

1 KELLEY DRYE & WARREN LLP
Lauri A. Mazzuchetti (*pro hac vice*)
2 Edward J. Mullins III (*pro hac vice*)
One Jefferson Road, 2nd Floor
3 Parsippany, New Jersey 07054
Telephone: (973) 503-5900
4 Facsimile: (973) 503-5950
lmazzuchetti@kelleydrye.com
5 emullins@kelleydrye.com

6 KELLEY DRYE & WARREN LLP
Lee S. Brenner (State Bar No. 180235)
7 Catherine D. Lee (State Bar No. 258550)
10100 Santa Monica Boulevard, 23rd Floor
8 Los Angeles, CA 90067-4008
Telephone: (310) 712-6100
9 Facsimile: (310) 712-6199
lbrenner@kelleydrye.com
10 clee@kelleydrye.com

11 Attorneys for Defendants Sunrun Inc. and Clean Energy
Experts, LLC

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

LYNN SLOVIN, an individual, on her own
behalf and on behalf of all others similarly
situated,

Plaintiff,

v.

SUNRUN, INC., a California corporation,
CLEAN ENERGY EXPERTS, LLC, a
California limited liability company doing
business as SOLAR AMERICA, and DOES 1
through 5, inclusive,

Defendants.

Case No. 4:15-cv-05340-YGR
(Hon. Yvonne Gonzalez Rogers)

**DEFENDANTS' ANSWER TO
PLAINTIFFS' THIRD AMENDED
COMPLAINT**

TAC Filed: July 12, 2016
Trial Date: None Set

1 Defendants Sunrun Inc. (“Sunrun”) and Clean Energy Experts, LLC (“CEE”) (collectively,
2 “Defendants”) hereby answer Plaintiffs’ Third Amended Class Action Complaint (“TAC”) as
3 follows:

4 **INTRODUCTION**

5 1. Defendants admit to operating within the solar energy industry, and admit that CEE
6 has the ability to deliver leads in real time to solar service providers, including Sunrun, who may
7 convert leads into closed sales deals. Defendants deny the remaining allegations in Paragraph 1.

8 2. Defendants deny the allegations in Paragraph 2.

9 3. The allegations in Paragraph 3 are either argument or state legal conclusions to
10 which no response is required. To the extent a response is required, Defendants deny the
11 allegations in Paragraph 3.

12 4. The allegations in Paragraph 4 are argument, to which no response is required. To
13 the extent a response is required, Defendants deny the allegations in Paragraph 4.

14 5. Defendants admit that Plaintiffs seek the relief stated in Paragraph 5, but deny that
15 Plaintiffs are entitled to the relief requested. Defendants deny the remaining allegations in
16 Paragraph 5.

17 **PARTIES**

18 6. Defendants are without knowledge or information sufficient to form a belief as to
19 the truth of the allegations in Paragraph 6, and deny the allegations on that basis.

20 7. Defendants are without knowledge or information sufficient to form a belief as to
21 the truth of the allegations in Paragraph 7, and deny the allegations on that basis.

22 8. Defendants are without knowledge or information sufficient to form a belief as to
23 the truth of the allegations in Paragraph 8, and deny the allegations on that basis.

24 9. Defendants are without knowledge or information sufficient to form a belief as to
25 the truth of the allegations in Paragraph 9, and deny the allegations on that basis.

26 10. Defendants admit the allegations in Paragraph 10.

27 11. Defendants admit that CEE is a California limited liability corporation with its
28 principal place of business located at 595 Market Street, 29th Floor, San Francisco, California, and

1 that it operates the websites solaramerica.com and solaramerica.org. Defendants admit that CEE
2 does business under its registered trademark “Solar America.” Defendants deny the remainder of
3 the allegations in Paragraph 11.

4 12. Defendants admit the allegations in Paragraph 12.

5 13. Defendants admit that Sunrun acquired CEE in April 2015, but deny the remaining
6 allegations in Paragraph 13, and respectfully refer the Court to the referenced and quoted
7 document for its true and correct contents.

8 14. Defendants deny knowledge or information sufficient to form a belief as to whether
9 Plaintiffs are “currently ignorant” of the true names of defendants with fictitious names Does 1-5.
10 Defendants further deny knowledge or information sufficient to form a belief as to whether
11 Plaintiffs will seek to amend the TAC to add the true names of such Defendants, and whether such
12 fictitiously named Doe defendants are “legally responsible” for the events and occurrences alleged
13 in the TAC. Defendants further deny the remaining allegations in Paragraph 14.

14 15. The allegations in Paragraph 15 state a legal conclusions, to which no response is
15 required. To the extent a response is required, Defendants deny the allegations in Paragraph 15.

16 16. The allegation in Paragraph 16 defines the manner in which Defendants are referred
17 to in the TAC, and does not require a response.

18 17. The allegation in Paragraph 17 defines the manner in which Defendants are referred
19 to in the TAC, and does not require a response. Defendants deny that it is appropriate for
20 Plaintiffs to lump together allegations directed to Defendants, without specifying the specific
21 conduct complained of as to each of them.

22 **JURISDICTION AND VENUE**

23 18. The jurisdictional claims in Paragraph 18 are legal conclusions to which no
24 response is required.

25 19. Defendants admit that Sunrun is headquartered within the Northern District of
26 California, but denies that CEE is headquartered within the Northern District of California. The
27 remainder of the allegations in Paragraph 19 are legal conclusions to which no response is
28 required.

1 27. The allegations in Paragraph 27 state legal conclusions as to which no response is
2 required. To the extent that a response is required, Defendants deny the allegations in Paragraph
3 27 to the extent that they inaccurately characterize the TCPA, its regulations or binding
4 interpretations thereof.

5 28. The allegations in Paragraph 28 state legal conclusions as to which no response is
6 required. To the extent that a response is required, Defendants deny the allegations in Paragraph
7 28 to the extent that they inaccurately characterize the TCPA, its regulations or binding
8 interpretations thereof.

9 29. The allegations in Paragraph 29 characterize and claim to cite to statements from
10 Sunrun's website. Defendants respectfully refer the Court to the referenced website for its true
11 and correct contents, and deny the allegations in Paragraph 29 to the extent that they conflict with
12 the referenced website.

13 30. The allegations in Paragraph 30 characterize and claim to cite to statements from
14 Sunrun's website. Defendants respectfully refer the Court to the referenced website for its true
15 and correct contents, and deny the allegations in Paragraph 30 to the extent that they conflict with
16 the referenced website.

17 31. The allegations in Paragraph 31 characterize and claim to cite to statements from
18 CEE's website. Defendants respectfully refer the Court to the referenced website for its true and
19 correct contents, and deny the allegations in Paragraph 31 to the extent that they conflict with the
20 referenced website.

21 32. Defendants admit that Sunrun acquired CEE in April 2015 for \$25.0 million in cash
22 and 1.9 million shares of common stock. The remainder of the allegations in Paragraph 32
23 characterize and claim to cite to statements made in a referenced SEC filing, and Defendants
24 respectfully refer the Court to the referenced document for its true and correct contents.

25 33. The allegations in Paragraph 33 characterize and claim to cite to statements made
26 in a referenced SEC filing, and Defendants respectfully refer the Court to the referenced document
27 for its true and correct contents.

28 34. The allegations in Paragraph 34 characterize and claim to cite to statements made

1 in a referenced SEC filing, and Defendants respectfully refer the Court to the referenced document
2 for its true and correct contents.

3 35. Defendants deny the allegations contained in the first two sentences of Paragraph
4 35. Defendants admit that they promote the cost savings of converting to solar energy to potential
5 customers and offer to provide homeowners with quotes from local installers, dealers or
6 contractors, but otherwise deny the allegations in the third sentence of Paragraph 35. The
7 allegations in the last sentence of Paragraph 35 characterize and claim to cite to statements from
8 CEE's website. Defendants respectfully refer the Court to the referenced website for its true and
9 correct contents, and deny the allegations in Paragraph 35 to the extent that they conflict with the
10 referenced website.

11 36. Defendants admit that CEE can deliver leads to solar companies within 30 to 60
12 seconds. The remaining allegations in Paragraph 36 characterize and claim to cite to statements
13 from CEE's website. Defendants respectfully refer the Court to the referenced website for its true
14 and correct contents, and deny the allegations in Paragraph 36 to the extent that they conflict with
15 the referenced website.

16 37. Defendants admit that the statement in Paragraph 37 was accurate at the time it was
17 made on the referenced website, and respectfully refer the Court to CEE's website for its true and
18 correct contents. Defendants otherwise deny the allegations in Paragraph 37.

19 38. Defendants admit that the allegations in Paragraph 38 reflect terms contained in the
20 referenced Lead Purchase Agreement. Defendants deny the allegations in Paragraph 38 to the
21 extent that they conflict with the terms of the referenced Lead Purchase Agreement.

22 39. Defendants admit that Sunrun's Form 10-K states that "[c]ustomer lead revenue is
23 recognized at the time the lead is delivered," and refer the Court to the referenced document for its
24 true and correct contents.

25 40. Defendants admit that the quoted material in Paragraph 40 appears on CEE's
26 website, and respectfully refer the Court to the referenced website for its true and correct contents.

27 41. Defendants admit that Sunrun has converted a lead into a closed sale deal.
28 Defendants deny the remaining allegations in Paragraph 41.

1 42. Defendants deny that the alleged “Agents,” as defined in the TAC, are agents of
2 either Defendant. Defendants further deny that the alleged “Agents,” as defined in the TAC, make
3 or have made, any calls on behalf of either Defendant. The first sentence of Footnote 1 is a legal
4 conclusion to which no response is required. Defendants deny the remaining allegations in
5 Paragraph 42 and Footnote 1.

6 43. Defendants deny the allegations in Paragraph 43.

7 44. Defendants deny the allegations in Paragraph 44.

8 45. Defendants deny the allegations in Paragraph 45 as alleged. Defendants deny that
9 the alleged “Agents,” as defined in the TAC, are agents of either Defendant, and deny that they
10 make or have made any calls on behalf of either Defendant. Defendants deny that that they
11 “preapprove” the scripts of third party vendors. Defendants admit, however, that they are aware of
12 some of the names used by third party vendors. Defendants admit that they are aware some third
13 party vendors may ask questions concerning a person’s credit score, average monthly electric bills,
14 roof shading, and other personal information.

15 46. Defendants deny the allegations in Paragraph 46 as alleged. Defendants deny that
16 the alleged “Agents,” as defined in the TAC, are agents of either Defendant, and deny that they
17 make or have made any calls on behalf of either Defendant. Defendants admit, however, that third
18 party vendors may post certain lead data into a customer relationship management software or
19 database.

20 47. Defendants deny the allegations in Paragraph 47 as alleged. Defendants deny that
21 the alleged “Agents,” as defined in the TAC, are agents of either Defendant, and deny that they
22 make or have made any calls on behalf of either Defendant. Defendants admit, however, that
23 certain third party vendors are requested to “live transfer” or “warm transfer” certain leads to
24 Defendants.

25 48. Defendants deny the allegations in Paragraph 48 as alleged. Defendants also deny
26 that the alleged “Agents,” as defined in the TAC, are agents of either Defendant, and deny that
27 they make or have made any calls on behalf of either Defendant. Defendants admit, however, that
28 certain third party vendors sometimes use scripts during a call, post the information obtained

1 directly into a CRM, and connect the lead with Defendants' call center employees. Defendants
2 admit that certain third party vendors may use conference a call with Defendants' call center, then
3 disconnect from the line and allow Defendants to ask qualifying questions and schedule an
4 appointment for a solar consultant from Sunrun to visit the potential customers' home.

5 49. Defendants deny the allegations in Paragraph 49.

6 50. Defendants deny the allegations in Paragraph 50.

7 51. Defendants deny the allegations in Paragraph 51.

8 52. Defendants deny the allegations in Paragraph 52.

9 53. Defendants deny the allegations in Paragraph 53.

10 54. Defendants deny the allegations in Paragraph 54.

11 55. Defendants deny the allegations in Paragraph 55 as alleged. Defendants also deny
12 that the alleged "Agents," as defined in the TAC, are agents of either Defendant, and deny that
13 they make or have made any calls on behalf of either Defendant. Defendants admit, however, that
14 they have provided certain third party vendors with pricing requirements, geo-targeting
15 information, roofing requirements, and/or which electric power companies that work with
16 Defendants.

17 56. Defendants deny the allegations in Paragraph 56.

18 57. Defendants deny the allegations in Paragraph 57.

19 58. Defendants deny the allegations in Paragraph 58.

20 59. Defendants deny the allegations in Paragraph 59 as alleged. Defendants also deny
21 that the alleged "Agents," as defined in the TAC, are agents of either Defendant, and deny that
22 they make or have made any calls on behalf of either Defendant. Defendants state, however, that
23 termination rights as applicable to any third party vendor are governed as per the parties'
24 contractual relationship.

25 60. Defendants deny the allegations in Paragraph 60.

26 61. Defendants deny the allegations in Paragraph 61.

27 62. Defendants deny the allegations in Paragraph 62.

28 63. Defendants deny the allegations in Paragraph 63 as alleged. Defendants also deny

1 that the alleged “Agents,” as defined in the TAC, are agents of either Defendant, and deny that
2 they make or have made any calls on behalf of either Defendant. In further response to Paragraph
3 63, Defendants state that the terms and conditions with respect to leads, and the “ownership” of
4 certain leads, are governed by the parties’ contractual relationship.

5 64. Defendants admit the allegations in Paragraph 64.

6 65. Defendants deny the allegations in Paragraph 65.

7 66. Defendants deny the allegations in Paragraph 66.

8 67. Defendants deny the allegations in Paragraph 67.

9 68. Defendants deny the allegations in Paragraph 68.

10 69. Defendants deny the allegations in Paragraph 69.

11 70. Defendants deny the allegations in Paragraph 70.

12 71. Defendants admit that the quoted material (with language omitted) appears in the
13 FCC’s 2003 Report and Order, and refer the Court to the referenced report for its true and correct
14 contents. Defendants deny the remaining allegations in Paragraph 71.

15 72. Defendants deny the allegations in Paragraph 72 as to Defendants. Defendants are
16 without knowledge or information sufficient to form a belief as to the allegations in Paragraph 72
17 as to third parties, and deny the allegations on that basis. Defendants also deny that the alleged
18 “Agents,” as defined in the TAC, are agents of either Defendant, and deny that they make or have
19 made any calls on behalf of either Defendant.

20 73. Defendants deny the allegations in Paragraph 73 as to Defendants. Defendants are
21 without knowledge or information sufficient to form a belief as to the allegations in Paragraph 73
22 as to third parties, and deny the allegations on that basis. Defendants also deny that the alleged
23 “Agents,” as defined in the TAC, are agents of either Defendant, and deny that they make or have
24 made any calls on behalf of either Defendant.

25 74. The allegations in Paragraph 74 state legal conclusions to which no response is
26 required. To the extent a response is required, Defendants are without knowledge or information
27 sufficient to form a belief as to whether any of the calls alleged in the TAC constitute calls for
28 “emergency purposes,” and Defendants deny the allegations on that basis. Defendants deny that

1 they are responsible or liable for the calls allegedly received by Plaintiffs.

2 75. Defendants deny the allegations in Paragraph 75.

3 76. Defendants deny the allegations in Paragraph 76.

4 **PLAINTIFF SLOVIN'S INDIVIDUAL ALLEGATIONS**

5 77. Defendants are without knowledge or information sufficient to form a belief as to
6 the truth of the allegations in Paragraph 77, and deny the allegations on that basis.

7 78. Defendants deny knowledge or information as to who Plaintiff "believes" the
8 alleged calls were made from, and deny the allegations on that basis. Defendants deny knowledge
9 or information sufficient to form a belief as to where the alleged calls originated. Defendants also
10 deny knowledge or information sufficient to form a belief as to the practices of other telemarketers
11 as described in Footnote 3, and deny the allegations in Footnote 3 on that basis.

12 79. Defendants deny knowledge or information sufficient to form a belief as to where
13 the alleged calls originated, and how the caller identified him/herself to Plaintiff. Defendants deny
14 that they initiated, and deny that they are responsible or liable for, the calls allegedly received by
15 Plaintiff Slovin. Defendants deny that the caller was authorized by Defendants to place the call at
16 issue, or use the Solar America name.

17 80. Defendants are without knowledge or information sufficient to form a belief as to
18 the truth of the allegations in Paragraph 80, and deny the allegations on that basis. Footnote 4
19 states legal conclusions to which no response is required. To the extent a response is required,
20 Defendants deny the allegations in Footnote 4.

21 81. Defendants deny knowledge or information sufficient to form a belief as to the
22 allegations in Paragraph 81, and deny the allegations on that basis. Defendants deny that they
23 initiated, and deny that they are responsible or liable for, the calls allegedly received by Plaintiff
24 Slovin. Defendants deny that the caller was authorized by Defendants to place the call at issue, or
25 use the Solar America name.

26 82. Defendants deny knowledge or information sufficient to form a belief as to the
27 allegations in Paragraph 82, and deny the allegations on that basis. Defendants deny that the caller
28 was authorized by Defendants to place the call at issue, or use the Solar America name.

1 Defendants also deny that they initiated, and deny that they are responsible or liable for, the calls
2 allegedly received by Plaintiff Slovin.

3 83. Defendants deny the allegations in Paragraph 83.

4 84. Defendants deny the allegations in Paragraph 84.

5 85. Defendants deny knowledge or information sufficient to form a belief as to any
6 alleged “contact” with Defendants prior to the alleged calls. Defendants deny that they initiated,
7 and deny that they are responsible or liable for, the calls allegedly received by Plaintiff Slovin.

8 Defendants also deny that the alleged “Agents,” as defined in the TAC, are agents of either
9 Defendant, and deny that they make or have made any calls on behalf of either Defendant.

10 Defendants deny the remaining allegations in Paragraph 85.

11 86. Defendants are without knowledge or information sufficient to form a belief as to
12 the truth of the allegations in Paragraph 86, and deny the allegations on that basis.

13 87. Defendants deny knowledge or information sufficient to form a belief as to the
14 allegations in Paragraph 87, and deny the allegations on that basis.

15 88. Defendants deny knowledge or information sufficient to form a belief as to the
16 allegations in Paragraph 88, and deny the allegations on that basis.

17 89. Defendants deny knowledge or information sufficient to form a belief as to the
18 allegations in Paragraph 89, and deny the allegations on that basis.

19 90. Defendants deny knowledge or information sufficient to form a belief as to whether
20 Plaintiff Slovin “found” the calls to be intrusive and harassing, or whether they diverted attention
21 away from her daily activities. Defendants further deny knowledge or information sufficient to
22 form a belief as to why, and whether, Plaintiff Slovin placed herself on national the Do-Not-Call
23 registry. Defendants deny that they caused any damage to Plaintiff Slovin, or otherwise invaded
24 her privacy. Defendants deny that the caller was authorized by Defendants to place the calls
25 alleged, or use the Solar America name. Defendants deny that they initiated, and deny that they
26 are responsible or liable for, the calls allegedly received by Plaintiff Slovin. The remainder of the
27 allegations in Paragraph 90 state legal conclusions, and on that basis are denied.

28

PLAINTIFF SAMUEL KATZ'S INDIVIDUAL ALLEGATIONS

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2 91. Defendants are without knowledge or information sufficient to form a belief as to
3 the allegations in Paragraph 91, and deny the allegations on that basis.

4 92. Defendants deny that the calls at issue were made “on behalf of Defendants.”
5 Defendants deny that they are responsible or liable for, any calls allegedly received by Plaintiff
6 Katz. Defendants are without knowledge or information sufficient to form a belief as to the
7 allegations in Paragraph 92.

8 93. Defendants admit that it appears that, according to records that Defendants
9 received, a call was made to Katz on August 18, 2015. Defendants are without knowledge or
10 information sufficient to form a belief as to the allegations in the second sentence of Paragraph 93,
11 and therefore deny the allegations on that basis. Defendants admit that it appears that, according
12 to records that Defendants received, the allegations in the fourth sentence of Paragraph 93 appear
13 to be true. Defendants admit that it appears that, according to records that Defendants received,
14 the caller identified herself as being from “Solar Nation,” that the caller stated that her call was a
15 “courtesy call,” and that the program she was talking about involves no out of pocket costs to the
16 consumer. Defendants deny that the caller stated that she “was calling on behalf of Sunrun.”
17 Defendants deny that they initiated, and deny that they are responsible or liable for, the call at
18 issue. Defendants deny the remaining allegations in Paragraph 93.

19 94. Defendants admit that it appears that, according to records that Defendants
20 received, a call was made to Katz by Mediamix365 on August 18, 2015, but only after Katz gave
21 his prior express consent to receive the call. Defendants admit that Mediamix365 may use the
22 name “Solar Nation” on calls. Defendants deny that any call was “on behalf of and for the benefit
23 of” Defendants. Defendants deny that Mediamix is Defendants’ “Agent.” Defendants are without
24 knowledge or information sufficient to form a belief as to the allegations in the remaining
25 allegations in Paragraph 94, and therefore deny the allegations on that basis.

26 95. Defendants deny the allegations in Paragraph 95.

27 96. Defendants deny that Solar Media Team is Defendants’ “Agent.” Defendants deny
28 that the additional calls at issue were made “on behalf of and for the benefit of Defendants.”

1 Defendants deny that they initiated, and deny that they are responsible or liable for, the calls
2 allegedly received by Plaintiff Katz on October 28-29 and November 2, 2015. Defendants deny
3 that the caller was authorized by Defendants to place the call at issue, or use the Solar America
4 name. Defendants are without knowledge or information sufficient to form a belief as to the
5 allegations in the remaining allegations in Paragraph 96, and therefore deny the allegations on that
6 basis.

7 97. Defendants are without knowledge or information sufficient to form a belief as to
8 the truth of the allegations in Paragraph 97, and deny the allegations on that basis.

9 98. Defendants deny knowledge or information to form a belief as to whether and when
10 Plaintiff Katz received such advertisement, and therefore deny the allegations in Paragraph 98 of
11 that basis.

12 99. Defendants deny the allegations in Paragraph 99.

13 100. Defendants are without knowledge or information sufficient to form a belief as to
14 the truth of the allegations in Paragraph 100, and deny the allegations on that basis.

15 101. Defendants deny knowledge or information sufficient to form a belief as to whether
16 Plaintiff “found” the calls to be intrusive and harassing, or whether they diverted attention away
17 from his daily activities. Defendants further deny knowledge or information sufficient to form a
18 belief as to why, and whether, Plaintiff Katz placed himself on the national Do-Not-Call registry.
19 Defendants deny that they caused any damage to Plaintiff Katz, or otherwise invaded his privacy.
20 Defendants deny that they initiated, and deny that they are responsible or liable for, the calls
21 allegedly received by Plaintiff Katz. The remainder of the allegations in Paragraph 101 state legal
22 conclusions, and on that basis are denied.

23 **PLAINTIFF JEFFERY PRICE’S INDIVIDUAL ALLEGATIONS**

24 102. Defendants are without knowledge or information sufficient to form a belief as to
25 the allegations in Paragraph 102, and deny the allegations on that basis.

26 103. Defendants admit that it appears that, according to records that Defendants have
27 received, a call was made to Price by Epath Media on April 2, 2014 and that Price was placed on
28 Defendants’ Do Not Call list in 2014. Defendants deny that Epath Media is Defendants’ “Agent.”

1 Defendants deny that they initiated, and deny that they are liable for, any calls allegedly received
2 by Plaintiff Price. Defendants are without knowledge or information sufficient to form a belief as
3 to the remaining allegations in Paragraph 103, and deny the allegations on that basis.

4 104. Defendants admit that Epath Media may use the names Clean Energy Foundation
5 and Green Energy Association when calling potential solar customers. Defendants deny the calls
6 at issue were made “on behalf of and for the benefit of Defendants.” Defendants are without
7 knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph
8 104, and deny the allegations on that basis.

9 105. Defendants deny that the caller was authorized by Defendants to place the call at
10 issue and deny that they initiated the call at issue. Defendants deny that they are liable for any
11 calls allegedly received by Plaintiff Price. Defendants are without knowledge or information
12 sufficient to form a belief as to the allegations in Paragraph 105, and deny the allegations on that
13 basis.

14 106. Defendants admit that on or about April 2, 2014, a call with Plaintiff Price was
15 transferred to a CEE representative. Defendants are without knowledge or information sufficient
16 to form a belief as to the remaining allegations in Paragraph 106, and therefore deny them on that
17 basis. The allegations in Footnote 5 characterize and claim to cite to statements from two
18 websites. Defendants respectfully refer the Court to the referenced websites for their true and
19 correct contents, and deny the allegations in Footnote 5 to the extent that they conflict with the
20 referenced websites.

21 107. Defendant admit that Plaintiff Price filed a complaint with the Better Business
22 Bureau against CEE on or about April 2, 2014 and made various claims against CEE. Defendants
23 deny that they initiated, and deny that they are responsible or liable for, any calls allegedly
24 received by Plaintiff Price.

25 108. Defendants are without knowledge or information sufficient to form a belief as to
26 the allegations in Paragraph 108, and deny the allegations on that basis. Defendants deny that the
27 caller was authorized by Defendants to place the call at issue and deny that they initiated the call at
28 issue. Defendants deny that they initiated, and deny that they are responsible or liable for, any

1 calls allegedly received by Plaintiff Price.

2 109. Defendants are without knowledge or information sufficient to form a belief as to
3 the allegations in Paragraph 109, and deny the allegations on that basis. Defendants further aver
4 that neither CEE nor Sunrun use, nor ever have used, the caller ID “UTILITIES” when making
5 calls to potential customers. Defendants deny that the caller was authorized by Defendants to
6 place the call at issue and deny that they initiated the call at issue. Defendants deny that they are
7 liable for any calls allegedly received by Plaintiff Price.

8 110. Defendants are without knowledge or information sufficient to form a belief as to
9 the allegations in Paragraph 110, and deny the allegations on that basis. Defendants further aver
10 that neither CEE nor Sunrun use, nor ever have used, the caller ID “UTILITIES” when making
11 calls to potential customers. Defendants deny that the caller was authorized by Defendants to
12 place the call at issue, or use the Solar America name. Defendants deny that the caller was
13 authorized by Defendants to place the call at issue and deny that they initiated the call at issue.
14 Defendants deny that they are liable for any calls allegedly received by Plaintiff Price.

15 111. Defendants are without knowledge or information sufficient to form a belief as to
16 the allegations in Paragraph 111, and deny the allegations on that basis.

17 112. Defendants admit that Plaintiff Price filed the complaint at issue, but deny that
18 Defendants are liable for the calls at issue in that complaint.

19 113. Defendants admit the allegations in Paragraph 113.

20 114. Defendants are without knowledge or information to form a belief as to the
21 remaining allegations in Paragraph 114, and deny the allegations on that basis. Defendants deny
22 that the caller was authorized by Defendants to place the call at issue and deny that they initiated
23 the call at issue. Defendants deny that they are liable for any calls allegedly received by Plaintiff
24 Price. Defendants further deny that they use, or ever have used, the name “Clean Energy
25 Advocates” to identify themselves.

26 115. Defendants admit the allegations in Paragraph 115.

27 116. Defendants are without knowledge or information sufficient to form a belief as to
28 the allegations in Paragraph 116, and deny the allegations on that basis. Defendants deny that the

1 caller was authorized by Defendants to place the call at issue and deny that they initiated the call at
2 issue. Defendants deny that they are liable for any calls allegedly received by Plaintiff Price.

3 117. Defendants are without knowledge or information sufficient to form a belief as to
4 the allegations in Paragraph 117, and deny the allegations on that basis.

5 118. Defendants are without knowledge or information sufficient to form a belief as to
6 the allegations in Paragraph 118, and deny the allegations on that basis.

7 119. Defendants are without knowledge or information sufficient to form a belief as to
8 the allegations in Paragraph 119, and deny the allegations on that basis.

9 120. Defendants deny knowledge or information sufficient to form a belief as to whether
10 Plaintiff “found” the calls to be intrusive and harassing, or whether they diverted attention away
11 from his daily activities. Defendants further deny knowledge or information sufficient to form a
12 belief as to why, and whether, Plaintiff Price placed himself on the national Do-Not-Call registry.
13 Defendants deny that they caused any damage to Plaintiff Price, or otherwise invaded his privacy.
14 Defendants deny that they are liable for the calls allegedly received by Plaintiff Price. The
15 remainder of the allegations in Paragraph 120 state legal conclusions, and on that basis are denied.

16 **PLAINTIFF JUSTIN BIRKHOFFER’S INDIVIDUAL ALLEGATIONS**

17 121. Defendants are without knowledge or information sufficient to form a belief as to
18 the allegations in Paragraph 121, and deny the allegations on that basis.

19 122. Defendants are without knowledge or information sufficient to form a belief as to
20 the allegations in Paragraph 122, and deny the allegations on that basis.

21 123. Defendants admit that on April 26, 2016, a call with Plaintiff Birkhofer was
22 transferred to a representative from Sunrun, but only after the third party vendor obtained
23 Birkhofer’s consent. Defendants admit that during the call with a Sunrun representative, the call
24 was disconnected. Defendants are without knowledge or information sufficient to form a belief as
25 to the remaining allegations in Paragraph 123, and deny the allegations on that basis.

26 124. Defendants admit that the same Sunrun representative called Plaintiff Birkhofer
27 back. Defendants admit that the Sunrun representative called from Sunrun’s telephone number,
28 855-478-6786. Defendants are without knowledge or information sufficient to form a belief as to

1 the remaining allegations in Paragraph 124, and deny the allegations on that basis.

2 125. Defendants admit that Sunrun has an office in Scottsdale, Arizona. Defendants
3 admit that the Sunrun representative stated that she could schedule an appointment for a field
4 consultant to go to Plaintiff Birkhofer's home. Defendants deny the remaining allegations in
5 Paragraph 125.

6 126. Defendants are without knowledge or information sufficient to form a belief as to
7 the allegations in the first two sentences of Paragraph 126, and deny the allegations on that basis.
8 The allegations in the third sentence of Paragraph 126 characterize and claim to cite to statements
9 from a website. Defendants respectfully refer the Court to the referenced website for its true and
10 correct contents, and deny the allegations in the third sentence of Paragraph 126 to the extent that
11 they conflict with the referenced website.

12 127. Defendants deny the allegations in Paragraph 127.

13 128. Defendants are without knowledge or information sufficient to form a belief as to
14 the allegations in Paragraph 128, and deny the allegations on that basis.

15 129. Defendants deny knowledge or information sufficient to form a belief as to whether
16 Plaintiff "found" the calls to be intrusive and harassing, or whether they diverted attention away
17 from his daily activities. Defendants further deny knowledge or information sufficient to form a
18 belief as to why, and whether, Plaintiff Birkhofer placed himself on the national Do-Not-Call
19 registry. Defendants deny that they caused any damage to Plaintiff Birkhofer, or otherwise
20 invaded his privacy. Defendants deny that they are liable for the calls allegedly received by
21 Plaintiff Birkhofer. The remainder of the allegations in Paragraph 129 state legal conclusions, and
22 on that basis are denied.

23 **CLASS CERTIFICATION ALLEGATIONS**

24 130. Defendants admit that Plaintiffs purport to bring this action on behalf of themselves
25 and putative classes as defined in Paragraph 130. Defendants deny, however, that this case is
26 appropriate for class treatment, and deny that the putative classes are valid or appropriate.

27 131. Defendants admit that Plaintiffs purport to exclude the persons identified in
28 Paragraph 131. Defendants otherwise deny the allegations in Paragraph 131.

1 132. Paragraph 132 states a legal conclusion as to which no response is required. To the
2 extent a response is required, Defendants deny the allegations in Paragraph 132.

3 133. Paragraph 133 states a legal conclusion as to which no response is required. To the
4 extent a response is required, Defendants deny the allegations in Paragraph 133.

5 134. Paragraph 134 states a legal conclusion as to which no response is required. To the
6 extent a response is required, Defendants deny the allegations in Paragraph 134.

7 135. Paragraph 135 states a legal conclusion as to which no responses is required. To the
8 extent a response is required, Defendants deny the allegations in Paragraph 135.

9 136. The allegations in Paragraph 136 state legal conclusions as to which no response is
10 required. To the extent a response is required, Defendants deny the allegations in Paragraph 136.

11 137. Paragraph 137 states a legal conclusion as to which no response is required. To the
12 extent a response is required, Defendants deny the allegations in Paragraph 137.

13 138. Paragraph 138 states a legal conclusion as to which no response is required. To the
14 extent a response is required, Defendants deny the allegations in Paragraph 138.

15 **FIRST CLAIM**
16 **Violation of the TCPA Against All Defendants**
17 **By Plaintiffs Slovin, Katz, and Birkhofer**
Individually and on Behalf of the Robocall Cellular Class

18 139. Defendants repeat its answers to the preceding paragraphs of the TAC as though
19 fully set forth herein. Defendants admit that Plaintiff purports to assert claims on behalf of
20 themselves and the members of the putative “Robocall Cellular Class,” but deny that this is a
21 viable or appropriate class.

22 140. Paragraph 140 states a legal conclusion, as to which no response is required. To
23 the extent a response is required, Defendants admit that the quoted material (with language
24 omitted) is from the TCPA. Defendants otherwise deny the allegations in Paragraph 140, and
25 refer to the referenced statute for its true and correct contents.

26 141. Paragraph 141 states a legal conclusion, as to which no response is required. To
27 the extent a response is required, Defendants admit that the quoted material (with language
28 omitted) is from the TCPA. Defendants otherwise deny the allegations in Paragraph 141, and

1 refer to the referenced statute for its true and correct contents.

2 142. Defendants admit they make calls to customers and others in the regular course of
3 their business. Defendants admit that Sunrun called Plaintiff Birkhofer on April 26, 2016, after a
4 third party vendor transferred the call to Sunrun, but deny that the call was made without
5 Birkhofer's consent. Defendants deny the remaining allegations in Paragraph 142.

6 143. Defendants deny the allegations in Paragraph 143.

7 144. Defendants deny the allegations in Paragraph 144.

8 145. Defendants deny the allegations in Paragraph 145.

9 146. Defendants deny the allegations in Paragraph 146.

10 147. Defendants deny the allegations in Paragraph 147.

11 148. Defendants admit that Plaintiffs seek the relief in Paragraph 148, but deny that
12 Plaintiffs are entitled to such relief.

13 **SECOND CLAIM**

14 **Violation Of the TCPA Against All Defendants by Plaintiff Price**
15 **Individually and on Behalf of the Robocall Landline Class**

16 149. Defendants repeat the answers to the allegations in the preceding paragraphs in the
17 TAC as though fully set forth herein. Defendants admit that Plaintiff Price purports to bring his
18 claim on behalf of himself and the members of the "Robocall Landline Class," but deny that this is
19 a viable or appropriate class.

20 150. Paragraph 150 states a legal conclusion, as to which no response is required. To
21 the extent a response is required, Defendants admit that the quoted material is from the TCPA.
22 Defendants deny the remaining allegations in Paragraph 150, and respectfully refer the Court to
23 the referenced statute for its true and correct contents.

24 151. Paragraph 151 states a legal conclusion, as to which no response is required. To
25 the extent a response is required, Defendants admit that the quoted material is from the TCPA.
26 Defendants deny the remaining allegations in Paragraph 151, and respectfully refer the Court to
27 the referenced statute for its true and correct contents.

28 152. Defendants admit that they make calls to potential customers in the regular course

1 of their business. Defendants deny the remainder of the allegations in Paragraph 152.

2 153. Defendants deny the allegations in Paragraph 153.

3 154. The allegations in Paragraph 154 state legal conclusions to which no response is
4 required. To the extent a response is required, Defendants are without knowledge or information
5 sufficient to form a belief as to whether any of the calls alleged in the TAC constitute calls for
6 “emergency purposes,” and Defendants deny the allegations on that basis. Defendants deny that
7 they are responsible or liable for the calls allegedly received by Plaintiffs.

8 155. Defendants admit that Plaintiff seeks the relief in Paragraph 155 on his own behalf
9 and on behalf of the putative class, but deny that Plaintiff is entitled to such relief.

10 **THIRD CLAIM FOR RELIEF**
11 **Violation Of the TCPA Against All Defendants**
12 **by Plaintiffs Slovin, Katz, Price, and Birkhofer**
Individually and On Behalf of the National DNC Class

13 156. Defendants repeat the answers to all preceding paragraphs of the TAC as though
14 fully set forth herein. Defendants admit that Plaintiffs assert a claim on behalf of themselves and
15 members of the DNC Class, but deny that this is a viable or appropriate class.

16 157. Paragraph 157 states a legal conclusion as to which no response is required. To the
17 extent a response is required, Defendants admit that the quoted material (with language omitted) is
18 from the TCPA. Defendants deny the remaining allegations in Paragraph 157, and respectfully
19 refer the Court to the full text of the referenced statute for its true and correct contents.

20 158. Paragraph 158 states a legal conclusion, as to which no response is required. To
21 the extent a response is required, Defendants admit that the quoted material (with language
22 omitted) is from the referenced regulation. Defendants otherwise deny the allegations in
23 Paragraph 158, and refer the Court to the referenced regulation for its true and correct contents.

24 159. Paragraph 159 states a legal conclusion, as to which no response is required.
25 Defendants respectfully refer the Court to the referenced regulation and Report and Order for the
26 true and correct contents of those documents.

27 160. Defendants deny the allegations in Paragraph 160.

28 161. Defendants deny the allegations in Paragraph 161.

1 162. Defendants deny the allegations in Paragraph 162.

2 163. Defendants deny the allegations in Paragraph 163.

3 164. Defendants deny the allegations in Paragraph 164.

4 165. Defendants deny the allegations in Paragraph 165.

5 166. Defendants deny the allegations in Paragraph 166.

6 **FOURTH CLAIM FOR RELIEF**
7 **Violations Of the TCPA, 47 U.S.C. 227**
8 **Against All Defendants by Plaintiff Slovin, Katz, Price, and Birkhofer**
9 **Individually and On Behalf of the Company DNC Class**

10 167. Paragraph 167 states a legal conclusion, as to which no response is required. To
11 the extent a response is required, Defendants respectfully refer the Court to the referenced statute
12 and regulation for their true and correct contents.

12 168. Defendants deny the allegations in Paragraph 168.

13 169. Defendants deny the allegations in Paragraph 169.

14 170. Defendants deny the allegations in Paragraph 170.

15 171. Defendants deny the allegations in Paragraph 171.

16 172. The allegations in Paragraph 172 state legal conclusions to which no response is
17 required. To the extent a response is required, Defendants deny the allegations in Paragraph 172.

18 173. Defendants deny the allegations in Paragraph 173.

19 174. Defendants deny the allegations in Paragraph 174.

20 175. Defendants admit that Plaintiffs and the purported “Company DNC Class” seek the
21 relief in Paragraph 175, but deny that Plaintiffs or the putative class members are entitled to such
22 relief.

23 **FIFTH CLAIM FOR RELIEF**
24 **Violations of the Consumers Legal Remedies Act,**
25 **California Civil Code Section 1750, et. seq.,**
26 **On Behalf of Plaintiff Price and the California Class**

27 176. Defendants repeat the answers to the allegations in all the preceding paragraphs of
28 the TAC as if fully set forth herein. Defendants admit that Plaintiff asserts this claim on behalf of
himself and the purported “California Class,” but deny that the class is viable or appropriate.

1 177. Paragraph 177 states a legal conclusion, as to which no response is required. To
2 the extent a response is required, Defendants refer the Court to the referenced section of the
3 California Civil Code for its true and correct contents.

4 178. Paragraph 178 states a legal conclusion, as to which no response is required. To
5 the extent a response is required, Defendants refer the Court to the referenced section of the
6 California Civil Code for its true and correct contents.

7 179. Defendants deny the allegations in Paragraph 179.

8 180. Defendants deny the allegations in Paragraph 180.

9 181. Defendants deny the allegations in Paragraph 181.

10 182. Defendants deny the allegations in Paragraph 182 as alleged. Defendants also deny
11 that the alleged “Agents,” as defined in the TAC, are agents of either Defendant, and deny that
12 they make or have made any calls on behalf of either Defendant. The allegations in Paragraph 182
13 state legal conclusions to which no response is required. To the extent a response is required,
14 Defendants deny the allegations in Paragraph 182.

15 183. Defendants deny the allegations in Paragraph 183.

16 184. Defendants deny the allegations in Paragraph 184.

17 185. Defendants are without knowledge or information sufficient to form a belief as to
18 the truth of the allegations in Paragraph 185, and deny the allegations on that basis.

19 186. Defendants deny the allegations in Paragraph 186.

20 187. Defendants admit that Plaintiff seeks, on behalf of himself and the “California
21 Class” the relief in Paragraph 187, but deny that Plaintiff and the “California Class” are entitled to
22 such relief.

23 188. Defendants admit that Plaintiff seeks, on behalf of himself and the “California
24 Class” reasonable attorneys’ fees and costs, but deny that Plaintiff and the “California Class” are
25 entitled to such relief.

26 189. Defendants deny knowledge or information sufficient to form a belief as to whether
27 Plaintiff brings this action “as a private attorney general, and to vindicate and enforce an important
28 right affecting the public interest.” Defendants admit that Plaintiff seeks an award of attorneys’

1 fees under California Code of Procedure section 1021.5, but deny that Plaintiff is entitled to such
2 relief.

3 190. Defendants admit that Plaintiff Price seeks, on behalf of himself and the “California
4 Class” reasonable attorneys’ fees and costs, but deny that Plaintiff is entitled to such relief.

5 191. Defendants deny knowledge or information sufficient to form a belief as to whether
6 Plaintiff brings this action “as a private attorney general, and to vindicate and enforce an important
7 right affecting the public interest.” Defendants admit that Plaintiff seeks an award of attorneys’
8 fees under California Code of Procedure section 1021.5, but deny that Plaintiff is entitled to such
9 relief.

10 **AFFIRMATIVE DEFENSES**
11 **FIRST AFFIRMATIVE DEFENSE**
12 **(Failure to State a Claim)**

13 1. The TAC fails to allege facts sufficient to state a cause of action against
14 Defendants.

15 **SECOND AFFIRMATIVE DEFENSE**
16 **(Consent)**

17 2. Plaintiffs and the putative class are barred in whole or in part from asserting their
18 claims because they provided Defendants with the requisite consent to receive telephone calls of
19 the type about which the TAC complains.

20 **THIRD AFFIRMATIVE DEFENSE**
21 **(No Use of Automatic Telephone Dialing System)**

22 3. The TCPA claims are barred because neither Defendants, nor Defendants’ agents
23 used an Automatic Telephone Dialing System, as defined in the TCPA.

24 **FOURTH AFFIRMATIVE DEFENSE**
25 **(Acquiescence and Ratification)**

26 4. Plaintiffs and the putative class members are barred from asserting their claims, in
27 whole or in part, by the doctrines of acquiescence and ratification.

28 **FIFTH AFFIRMATIVE DEFENSE**
(Estoppel)

1 reduce their damages, and any damages awarded to them must be reduced accordingly.

2 **TWELFTH AFFIRMATIVE DEFENSE**
3 **(No Proximate Cause)**

4 12. Defendants did not proximately cause any damage, injury or violation alleged in
5 the TAC.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**
7 **(No Knowing or Willful Misconduct)**

8 13. Any claim for treble damages under the TCPA is barred because Defendants did
9 not engage in any knowing or willful misconduct.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**
11 **(No Agency)**

12 14. The parties responsible for the actions alleged in the TAC were not Defendants'
13 agents, and Defendants cannot be held responsible for them.

14 **FIFTEENTH AFFIRMATIVE DEFENSE**
15 **(First Amendment)**

16 15. The calls at issue constitute speech protected by the First Amendment, and
17 imposing liability on Defendants would violate their First Amendment rights.

18 **SIXTEENTH AFFIRMATIVE DEFENSE**
19 **(Due Process)**

20 16. The claims of Plaintiffs and the putative class, including the imposition of statutory
21 damages under the TCPA, violate the Due Process Clause of the United States Constitution.

22 **SEVENTEENTH AFFIRMATIVE DEFENSE**
23 **(Calls Not Made By Defendants)**

24 17. The claims of Plaintiffs and the putative class are barred, in whole or in part,
25 because Defendants did not make the calls at issue.

26 **EIGHTEENTH AFFIRMATIVE DEFENSE**
27 **(Existing Business Relationship)**

28 18. The claims of Plaintiffs and the putative class are barred, in whole or in part,

1 because they maintained an existing business relationship with the caller.

2 **NINETEENTH AFFIRMATIVE DEFENSE**
3 **(Safe Harbor)**

4 19. The claims of Plaintiffs and the putative class are barred, in whole or in part, by the
5 TCPA's "Safe Harbor" provision or other "Safe Harbor" defenses.

6 **TWENTIETH AFFIRMATIVE DEFENSE**
7 **(Less Than 30 Days Following Request to Be Placed On Company DNC List)**

8 20. The claims of Plaintiffs and the putative class are barred, in whole or in part, to the
9 extent that the calls at issue were made within thirty (30) days from the time the customer
10 requested to be put on Defendants' internal Do Not Call list.

11 **TWENTY-FIRST AFFIRMATIVE DEFENSE**
12 **(Response to Customer Inquiry/Request)**

13 21. The claims of Plaintiffs and the putative class are barred, in whole or in part, to the
14 extent that the calls at issue were made in response to a consumer inquiry, or request to be called.

15 **TWENTY-SECOND AFFIRMATIVE DEFENSE**
16 **(One Call Safe Harbor for Wrong Number Calls)**

17 22. The claims of Plaintiffs and the putative class are barred, in whole or in part, to the
18 extent that the calls at issue were the first call made to a phone number that no longer belongs to
19 the individual or household that originally requested to be called by Defendants, and were made
20 while Defendants were unaware that the number at issue had been reassigned.

21 **TWENTY-THIRD AFFIRMATIVE DEFENSE**
22 **(Improper Class Action)**

23 23. Plaintiff cannot satisfy the prerequisites set forth in Rule 23 of the Fed. R. Civ. P.
24 to maintain this action as a class action.

25 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**
26 **(No Charge)**

27 24. Plaintiffs and putative class members were not "charged for the call," as that term
28 is used in the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii).

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Hobbs Act)

1
2 25. The Hobbs Act cannot be validly or constitutionally applied to preclude Defendants
3 from raising defenses to an action arising under the TCPA.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Good Faith)

4
5
6 26. Plaintiffs' and putative class members' claims are barred, in whole or in part,
7 because Defendants possessed a good faith belief that they had the requisite level of prior express
8 consent.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Right to Tender Relief)

9
10
11 27. Defendants reserve the right to tender relief by depositing the full amount of
12 Plaintiffs' claims in an account payable to Plaintiffs in order to moot Plaintiffs' claims. *See*
13 *Campbell-Ewald Co. v. Gomez*, 136 S.Ct. 633, 672 (2016).

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Right to Assert Additional Defenses)

14
15
16 28. Defendants further aver that they currently lack sufficient knowledge or
17 information on which to form a belief as to whether they may have additional, as yet unstated,
18 affirmative defenses. Defendants reserve the right to assert additional affirmative defenses in the
19 event discovery indicates it would be appropriate.

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PRAYER FOR RELIEF

WHEREFORE, Defendants respectfully request that:

1. The Court enter judgment in favor of Defendants, and against Plaintiffs.
2. The Court award Defendants all expenses, costs and attorneys' fees in connection with this lawsuit; and
3. The Court award such other and further relief to Defendants as it deems just and proper.

DATED: August 19, 2016

KELLEY DRYE & WARREN LLP
Lauri A. Mazzuchetti
Lee S. Brenner
Edward J. Mullins III
Catherine D. Lee

By: /s/ Lauri A. Mazzuchetti
Lauri A. Mazzuchetti
Attorneys for Defendants Sunrun, Inc. and
Clean Energy Experts, LLC