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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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

Plaintiff,

v.

NRG RESIDENTIAL SOLAR SOLUTIONS  
LLC,

Defendant.

Case No. 3:15-cv-05089

Hon. Freda L. Wolfson, U.S.D.J.  
Hon. Lois H. Goodman, U.S.M.J.

**ANSWER AND AFFIRMATIVE  
DEFENSES OF NRG RESIDENTIAL  
SOLAR SOLUTIONS LLC TO  
PLAINTIFF'S SECOND AMENDED  
CLASS ACTION COMPLAINT**

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Defendant NRG Residential Solar Solutions LLC (“NRG Residential”), by and through its counsel K&L Gates LLP, states as follows as its Answer to the Second Amended Class Action Complaint (“SAC”) of Plaintiff Michael Dobkin (“Plaintiff”).

The introductory paragraph of the SAC sets forth legal conclusions and Plaintiff’s

characterization of his alleged claims to which no response is required. To the extent a further response may be required, NRG Residential denies the allegations set forth in the introductory paragraph of the SAC.

**AS TO THE NATURE OF THE ACTION**

1. NRG Residential admits the allegations set forth in the first sentence of paragraph 1 of the SAC. NRG Residential denies the allegations set forth in the second sentence of paragraph 1 of the SAC.

2. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the SAC.

3. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the SAC.

4. NRG Residential denies the allegations set forth in paragraph 4 of the SAC.

5. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the SAC.

**AS TO THE PARTIES**

6. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 of the SAC.

7. NRG Residential admits that it is a limited liability company with offices in New Jersey. The remaining allegations in paragraph 7 of the SAC set forth legal conclusions to which no response is required. To the extent a further response may be required, NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the SAC.

**AS TO JURISDICTION AND VENUE**

8. NRG Residential admits that the Court has jurisdiction over this matter and otherwise denies the allegations set forth in paragraph 8 of the SAC.

9. NRG Residential admits that venue is proper in this Court and otherwise denies the allegations set forth in paragraph 9 of the SAC.

**AS TO FACTUAL ALLEGATIONS**

10. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 of the SAC.

11. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 of the SAC.

12. NRG Residential denies the allegations set forth in paragraph 12 of the SAC.

13. NRG Residential denies the allegations set forth in the first sentence of paragraph 13 of the SAC. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the second sentence of paragraph 13 of the SAC.

14. NRG Residential denies the allegations set forth in the first sentence of paragraph 14 of the SAC. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in second, third, and fourth sentences of paragraph 14 of the SAC.

15. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 15 of the SAC.

16. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 16 of the SAC.

17. NRG Residential denies the allegations set forth in paragraph 17 of the SAC.

18. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 18 of the SAC.

19. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 19 of the SAC.

20. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 20 of the SAC.

21. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 21 of the SAC.

22. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 22 of the SAC.

23. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 23 of the SAC.

24. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 24 of the SAC.

25. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 25 of the SAC.

26. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 26 of the SAC.

27. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 27 of the SAC.

28. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 28 of the SAC.

**AS TO THE CLASS ALLEGATIONS**

29. NRG Residential denies the allegations set forth in paragraph 29 of the SAC.

30. NRG Residential denies the allegations set forth in paragraph 30 of the SAC.

31. NRG Residential denies, including, without limitation, the allegations set forth in each of the subparts, the allegations set forth in paragraph 31 of the SAC.

32. NRG Residential denies the allegations set forth in paragraph 32 of the SAC.

33. NRG Residential denies the allegations set forth in paragraph 33 of the SAC.

34. NRG Residential denies the allegations set forth in paragraph 34 of the SAC.

35. NRG Residential denies the allegations set forth in paragraph 35 of the SAC.

**AS TO THE FIRST CAUSE OF ACTION**

36. NRG Residential incorporates its responses to the foregoing paragraphs of the SAC.

37. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 37 of the SAC.

38. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 38 of the SAC.

39. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 39 of the SAC.

40. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 40 of the SAC.

41. NRG Residential denies the allegations set forth in the first sentence of paragraph 41 of the SAC. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the second and third sentences of paragraph 41 of the

SAC.

42. NRG Residential denies the allegations set forth in paragraph 42 of the SAC.

43. NRG Residential denies the allegations set forth in paragraph 43 of the SAC.

44. NRG Residential denies the allegations set forth in paragraph 44 of the SAC.

**AS TO THE SECOND CAUSE OF ACTION**

45. NRG Residential incorporates its responses to the foregoing paragraphs of the

SAC.

46. NRG Residential denies the allegations set forth in paragraph 46 of the SAC.

47. NRG Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 47 of the SAC.

48. NRG Residential denies the allegations set forth in paragraph 48 of the SAC.

49. NRG Residential denies the allegations set forth in paragraph 49 of the SAC.

50. NRG Residential denies the allegations set forth in paragraph 50 of the SAC.

**AS TO THE THIRD CAUSE OF ACTION**

51. NRG Residential incorporates its responses to the foregoing paragraphs of the SAC.

52. NRG Residential denies the allegations set forth in paragraph 52 of the SAC.

53. NRG Residential denies the allegations set forth in paragraph 53 of the SAC.

54. NRG Residential denies the allegations set forth in paragraph 54 of the SAC.

55. NRG Residential denies the allegations set forth in paragraph 55 of the SAC.

56. NRG Residential denies the allegations set forth in paragraph 56 of the SAC.

57. NRG Residential denies the allegations set forth in paragraph 57 of the SAC.

NRG Residential denies that Plaintiff is entitled to any of the relief requested in the

Prayer for Relief.

WHEREFORE, Defendant NRG Residential requests that the Court enter judgment in NRG Residential's favor, that no class be certified, that the SAC be dismissed with prejudice in its entirety, that the Court award NRG Residential its attorneys' fees and costs incurred in defending this action, and that the Court grant all other relief to which NRG Residential is entitled or as to which the Court deems just and necessary.

**AFFIRMATIVE DEFENSES**

NRG Residential asserts the following Affirmative Defenses to the SAC and reserves the right to raise such additional affirmative defenses as may be established during the conduct of discovery and in the investigation of this matter. In asserting these affirmative defenses, NRG Residential does not assume any burden of proof, persuasion, or production on such defenses where such burden would otherwise fall on Plaintiff.

**FIRST AFFIRMATIVE DEFENSE**

The SAC fails to state a claim upon which relief can be granted against NRG Residential.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because to the extent Plaintiff suffered harm, which NRG Residential denies, the harm was caused by a person or entity other than NRG Residential.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, and NRG Residential is not liable under the TCPA or under any other legal theory because, among other reasons, Plaintiff and/or the alleged members of the putative class gave their prior express consent or prior express written consent to and/or solicited the receipt of the telephone calls at issue.

**FOURTH AFFIRMATIVE DEFENSE**

Any award of statutory and/or punitive damages to Plaintiff and/or the alleged members of the putative class would be grossly disproportionate to any actual injury allegedly sustained by Plaintiff or any class member and would therefore deny NRG Residential its rights under the Due Process and Excessive Fines Clauses of the United States Constitution. Furthermore, the TCPA, particularly as applied to class actions, imposes liabilities, penalties, or fines that are so excessive, severe, and oppressive as to be obviously unreasonable and wholly disproportionate to the alleged offense of placing a purportedly unsolicited telephone call, and the TCPA thereby violates the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because of Plaintiff's failure to join an indispensable party or parties.

**SIXTH AFFIRMATIVE DEFENSE**

NRG Residential is not liable under the TCPA or under any other legal theory because, among other reasons, the claims of Plaintiff and/or the alleged members of the putative class are barred, in whole or in part, by the applicable statute of limitations and/or laches.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part because, to the extent any employee or agent of NRG Residential performed any act or engaged in any conduct purportedly in violation of the TCPA, any such act or conduct was outside the scope of authority of such employee or agent and was not authorized by NRG Residential and was not made with the apparent authority of NRG Residential.



**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because NRG Residential's conduct with respect to Plaintiff (and any other alleged members of the putative class), was at all times reasonable, justified, and in complete good faith.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because the claims of Plaintiff and/or the alleged members of the putative class are barred by the doctrines of waiver, estoppel, indemnity, and ratification.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because to the extent plaintiff was damaged, he failed to mitigate those damages.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because, to the extent that Plaintiff suffered any harm (which NRG Residential denies) Plaintiff's own actions caused the harm of which Plaintiff complains.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because the TCPA and its implementing regulations violate the First Amendment to the United States Constitution because they are more restrictive than necessary to achieve their asserted purposes and have no reasonable relation to any substantial government interest sought to be advanced. The TCPA violates both the First Amendment right of the public to receive, and the First Amendment right of advertisers to send, legitimate commercial communications.

**LOCAL RULE 11.2 CERTIFICATION**

I hereby certify that the matter in controversy in this action is not otherwise known to me to be the subject of any other action pending in any Court or of any pending arbitration or administrative proceeding.

Dated: October 26, 2015

**K&L GATES LLP**

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