

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY, TRENTON DIVISION**

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

Hon. Brian R. Martinotti, USDJ

Hon. Lois H. Goodman, USMJ

**DECLARATION OF RAFEY S. BALABANIAN
IN SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Pursuant to 28 U.S.C. § 1746, I hereby declare and state as follows:

1. I am a citizen of the state of California, and am over the age of eighteen years old. I make this declaration based upon personal knowledge unless otherwise indicated. If called upon to testify as to the matters stated herein, I could and would competently do so.

2. I make this declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

3. I am the Managing Partner of the law firm of Edelson PC, which, along with co-counsel, has been retained to represent the named Plaintiff Michael

Dobkin (“Plaintiff” or “Dobkin”) in this matter against Defendant NRG Residential Solar Solutions LLC (“Defendant” or “NRG Residential”) regarding alleged violations of the Telephone Consumer Protection Act (“TCPA”).

4. This case began over two years ago, with Plaintiff Dobkin filing his initial complaint on July 1, 2015. (Dkt. 1.) From the start of the case, it was actively litigated. The Parties engaged in substantial formal and informal discovery, with each serving initial disclosures, propounding interrogatories and document requests, pursuing third party subpoenas and taking depositions – including the deposition of a third party lead generator to obtain the facts surrounding their calling practices, as well as the nature of their relationship with Defendant. The Parties also exchanged discovery informally, both as part of their settlement negotiations and more generally.

5. The information exchanged included how NRG Residential collected telephone numbers and how the telephone calls were placed. Discovery ultimately revealed that NRG Residential purchased leads from third-party lead generators as a result of those lead generators’ telephone calls to consumers. Defendant would end up purchasing and being provided with the contact information of those consumers to whom they hoped to sell their solar energy products. Discovery also revealed that the size of the proposed Settlement Class is approximately 317,000 individuals. There was extensive discovery conducted in this case, and it permitted

both sides to accurately evaluate the strength of their claims. Even still, the Parties held very different views on the strengths and weaknesses of the case; Plaintiff remained confident that he would ultimately prevail in litigation, while Defendant 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.

6. At the same time they were actively litigating the case, the Parties also engaged in settlement discussions that, when all was said and done, lasted for more than a year. The Parties first attempted to resolve the lawsuit through private mediation with Professor Eric Green of Resolutions LLC, on September 27, 2016. Despite the Parties' best efforts, the mediation with Prof. Green proved unsuccessful, in that it did not result in a settlement, and the Parties returned to discovery.

7. The Parties eventually decided to revisit settlement talks in March 2017, but this time with the assistance of Magistrate Judge Lois H. Goodman. After several rounds of settlement communications and telephonic conferences, the Parties attended an in-person settlement conference with Magistrate Judge Goodman on July 12, 2017. After several exchanges of settlement communications and telephonic conferences lasting over the course of several months, the Parties attended an in-person settlement conference with Magistrate Goodman on July 12, 2017. Despite the gap in Parties' settlement positions being wide, Magistrate

Goodman worked tirelessly to bring them closer together on the material terms of a class settlement, and then eventually made a mediator's proposal, which both Parties accepted. After additional negotiations over specifics, the Parties eventually executed the formal Settlement Agreement that is now before the Court.

8. In my opinion, and based on my experience and the facts of this case, the proposed Settlement Class here readily satisfies the commonality requirement of Rule 23(a). Dobkin asserts (and Defendant denies) that, through a common course of conduct, NRG Residential's alleged agents – using automated dialing equipment – made thousands of unsolicited telemarketing calls to consumers nationwide in violation of the TCPA, causing Plaintiff and the other Settlement Class members to suffer the same type of harm (arising from the aggravation and invasion of privacy associated with the receipt of such calls). Hence, the claims of Dobkin and the Settlement Class in this case are based upon the same disputed contentions: that NRG Residential violated the TCPA by having telemarketing calls made to their telephone numbers, despite the fact that the called parties did not authorize the calls. Defendant's alleged uniform pattern of conduct has given rise to several common questions of both law and fact, including whether NRG Residential's alleged agents made telephone calls to consumers without their prior express consent, whether NRG Residential can be held vicariously liable for the calls placed by its alleged agents, whether the calls were placed used automated

dialing equipment, and whether the alleged TCPA violations were willful.

9. It is also my opinion that the proposed Settlement Class readily satisfies the predominance requirement of Rule 23(b)(3), as the evidence necessary to prove Plaintiff's and Settlement Class members' claims—including evidence regarding the prerecorded nature of the calls, the equipment used to place the calls, the phone numbers that were called, how Defendant or its alleged agents obtained those phone numbers, and the nature of the alleged agency relationship with the third-party lead generators—will come from within NRG Residential's or its alleged agent's records, rather than from individual members of the Settlement Class.

10. The class action device is also the superior method for adjudicating this controversy because absent class treatment in this case, each of the individual Settlement Class members would be required to present the same or essentially the same legal and factual arguments, in separate and duplicative proceedings, the result of which would be a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants. Moreover, a class action is superior because it allows the Settlement Class Members to aggregate relatively modest individual claims worth just \$500 per call in statutory damages (or, at most, \$1,500 in the case of willful conduct). In comparison to the relief available, the cost of litigating TCPA claims on an individual basis—including the cost of discovery,

motion practice, and trial—would be prohibitively expensive.

11. I, as proposed Class Counsel, am confident in the strength of Plaintiff's case, that he would have been successful in certifying an adversarial class, and would have achieved summary judgment or a favorable verdict at trial. That said, based on my experience, and the facts of this case, none of those outcomes are certain by any means. Yet, there is no question that just getting to class certification, summary judgment, and trial would be incredibly costly to the Parties. Of greater concern, however, if a jury were to find that NRG Residential was not vicariously liable for the phone calls – a point on which Plaintiff bears the burden of proof – then the class members would obtain no recovery at all. And, in light of the complexity of the issues presented here and the amount in controversy, the defeated party would likely appeal, further delaying recovery by the Settlement Class. In light of these risks, the immediate and substantial relief provided by the Settlement weighs heavily in favor of a finding that the settlement is fair, reasonable, and adequate, and well within the range of approval.

12. Proposed Class Counsel have spent significant time and effort investigating and prosecuting this case, including tracing the calls at issue back to the source, identifying the claims asserted against Defendant, conferring with their clients about the factual underpinnings of the lawsuit, funding the prosecution of the case, and ultimately negotiating a settlement that provides substantial benefits

to the proposed Settlement Class.

13. I, along with my partner, Eve-Lynn Rapp, as well as my law firm, Edelson PC, more generally, have extensive experience litigating class actions of similar size, scope, and complexity to the instant action. The attorneys at my firm regularly engage in major complex litigation on behalf of consumers and have extensive experience in large and complex consumer class actions like the present case—including class actions brought and certified under the TCPA. We have and will continue to use this experience for the benefit of the Settlement Class in this case.

14. To date, Edelson PC has committed substantial human and financial resources to the prosecution of this case, and will continue to do so throughout its pendency.

15. With Magistrate Judge Goodman's invaluable assistance, the Parties eventually came to a resolution that should be viewed as a leader when it comes to TCPA class action settlements. Indeed, a \$7 million Settlement Fund, with a likely pay out to each claiming Settlement Class member of between \$150-\$250, exceeds the results achieved in similar cases.

16. The Parties have agreed to disseminate notice in a manner consistent with Rule 23 and Due Process. The format and language of each form of Notice have been carefully drafted in straightforward, easy-to-read language, which

clearly informs class members of all the material aspects of the deal, such as the range of potential class member recovery, class members' right to challenge the Settlement, and the amount of attorneys' fees being sought. Because the proposed notice plan effectuates direct notice to all class members identified by Defendant's records and fully apprises class members of their rights, it comports with the requirements of Due Process and Rule 23 and should be approved.

17. Attached hereto as Exhibit 1 is a true and accurate copy of my law firm's resume, updated as of September 2017.

* * *

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of September, 2017 at San Francisco, California.

/s/ Rafey S. Balabanian