or any of them as an admission, concession, or evidence of, the infirmity of strength of any claims asserted in the Action, the truth or falsity of any fact asserted by NRG, or the availability or lack of availability of meritorious defenses to

**EXECUTION VERSION**

the claims raised in the Action;

(d) is, may be deemed, or shall be used, offered, or received against the Released Parties, or each or any of them as an admission or concession with respect to any liability, negligence, fault, or wrongdoing as against any Released Parties, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Provided, however, that the Settlement, this Agreement, and any acts performed or documents executed in furtherance of or pursuant to this Agreement or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. Moreover, if this Settlement Agreement is approved by the Court, any party or any of the Released Parties may file this Settlement Agreement or the Final Judgment in any action that may be brought against such party or Released Parties to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion, or similar defense or counterclaim;

(e) is, may be deemed, or shall be construed against Dobkin and the Settlement Class, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than, or greater than that amount that could have or would have been recovered after trial; and

(f) is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Dobkin and the Settlement Class, or each and any of them, or against the Released Parties, or each or any of them, that any of Dobkin's claims are with or without merit or that damages recoverable in the Action would have exceeded

**EXECUTION VERSION**

or would have been less than any particular amount.

11.6 Except insofar as expressly agreed upon by the Parties, neither of the Parties, nor Class Counsel, nor NRG's Counsel shall issue, or cause to be issued, any press release regarding the Settlement, the Settlement Agreement, the negotiations that culminated in the Settlement Agreement, or any of the facts or allegations comprising the Action. The Parties agree not to make any disparaging remarks regarding any of the Parties or their counsel.

11.7 The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

11.8 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.

11.9 All of the exhibits to this Settlement Agreement are material and integral parts hereof and are fully incorporated herein by reference, provided, however, any inconsistency between this Settlement Agreement and the appended exhibits will be resolved in favor of this Settlement Agreement.

11.10 This Agreement and its exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements, and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any party concerning this Settlement Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument by or on behalf of all Parties or their respective successors-in-interest.

11.11 Except as otherwise provided herein, each Party shall bear its own attorneys' fees

**EXECUTION VERSION**

and costs incurred in any way related to the Action.

11.12 Dobkin represents and warrants that he has not assigned any claim or right or interest relating to any of the Released Claims against the Released Parties to any other Person or party and that he is fully entitled to release the same.

11.13 Class Counsel represents and warrants that they currently do not represent any individual, and have not consulted with any individual, who has expressed interest in filing suit against any of the Released Parties, other than Erica Gennarini and Dobkin in this matter. Class Counsel shall make the same certification at the time of the Preliminary Approval Hearing and Final Approval Hearing.

11.14 If they have not already done so, Class Counsel agrees to immediately withdraw any outstanding subpoenas issued in this Action, in writing, and with notice to counsel for all Parties.

11.15 Class Counsel shall (a) move to intervene in the related civil action presently styled *Mara Allen and Gilbert Abarca v. NRG Energy, Inc., et al.*, Case No. 8:15-cv-01128-CJC-JCG, pending in the United States District Court for the Central District of California (the “*Allen Action*”), and seek to enforce this Settlement and Agreement in that forum should the Court in the *Allen Action* grant the *Allen Action* plaintiffs’ pending “Motion to Stay, Dismiss or Transfer the Later Filed *Dobkin Action* under the First to File Rule” (Dkt. No. 110), currently scheduled for hearing on September 11, 2017, and (b) move to intervene in the *Allen Action* and seek appointment as interim class counsel in the *Allen Action* should the Court in the *Allen Action* deny NRG’s pending “Motion to Stay Case Pending Classwide Settlement in Related Case” (Dkt. No. 97), currently scheduled for hearing on September 11, 2017.

11.16 Within fourteen (14) days of the Effective Date, Dobkin and Class Counsel shall

**EXECUTION VERSION**

(a) destroy any documents or ESI and copies thereof obtained during the course of this Action, including through third-party discovery subpoena, and (b) warrant to NRG's Counsel that Dobkin and Class Counsel have carried out the steps described in subpart (a) of this paragraph.

11.17 Each counsel or other Person executing this Settlement Agreement, any of its exhibits, or any related settlement documents on behalf of any Party hereto, hereby warrants and represents that such person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

11.18 This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Signature by digital facsimile or in PDF format will constitute sufficient execution of this Agreement. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

11.19 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Agreement.

11.20 This Settlement Agreement is deemed to have been prepared by counsel for all Parties, as a result of arm's-length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

11.21 This Settlement Agreement is governed by, and shall be construed in accordance with, the laws of the State of New Jersey without regard to any principles of conflict of or choice

**EXECUTION VERSION**

of laws.

11.22 Where this Settlement Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel:

**If to Class Counsel:**

Rafey S. Balabanian  
Eve-Lynn J. Rapp  
Edelson PC  
123 Townsend Street,  
Suite 100  
San Francisco, CA 94107

**If to NRG's Counsel:**

Andrew C. Glass  
Gregory N. Blase  
K&L Gates LLP  
State Street Financial Center  
One Lincoln Street  
Boston, MA 02111

**[SIGNATURE PAGE FOLLOWS]**



**EXECUTION VERSION**

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed, by their duly authorized attorneys.

Dated: 9/24/17

**MICHAEL DOBKIN**, individually and on behalf of Settlement Class Members,

By: 

Dated: 9/25/17

**EDELSON PC**  
Attorneys for Dobkin and for the Settlement Class

By: 

Dated: \_\_\_\_\_

**NRG RESIDENTIAL SOLAR SOLUTIONS LLC**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

**NRG ENERGY, INC.**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

**K&L GATES LLP**  
Attorneys for NRG

By: \_\_\_\_\_

**EXECUTION VERSION**

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed, by their duly authorized attorneys.

Dated: \_\_\_\_\_

**MICHAEL DOBKIN**, individually and on behalf of Settlement Class Members,

By: \_\_\_\_\_

Dated: \_\_\_\_\_

**EDELSON PC**  
Attorneys for Dobkin and for the Settlement Class

By: \_\_\_\_\_

Dated: 09/25/17

**NRG RESIDENTIAL SOLAR SOLUTIONS LLC**

By: [Signature]  
Its: Secretary

Dated: 9/25/17

**NRG ENERGY, INC.**

By: [Signature]  
Its: EVP: GC

Dated: \_\_\_\_\_

**K&L GATES LLP**  
Attorneys for NRG

By: \_\_\_\_\_

**EXECUTION VERSION**

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed, by their duly authorized attorneys.

Dated: \_\_\_\_\_

**MICHAEL DOBKIN**, individually and on behalf of Settlement Class Members,

By: \_\_\_\_\_

Dated: \_\_\_\_\_

**EDELSON PC**  
Attorneys for Dobkin and for the Settlement Class

By: \_\_\_\_\_

Dated: \_\_\_\_\_

**NRG RESIDENTIAL SOLAR SOLUTIONS LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_


**NRG ENERGY, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: 9/25/2017

**K&L GATES LLP**  
Attorneys for NRG

By:  \_\_\_\_\_

**EXECUTION VERSION**

# Exhibit A

[Claim Form]

*Dobkin v. NRG Residential Solar Solutions LLC.*  
 U.S.D.C. D.N.J. Case No. 3:15-cv-05089

**CLAIM FORM**

*Instructions. Fill out each section of this form and sign where indicated.*

<u>First Name</u>		<u>Last Name</u>
<u>Current Mailing Address</u>		
<u>Former Mailing Address (if Current Mailing Address is different from address on Notice You received)</u>		
<u>City</u>	<u>State</u>	<u>ZIP Code</u>
<u>Telephone Number(s) at which you received the Telephone Call(s)</u>		

**Settlement Class Member Affirmation:** By submitting this Claim Form, I declare that I received one or more telephone call(s) regarding the sale or leasing of a residential solar panel system at the telephone number(s) written above.

I state under penalty of perjury under the laws of the United States of America that the information provided above is true and correct.

Signature: \_\_\_\_\_

Date: \_\_\_\_ - \_\_\_\_ - \_\_\_\_  
 (MM-DD-YY)

Printed Name: \_\_\_\_\_

The Settlement Administrator will review your Claim Form. If accepted, you will be mailed a check for a *pro rata* share depending on the number of Approved Claims. This process takes time, please be patient. Regardless of the number of telephone calls you received, you may only submit one Claim Form. Additional Claim Forms will be disregarded.

**Questions, visit [www.\[website\].net](#) or call [\[toll free number\]](#)**

**EXECUTION VERSION**

# Exhibit B

[Email Notice]

**NOTICE OF CLASS ACTION SETTLEMENT**

*Dobkin v. NRG Residential Solar Solutions LLC.*  
U.S.D.C. D.N.J. Case No. 3:15-cv-05089

**IF YOU RECEIVED A TELEPHONE CALL REGARDING THE SALE OR LEASING OF A RESIDENTIAL SOLAR PANEL SYSTEM BY NRG RESIDENTIAL A CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS. YOU ARE RECEIVING THIS NOTICE BECAUSE NRG RESIDENTIAL SOLAR SOLUTIONS LLC'S BUSINESS RECORDS REFLECT THAT YOU LIKELY RECEIVED AT LEAST ONE OF THESE CALLS.**

XXX—«ClaimID» «MailRec»

«First1» «Last1»

«CO»

«Addr1» «Addr2»

«City», «St» «Zip» «Country»

By Order of the Court Dated: [date]

For complete information, visit [website] or call [toll-free number].

*A United States District Court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.*

A settlement has been reached in a class action lawsuit against NRG Residential Solar Solutions LLC (“NRG Residential”). The suit claims NRG Residential violated a federal law called the Telephone Consumer Protection Act (“TCPA”) by using prerecorded and/or autodialed calls to advertise the sale and leasing of residential solar panel systems; the suit also claims that NRG Residential violated the TCPA by making calls to telephone numbers registered on the National Do-Not-Call Registry (collectively, the “Telephone Call or Calls”). The suit is based on Telephone Calls that NRG Residential allegedly made directly or through third-party lead generators. The suit previously sought to hold NRG Residential’s parent corporation NRG Energy, Inc. (“NRG Energy,” and with NRG Residential, “NRG”) liable as well, although NRG Energy was previously dismissed without prejudice. NRG Residential denies (and NRG Energy previously denied) any wrongdoing. The Settlement does not establish who is correct, but rather is a compromise to end the lawsuit. The lawsuit is called *Dobkin v. NRG Residential Solar Solutions LLC*, Case No. 3:15-cv-05089, and is pending in the United States District Court for the District of New Jersey.

- **Why am I Being Contacted?** The Settlement Class includes about 317,000 individuals in the United States who received one or more Telephone Calls and as to whom NRG Residential was offered name and contact information as a “lead” as a result. NRG Residential’s records show you received at least one of these Telephone Calls and are a person within the “Settlement Class.”
- **What Can I Get Out of the Settlement?** If you complete a Claim Form, and the Court approves the Settlement, you could receive a cash payment. Settlement Class Members who submit a valid Claim Form will receive equal shares of a \$7 million Settlement Fund that NRG has agreed to create, after the payment of expenses and fees.
- **How Do I Get My Payment?** Just complete and sign the short Claim Form available at [website]. You can also call [toll-free number] to request a paper copy of the Claim Form. *All Claim Forms must be received by [claims deadline].*
- **What are My Options?** You can do nothing, submit a Claim Form, file a written objection to any of the Settlement terms, or exclude yourself from the Settlement. If you do nothing, submit a Claim Form, or file an objection, you won’t be able to sue NRG in a future lawsuit about the claims addressed in the

Settlement if the Court approves the Settlement. If you exclude yourself, you won't get a payment but you'll keep your right to sue NRG on an individual basis on the issues the Settlement concerns. You must contact the Settlement Administrator by mail to exclude yourself, subject to the Settlement terms regarding exclusions. *All Requests for Exclusion and Objections must be received by [exclusion/objection deadline].*

- **Do I Have a Lawyer?** Yes. The Court has appointed lawyers from the law firm Edelson PC as "Class Counsel." They represent you and other Persons within the Settlement Class. The lawyers will request to be paid from the Settlement Fund. You can hire your own lawyer, but you'll need to pay your own legal fees. The Court has also chosen Michael Dobkin—a Person within the Settlement Class, like you—to represent the Settlement Class (the "Class Representative").
- **When Will the Court Approve the Settlement?** The Court granted preliminary approval on [date]. The Court will hold a final approval hearing on [date] at [time] at the Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Trenton, New Jersey 08608. The Court will hear any objections, determine if the Settlement is fair, and consider Class Counsel's request for reasonable attorneys' fees and reimbursable expenses and costs (up to 33 1/3% of the Settlement Fund) and an incentive award to the Class Representative. These requests will be posted on the Settlement Website on [date].
- **How Can I Get More Information?** A more detailed notice regarding the Settlement, along with pertinent Settlement documents, is available at [website]. You can also call [toll-free number].


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



**EXECUTION VERSION**

# Exhibit C

[Postcard Notice]

<p style="text-align: center;"><u>LEGAL NOTICE</u>  <i>Dobkin v. NRG Residential Solar Solutions LLC.,</i>                  U.S.D.C. D.N.J. Case No. 3:15-cv-05089</p> <p style="text-align: center;"><b>If you received a telephone call regarding the sale or leasing of a residential solar panel system, a class action settlement may affect your rights.</b></p> <p>You are receiving this notice because NRG Residential Solar Solutions LLC's business records reflect that you likely received at least one of these calls.</p> <p>A United States District Court authorized this notice. You are <u>not</u> being sued. This is <u>not</u> a solicitation from a lawyer.</p> <p style="text-align: center;"><i>See reverse for details.</i>                  For complete information, visit <a href="#">[website]</a> or call <a href="#">[toll-free number]</a>.</p>	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin-left: auto; margin-right: auto;">                     US Postage Paid Permit #__                 </div> <p>NRG Residential Call Settlement Administrator P.O. Box 0000 City, ST 00000-0000</p> <div style="text-align: center;">                       Postal Service: Please do not mark barcode                 </div> <p>XXX—«ClaimID» «MailRec»</p> <p>«First1» «Last1»                  «CO»                  «Addr1» «Addr2»                  «City», «St» «Zip» «Country»</p> <p style="text-align: right;">By Order of the Court Dated: <a href="#">[date]</a></p>
--	---

**CLAIM FORM**

*Instructions. Fill out each section of this form and sign where indicated.*

<u>First Name</u>	<u>Last Name</u>	
<u>Current Mailing Address</u>		
<u>Former Mailing Address (if Current Mailing Address is different from address on Notice You received)</u>		
<u>City</u>	<u>State</u>	<u>ZIP Code</u>
<u>Telephone Number(s) at which you received the Telephone Call(s)</u>		

**Settlement Class Member Affirmation:** By submitting this Claim Form, I declare that I received one or more telephone call(s) regarding the sale or leasing of a residential solar panel system at the telephone number(s) written above. I state under penalty of perjury under the laws of the United States of America that the information provided above is true and correct.

Signature: \_\_\_\_\_ Date: \_\_\_\_ - \_\_\_\_ - \_\_\_\_  
 (MM-DD-YY)

Printed Name: \_\_\_\_\_

The Settlement Administrator will review your Claim Form. If accepted, you will be mailed a check for a *pro rata* share depending on the number of Approved Claims. This process takes time, please be patient. Regardless of the number of telephone calls you received, you may only submit one Claim Form. Additional Claim Forms will be disregarded.

**Questions, visit [www.\[website\].net](#) or call [\[toll free number\]](#)**

A Settlement has been reached in a class action lawsuit against NRG Residential Solar Solutions LLC (“NRG Residential”). The lawsuit claims NRG Residential violated a federal law called the Telephone Consumer Protection Act (“TCPA”) by using prerecorded and/or autodialed calls to advertise the sale and leasing of residential solar panel systems; the suit also claims that NRG Residential violated the TCPA by making calls to individuals whose telephone numbers were registered on the National Do-Not-Call Registry (collectively, the “Telephone Call or Calls”). The suit is based on Telephone Calls that NRG Residential allegedly made directly or through third-party lead generators. The suit previously sought to hold NRG Residential’s parent corporation NRG Energy, Inc. (“NRG Energy,” and with NRG Residential, “NRG”) liable as well, although NRG Energy was previously dismissed without prejudice. NRG Residential denies (and NRG Energy denied) any wrongdoing. The Settlement does not establish who is correct, but rather is a compromise to end the lawsuit. The lawsuit is called *Dobkin v. NRG Residential Solar Solutions LLC*, Case No. 3:15-cv-05089, and is pending in the United States District Court for the District of New Jersey.

**Why am I Being Contacted?** Settlement Class includes about 317,000 individuals in the United States who received one or more Telephone Calls and as to whom NRG Residential was offered name and contact information as a “lead” as a result. NRG Residential’s records show you received at least one of these Telephone Calls and are a person within the “Settlement Class.”

**What Can I Get Out of the Settlement?** If you complete a Claim Form and the Court approves the Settlement, you could receive a cash payment. Settlement Class Members will receive equal shares of a \$7 million Settlement Fund that NRG has agreed to create, after the payment of expenses and fees.

**How do I get my payment?** Just complete and sign the short Claim Form attached to this postcard and/or available at [website]. You can also call [toll-free number] for a paper copy of the Claim Form. *All Claim Forms must be postmarked by [claims deadline].*

**What are My Options?** You can do nothing, submit a Claim Form, file a written objection to any of the Settlement terms, or exclude yourself from the Settlement. If you do nothing, submit a Claim Form, or file an objection, and the Court approves the Settlement, you won’t be able to sue NRG 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 NRG on an individual basis on the issues the Settlement concerns. You must contact the Settlement Administrator by mail to exclude yourself, subject to the Settlement terms regarding exclusions. *All Requests for Exclusion and Objections must be received by [exclusion/objection deadline].*

**Do I have a lawyer?** Yes. The Court has appointed lawyers from the law firm Edelson PC as “Class Counsel.” They represent you and other Persons within the Settlement Class. The lawyers will request to be paid from the Settlement Fund. You can hire your own lawyer, but you’ll need to pay your own legal fees. The Court has also chosen Michael Dobkin—a Person within the Settlement Class, like you—to represent the Settlement Class (“the Class Representative”).

**When will the Court approve the Settlement?** The Court granted preliminary approval on [date]. The Court will hold a final approval hearing on [date] at [time] at the Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Trenton, New Jersey 08608. The Court will hear objections, determine if the Settlement is fair, and consider Class Counsel’s request for reasonable attorneys’ fees and reimbursable expenses and costs (up to 33 1/3 % of the Settlement Fund) and an incentive award to the Class Representative. These requests will be posted on the settlement website on [date].

**Visit [website] for complete information**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NO POSTAGE  
NECESSARY  
IF MAILED IN  
THE UNITED  
STATES

NRG Residential Call Settlement Administrator  
c/o [Settlement Administrator]  
PO Box 0000  
City, ST 00000-0000

**EXECUTION VERSION**

# Exhibit D

[Internet Notice]

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

*Dobkin v. NRG Residential Solar Solutions LLC*, Case No. 3:15-cv-05089

**If you received a telephone call regarding the sale or leasing of a residential solar panel system, a class action settlement may affect your rights.**

*A United States District Court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.*

- A Settlement has been reached in a class action lawsuit against NRG Residential Solar Solutions LLC (“Defendant” or “NRG Residential”). The suit claims NRG Residential violated a federal law called the Telephone Consumer Protection Act (the “TCPA”) by using prerecorded and/or autodialed calls to advertise the sale and leasing of residential solar panel systems; the suit also claims that NRG Residential violated the TCPA by making calls to telephone numbers registered on the National Do-Not-Call Registry (collectively, the “Telephone Call or Calls”). The suit is based on Telephone Calls that NRG Residential allegedly made directly or through third-party lead generators. The suit previously sought to hold NRG Residential’s parent corporation NRG Energy, Inc. (“NRG Energy,” and with NRG Residential, “NRG”) liable as well, although NRG Energy was previously dismissed without prejudice. NRG Residential denies (and NRG Energy denied) any wrongdoing. The Settlement does not establish who is right, but instead is a compromise to end the lawsuit. The lawsuit is called *Dobkin v. NRG Residential Solar Solutions LLC*, Case No. 3:15-cv-05089, and is pending in the United States District Court for the District of New Jersey.
- You are included in the Settlement Class if you received a Telephone Call or Calls and NRG Residential was offered your name and contact information as a “lead” from a third-party lead generator as a result, as reflected in NRG Residential’s business records. You may be entitled to a cash payment if you affirm that you received such Telephone Calls by submitting a Claim Form and your name and contact information appear in NRG Residential’s business records.
- Settlement Class Members who submit valid Claim Forms will be eligible to receive an equal, or *pro rata*, share of a \$7 million Settlement Fund that NRG has agreed to establish, after the payment of expenses and fees. Each Settlement Class Member who submits a valid Claim Form will receive a portion of this fund, after all notice and administration costs, the incentive award to the Class Representative, and attorneys’ fees to Class Counsel have been paid. As part of the Settlement, NRG Residential has also confirmed that it no longer purchases leads from third-party lead generators as a result of lead-generator telephone calls to such persons.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM</b>	This is the only way to receive a payment, subject to the Court's approval of the Settlement. Claim Forms will be subject to validation before payment is made.
<b>EXCLUDE YOURSELF</b>	You will receive no payment, but you will retain any rights you currently have to sue NRG on an individual basis about the issues in this case.
<b>OBJECT</b>	Write to the Court explaining why you don't like the Settlement.
<b>ATTEND A HEARING</b>	If you object to the Settlement, you may also ask to speak in Court about the fairness of the Settlement.
<b>DO NOTHING</b>	You will receive no payment under the Settlement, but nevertheless be bound by its terms if approved and give up your rights to sue NRG about the issues in this case.

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

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. What is this notice and why should I read it?**

A Court authorized this notice to let you know about a proposed Settlement with NRG. You have legal rights and options that you may act on before the Court decides whether to approve the proposed Settlement. You may be eligible to receive a cash payment as part of the Settlement. This notice explains the lawsuit, the Settlement, and your legal rights.

Judge Brian R. Martinotti of the United States District Court for the District of New Jersey is overseeing this putative class action. The case is called *Dobkin v. NRG Residential Solar Solutions LLC*, Case No. 3:15-cv-05089. The person who filed the lawsuit, Michael Dobkin, is the Plaintiff. The company he sued, NRG Residential, is the Defendant, and its parent corporation, NRG Energy, was previously a party to the lawsuit, but was dismissed

without prejudice. You do not need to live in New Jersey to get a payment under the Settlement.

## **2. What is a class action lawsuit?**

A class action is a lawsuit in which one or more plaintiffs—in this case, Michael Dobkin (the “Class Representative”)—sue on behalf of a group of people who are alleged to have similar claims. Together, this group is called a “class” and consists of “class members.” In a class action, the court resolves the issues for all class members, except those who exclude themselves from the class. After the Parties reached an agreement to settle this case, the Court granted preliminary approval of the Settlement and recognized it as a case that should 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 NRG Residential placed or had third parties place prerecorded and/or autodialed calls to the telephones of consumers without their consent promoting the sale and leasing of residential solar panel systems. The suit further alleges that these calls were made to individuals whose telephone numbers were registered on the National Do-Not-Call Registry. The lawsuit alleges that, as a result of these calls, NRG Residential violated a federal law called the Telephone Consumer Protection Act.

NRG Residential denies these allegations and contends that it acted with consumers’ consent, that the calls were not prerecorded and/or autodialed or made to numbers registered on the National Do-Not-Call Registry, that it is not responsible for calls made by third parties, or that the calls otherwise did not violate the Act. No court has decided who is right. The parties are entering into the Settlement to avoid further time-consuming and expensive litigation. The Settlement is not an admission of wrongdoing by NRG. More information about the complaint filed in the lawsuit, and NRG Residential’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. That way, they can avoid the uncertainty and expense of ongoing litigation, and Settlement Class Members will get compensation now rather than years later—if ever. 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 Settlement Class of about 317,000 individuals in the United States who received a Telephone Call and as to whom NRG Residential was offered name and contact information as a “lead” by a lead generator as a



result. All Settlement Class Members appear on a list in NRG Residential's records of leads offered by lead generators (the "Class List").

If you meet the above definition, you are a Settlement Class Member, unless you request exclusion from the Settlement. Most Persons within the Settlement Class will receive either an email summary of this notice or a postcard summary of this notice in the mail.

#### **6. What were the allegedly unconsented calls about?**

The calls covered by this Settlement were calls promoting the sale or leasing of residential solar panel systems by NRG Residential.

### **THE SETTLEMENT BENEFITS**

#### **7. What does the Settlement provide?**

**Cash Payments to Settlement Class Members:** NRG has agreed to create a \$7 million Settlement Fund, from which Settlement Class Members who submit valid claims will receive cash payments. To get a payment, Settlement Class Members must submit a valid claim before the deadline of [claims deadline]. The amount Settlement Class Members will receive will depend on the total number of valid claims received. If the number of valid claims is low, then the amount of individual payments will go up. But if the number of valid claims is high, then the amount of individual payments will go down.

All checks issued to Settlement Class Members will become void unless cashed within one hundred twenty (120) days after the date of issuance.

**Certification by NRG Residential:** In addition to the monetary relief provided under the Settlement, NRG Residential has confirmed that it is no longer operating a business pursuant to which it purchases leads from a third-party lead generator as a result of that lead generator's telephone calls to such persons.

### **HOW TO GET BENEFITS**

#### **8. How do I make a claim?**

If you want to get a cash payment under the Settlement, you must fill out and submit a valid Claim Form. An online Claim Form is available on this website and can be filled out and submitted online. If you received a postcard, a Claim Form was attached. If you received an email, there was a link to the Claim Form. You can also get a paper Claim Form by calling [toll-free number]. We encourage you to submit a claim online. It's faster, and it's free.

The Claim Form requires you to provide the following information: (1) your name, current mailing address, and former mailing address (if your current mailing address is different from the address on the email or postcard you received), (2) the telephone number(s) at which you received the Telephone Call(s), and (3) a sworn statement that you received the Telephone Call(s). Claim Forms will be checked against the Class List for the purposes of verifying the claim.

Each Settlement Class Member is entitled to submit one (1) Claim Form regardless of number of telephone calls allegedly received or telephone numbers at which the Settlement Class Member received a call. If a Settlement Class Member submits more than one (1) Claim Form, any additional Claim Form will be disregarded for the purposes of determining the *pro rata* share of the Settlement Fund due to Settlement Class Members who submit Approved Claims.

**9. When will I get my payment?**

The hearing to consider the fairness of the Settlement is scheduled for [Final Approval Hearing Date]. If the Court approves the Settlement, eligible Settlement Class Members whose claims were approved by the Settlement Administrator will be sent a check. Please be patient. All checks will expire and become void one hundred twenty (120) days after they are issued.

**THE LAWYERS REPRESENTING YOU**

**10. Do I have a lawyer in this case?**

Yes, the Court has appointed lawyers Rafey S. Balabanian and Eve-Lynn Rapp of Edelson PC as the attorneys to represent you and other Settlement Class Members. These attorneys are called “Class Counsel.” In addition, the Court appointed Plaintiff Michael Dobkin to serve as the Class Representative. He’s a class member like you. Class Counsel can be reached by calling [phone 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 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 payment to them of reasonable attorneys’ fees and reimbursable expenses and costs of up to 33 1/3% of the Settlement Fund and will also request payment of an incentive award of \$5,000 to the Class Representative. The Court will determine the proper amount of any reasonable attorneys’ fees and reimbursable expenses and costs to award Class Counsel and the proper amount of any incentive award to the Class Representative. The Court may award less than the amounts requested. Any money not awarded will stay in the Settlement Fund to pay Settlement Class Members who submit valid claims.

Class Counsel will file with the Court and post on the Settlement Website its request for attorneys’ fees and incentive award on [date].

## YOUR RIGHTS AND OPTIONS

### 13. What happens if I do nothing at all?

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, as well as the release to which the Settlement Class is agreeing. Unless you exclude yourself, you won't be able to start a lawsuit or be part of any other lawsuit against NRG for the claims or legal issues being resolved by this Settlement.

### 14. What happens if I ask to be excluded?

If you exclude yourself from the Settlement, you will receive no payment under the Settlement. However, you will not be in the Settlement Class. You will keep your right to start your own lawsuit against NRG on an individual basis for the same legal claims made in this lawsuit. You will not be legally bound by the Court's judgments related to the Settlement Class and NRG in this class action or the release to which the Settlement Class is agreeing.

### 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 stating that you want to be excluded from the Settlement in *Dobkin v. NRG Residential Solar Solutions LLC*, Case No. 3:15-cv-05089 (D.N.J.). Your letter must also include your (1) name, current mailing address, and former mailing address, if your current mailing address is different from the mailing address listed on the email or postcard you received, (2) the telephone number(s) at which you received the Telephone Call(s), (3) a statement that you wish to be excluded from the Settlement, and (4) your signature. You must mail your exclusion request no later than **[objection / exclusion deadline]** to:

NRG Residential Call Settlement Administrator  
P.O. Box 0000  
City, ST 00000-0000

You cannot exclude yourself in any other way, such as on the phone or by email. You also cannot exclude other persons within the Settlement Class, nor can other persons within the Settlement Class exclude you.

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

No. Unless you exclude yourself, you give up any right to sue NRG 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, you cannot submit a Claim Form to ask for a payment, nor can you object to the terms of the Settlement.

**18. How do I object to the Settlement?**

If you do not exclude yourself from the Settlement, 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. To object, you must file a letter or brief with the Court stating that you object to the Settlement in *Dobkin v. NRG Residential Solar Solutions LLC*, Case No. 3:15-cv-05089 (D.N.J.), no later than [objection / exclusion deadline]. Your objection should be sent to the United States District Court for the District of New Jersey at the following address:

Clerk of Court, United States District for the District of New Jersey  
 Clarkson S. Fisher Building & U.S. Courthouse  
 402 East State Street, Room 2020  
 Trenton, New Jersey 08608

If you are represented by a lawyer other than Class Counsel, the lawyer must file your objection through the Court's CM/ECF system. Include your lawyer's contact information in the objection.

Your letter or brief must indicate the case name *Dobkin v. NRG Residential Solar Solutions LLC*, Case No. 3:15-cv-05089 (D.N.J.), be personally signed, and include the following information: (1) your name, current mailing address, and former mailing address, if your current mailing address is different from the mailing address listed on the email or postcard you received), (2) all arguments, citations, and evidence supporting your objection, including copies of any documents you rely on, (3) a statement that you are a Settlement Class Member, (4) the telephone number(s) at which you received the Telephone Call(s), (5) the name and contact information of any and all attorneys representing, advising, profiting, or in any way assisting you in connection with the preparation or submission of the objection, (6) copies of any papers, briefs, or other documents upon which the objection is based, and (7) a statement of whether you intend to appear at the Final Approval Hearing either personally or through counsel. If you are represented by a lawyer, he or she must file an appearance or seek *pro hac vice* admission.

In addition to filing your objection with the Court, you must send copies of your objection and any supporting documents to both Class Counsel and the NRG's Counsel at the addresses listed below:

Class Counsel	NRG's Counsel
Rafey S. Balabanian Eve-Lynn J. Rapp EDELSON PC 123 Townsend Street Suite 100 San Francisco, CA 94107	Andrew C. Glass Gregory N. Blase K&L Gates LLP State Street Financial Center One Lincoln Street Boston, MA 02111

The filing of an objection does not guarantee that the Court will decline to approve the Settlement. The Court may overrule any objection filed and approve the Settlement.

**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. Excluding yourself from the Settlement 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 FINAL APPROVAL HEARING**

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

The Court will hold the Final Approval Hearing at [time] on [date], before the Honorable Brian R. Martinotti at the Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Trenton, New Jersey 08608. The purpose of the hearing is for the Court to determine whether the Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class. **At the hearing, the Court will consider any objections that are filed by the deadline specified above and hear arguments concerning the fairness of the proposed Settlement, including those related to the amount requested by Class Counsel for attorneys' fees and expenses and the incentive award to the Class Representative.**

**Note:** The date and time of the Final Approval Hearing are subject to change by Court Order. Any changes will be posted at the Settlement Website, [website], and through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.njd.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 to the hearing at your own expense. If you file 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, the Court will consider it. You may also pay a lawyer to attend, but you don't have to.

**22. May I speak at the hearing?**

Yes, if you do not exclude yourself from the Settlement Class. 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. If you filed an objection (*see* Question 18 above) and intend to appear at the hearing, you must state your intention to do so in your objection.

## 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], contact Class Counsel at [phone number], access the Court docket in this case through the Court's PACER system at <https://ecf.njd.uscourts.gov>, or visit the office of the Clerk of the Court for the United States District Court for the District of New Jersey, Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Trenton, New Jersey 08608 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 NRG WITH QUESTIONS ABOUT THE SETTLEMENT OR CLAIMS PROCESS.**

**EXECUTION VERSION**

# Exhibit E

[Proposed Preliminary Approval Order]

Stefan Louis Coleman  
Law Offices of Stefan L. Coleman  
1072 Madison Ave, Suite 1  
Lakewood, New Jersey 08701  
Telephone: 877-333-9427  
Email: law@stefancoleman.com

Rafey S. Balabanian (*Pro Hac Vice*)  
rbalabanian@edelson.com  
Eve-Lynn J. Rapp (*Pro Hac Vice*)  
erapp@edelson.com  
EDELSON PC  
123 Townsend Street, Suite 100  
San Francisco, California 94107  
Tel: 415.212.9300

*Attorney for Plaintiff*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

MICHAEL DOBKIN, individually and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

NRG RESIDENTIAL SOLAR SOLUTIONS  
LLC, a Delaware limited liability company,

*Defendant.*

Case No. 3:15-cv-05089-BRM-LHG

Hon. Brian R. Martinotti, U.S.D.J.

Hon. Lois H. Goodman, U.S.M.J.

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
SETTLEMENT**

**THIS MATTER** having come before the Court by way of plaintiff Michael Dobkin’s motion for preliminary approval of class settlement pursuant to Federal Rule of Civil Procedure 23, the Court has reviewed the motion, including the Class Action Settlement Agreement (“Settlement Agreement”),<sup>1</sup> and based on this review and the findings below, the Court finds good cause to GRANT the motion.

<sup>1</sup> This Order incorporates by reference the definition of any capitalized terms as set forth in the Settlement Agreement except as otherwise defined herein.



## **FINDINGS**

1. The Court has conducted a preliminary evaluation of the Settlement set forth in the Settlement Agreement for fairness, adequacy, and reasonableness. Based on this preliminary evaluation, the Court finds that: (i) there is good cause to believe the Settlement Agreement, and the Settlement memorialized therein, is fair, reasonable, and adequate, (ii) the Settlement has been negotiated at arm's-length between experienced attorneys familiar with the legal and factual issues of this case and was reached with the assistance of the Honorable Lois H. Goodman of this Court, and (iii) the Settlement warrants Notice of its material terms to the Settlement Class for their consideration and reaction.

2. The Notice, in the forms appended to the Settlement Agreement, complies with due process because the Notice and its various forms are reasonably calculated to adequately apprise Persons within the Settlement Class of (a) the pending lawsuit, (b) the proposed Settlement, and (c) their rights, including the right to either participate in the Settlement, exclude themselves from the Settlement, or object to the Settlement.

3. Pursuant to Federal Rule of Civil Procedure 23(b)(3), and for the purposes of settlement only, the Court preliminarily finds that the Settlement Class is so numerous that joinder of all members is impracticable, that there are questions of law or fact common to the Settlement Class which predominate over any questions affecting only individual members of the Settlement Class, that the claims of the Class Representative are typical of the claims of the Settlement Class, that the Class Representative will fairly and adequately protect the interests of the Settlement Class, and that a class action would be superior to other available methods for fairly and efficiently adjudicating the controversy.

**IT IS HEREBY ORDERED THAT:**

4. **Certification.** The Court hereby preliminarily certifies the following class for the purposes of settlement only: all Persons with respect to whom NRG Residential was offered a lead from a third-party lead generator as a result of the lead generator's telephone call to such person. Based on the Parties' discovery and investigation to date, there are approximately 317,000 Persons within the Settlement Class. Excluded from the Settlement Class are (a) any Judge or Magistrate Judge presiding over this action and members of their immediate families; (b) NRG Residential, NRG Residential's subsidiaries, parents, successors, predecessors, and any entity in which NRG Residential or its parents have a controlling interest and their current or former officers, directors, agents, attorneys and employees; (c) all Persons who have had their claims against NRG Residential or NRG Energy, Inc. or their respective subsidiaries, parents, successors, predecessors, and any entity in which NRG Residential or its parents have a controlling interest and their current or former officers, directors, agents, attorneys and employees, previously released and/or adjudicated on the merits; and (d) counsel for all Parties and members of their families.

5. **Settlement Approval.** The Settlement Agreement, and the Notice, in the forms appended to the Settlement Agreement as Exhibits B - D, are preliminarily approved.

6. **Appointment of Class Representative and Class Counsel.** Plaintiff Michael Dobkin is hereby appointed Class Representative. Rafey S. Balabanian and Eve-Lynn Rapp of the law firm Edelson PC are hereby appointed Class Counsel.

7. **Provision of Notice.** The Court approves the proposed plan for giving Notice to the Settlement Class in the manner specified under paragraphs 4.2 and 4.3 of the Settlement Agreement. KCC Class Action Services, LLC (the "Settlement Administrator") is approved to

act as Settlement Administrator and to notify Persons within the Settlement Class of the Settlement in the manner specified under paragraphs 4.2 and 4.3 of the Settlement Agreement.

8. **Process and Deadline for Submitting Claims.** Settlement Class Members who want to submit a Claim Form shall do so no later than \_\_\_\_\_ [INSERT DATE 90 DAYS AFTER ENTRY OF THIS PRELIMINARY APPROVAL ORDER]. Each Settlement Class Member is entitled to submit one (1) Claim Form regardless of number of telephone calls allegedly received or telephone numbers at which the Settlement Class Member received a call. If a Settlement Class Member submits more than one (1) Claim Form, any additional Claim Form will be disregarded for the purposes of determining the *pro rata* share of the Settlement Fund due to Settlement Class Members who submit Approved Claims.

9. **Objection to Settlement.** Settlement Class Members who want to object to the Settlement Agreement must file written objections with the Court, and deliver such objections to Class Counsel and NRG's Counsel, no later than \_\_\_\_\_ [INSERT DATE 90 DAYS AFTER ENTRY OF THIS PRELIMINARY APPROVAL ORDER]. The delivery date will be deemed to be the date the objection is deposited in the U.S. Mail as evidenced by the postmark, and if no such date can be discerned, the date the objection is received by the Court will control. The objection must be signed by the Settlement Class Member and must include: (a) his or her name and current U.S. mailing address (as well as his or her former U.S. mailing address if his or her current U.S. mailing address is different from the U.S. mailing address listed on the Notice sent to the Settlement Class Member), (b) all arguments, citations, and evidence supporting the objection (including copies of any documents relied on), (c) a statement that the objector is a Settlement Class Member, (d) the telephone number(s) at which he or she allegedly received a call regarding the sale or leasing of a residential solar panel system, (e) the name and

contact information of any and all attorneys representing, advising, or in any way assisting the objecting Settlement Class Member in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection, and (f) a statement whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing and, if so, whether personally or through counsel.

10. **Failure to Object to Settlement.** Settlement Class Members who do not object to the Settlement Agreement in the manner specified above will (a) be deemed to have waived their right to object to the Settlement Agreement, (b) be foreclosed from objecting (whether by a subsequent objection, intervention, appeal, or any other process) to the Settlement Agreement, and (c) not be entitled to speak at the Final Approval Hearing.

11. **Requesting Exclusion.** Persons within the Settlement Class who want to be excluded from the Settlement must send a letter, postcard, or other writing to the address listed in the Notice that is signed by the Person within the Settlement Class seeking exclusion from the Settlement no later than \_\_\_\_\_ [INSERT DATE 90 DAYS AFTER ENTRY OF THIS PRELIMINARY APPROVAL ORDER]. Persons within the Settlement Class seeking to request exclusion must include in the written request (a) his or her name and U.S. mailing address (as well as his or her former U.S. mailing address if his or her current U.S. mailing address is different from the U.S. mailing address listed on the Notice sent to the Person within the Settlement Class), (b) the telephone number(s) at which he or she allegedly received a call regarding the sale or leasing of a residential solar panel system, (c) the caption for the Action (i.e., *Dobkin v. NRG Residential Solar Solutions LLC*, Case No. 3:15-cv-05089 (D.N.J.)), and (d) a statement that he or she wishes to be excluded from the Settlement Class. “Mass” or “class” requests for exclusion shall not be allowed, meaning an attorney or other representative

may not send a letter or other communication on behalf of Settlement Class Members seeking to opt out of the Settlement Agreement. No Person shall purport to exercise any exclusion rights of any other Person, or purport to exclude other Persons within the Settlement Class as a group, aggregate, or class involving more than one Person within the Settlement Class, or as an agent or representative. Any such purported exclusion shall be void, and Persons within the Settlement Class that are the subject of such purported exclusion shall be treated as Settlement Class Members for all purposes.

12. **Termination.** If the Settlement Agreement terminates for any reason, the following will occur: (a) the Preliminary Approval Order and all of its provisions will be vacated and this Order will not waive or otherwise impact the Parties' rights or arguments in any respect, and (b) this Action will revert to its previous status in all respects as it existed immediately before the Parties executed the Settlement Agreement. No term or draft of the Settlement Agreement, or any part of the Parties' settlement discussions, negotiations, or documentation will have any effect or be admissible in evidence for any purpose in the Action or any other proceeding.

13. **No Admissions.** Nothing in the Settlement Agreement or this Order, nor the proceedings and statements made pursuant to either or any papers filed relating to them may be construed as an admission or concession on any point of fact or law against any Party.

14. **Stay of Dates and Deadlines.** The stay entered on August 11, 2017 (Dkt. No. 79) is hereby continued, and all proceedings and deadlines continue to be stayed and suspended until further notice from the Court, except for such actions as are necessary to implement the Settlement Agreement and this Order.

15. **Fairness Hearing.** On \_\_\_\_\_ [INSERT DATE NO LESS

THAN 150 AND NO MORE THAN 180 DAYS AFTER ENTRY OF THIS PRELIMINARY APPROVAL ORDER], the Court will hold a Final Approval Hearing to determine whether (i) the Settlement Agreement should be finally approved as fair, reasonable, and adequate, and (ii) Class Counsel's application for reasonable attorneys' fees and reimbursable expenses and costs, and an incentive award to the Class Representative should be granted. All papers supporting Plaintiff's request for reasonable attorneys' fees and reimbursable expenses and costs and an incentive award to the Class Representative must be filed no later than \_\_\_\_\_ [INSERT DATE 14 DAYS PRIOR TO OBJECTION/EXCLUSION DEADLINE]. Any motion for final approval of the Settlement Agreement, or any other paper supporting such approval, shall be filed no later than seven (7) days before the Final Approval Hearing. This Court may order the Final Approval Hearing to be postponed, adjourned, or continued. If that occurs, neither NRG nor the Settlement Administrator will be required to provide additional notice to Settlement Class Members.

Date: \_\_\_\_\_, 2017

\_\_\_\_\_  
THE HONORABLE BRIAN R. MARTINOTTI  
UNITED STATES DISTRICT JUDGE

**EXECUTION VERSION**

# Exhibit F

[Proposed Final Approval Order and Judgment]

Stefan Louis Coleman  
Law Offices of Stefan L. Coleman  
1072 Madison Ave, Suite 1  
Lakewood, New Jersey 08701  
Telephone: 877-333-9427  
Email: law@stefancoleman.com

Rafey S. Balabanian (*Pro Hac Vice*)  
rbalabanian@edelson.com  
Eve-Lynn J. Rapp (*Pro Hac Vice*)  
erapp@edelson.com  
EDELSON PC  
123 Townsend Street, Suite 100  
San Francisco, California 94107  
Tel: 415.212.9300

*Attorney for Plaintiff*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

MICHAEL DOBKIN, individually and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

NRG RESIDENTIAL SOLAR SOLUTIONS  
LLC, a Delaware limited liability company,

*Defendant.*

Case No. 3:15-cv-05089-BRM-LHG

Hon. Brian R. Martinotti, U.S.D.J.

Hon. Lois H. Goodman, U.S.M.J.

**[PROPOSED] FINAL ORDER  
APPROVING CLASS SETTLEMENT**

**THIS MATTER** having come before the Court by way of plaintiff Michael Dobkin's motion for final approval of class settlement pursuant to Federal Rule of Civil Procedure 23 and plaintiff Michael Dobkin's motion for reasonable attorneys' fees and reimbursable expenses and costs, and incentive award, the Court has reviewed the motions, including the Class Action Settlement Agreement ("Settlement Agreement"),<sup>1</sup> as well as any objections filed with or presented to the Court and the Parties' responses to any objections, and considered the oral

<sup>1</sup> This Order incorporates by reference the definition of any capitalized terms as set forth in the Settlement Agreement except as otherwise defined herein.



argument of counsel and any objectors who appeared, and based on this review and the findings below, the Court finds good cause to GRANT the motion.

## **FINDINGS**

1. This Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all Settlement Class Members.
2. On [date], this Court preliminarily approved the Settlement and certified, for settlement purposes only, the Settlement Class consisting of: all Persons with respect to whom NRG Residential was offered a lead from a third-party lead generator as a result of the lead generator's telephone call to such person.
3. KCC Class Action Services, LLC (the "Settlement Administrator") provided notice to Persons within the Settlement Class in Compliance with paragraphs 4.2 and 4.3 of the Settlement Agreement, due process, and Rule 23 of the Federal Rules of Civil Procedure. The Notice (a) fully and accurately informed Persons within the Settlement Class about the lawsuit and the Settlement, (b) provided sufficient information so that Persons within the Settlement Class were able to decide whether to accept the benefits offered (including whether to submit a Claim Form), opt-out and pursue their own remedies, or object to the proposed Settlement, (c) provided procedures for Settlement Class Members to file written objections to the proposed Settlement, to appear at the Final Approval Hearing, and to state objections to the proposed Settlement, and (d) provided the time, date, and place of the Final Approval Hearing. The Settlement Agreement is fair, reasonable, and adequate and in the best interests of the Settlement Class in light of the complexity, expense, and duration of litigation and the risks involved in establishing liability and damages and in maintaining the class action through trial and appeal. The Settlement Agreement was negotiated at arm's length, in good faith, by capable and

experienced counsel, with full knowledge of the facts, the law, and the risks inherent in litigating the Act, and with the active involvement of the Parties and the assistance of the Honorable Lois H. Goodman of this Court.

4. The consideration provided under the Settlement Agreement constitutes fair value given in exchange for the release of the Released Claims against the Released Parties. The Court finds that the consideration to be paid to the Settlement Class Members is reasonable, considering the facts and circumstances of the claims and affirmative defenses asserted in the Action, and the potential risks and likelihood of success of alternatively pursuing trials on the merits, and given that the Settlement confers substantial economic benefits on the Settlement Class Members, is not contrary to the public interest, will provide the Parties with repose from litigation, and is supported by Plaintiff and Class Counsel.

5. The Parties adequately performed their obligations under the Settlement Agreement.

6. The deadline for Settlement Class Members to submit a Claim Form was \_\_\_\_\_.

7. As set forth in the separate order granting Plaintiff's and Class Counsel's motion for attorneys' fees and costs, an award of \$\_\_\_\_\_ [AN AMOUNT NOT TO EXCEED \$2,333,333.33] in attorneys' fees and costs to Class Counsel is fair and reasonable in light of the nature of this Action, Class Counsel's experience and efforts in prosecuting this Action, and the benefits obtained for the Settlement Class. The award will be paid out of the Settlement Fund pursuant to paragraphs 9.1 through 9.2 of the Settlement Agreement.

8. An incentive award to Plaintiff Michael Dobkin of \$\_\_\_\_\_ [AN AMOUNT NOT TO EXCEED \$5,000.00] is fair and reasonable in light of Plaintiff's risks in

commencing this Action as the Class Representative, the time and effort spent by Plaintiff in litigation this Action as the Class Representative, and Plaintiff's public interest service. The award will be paid out of the Settlement Fund pursuant to paragraphs 9.3 through 9.4 of the Settlement Agreement.

9. The persons listed on Exhibit A hereto are found to have validly excluded themselves from the Settlement in accordance with the provisions of the Preliminary Approval Order.

**IT IS HEREBY ORDERED THAT:**

10. **Settlement Class.** The Court hereby finally certifies the following class for the purposes of settlement only: all Persons with respect to whom NRG Residential was offered a lead from a third-party lead generator as a result of the lead generator's telephone call to such person. Excluded from the Settlement Class are (a) any Judge or Magistrate Judge presiding over this action and members of their immediate families; (b) NRG Residential, NRG Residential's subsidiaries, parents, successors, predecessors, and any entity in which NRG Residential or its parents have a controlling interest and their current or former officers, directors, agents, attorneys and employees; (c) all Persons who have had their claims against NRG Residential or NRG Energy, Inc. or their respective subsidiaries, parents, successors, predecessors, and any entity in which NRG Residential or its parents have a controlling interest and their current or former officers, directors, agents, attorneys and employees, previously released and/or adjudicated on the merits; and (d) counsel for all Parties and members of their families. For the purposes of settlement only, the Court finds that the Settlement Class is so numerous that joinder of all members is impracticable, that there are questions of law or fact common to the Settlement Class which predominate over any questions affecting only individual members of the Settlement

Class, that the claims of the Class Representative are typical of the claims of the Settlement Class, that the Class Representative will fairly and adequately protect the interests of the Settlement Class, and that a class action would be superior to other available methods for fairly and efficiently adjudicating the controversy.

11. **Binding Effect of Order.** This order applies to all claims or causes of action settled under the Settlement Agreement, and binds Plaintiff and all Persons within the Settlement who did not properly request exclusion under paragraph 11 of the Order Granting Preliminary Approval of Class Settlement. This order does not bind persons who filed a timely and valid request for exclusion. Attached hereto as Exhibit A is a list of persons who properly requested to be excluded from the Settlement.

12. **Release.** Plaintiff and all Settlement Class Members are (a) deemed to have released and discharged NRG Residential and the Released Parties from all claims arising out of or asserted in this Action and all claims released under the Settlement Agreement, and (b) barred and permanently enjoined from asserting, instituting, or prosecuting, either directly or indirectly, these claims. The full terms of the release described in this paragraph are set forth in section 3 of the Settlement Agreement and are specifically approved and incorporated herein by reference (the "Release").

13. **Class Relief.** The Settlement Fund, consisting of seven million United States dollars and no cents (\$7,000,000.00), shall be used to pay Settlement Class Members who submit Approved Claims. Each Settlement Class Member submitting an Approved Claim shall receive a *pro rata* share of the Settlement Fund, minus costs, fees, and expenses, as provided in paragraph 2.1 of the Settlement Agreement.

14. **Administration Fee.** The Settlement Administrator is authorized to withdraw

from the Settlement Fund moneys sufficient to pay the Settlement Administration Expenses according to the terms of the Settlement Agreement. Such payment shall have priority to the funds in the Escrow Account containing the Settlement Fund over the Fee Award, the incentive award, and the payments to the Settlement Class Members who submit Approved Claims.

15. **Appointment of Class Representative and Class Counsel.** Plaintiff Michael Dobkin was previously certified as Class Representative and shall implement the Settlement in accordance with the Settlement Agreement. As previously appointed, Rafey S. Balabanian and Eve-Lynn Rapp of the law firm Edelson PC are Class Counsel. Class Counsel are experienced in class litigation, including litigation of similar claims, and have fairly and adequately represented the interests of the Settlement Class. Class Counsel and the Class Representative have fairly and adequately protected the Settlement Class's interests and must continue to do so.

16. **Attorneys' Fees and Costs.** Class Counsel is awarded \$\_\_\_\_\_ [AN AMOUNT NOT TO EXCEED \$2,333,333.33] in attorneys' fees and costs. Payment shall be made from the Settlement Fund pursuant to paragraph 9.2 of the Settlement Agreement.

17. **Incentive Award.** Plaintiff Michael Dobkin is awarded \$\_\_\_\_\_ [AN AMOUNT NOT TO EXCEED \$5,000.00] as an incentive award. Payment shall be made from the Settlement Fund pursuant to paragraph 9.4 of the Settlement Agreement.

18. **Dismissal with Prejudice.** The Court hereby dismisses the Action in its entirety with prejudice and without fees or costs except as otherwise provided for herein.

19. **Termination.** If the Effective Date does not occur for any reason, the following will occur: (a) the Final Judgment (consisting of this Order and the separately entered Judgment) and all of its provisions will be vacated by their own terms, including, but not limited to, the Fee Award and the incentive award, and the Final Judgment will not waive or otherwise impact the

Parties' rights or arguments in any respect, and (b) the Action will revert to the status that existed before the Settlement Agreement's execution date. No term or draft of the Settlement Agreement, or any part of the Parties' settlement discussions, negotiations, or documentation will have any effect or be admissible in evidence for any purpose in the Action or any other proceeding.

20. **The Court's Continuing Jurisdiction.** Pursuant to the Parties' request, the Court will and does retain jurisdiction over this Action and the Parties until final performance of the Settlement Agreement.

21. **Entry of Judgment.** The Clerk of Court is hereby directed to enter as a separate document on the docket the accompanying Judgment.

Date: \_\_\_\_\_, 201\_

\_\_\_\_\_  
THE HONORABLE BRIAN R. MARTINOTTI  
UNITED STATES DISTRICT JUDGE

Stefan Louis Coleman  
Law Offices of Stefan L. Coleman  
1072 Madison Ave, Suite 1  
Lakewood, New Jersey 08701  
Telephone: 877-333-9427  
Email: law@stefancoleman.com

Rafey S. Balabanian (*Pro Hac Vice*)  
rbalabanian@edelson.com  
Eve-Lynn J. Rapp (*Pro Hac Vice*)  
erapp@edelson.com  
EDELSON PC  
123 Townsend Street, Suite 100  
San Francisco, California 94107  
Tel: 415.212.9300

*Attorney for Plaintiff*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

MICHAEL DOBKIN, individually and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

NRG RESIDENTIAL SOLAR SOLUTIONS  
LLC, a Delaware limited liability company,

*Defendant.*

Case No. 3:15-cv-05089-BRM-LHG

Hon. Brian R. Martinotti, U.S.D.J.

Hon. Lois H. Goodman, U.S.M.J.

**[PROPOSED] JUDGMENT**

**WHEREAS**, on \_\_\_\_\_, the Court granted the Preliminary Approval Order conditionally approving the Settlement in this Action;<sup>1</sup> and

**WHEREAS**, on \_\_\_\_\_, the Court entered the Final Order Approving Class Settlement in this Action, finding the Settlement is fair, reasonable, and adequate within the meaning of Rule 23(e) of the Federal Rules of Civil Procedure and applicable law; and

<sup>1</sup> This Judgment incorporates by reference the definition of any capitalized terms as set forth in the Settlement Agreement except as otherwise defined in the Final Order Approving Class Settlement or herein.

**WHEREAS**, Plaintiff and the Settlement Class Members have provided the Release to NRG Residential Solar Solutions LLC and the Released Parties as set forth in section 3 of the Settlement Agreement and the Final Order Approving Class Settlement in this Action; and

**WHEREAS**, the Final Order Approving Class Settlement dismissed the Action in its entirety with prejudice, and without fees or costs except as otherwise provided for in the Final Order Approving Class Settlement;

**NOW, THEREFORE**, the Court hereby enters judgment in this Action pursuant to Rule 58 of the Federal Rules of Civil Procedure.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_, 201\_

\_\_\_\_\_  
THE HONORABLE BRIAN R. MARTINOTTI  
UNITED STATES DISTRICT JUDGE