

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, *ex rel.*,
HECTOR H. BALDERAS, Attorney General of
New Mexico,

Plaintiff/Petitioner,

No. D-202-CV-2018-01936

v.

VIVINT SOLAR DEVELOPER, LLC, VIVINT
SOLAR, INC., VIVINT SOLAR HOLDINGS,
INC., DAVID BYWATER, Individually and as an
Officer of Vivint Solar, Inc., DANA RUSSELL,
Individually and as an Officer of Vivint Solar, Inc.,
PAUL DICKSON, Individually and as an Officer of
Vivint Solar, Inc., L. CHANCE ALLRED,
Individually and as an Officer of Vivint Solar, Inc.,
XYZ CORPORATION 1-10, and JOHN/JANE
DOES 1-10,

Defendants.

CONSENT ORDER

WHEREAS, since 2015, Vivint Solar (as defined below) has entered into approximately 2,300 PPAs (as defined below) with New Mexico consumers, whereby Vivint Solar installs and maintains a residential solar photovoltaic systems (a “Solar System”) during which the consumer purchases all of the electricity produced by the solar system from Vivint Solar;

WHEREAS, on March 8, 2018, following an investigation into consumer complaints regarding the sales, marketing, and recording practices of Vivint Solar, the Attorney General of the State of New Mexico (the “Attorney General”) filed a complaint alleging that defendants in the above-captioned action (the “Defendants”) had engaged in numerous violations of New Mexico law in connection with the advertisement, sale, marketing, and recording of power purchase agreements (“PPAs”);

WHEREAS, following the installation of a solar system pursuant to a PPA, Vivint Solar files or causes to be filed a UCC-1 financing form that identifies the consumer as a “debtor” and Vivint Solar as a “secured party.”

WHEREAS, the Attorney General alleges that, at various time, Defendants have acted to violate New Mexico law, or caused or supported violations of New Mexico law as follows: (a) engaged in deceptive marketing, communications, and door-to-door sales tactics, including making misleading statements regarding the anticipated savings generated by a PPA, the cost of the electricity generated by solar systems installed through PPA contracts, and the cost of electricity purchased from New Mexico utilities; (b) misrepresented Vivint Solar’s affiliation with New Mexico utility companies and/or the government of the State of New Mexico; (c) utilized a form of contract for PPAs that includes misleading language regarding the rates, and increases thereto, charged by Vivint Solar for electricity generated by PPAs; (d) utilized a form contract for PPAs that misleads consumers regarding Vivint’s intention to record its interest in the solar systems installed following execution of a PPA contract; (e) failed to comply with local ordinances regarding licensing of door-to-door sales people; (f) failed to provide notice of right to cancel in the form required by New Mexico law; (g) misstated the relationship of consumers to Vivint in the UCC-1 forms filed by Vivint Solar for the purpose of recording interest solar systems; and (h) in undertaking the above actions, engaged in violations of the New Mexico Unfair Practices Act, NMSA 1978, Sections 57-12-1 to -26 (1953, as amended through 2009), the False Advertising Act, NMSA 1978, Sections 57-15-1 to -10 (1953, as amended through 1967), the Racketeering Act, NMSA 1978, Sections 30-42-1 to -6 (1978, as amended through 2015) and Civil Fraud, UJI 13–1633 NMRA;

WHEREAS, Defendants deny the Attorney General’s allegations as set forth above and in the Complaint and First Amended Complaint filed in the above-captioned action;

WHEREAS, the Attorney General and the Defendants (collectively, the “Parties”) have reached an amicable agreement resolving all claims and disputes that have been raised or asserted in the litigation and;

WHEREAS, Defendants have consented to the entry of the below consent order without admitting any violation of law or finding of fact, and for good cause shown:

IT IS HEREBY ORDERED AND AGREED AS FOLLOWS:

1. EFFECTIVE DATE

1.1 This Consent Order is effective on the date it is entered by the Second Judicial District Court of New Mexico.

2. DEFINITIONS

As used in this Consent Order, the following words or terms shall have the following meaning, which meaning shall apply wherever the words and terms appear in this Consent Order.

2.1 “Clear and Conspicuous” or “Clearly and Conspicuously” shall mean a statement that, regardless of the medium in which it is made, is presented in such size, color, contrast, duration, location, and audibility, compared to the other information with which it is presented, that it is readily apparent and understandable and in language and in terms used in accordance with their common or ordinary usage and meaning. If such statement modifies, explains or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, explains or clarifies in a manner that is readily apparent and understandable.

2.2 “Consumer Service Representative” shall mean any person hired by Vivint Solar as an employee or an independent contractor, whose job tasks include, among other things, receiving and/or responding to Consumer inquiries and/or complaints.

2.3 “Lease” shall refer to any version of the Residential Solar Energy System Lease Agreement between Vivint Solar Developer, LLC and a consumer.

2.4 “New Mexico” or “State” shall refer to the State of New Mexico.

2.5 “Person” shall be defined in accordance with §57-12-2 NMSA (1978) as natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures, or syndicates.

2.6 “PPA” shall refer to any version of the Residential Solar Power Purchase Agreement entered into between Vivint Solar Developer, LLC and Consumers in New Mexico.

2.7 “Sales Representative” shall mean any person hired by a Third Party Vendor or Vivint Solar, as an employee or an independent contractor, who directly engages with Consumers for the purpose of Soliciting and selling Solar Energy Systems on behalf of Vivint Solar.

2.8 “Solicitation” shall refer to both the door-to-door solicitation and telephone solicitation of Consumers on or behalf of Vivint Solar to sell Vivint Solar products.

2.9 “SPA” shall refer to any version of the Residential Solar Energy System Purchase Agreement entered into between Vivint Solar Developer, LLC and Consumers in New Mexico.

2.10 “Third Party Vendor” shall be defined as any Person hired by Vivint Solar as an employee or an independent contractor that hires a Sales Representative.

2.11 “Vivint Solar” shall collectively refer to Vivint Solar Developer, LLC, Vivint Solar, Inc., and Vivint Solar Holdings, Inc.

3. CHANGES TO VIVINT SOLAR’S GENERAL BUSINESS PRACTICES

Code of Ethics, Practices, and Training to be Implemented Within Sixty (60) Days of Entry of this Consent Order:

3.1 Vivint Solar will make, or cause to be made, the following updates and/or changes to the Vivint Solar’s Code of Ethics:

3.1.1 Vivint Solar’s Code of Ethics will be updated to reflect the best practices set forth herein. Specifically, the Code of Ethics will instruct sales personnel to:

3.1.1.1 Explain the expected production of the Solar Energy System;

3.1.1.2 Avoid soliciting door-to-door in gated communities, to New Mexicans who have posted no soliciting signs, or before 9:00 AM or after 9:00 PM;

3.1.1.3 Explain to customers their right to cancel the contract prior to the initiation of work associated with installing the solar system.

3.2 Vivint Solar will distribute the updated Code of Ethics to all pertinent personnel and provide the OAG with a detailed confirmation that said distribution has been performed.

3.2.1 All Vivint Solar employees will receive ethics training at onboarding.

3.2.2 Vivint Solar employees who engage in sales, supervise sales, or support sales will receive additional training in ethics and compliance with consumer law annually.

3.2.3 All Vivint Solar employees will receive ethics training and training regarding compliance with consumer law biennially.

3.2.4 Vivint Solar shall bear the cost of said training.

3.2.5 For a period of three (3) years after this Consent Order is entered, Vivint Solar will inform the Attorney General of every instance in which a Vivint Solar employee is terminated for violating Vivint Solar's Code of Ethics in relation to the marketing or sale of a PPA or Lease to a Consumer in New Mexico.

Correcting, Clarifying and Enhancing Disclosures to Consumers, Including System Design Disclosures and Procedures, and Sales Process Changes to be Implemented Within Ninety (90) Days of Entry of this Consent Order:

3.3 Prior to presentation of a PPA or solar Lease to the consumer, Vivint Solar will explain the expected production of the system, including:

3.3.1 Vivint Solar's calculations as to the amount and percentage of electricity use that Vivint Solar calculates will be offset by the system on a monthly basis.

3.3.2 Vivint Solar's estimate of current electricity usage, on both a monthly and annual basis.

3.3.3 Identifying the basis for Vivint Solar's calculations regarding usage.

3.3.4 The total estimated monthly cost (by month) of the electricity referred to above, calculated using current rates for both Vivint Solar and the utility company serving the consumer, and including all related fees and surcharges.

3.3.5 Disclosing, in plain language, that the consumer will be responsible for all electricity produced by the system on a monthly basis, even if the consumer does not use all of that electricity.

4. CONSUMER LEASES

4.1 Within one hundred twenty (120) days of the entry of this Consent Order, Vivint Solar will begin offering Leases in New Mexico in addition to PPAs and Solar System purchases. Such Leases will be subject to any applicable terms set forth in this Consent Order.

5. VIVINT SOLAR CONTRACTS

5.1 Within ninety (90) days of the entry of this Consent Order, All PPAs, Leases, and associated disclosure documents issued by Vivint Solar to persons in New Mexico shall disclose and/or include:

5.1.1 The following disclosure paragraph:

Please contact Vivint Solar at ###-###-#### or help@vivintsolar.com if you have any questions, concerns, or complaints relating to this Agreement, the solar energy system, or any employee of Vivint Solar. For inquiries relating to Vivint Solar's contractor licenses, you may also contact the New Mexico Department of Regulation and Licensing at <http://www.rld.state.nm.us/>. For inquiries or complaints relating to the consumer practices of Vivint Solar, you may also contact New Mexico's Office of the Attorney General. The Attorney General's Office provides complaint resolution services to consumers at no charge. For more information, please visit <https://www.nmag.gov/consumer-complaint-instructions.aspx>.

5.1.2 The term of the PPA or Lease in years, acknowledged in the contract by adjacent initial block;

5.1.3 A disclosure that the PPA or Lease is binding at signature unless and until the consumer affirmatively cancels the contract;

5.1.4 A disclosure that the electricity rates paid by the consumer will increase by 2.9% every year for the life of the contract, acknowledged in PPA by adjacent initial block;

5.1.5 An escalation chart detailing the effect of the 2.9% annual increase, including the initial rate per kWh and the rate per kWh for each year of the PPA; the rates shall be expressed in \$0.## per kWh, and all rounding (either up or down) shall reflect what the consumer will actually pay;

5.1.6 In plain language, the rate that the consumer will pay in the final year of the contract;

5.1.7 In plain language, a disclosure stating that the consumer will be responsible for all electricity produced by the Solar System on a monthly basis, even if the consumer does not use all of that electricity, acknowledged in PPA by adjacent initial block;

5.1.8 A disclosure that, upon entry into the contract, Vivint Solar will record a statement with the real property records maintained by the County Clerk in which the Solar System is located Clerk identifying its ownership interest in the solar energy system.

6. ADDITIONAL PRO-CONSUMER POLICIES AND PROCESSES

Within ninety (90) days of entry of this Consent Order, Vivint Solar will:

6.1 Ensure that it and all of its sales representatives are appropriately licensed under state and local laws and ordinances.

6.2 Not solicit door-to-door in gated communities or to New Mexicans who have posted no soliciting signs.

6.3 Not solicit door-to-door before 9:00 AM or after 9:00 PM.

6.4 Make all necessary technological and process changes to implement the use of DocuSign (or other/successor third-party electronic signature vendor) as the sole method by which New Mexico consumers sign a PPA, Lease, or SPA with Vivint Solar, whereby such agreement is first sent to a customer's e-mail address and is signed on the customer's electronic device.

6.5 Provide the Notice of Cancellation and associated form as a file separate from the PPA through DocuSign, such that the Notice of Cancellation and associated form would be made available to the customer as a separate file.

6.6 Change all checkboxes in customer PPAs, Leases, and SPAs to initial blocks.

6.7 Include initial blocks throughout agreement adjacent to relevant provision.

6.8 Ensure that customer agreements are written in plain language, and that font size and color is appropriately visible.

6.9 Not ask customers to sign agreements unless or until a design proposal is completed and approved by the consumer.

6.10 Provide electronic contract consent separate from customer agreement.

6.11 Allow New Mexico consumers to opt-out of electronic contracting and receive paper copies of all documents at no cost.

6.12 Automatically mail a courtesy copy of customer agreements to all customers sixty-five (65) years or older.

6.13 Vivint Solar will inform consumers that they may request a paper copy of their customer agreement. If requested, the customer agreement will be placed in the mail to the consumer at least five (5) business days before the date scheduled for installation, provided the request is made at least ten (10) business days before the date scheduled for installation.

6.14 Develop Spanish-language agreements for customers who indicate a preference for Spanish and/or where sales presentations are made in Spanish.

6.15 Include a copy of the Form UCC-1 or new form, as the case may be (as described in Section 11) as an exhibit to the customer agreement, and inform customer that the filing will be recorded in the real property records maintained by the County Clerk in the county in which the Solar System will be installed, which will be acknowledged by adjacent initial block.

6.16 Require that customers create an account with the Vivint Solar Account Center and ensure they can view and retrieve relevant documents from it at least five days prior to the beginning of installation.

6.17 Require that PPA customers complete a telephone survey with a corporate representative at least five days prior to the beginning of installation to confirm on a recorded line that the customer understands the material terms of the PPA, including the length of the PPA, price per kWh, escalation rate, the fact that customer will purchase all power produced by the solar system, and the Form UCC-1 or other form to be filed by Vivint Solar for the purpose of recording Vivint Solar's interest in the solar system.

6.18 Record customer preferences for Spanish in internal systems that will ensure material communications with the customer, both written and oral, are conducted in Spanish.

6.19 Provide a copy of the PPA, Lease, or SPA in Spanish upon request.

6.20 Allow customers to cancel the PPA or Lease, or terminate the SPA, at any time prior to installation or the commencement of electrical work.

6.21 Allow customers to cancel by way of anything in writing, including an email, even if customer does not fill out the Notice of Cancellation form.

7. TRAINING OF VIVINT SOLAR EMPLOYEES AND SALES REPRESENTATIVES

7.1 Vivint Solar will undertake the following actions to correct, clarify, and enhance the training of its employees and sales representatives within ninety (90) days of the entry of this Consent Order:

7.1.1 Vivint Solar will develop training for sales representatives in New Mexico to implement the terms of settlement as set forth herein.

7.1.2 Employees shall be trained to disclose that the PPA or Solar Lease contract may be cancelled at any point prior to the beginning of installation work (including, but not limited to, electrical work necessary for installation of the solar system).

7.1.3 Employees shall be trained to disclose that the PPA or Solar Lease contract may not be cancelled once installation work has begun.

7.1.4 Employees shall be trained specifically not to make misrepresentations that would constitute violations of New Mexico law, including without limitation the following representations:

7.1.4.1 That the PPA is “free,” “at no cost,” or other similar representations.

7.1.4.2 Imply they are associated with any governmental entity, utility or misrepresent their affiliation with Vivint Solar; and

7.1.4.3 That PPAs are, in any way, paid for by tax dollars.

8. CONSUMER COMPLAINTS

8.1 Within ninety (90) days of the entry of this Consent Order, Vivint will begin handling Complaints from New Mexico consumers as follows:

8.1.1 The nature and detail of each complaint will be recorded in a manner that will allow relevant information associated with the complaint to be retrieved, reviewed, and augmented;

8.1.2 Vivint Solar teams responsible for handling complaints will be identifiable, and their activities in connection with a particular complaint, including actions taken and next steps, will be recorded; and

8.1.3 If the consumer complaint cannot be resolved within one-hundred and twenty (120) days of receipt, Vivint Solar will inform the customer of their right to file a

complaint with OAG's Consumer & Family Advocacy Services and/or Consumer & Environmental Protections Divisions, as described at <https://www.nmag.gov/consumer-complaint-instructions.aspx>.

9. SETTLEMENT PAYMENT

9.1 Vivint Solar will make a one-time payment to OAG of one million, nine hundred fifty thousand and 00/100 Dollars (the "Settlement Payment") within ten (10) business days of execution of this Agreement by both Vivint Solar and the OAG.

9.2 The Settlement Payment shall be made by wire transfer via wire instructions provided by the Attorney General to counsel for Defendants in a mutually agreeable form.

9.3 Upon making the Settlement Payment, Vivint Solar shall immediately be fully divested of any interest in, or ownership of, the monies paid, and all interest in the monies, and any subsequent interest or income derived therefrom.

9.4 The Settlement Payment shall be expended for litigation fees and costs, as approved by this Court, and to enhance the OAG's law enforcement efforts to prevent and prosecute financial fraud or unfair or deceptive acts or practices and to investigate, enforce, and prosecute other illegal conduct related to financial services or consumer protection laws.

10. AWARD OF ATTORNEYS' FEES AND EXPENSES

10.1 Following entry of this Consent Order, the State's counsel will move, subject to review by the Court, an award of attorneys' fees and expenses to the State's counsel, to be made from the Settlement Payment. Any such award of attorneys' fees and expenses is not the subject of any agreement between the Defendants and the Attorney General other than what is set forth in this Consent Order.

10.2 Defendants have no interest in, and shall not oppose, the award of attorneys' fees and expenses.

11. CONSUMER DISCLOSURE LEGISLATION

11.1 New Notice Filing:

11.1.1 The Attorney General and Vivint Solar will work together, as appropriate, to support legislation to create a “notice of energy generation system owned by third-party” similar to the proposal reflected in SB 108, introduced during the 2020 General Session of the New Mexico Legislature, <https://www.nmlegis.gov/Legislation/Legislation?chamber=S&legType=B&legNo=108&year=20>.

11.1.2 Within two (2) years after the effective date of any legislation consistent with that described above in section 11.1.1, Vivint Solar will ensure that all Form UCC-1 documents that Vivint Solar has caused to be recorded with county recorder’s offices associated with Vivint Solar PPA Solar Systems in New Mexico will be released and replaced by the new notice filing associated with such legislation.

11.2 The OAG, with the cooperation and support of Vivint Solar, will seek to amend § 57-31-3 N.M.S.A (1978) to require the following disclosures be made to consumers prior to the execution of a PPA or Lease:

11.2.1 Calculations setting forth the amount and percentage of electricity use that a solar installer calculates will be offset by the Solar System on a monthly basis;

11.2.2 An estimate of a consumer’s current electricity usage, on both a monthly and annual basis;

11.2.3 The basis for the solar installer’s calculations regarding usage;

11.2.4 The total monthly cost of the electricity referred to above, calculated using current rates for both the installer and the consumer’s applicable utility company;

11.2.5 For PPA customers, as applicable, a plain language disclosure that the consumer will be responsible for all electricity produced by the system on a monthly basis, even if the consumer does not use all of that electricity;

11.2.6 A plain language disclosure of any current net metering planning available for the Solar System;

11.2.7 If any representations are made to the consumer regarding the repurchase of excess electricity by the consumer's applicable utility company, the current rate paid for such repurchases will be disclosed;

11.2.8 A comparison of the rate an installer charges for each kWh versus the rate of the kWh credited by the applicable utility. In the context of discussing rate increases, the installer will be required to provide accurate historical data regarding approved and implemented rate changes.

12. RELEASE

12.1 In consideration of the injunctive relief, payments, undertakings, mutual promises, and obligations provided for in this Agreement and conditioned on Vivint Solar making the Settlement Payment in the manner specified in paragraph 9, the OAG hereby agrees to release each and all Defendants named in this action (the "Released Defendant Parties") from any and all civil claims, Consumer-related administrative claims, and unknown Claims (defined below), to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Vivint Solar for violations of New Mexico law arising out of this litigation, except for enforcement of this Consent Order ("Released Claims") and the claims set forth in paragraph 12.3. The Released Claims are only claims that the Attorney General has the authority to bring and release.

12.2 Nothing in this Consent Order shall be construed to create, waive, release or limit any private right of action, including any claims consumers have or may have on an individual or class basis under state consumer protection laws against any person or entity, including Vivint Solar.

12.3 Notwithstanding the releases in paragraph 12.1 of this Consent Order, or any other terms of this Consent Order, the following claims are specifically reserved and not released by this Consent Order: (a) claims based on violations of securities laws, including based on the offer, sale, or purchase of securities, and (b) claims of state regulatory agencies having specific regulatory jurisdiction that are separate and independent from the regulatory and enforcement jurisdiction of the Attorney General.

12.4 In consideration of the payments, undertakings, mutual promises, and obligations provided for in this Consent Order, the Defendants hereby agree to fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle and acquit New Mexico and their departments and former or current officers, representatives (including Special Assistant Attorneys General appointed in relation to this Action), or employees (collectively, the “Released Plaintiff Parties”) from any and all claims, demands, actions, or causes of action, including unknown Claims (as defined below) that they may have, purported to have, or may hereafter have against any Released Defendant Party arising out of or in any way related to the claims brought in this litigation (hereinafter, the “Released Defendant Claims”).

12.5 “Unknown Claims” means any and all released Plaintiff Claims or Released Defendant Claims (together, the “Released Claims”) that any of the Released Plaintiff Parties or the Released Defendant Parties (together, the “Released Persons”) do not know or suspect to exist in their favor at the time of the release arising out of or in any way related to the claims or counterclaims brought in this litigation or any affirmative defenses claims by any Released Persons, which if known by them might have affected their decisions with respect to

the Consent Order. With respect to any of the Released Claims, the Parties stipulate and agree that upon the Effective Date, the Parties expressly waive, and each Released Person shall be deemed to have waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law.

13. PENALTIES FOR NON-COMPLIANCE

13.1 The OAG (or designated representative) shall have the authority to enforce the provisions of this Agreement Order or to seek sanctions for violations hereof or both.

13.2 The Parties agree that Vivint Solar may be liable for civil penalties relating to any future violations of the provisions of Sections 3 and 5-7 of this Consent Order, the New Mexico Unfair Practices Act, NMSA 1978, Sections 57-12-1 to -26 (1953, as amended through 2009), the False Advertising Act, NMSA 1978, Sections 57-15-1 to -10 (1953, as amended through 1967), the Racketeering Act, NMSA 1978, Sections 30-42-1 to -6 (1978, as amended through 2015) and Civil Fraud, *see* UJI 13-1633 NMRA.

14. COMPLIANCE WITH LAWS

14.1 Except as provided in this Consent Order, no provision herein shall be construed as:

14.1.1 Relieving Vivint Solar of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or

14.1.2 Limiting or expanding any right the OAG may otherwise have to obtain information, documents, or testimony from Vivint Solar pursuant to any New Mexico or Federal law, regulation, or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Vivint Solar may otherwise have pursuant to any New Mexico

or Federal law, regulation, or rule, to oppose any process employed by the OAG to obtain such information, documents, or testimony.

15. NOTICES UNDER THIS AGREEMENT

15.1 Except as otherwise provided herein, any notice or other documents required to be sent to the Parties pursuant to this Agreement shall be sent by United States Mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the documents and electronic mail. The notices and/or documents shall be sent to the following addresses:

For the OAG:

P. Cholla Khoury
Jacqueline N. Ortiz
P.O. Drawer 1508
Santa Fe, NM 87504-1508
ckhoury@nmag.gov
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16. DISMISSAL

16.1 This Consent Order resolves all claims asserted in the Action.

16.2 Upon entry of this Consent Order, Vivint Solar will move to dismiss First Judicial District Court of New Mexico Case No. D-101-CV-2018-03544 captioned *Vivint Solar Developer, LLC v. The Office of the Attorney general, et. al.*, with prejudice.

17. GENERAL PROVISIONS

17.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Order.

17.2 This Consent Order shall be governed by, and construed, interpreted, and enforced in accordance with the laws of the State of New Mexico.

17.3 The Parties agree that any action to enforce the term of this Consent Order shall be brought exclusively in the Second Judicial District Court of the State of New Mexico and the Parties irrevocably consent to the jurisdiction of that court for such action.

17.4 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

17.5 This is a fully integrated settlement agreement. This document contains the entire agreement of the Parties with respect to its subject matter, and all prior oral or written agreements, contracts, negotiations, representations and discussions, if any, pertaining to this matter are merged into this Consent Order. No Party to this Consent Order has made any oral or written representation other than those set forth in this Consent Order, and no Party has relied upon, or is entering into, this Consent Order in reliance upon any representation other than those set forth in this Consent Order. This Consent Order may not be modified in any respect except by a written amendment signed by all Parties.

17.6 Except as otherwise explicitly provided for in this Consent Order, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

17.7 Paragraph headings contained in this Consent Order are inserted solely as reference aids for the ease and convenience of the reader. They shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions or any other aspect of this Consent Order.

17.8 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected except that paragraph 12.1 shall remain effective.

17.9 This Consent Order shall bind and inure to the benefit of the Parties thereto, the Released Parties and their predecessors, successors, assigns, agents, and attorneys. Each of the signatories of this Consent Order represents and warrants that it, he, or she is authorized by his or her respective clients or principal to execute this Consent Order and to bind the corresponding

Party hereto. With respect to the Plaintiff, the relevant signatories affirm that they have authority to execute this Consent Order on behalf of the State of New Mexico and their respective governmental departments and/or agencies and that this Consent Order is a binding obligation enforceable against the State of New Mexico and their respective governmental departments and/or agencies under applicable State law.

17.10 This Consent Order is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order nor any action taken hereunder shall constitute, or be construed as; (a) an approval, sanction or authorization by the Attorney General or any other governmental unit of the State of any act or practice of Vivint Solar; and/or (b) an admission by Vivint Solar that any of its acts or practices described in, required in, or prohibited by this Consent Order were or are unfair or deceptive or violate the consumer protection laws of the State. This Consent Order is not intended, and shall not be deemed to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms of this Consent Order; or (b) any action or proceeding involving a released Claim (as defined above) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

17.11 This Consent Order is a public document subject to the Inspection of Public Records Act.

17.12 The Parties represent and warrant that an authorized representative of each has signed this Consent Order with full knowledge, understanding and acceptance of its terms and that the representative has done so with the authority to legally bind the respective Parties.

17.13 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.

17.14 The Parties agree, accept as otherwise provided herein, each Party shall bear its own costs and expenses. Without affecting the finality of this order and judgment, the Court retains jurisdiction solely to decide a forthcoming request by the State's counsel for an award of attorneys' fees and costs.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to be 'CC', written over a horizontal line.

Clay Campbell
District Court Judge

Submitted by:

**HECTOR H. BALDERAS,
ATTORNEY GENERAL**

/s/ Jacqueline N. Ortiz

Jacqueline N. Ortiz

P. Cholla Khoury

Assistant Attorney General

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