

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

THOMAS NIEMCZYK, individually and on  
behalf of a class of similarly situated individuals,

Plaintiff,

v.

PRO CUSTOM SOLAR LLC, D/B/A  
MOMENTUM SOLAR

Defendant.

Case No.: 2:19-cv-7846-ES-MAH

RICK HILL and BARRY WOLFORD,  
individually and on behalf of a class of similarly  
situated individuals,

Plaintiffs,

v.

PRO CUSTOM SOLAR LLC, D/B/A  
MOMENTUM SOLAR

Defendant.

Case No.: 2:22-cv-00247- ES-MAH

**SETTLEMENT AGREEMENT**

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Subject to the approval of the Court and pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Class Action Settlement Agreement and Release, including the attached Exhibits (“Settlement Agreement” or “Settlement”), is entered into between Plaintiffs Thomas Niemczyk, Rick Hill, and Barry Wolford, on behalf of themselves and on behalf of each of the Settlement Class Members (“Plaintiffs”), and Defendant Momentum Solar LLC (“Defendant” or “Momentum”) (collectively, the “Parties”) in the actions entitled *Niemczyk v. Pro Custom Solar LLC*, Case No. 2:19-cv-7846-ES-MAH (D.N.J.) and *Walters v. Pro Custom Solar LLC*, Case No. 2:22-cv-00247-ES-MAH (D.N.J.) (the “Actions” or this “Litigation”) in the United States District Court for the District of New Jersey.

### **RECITALS**

WHEREAS, on March 5, 2019, Plaintiff Thomas Niemczyk (“Niemczyk”) filed a putative class action in the United States District Court for the District of New Jersey against Defendant on behalf of himself and all others similarly situated, alleging claims for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (“TCPA”) for alleged unsolicited telemarketing calls made by or on behalf of Defendant;

WHEREAS, on January 19, 2022, Plaintiffs Herbert Walters, Rick Hill, and Barry Wolford filed a putative class action in the United States District Court for the District of New Jersey against Defendant on behalf of themselves and all others similarly situated, alleging claims for violations of the TCPA, the Florida Do Not Call Act, § 501.059, et seq., and the Florida Telemarketing Act, § 501.616, Fla. Stat., et seq., (collectively, the Florida Do Not Call Act and Florida Telemarketing Act will be referred to herein as the “FTCPA”) for alleged unsolicited telemarketing calls made by or on behalf of Defendant;

WHEREAS, both the *Niemczyk* and the *Walters* actions were assigned to District Judge Esther Salas and Magistrate Judge Michael Hammer, and were effectively litigated as one case from that point forward on one schedule and with the same discovery obligations;

WHEREAS, the Plaintiffs in both the *Niemczyk* and *Walters* actions were represented by the same counsel;

WHEREAS, pursuant to stipulation of the parties, Plaintiff Herbert Walters' claims were dismissed without prejudice on March 21, 2024, and, accordingly, Plaintiff Walters is not a party to this Settlement other than by virtue of his putative status as an absent Class Member;

WHEREAS, from the inception of the *Niemczyk* action until a settlement was reached, the parties vigorously litigated the asserted claims and obtained rulings on many contested motions, including, *inter alia*: the Court denied Defendant's motion to dismiss on April 1, 2020 (ECF No. 26); the Court issued an order denying Defendant's motion for judgment on the pleadings and motion to strike on March 25, 2022 (ECF No. 94); and Plaintiffs were days away from filing a contested motion for class certification prior to reaching this Settlement;

WHEREAS, discovery was extremely contentious, involving multiple motions to compel and numerous discovery conferences with the Court; around a dozen discovery orders by the Court concerning contested motions to compel or resolution of discovery dispute letters; Defendant's production of millions of call logs and lead files spanning the length of the class period; the production of internal do not call lists; the search, review, and production of hundreds of thousands of Defendant's internal email correspondence and electronic records; the production of current and former customer lists; significant third-party discovery including a motion to compel compliance with a subpoena in another jurisdiction and the review of productions from Defendant's third party vendors; the production and expert review of Defendant's financial records that enabled the parties

to evaluate Defendant's ability to withstand a judgment should Plaintiffs have prevailed at trial and the maximum amount of money that Defendant could contribute to a settlement while still having a reasonable probability of staying in business; Defendant's taking the depositions of Plaintiffs Niemczyk, Hill, and Wolford; Plaintiffs' taking the depositions of three witnesses Defendant designated as corporate representatives pursuant to Fed. R. Civ. P. 30(b)(6); Plaintiffs' service of four expert reports; and the completion of all fact and expert discovery;

WHEREAS, this Settlement has been reached after hard-fought litigation and is the product of extensive, arm's-length settlement negotiations spanning multiple years, including a June 19, 2023 mediation before Honorable Wayne R. Andersen (Ret.); settlement discussions that included an in-person meeting between the parties and Plaintiffs' expert in New York in October 2023 and another in-person meeting between the parties in Louisville, KY in February 2024; and continuous settlement discussions over the next couple of months leading up to the signing of a binding Term Sheet memorializing the material terms of this Settlement on June 19, 2024, that were overseen by Judge Andersen within the scope of the continuing mediation;

WHEREAS, Defendant denies each and every one of Plaintiffs' allegations of violations of the statutes at issue in the Actions, Defendant has asserted numerous defenses to Plaintiffs' claims, Defendant disclaims any liability whatsoever, and Defendant further denies that this case satisfies the requirements to be tried as a class action under Federal Rule of Civil Procedure 23; and

WHEREAS, the Parties have engaged in significant discovery that has allowed the Parties to adequately apprise themselves of the strengths, merits, risks, potential damages, and complexities of the Actions should they have proceeded in litigation, and to allow them to objectively analyze the fairness, reasonableness, and adequacy of the Settlement; and

WHEREAS, the Parties recognize that the outcome of this Litigation is uncertain, and that a final resolution through the litigation process would require several more years of litigation concerning class certification, summary judgment, a trial, and subsequent appeals, substantial risk and expense, the distraction and diversion of Defendant's personnel and resources, and the expense of any possible future litigation raising similar or duplicative claims; and

WHEREAS, the Parties believe that this Settlement Agreement is fair, reasonable, and adequate because it provides substantial economic consideration to the Settlement Class in exchange for Settlement Class Members' release of certain Claims.

NOW, THEREFORE, without (a) any admission or concession on the part of Plaintiffs about the likelihood of success at trial, on appeal, or in other motion practice, or (b) any admission or concession of the merits of this Litigation or of liability or wrongdoing or the lack of merit of any defense whatsoever by Defendant, it is hereby stipulated and agreed by the undersigned, on behalf of Plaintiffs, the Settlement Class and Defendant, that this Litigation and all Claims of the Settlement Class be settled, compromised, and dismissed on the merits and with prejudice as to Defendant, subject to Court approval as required by Federal Rule of Civil Procedure 23, on the terms and conditions set forth herein.

The recitals stated above are true and accurate and are hereby made a part of this Settlement Agreement.

## **I. DEFINITIONS**

For the purposes of this Settlement Agreement, the following terms shall have the following meanings:

A. **"CAFA Notice"** means notice of this Settlement to the appropriate federal and state officials, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, the form of which is attached hereto as **Exhibit A**.

B. “**Claim Form**” means the proposed Claim Form in substantially the form attached hereto as **Exhibit B** to be used by Settlement Class Members to make a claim for benefits due under the Settlement, which form is to be approved by the Court and to be posted on the Settlement Website in accordance with Section VI of this Settlement Agreement.

C. “**Claims Administration Expenses**” means the Class Notice expenses and other expenses incurred by the Settlement Claims Administrator in administering this Settlement, including, without limitation: preparing and disseminating Class Notice and CAFA Notice; responding to inquiries from Settlement Class Members, including the processing of any requests for opting out of the Settlement or objecting thereto; creating and maintaining a Settlement Website; coordinating information with Defendant and Class Counsel; accepting, validating, maintaining and processing claims submitted by Settlement Class Members; and maintaining all claims and other Settlement Agreement-related data through the conclusion of the settlement administration process.

D. “**Claims Deadline**” means the date by which a Claim Form must be received via electronic submission by 11:59 p.m. Pacific Time to be considered timely. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Class Notice and shall not be more than one hundred and twenty (120) consecutive days from the Class Notice Date.

E. “**Class Counsel**” or “**Class Member Counsel**” or “**Plaintiffs’ Counsel**” means Smith Krivoshey, PC, Bursor & Fisher, P.A., and Mazie Slater Katz & Freeman, LLC.

F. “**Class Notice**” means the form of notice to be disseminated to Settlement Class Members informing them about the terms of the Settlement Agreement, their right to participate in this Settlement, to opt out, or to object to the same, to appear at the Final Approval Hearing and instructing Settlement Class Members on how to submit requests for benefits due under the Settlement. A copy of the proposed Long Form Notice is attached hereto as **Exhibit C** and the proposed Summary Notice is attached hereto as **Exhibit D**.

G. “**Class Notice Date**” means the first date on which Class Notice is sent by the Settlement Claims Administrator to each Settlement Class Member.

H. **“Class Representatives”** or **“Plaintiffs”** means named Plaintiffs Thomas Niemczyk, Rick Hill, and Barry Wolford.

I. **“Class Period”** means the period commencing March 5, 2015, to the date that the Court grants preliminary approval to this Settlement by issuing the Preliminary Approval Order.

J. **“Common Fund”** means the fund described in Section III of this Settlement that will be used to pay any attorney’s fees, costs, and expenses, any Claims Administration Expenses, and all payments due to any Settlement Class Members under this Settlement. All payments due to be paid into the Common Fund will be deposited in an escrow account at a bank chosen by the Settlement Claims Administrator.

K. **“Court”** means the United States District Court for the District of New Jersey, the Honorable Esther Salas and/or Michael Hammer.

L. **“Effective Date”** means the date on which all appellate rights with respect to the Final Order and Judgment have expired or have been exhausted in such a manner as to affirm the Final Order and Judgment, and when no further appeals are possible.

M. **“Final Approval Hearing”** means the hearing to be held by the Court to consider and determine whether the proposed Settlement of this Litigation as contained in this Settlement Agreement should be approved as fair, reasonable, and adequate, whether Plaintiffs’ request for an award of attorneys’ fees and expenses should be granted, and whether the Final Order and Judgment approving this Settlement should be entered.

N. **“Final Order and Judgment”** means the order and judgment entered by the Court giving approval to the terms of this Settlement Agreement as fair, reasonable, and adequate, certifying a class for settlement purposes, providing for the orderly performance and enforcement of the terms of this Settlement Agreement, discharging the Released Parties of and from all further liability for the Released Claims of the Releasing Parties, and permanently barring and enjoining the Releasing Parties from instituting, filing, commencing, prosecuting, maintaining, continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or in any other capacity of any kind whatsoever, any action in any state court, federal court, or any



other tribunal, forum, or proceeding of any kind, against the Released Parties that asserts any Released Claims.

O. **“Litigation”** or **“Actions”** means the actions entitled *Niemczyk v. Pro Custom Solar LLC*, Case No. 2:19-cv-7846-ES-MAH (D.N.J.) and *Walters v. Pro Custom Solar LLC*, Case No. 2:22-cv-00247-ES-MAH (D.N.J.).

P. **“Liquidity Event”** means any of the following: (i) any sale or disposition of common equity interests in Momentum by the holders of such common equity interests where the proceeds to the holders of the common equity interests are \$1,500,000 or more, whether in one or more transactions in any one year period; (ii) any equity financing, including but not limited to a private placement or initial public offering, pursuant to which Momentum receives primary proceeds, net of transaction fees and expenses, provided such transaction fees and expenses are not paid to existing common equity holders or employees, of \$1,500,000 or more, whether in one or more transactions within any one year period; (iii) any financing in which Momentum issues securities convertible into equity securities of Momentum (for example, a convertible note financing) pursuant to which Momentum receives proceeds, net of transaction fees and expenses, provided such transaction fees and expenses are not paid to existing common equity holders or employees, of \$1,500,000 or more, whether in one or more transactions within any one year period; (iv) any exclusive license, sale or disposition, in a single transaction or a series of related transactions, of more than 33.33% of the assets of Momentum, except in the ordinary course of business (an “Asset Sale”); (v) any merger, consolidation, combination, restructuring, or reorganization involving Momentum and another entity (collectively, a “Merger”) where Momentum is not the surviving entity; (vi) any transaction or series of transactions or combination of related transactions in which the equity holders of Momentum immediately prior to the closing of the transaction own less than 66.67% of the surviving company, as applicable, immediately after the transaction (a “Change of Control”); and (vii) any second sale or disposition of Class C Units in Momentum by a person or entity that is not the holder of the sold or disposed Class C Units as of the Effective Date, where the aggregate proceeds to the subsequent holders of the Class

C Units are \$1,500,000 or more, whether in one or one or more transactions in any one year period. For the avoidance of doubt, the following transactions are not Liquidity Events: the sale of Class C Units by current Class C Unit holders on a secondary basis to new investors where no cash or cash equivalents are paid to Momentum, so long as not more than 33.33% of the total of Class C Units are sold in one or more transactions in any one-year period. If more than 33.33% of the total of Class C Units are sold in one or more transactions in any one-year period, such transaction or transactions will constitute a Liquidity Event.

Q. **“Liquidity Event Proceeds”** means the proceeds received by Momentum or its equity holders attributable to one or more Liquidity Events, whether in the form of (i) cash and cash equivalents and (ii) promissory notes, stock or other securities upon the conversion to cash or cash equivalents, provided that if the Liquidity Event Proceeds are not initially cash or cash equivalents, any amounts owed to the Class in connection with a Liquidity Event are payable in cash within 24 months of the Liquidity Event, and any other proceeds regardless of the form that are paid or set aside for payment to Momentum or its equity holders in connection with a Liquidity Event minus, without duplication, any direct and reasonable third party costs and expenses incurred by Momentum in connection with such Liquidity Events. If the proceeds of a Liquidity Event are payable to the equity holders of Momentum and not directly to Momentum, Momentum will ensure that any amount payable to the Common Fund is paid directly to the Common Fund, and not to the Momentum equity holders, in connection with the closing of the applicable Liquidity Event.

R. **“Long Form Notice”** means the proposed notice in substantially the form attached hereto as **Exhibit C**.

S. **“Notice Plan”** means the plan created by the Parties for the purpose of providing notice of this Settlement to the Settlement Class Members, as described in Section VI.

T. **“Opt-Out and Objection Date”** means the date ordered by the Court, which the Parties shall request be set at twenty-one (21) days prior to the Final Approval Hearing.

U. **“Preliminary Approval Order”** means the proposed order preliminarily approving this Settlement, substantially in the form of **Exhibit E** attached hereto.

V. **“Release”** means the release set forth in Section VII.

W. **“Released Claims”** all claims that have or could have been asserted in the Actions, whether known or unknown, by Plaintiffs and all Settlement Class Members against the Released Parties in the Litigation or in any other court action or before any administrative body, tribunal or arbitration panel arising out of or related to the claims asserted by Plaintiffs and the Settlement Class Members in the Litigation relating to violations of the TCPA or any federal, state, or administrative rules concerning telephonic telemarketing calls. This release shall include all claims based on a substantially similar factual predicate as that underlying the allegations and claims asserted in the Actions. The Released Claims shall not include any claims for personal injury, and no such claims are released as part of this Settlement.

X. **“Released Parties”** or **“Momentum Released Parties”** means each of Momentum’s (i) present and future, direct and indirect parents, subsidiaries, partners, joint ventures, and affiliates; (ii) the past, direct and indirect parents, subsidiaries, partners, joint ventures, and affiliates of any of the foregoing; (iii) past, present and future officers, directors, employees, representatives, agents, members, principals, attorneys and shareholders of any of the foregoing; and (iv) the predecessors, successors and assigns of any of the foregoing.

Y. **“Releasing Parties”** means Class Representatives Thomas Niemczyk, Rick Hill, and Barry Wolford, and all Settlement Class Members who have not validly and timely opted out of the Settlement Class, and all those who claim through them or who assert or could assert claims on their behalf.

Z. **“Settlement Claims Administrator”** or **“Settlement Administrator”** means Angeion Group or such other entity that the Court shall approve with the consent of the Parties to administer the Notice Plan and to oversee the processing and resolution of Claim Forms as set forth in this Settlement Agreement.

AA. **“Settlement Class”** or **“Settlement Class Member(s)”** or **“Class Member(s)”** means all persons in the United States that received two or more telemarketing calls (**“Calls”**) from Momentum or on behalf of Momentum within a 365-day period from March 5, 2015 through and including the date of preliminary approval of the Settlement by the Court (**“Class Period”**). Any current or former customer of Momentum is excluded from the Class. Also, excluded from the Settlement Class are all persons who validly opt out of the Settlement in a timely manner; governmental entities; counsel of record (and their respective law firms) for the Parties; Defendant and any of its affiliates, subsidiaries, and all of its respective employees, officers, and directors; the presiding judges in the Litigation or judicial officers presiding over the matter, and all of their immediate families and judicial staff; and any natural person or entity that entered into a release with the Momentum Released Parties prior to the Effective Date concerning the Released Claims in the Litigation.

BB. **“Settlement Consideration”** means the benefits available to Settlement Class Members as described in detail in Section III.

CC. **“Settlement Website”** means the website established by the Settlement Claims Administrator, on which the Class Notice and other information relevant to this Settlement will be posted for Settlement Class Members’ benefit.

DD. **“Summary Notice”** means the proposed postcard notice in substantially the form attached hereto as **Exhibit D**.

EE. **“Valid Claim”** means a timely Claim Form submitted by a Settlement Class Member that: (a) is submitted in accordance with the directions accompanying the Claim Form and the terms of this Settlement Agreement; (b) is accurately, fully, and truthfully completed and executed by a Settlement Class Member; (c) is signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) is received by the Claims Deadline; and (e) is determined to be valid by the Settlement Claims Administrator.

## **II. MOTION FOR PRELIMINARY APPROVAL**

As soon as reasonably practicable after execution of this Settlement Agreement, Plaintiffs shall file with the Court a Motion for Preliminary Approval of the Settlement, Approval and Direction of Notice Plan, and Appointment of Settlement Claims Administrator that seeks entry of an order that, by its terms, shall:

1. Preliminarily approve this Settlement as fair, reasonable, and adequate;
2. Certify the Settlement Class for settlement purposes only;
3. Appoint Plaintiffs' Counsel as class counsel and Plaintiffs as Class Representatives;
4. Approve the proposed Notice Plan and Class Notice in forms substantially similar to those attached hereto as **Exhibit C** and **Exhibit D**;
5. Establish deadlines for the filing of objections and notice of opting out of the Settlement;
6. Appoint the Settlement Claims Administrator; and
7. Set a date for the Final Approval Hearing at which the Court will consider final approval of the Settlement and Plaintiffs' motion for attorneys' fees and expenses.

## **III. SETTLEMENT CONSIDERATION**

Defendant shall provide the following Settlement Consideration in exchange for the Release detailed in Section VII:

A. Common Fund: Momentum shall pay \$10 million over five (5) years into a Common Fund to be administered by the Claims Administrator. The first payment in the amount of \$1,000,000 shall be paid into the Common Fund within 90 days ("Initial Payment Date") of the Court issuing the Final Order and Judgment. Each subsequent payment into the Common Fund shall be due on the first, second, third, fourth and fifth anniversary of the Initial Payment Date in the amounts of \$2.0 million, \$1.25 million, \$1.75 million, \$1.75 million and \$2.25 million. On the sixth anniversary of the Initial Payment Date, Momentum shall pay \$1.2 million into the Common Fund, and then pay an additional \$1.2 million annually thereafter for 9 more years until an additional \$12 million has been paid for a total of \$22 million.

B. Liquidity Event Proceeds: Momentum shall pay into the Common Fund twelve percent (12%) of the Liquidity Event Proceeds from Liquidity Events provided that the total amount paid into the Common Fund under all circumstances and via all means shall not exceed \$30 million (the “Settlement Payment Cap”).

C. QuickPay Option: If Momentum pays \$20 million into the Common Fund via any means within seven (7) years of the Court issuing the Final Order and Judgment, the Settlement amount owed shall be deemed fully paid and no further payments shall be owed by Momentum.

D. Form of Proceeds Payable to Common Fund: Regardless of the structure of the Liquidity Event Proceeds payable to Momentum or its equity holders, all amounts payable under this Settlement to the Common Fund are payable in cash, and Momentum is responsible for ensuring the Common Fund receives its portion of Liquidity Event Proceeds in cash in connection with the closing of any Liquidity Event. For example, if Momentum consummates a Liquidity Event pursuant to which it or its equity holders receive \$5,000,000 in cash and \$5,000,000 in stock, the Common Fund is entitled to receive \$1,200,000 (\$10 million x 12%) payable in cash to the Common Fund as follows: \$600,000 payable in cash upon the closing of the applicable Liquidity Event, and \$600,000 payable in cash no more than 24 months following the closing of the applicable Liquidity Event.

E. Survival; Non-Contravention: The Common Fund’s right to receive payments under this Settlement, including Liquidity Event Proceeds, will continue in effect until the Common Fund has received a total of at least \$22,000,000 (provided the Common Fund may receive up to \$30,000,000 pursuant to Section III(B) of this Settlement), or \$20,000,000 under the “Quickpay Option” in Section III(C). In the case of a Merger, Asset Sale or other Change of Control, Momentum will cause the surviving company to assume all obligations under this Settlement until the amounts owed to the Common Fund pursuant to this Settlement are paid in full. Momentum and the Momentum equity holders will not enter into any transaction that attempts to circumvent the rights of the Common Fund under this Settlement or otherwise separate the assets and value of Momentum as a going concern from the liabilities stated in this Settlement.

For example, Momentum will not consummate an Asset Sale whereby Momentum sells all of its assets, and the purchaser does not assume Momentum's obligations under this Settlement. The obligations in this section will terminate upon receipt by the Common Fund of all amounts owed under this Settlement.

F. Notice of Liquidity Events: Momentum shall provide Class Counsel with not less than ninety (90) days' notice of any prospective "Liquidity Event" and Momentum shall provide notice of its obligations pursuant to this Settlement to all participating Liquidity Event Parties.

G. Timing of Payments into the Common Fund: All payments shall be paid into the Common Fund when due, even if the Settlement is otherwise on appeal. Should the Settlement be finally reversed on appeal, all Settlement payments made by Defendant into the Common Fund, with the exception of Claims Administration Expenses that have been incurred to date, shall be returned within 30 days thereafter. All Claims Administration Expenses are to be paid by Defendant when incurred even if the Settlement is otherwise terminated, not approved, or overturned on appeal, and are non-refundable.

H. Timing of Payments to Settlement Class Members: Class Member distributions shall only be paid after the Effective Date to the Settlement. Payments to Class Members shall be made as soon as practicable at the discretion of the Claims Administrator after each time at least \$1,000,000 is accumulated in the Common Fund for the benefit of Class Members after the payment of any Claims Administration Expenses and attorneys' fees, costs, and expenses that may be due. To the extent that the entirety of the Common Fund has been paid out, but less than \$1,000,000 remains in the Common Fund owing to the Class Members, the Claims Administrator shall pay out as much as is administratively feasible to Class Members, with any remainder to be distributed to a *cy pres* recipient to be approved by the Court.

I. Settlement Class Member Benefits: Settlement Class Members may submit claims for up to 50 Calls received within the Class Period, subject to verification by the Claims Administrator. To the extent that Settlement Class Members that file a claim submit no records of how many Calls they received within the Class Period, the Claims Administrator shall apply the

number of Calls for each such Settlement Class Member as reflected in Momentum's call log records subject to a cap of 50 Calls per Settlement Class Member filing a valid claim. Settlement Class Members that file timely and valid claims shall be entitled to a *pro rata* share of any amounts paid into the Common Fund on a per-call basis, net of any attorneys' fees, costs, expenses or any other Claims Administration Expenses, until the entirety of the Common Fund is exhausted, subject to any remainder that cannot administratively feasibly be distributed to the Settlement Class being distributed to a *cy pres* recipient to be approved by the Court.

#### IV. CLASS CERTIFICATION

A. Certification of Settlement Class. For Settlement purposes only, and without any finding or admission of any wrongdoing or fault by Defendant, and solely pursuant to the terms of this Settlement Agreement, the Parties consent to, and agree to, the establishment of a conditional certification of the nationwide Settlement Class, pursuant to Federal Rule of Civil Procedure 23(b)(3).

B. Certification is Conditional. This certification is conditional on the Court's approval of this Settlement Agreement. In the event the Court does not approve all terms of the Settlement Agreement, or if the Settlement Agreement is voluntarily or involuntarily terminated for any reason, then certification of the Settlement Class shall be void and this Settlement Agreement and all orders entered in connection therewith, including, but not limited to, any order conditionally certifying the Settlement Class, shall become null and void and shall be of no further force and effect and shall not be used or referred to for any purposes whatsoever in the Litigation or in any other case or controversy. And, in such an event, this Settlement Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all parties hereto, who shall be restored to their respective positions as of the date of this Settlement Agreement, and Defendant shall not be deemed to have waived any opposition or defenses it has to any aspect of the claims asserted herein or to whether those claims are amenable to class-based treatment.



C. Defendant's Reservation of Rights: Defendant contends that this Litigation could not be certified as a class action under Federal Rule of Civil Procedure 23(b), other than for settlement purposes. Nothing in this Settlement Agreement shall be construed as an admission by Defendant that this Litigation or any similar case is amenable to class certification for trial purposes. Furthermore, nothing in this Settlement Agreement shall prevent Defendant from opposing class certification or seeking decertification of the Settlement Class if final approval of this Settlement Agreement is not obtained, or not upheld on appeal, including review by the United States Supreme Court, for any reason. Defendant supports certification of the class for settlement purposes only.

V. **CLASS SETTLEMENT NOTICE**

A. Settlement Claims Administrator

1. In their motion for preliminary approval, Plaintiffs will propose that the Court appoint Angeion Group as the Settlement Claims Administrator.

2. The Settlement Claims Administrator will facilitate the notice process by providing professional guidance and support in the implementation of the Notice Plan and by overseeing the Claim Form submission process and validating claims.

B. Notice Plan

1. The Parties and the Settlement Claims Administrator have developed an appropriate and reasonable Notice Plan to reach Settlement Class Members. The Class Notice is designed to provide clear and concise notice of the terms of this Settlement Agreement in plain, easily understood language. The Parties acknowledge and expressly agree that the Notice Plan constitutes due and sufficient notice under Federal Rule of Civil Procedure 23. The Parties will recommend to the Court the Notice Plan, which will be administered by the Settlement Claims Administrator.

2. Momentum shall pay all Claims Administration Expenses at the time those costs and expenses are incurred. Claims Administration Expenses shall count against the total \$22 million cap to the Common Fund set out in Section III(A), the \$30 million cap to the Common

Fund set out in Section III(B), and the \$20 million cap to the Common Fund set out in Section III(C). However, the payment of Claims Administration Expenses shall not offset the requirements to otherwise make payments into the Common Fund under Sections III(A), (B), and (C) in the amounts specified therein until the caps are fully paid off in their respective amounts as set out in Sections III(A), (B), and (C).

3. Under the Notice Plan, upon Preliminary Approval of this Settlement, the Settlement Claims Administrator shall cause the Long Form Notice to be disseminated to Settlement Class Members via e-mail, and the Summary Notice by U.S. mail for any Settlement Class Members with respect to whom Momentum and the Settlement Claims Administrator are not able to locate an e-mail address as of the Class Notice Date and for whom Momentum has a physical mailing address. The Parties anticipate that this will result in direct notice to virtually every Settlement Class Member. The Settlement Claims Administrator will also develop a publication notice to be agreed upon by the Parties and approved by the Court. The Class Notice shall conform substantially with the notices attached hereto as **Exhibit C** and **Exhibit D**. The Class Notice and Claim Forms shall be provided in Spanish format on the Settlement Website and be provided to any Settlement Class Member in Spanish upon request. Otherwise, all Class Notice shall be in English. The Settlement Administrator may make appropriate modifications to the Class Notice described in this Section and the Exhibits to this Agreement that have been approved by the Parties and the Court and are consistent with Due Process and this Settlement. The Settlement Administrator may request the assistance of the Parties to facilitate Class Notice and to accomplish such other purposes as may be approved by Defendant's counsel and Class Counsel. The Parties shall reasonably cooperate with such requests.

4. For any e-mails to Settlement Class Members that are returned to the Settlement Claims Administrator as undeliverable and for Settlement Class Members for whom Momentum and the Settlement Claims Administrator are not able to locate an e-mail address, a Summary Notice shall be sent to each Settlement Class Member's last known address on a double-sided postcard with a returnable claim form on the back flap.

5. Reminder Notice: The Settlement Claims Administrator shall provide a reminder notice to all Settlement Class Members that have not submitted claims, objected, or opted-out at least 30 days prior to the deadline for the submission of Claim Forms.

6. The Settlement Claims Administrator will also create and maintain a Settlement Website that will be activated prior to the Class Notice Date. The Settlement Claims Administrator will secure an appropriate Settlement Website URL. The Settlement Website will have a Claim Form submission capability, contain the Preliminary Approval Order, the Class Notice, this Settlement Agreement, and other information regarding the Court approval process as agreed to by the Parties or ordered by the Court. The Settlement Website will also contain other important case documents, which will be updated from time to time, including the Complaints in the Actions, any motion for attorney's fees, costs, expenses and service awards (and supporting documentation), and motions for preliminary and final approval. In addition, the Settlement Website will include a section for frequently asked questions and procedural information regarding the status of the Court-approval process, such as an announcement when the final approval hearing is scheduled, deadlines for opting out and objecting, when the Final Order and Judgment has been entered, and when the Effective Date is expected or has been reached. The Settlement Claims Administrator will terminate the Settlement Website forty-five (45) days after either all benefits owed to Settlement Class Members have been distributed, or (2) the date on which the Settlement is terminated or otherwise not approved by a court. The Settlement Claims Administrator will then promptly transfer ownership of the Settlement Website URL to Defendant.

7. The Settlement Claims Administrator will also establish a toll-free telephone number for Settlement Class Members to call and receive pre-recorded answers to questions regarding this Settlement and will also set up an email address to handle Settlement Class Members' inquiries.

8. The Settlement Claims Administrator shall send to each appropriate State and Federal official the materials specified in 28 U.S.C. § 1715 within ten (10) days of Plaintiffs and Class Counsel filing the Motion for Preliminary Approval, and otherwise complying with its

terms. Within fifteen (15) days after the Notice Date, the Settlement Administrator shall provide declarations to the Court attesting to the measures undertaken to provide Class Notice as directed by 28 U.S.C. § 1715.

9. The Settlement Claims Administrator shall provide a declaration to the Court attesting to the Class Notice and all measures undertaken to provide notice of the Settlement to the Settlement Class upon request by the Parties.

#### **VI. CLAIMS SUBMISSION PROCESS AND ADMINISTRATION**

A. Defendant shall provide the Settlement Claims Administrator and Class Counsel with up-to-date call logs and contact information for Settlement Class Members covering the span of the entire Settlement Class Period sufficient to verify their identity as Settlement Class Members, and to allow the Settlement Claims Administrator to validate claims. Defendant shall also provide a list of former and current customers covering the span of the entire Settlement Class Period to ensure that the Parties and the Settlement Administrator can exclude such persons from the Settlement Class. Defendant shall complete all such productions within fourteen (14) days of the Court's Order granting Preliminary Approval.

B. The Settlement Claims Administrator shall cause the Claim Form to be available on the Settlement Website and provide a physical copy of the Claim Form to any Settlement Class Member upon request. The Claim Form shall conform with the form attached hereto as **Exhibit B**. The Settlement Claims Administrator shall ensure that Settlement Class Members are permitted to submit files and documents on the Settlement Website to the extent necessary to prove their status as *bona fide* Settlement Class Members and the number of Calls that fall within the Class Period.

C. All Claim Forms must be electronically submitted and received by the Claims Deadline. Class Members may, at their option, contact the Settlement Claims Administrator for a copy of a paper Claim Form, which will be accepted upon receipt as valid by the Settlement Claims Administrator if the claims are otherwise valid.

D. Class Members shall have up to one hundred twenty (120) days to submit a Claim Form from the date that the initial class notice is disseminated, unless otherwise ordered by the Court.

E. The Settlement Claims Administrator shall use adequate and customary procedures and standards to prevent the payment of fraudulent claims, including, but not limited to: (i) validating claims against the Parties' records, (ii) determining the number of Calls that fall within the Class Definition based on the Parties' records, and (iii) screening for multiple or fraudulent claims which are not consistent with the facts. The Settlement Claims Administrator and Class Counsel shall have the right to audit claims and the Settlement Claims Administrator, and when necessary, may request additional information from Settlement Class Members submitting Claim Forms and from the Parties.

F. The Settlement Claims Administrator shall approve or deny all Claim Forms and will only pay Valid Claims. If any fraud is detected or reasonably suspected, the Settlement Claims Administrator may request further information from the Settlement Class Member and from the Parties or deny claims, subject to the ultimate oversight of the Court.

G. Settlement Class Members shall be able to elect on their Claim Form their preferred method of payment, which shall include payment via (a) check mailed by first class U.S. Mail to the address provided by the Settlement Class member to the Settlement Administrator; (b) Venmo; (c) PayPal; (d) ACH; or (e) Zelle.

H. All payments to Settlement Class Members via check will state on the face of the check that the check will expire and become null and void unless cashed within one hundred eighty (180) days after the date of issuance. To the extent that any checks to Class Members expire and become null and void, the Settlement Administrator shall apply any such residual funds back into the Common Fund for the benefit of Settlement Class Members. Such residual funds shall then be distributed to Settlement Class Members on a *pro rata* basis whenever a subsequent round of distribution is due under the Settlement or provided to a *cy pres* recipient in accordance with Section III(H).

I. The Settlement Claims Administrator shall maintain records of all Claim Forms until ninety (90) days after the Settlement Claims Administrator has issued payment to those Settlement Class Members who submitted Valid Claims, and such records will be made available upon request to Defendant's counsel and Class Counsel at the end of the ninety (90) day period. The Settlement Claims Administrator also shall provide such reports, declarations, and such other information to the Court as the Court may require or as Class Counsel or Defendant requests.

J. No decisions by the Settlement Claims Administrator shall be deemed to constitute a finding, admission, or waiver by Defendant as to any matter of fact, law, or evidence having any collateral effect on any claim hereunder or in any other proceeding or before any other forum or authority. Further, such decisions shall not be submitted to or admissible in any other proceeding or before any other forum or authority.

## **VII. RELEASE**

A. Settlement Class Member Release: Upon the Effective Date and by operation of the Final Order and Judgment, the Releasing Parties shall have, fully, finally, and forever released, relinquished, and discharged against the Released Parties all Released Claims, as well as any claims arising out of, relating to, or in connection with, the defense, settlement or resolution of this Litigation or the Released Claims.

B. Class Representatives' Individual Releases: The Class Representatives each expressly waive and relinquish all rights and benefits against Momentum afforded under Section 1542 of the California Civil Code or under any similar statute or legal theory, and do so understanding and acknowledging the significance and consequence of such specific waiver of Section 1542. Section 1542 of the California Civil Code states as follows:

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

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of all claims, Class Representatives acknowledge that the Release is intended to include, without limitation, all claims that Class Representatives do not know or suspect exist in their favor at the time of execution hereof, and that this Release contemplates the extinguishment of any and all such claims.

**VIII. OBJECTIONS, NOTICES TO APPEAR, AND OPT-OUTS (REQUESTS FOR EXCLUSION)**

A. Any Settlement Class Member who wishes to object to this Settlement must serve the Settlement Claims Administrator his or her objection no later than the Opt-Out and Objection Date, which shall be set by the Court in its Preliminary Approval Order. The Parties shall request an Opt-Out and Objection Deadline of twenty-one (21) days prior to the Final Approval Hearing.

B. The Parties shall request that the Court require any objection to be in writing and include the following information: (a) the objector's name, address, telephone number and, if represented by counsel, the name, address, and telephone number of his or her counsel; (b) a description of the date(s) and contents of any purported Calls within the Settlement Class Period, including a description of what occurred on each of the Calls (c) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel; (d) all grounds for his or her objection, accompanied by any legal and factual support for the objection known to the objector or his or her counsel; (e) copies of any papers, briefs, or other documents upon which the objection is based or upon which the objector or his or her counsel intends to rely; (f) the objector's handwritten signature, and (g) the identification of the case name, case number, and court for any prior class action lawsuit in which the objector and the objector's attorney (if applicable) has objected to a proposed class action settlement.

C. Any Settlement Class Member who wishes to be excluded from the settlement (*i.e.*, to Opt Out of the Settlement Class) must mail or deliver a written request for exclusion to the Settlement Claims Administrator, received by the Opt-Out and Objection Date, which shall be no

later than twenty-one (21) days before the Final Approval Hearing. The written request must provide the Settlement Class Member's name, address and telephone number, state that the Settlement Class Member requests exclusion from the Settlement Class, and the Settlement Class Member's handwritten signature. Any Settlement Class Member who does not submit a timely request for exclusion shall be bound by all subsequent proceedings, orders, and the Final Order and Judgment in this Litigation relating to this Settlement, even if he or she has pending, or subsequently initiates, litigation, arbitration, or any other proceeding against the Released Parties relating to the Released Claims.

D. The Settlement Claims Administrator shall receive and maintain the exclusion requests and objections and provide copies of the exclusion requests and objections to the Parties' counsel. At least fourteen (14) court days before the Final Approval Hearing, the Settlement Claims Administrator shall provide the Parties' counsel with a list of all Settlement Class Members who submitted exclusion requests, including details of whether such requests were valid and timely, as well as all objections.

E. A Settlement Class Member who appears at the Final Approval Hearing, either personally or through counsel, may be permitted to argue only those matters that were set forth in the timely and validly submitted written objection filed by such Settlement Class Member. No Settlement Class Member shall be permitted to raise matters at the Final Approval Hearing that the Settlement Class Member could have, but failed to, raise in his/her written objection, and all objections to the Settlement Agreement that are not set forth in a timely and validly submitted written objection will be deemed waived.

F. If a Settlement Class Member wishes to present witnesses or evidence at the Final Approval Hearing in support of a timely and validly submitted objection, all witnesses must be identified in the objection, and true and correct copies of all supporting evidence must be appended to, or filed and served with, the objection. Failure to identify witnesses or provide copies of supporting evidence in this manner waives any right to introduce such testimony or evidence at



the Final Approval Hearing. Representative Plaintiffs or Defendant or both may take discovery regarding any objector, their attorney (if applicable), and the basis of any objection.

**IX. ATTORNEYS' FEES, COSTS, OTHER EXPENSES AND CLASS REPRESENTATIVES' SERVICE AWARDS**

A. Within the time period established by the Court, Class Counsel will file a motion for approval of Attorneys' Fees and Expenses, and Service Awards to be paid from the Common Fund, which shall be included on the Settlement Website. Class Counsel may apply for an award of attorneys' fees not to exceed one-third (1/3) of any amounts paid into the Common Fund. In addition, Class Counsel shall be entitled to seek all of their reasonable costs and expenses to be paid out of any amounts paid into the Common Fund. Any percentage of attorneys' fees, and all costs and expenses, awarded by the Court to Class Counsel shall be payable within thirty (30) days after payments are made into the Common Fund, subject to Class Counsel providing an undertaking providing for repayment of any such fees, expenses, and costs should the Court's order be reversed on appeal and/or should the Settlement be terminated according to its terms. All reasonable costs and expenses awarded by the Court shall be paid out first in full before the distribution of any attorneys' fees or any other payments due to Class Members under this Settlement. Defendant shall have the right to object to the amount of fees, costs, and expenses sought by Class Counsel, but not their entitlement to fees, costs, and expenses under the Settlement.

B. Class Counsel shall file, and the Settlement Claims Administrator shall post to the Settlement Website, their papers supporting the petition for attorneys' fees, expenses, and costs at least fourteen (14) days before the Opt-Out and Objection Date.

C. This agreement with respect to attorneys' fees, costs, and expenses was not negotiated until after the substantive terms of the Settlement, including the consideration to the Settlement Class, had been negotiated and agreed upon.

D. In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees, expenses, and costs in the amounts requested, the remaining provisions of this

Settlement Agreement shall remain in full force and effect. The amounts awarded by the Court in attorneys' fees, expenses, and costs shall be the sole aggregate compensation paid by Defendant to Class Counsel in connection with this Litigation.

E. Class Counsel may make an application for service awards, in amounts not to exceed \$7,500 for Plaintiff Thomas Niemczyk and \$5,000 each for Plaintiffs Rick Hill and Barry Wolford, to compensate them for their efforts and commitment on behalf of the Settlement Class. Defendant shall have the right to object to the amount of service awards. The service awards shall not count against the caps of the Common Fund, and, to the extent awarded, shall be paid by Defendant within thirty (30) calendar days of the Effective Date, provided that Defendant has received a completed W-9 form and any necessary wiring or mailing instructions for each Class Representative.

F. In the event the Court declines to approve, in whole or in part, the payment of service awards in the amounts requested, the remaining provisions of this Settlement Agreement shall remain in full force and effect.

G. Class Counsel shall have the sole authority and discretion to allocate any Court-awarded attorneys' fees, costs, and expenses amongst Class Counsel.

**X. ENTRY OF FINAL ORDER AND JUDGMENT**

This Settlement is subject to and conditioned upon the issuance by the Court of a Final Order and Judgment that grants approval of this Settlement and orders the consideration specified herein, which consideration shall be subject to the terms and conditions of this Settlement Agreement and the Parties' performance of their continuing rights and obligations hereunder. Such Final Order and Judgment shall:

1. Grant final approval of this Settlement and direct its implementation pursuant to the terms and conditions of the Settlement Agreement;

2. Confirm that the Notice Plan complies in all respects with the requirements of due process and Rule 23 by providing due, adequate, and sufficient notice to the Settlement Class;

3. Determine that this Settlement is fair, reasonable, and adequate;

4. Effect the Release as provided in Section VII;

5. Permanently bar and enjoin all Settlement Class Members from initiating, maintaining, prosecuting or pursuing, either directly or indirectly, any claim or action asserting Released Claims;

6. Direct that this Litigation be dismissed with prejudice;

7. State pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and direct that the Final Order and Judgment is a final, appealable order; and

8. Retain the Court's continuing and exclusive jurisdiction over the Parties, including all Settlement Class Members, to construe and enforce this Settlement Agreement in accordance with its terms for the mutual benefit of the Parties.

## **XI. DISMISSAL**

Upon final approval of this Settlement by the Court, this Litigation will be dismissed with prejudice, including the Plaintiffs' individual claims, as provided for in the Final Order and Judgment.

## **XII. TERMINATION**

The Parties have the right to terminate this Settlement Agreement, declare it null and void, and have no further obligations under this Settlement Agreement, if any of the following conditions subsequent occurs:

1. The Parties fail to obtain and maintain preliminary approval of the proposed Settlement;

2. The Court fails to enter a Final Order and Judgment consistent with the provisions in Section X; or

3. This Settlement is not upheld on appeal, including review by the United States Supreme Court.

The decision of any court not to approve in full the request by Class Counsel for attorneys' fees, costs, and other expenses or Plaintiffs' service awards, however, shall not be grounds for Plaintiffs, the Settlement Class, or Class Counsel to cancel or terminate this Settlement Agreement.

4. If this Settlement Agreement is not finally approved, is not upheld on appeal, or is otherwise terminated for any reason before the Effective Date, this Settlement Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection therewith, shall be without prejudice to any Party and shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law; and all Parties shall stand in the same procedural position as if this Settlement Agreement had not been negotiated, made, or filed with the Court.

### **XIII. DENIAL OF WRONGDOING AND LIABILITY**

1. The Parties acknowledge and agree that this Settlement represents a compromise resolution of disputed claims, is entered into to avoid the time, legal expense, and inconvenience of litigation, and is not to be construed as an admission of (a) a violation of any statute, law, regulation, order, or other applicable law, (b) a breach of contract, or (c) a tort. No Party admits liability to any other Party with respect to such disputed claims, such liability being expressly denied. Nothing in the Settlement shall constitute or be construed as an admission of liability on behalf of the Parties, and the Parties expressly deny all such liability.

### **XIV. ADDITIONAL PROVISIONS**

#### **A. Best Efforts to Obtain Court Approval**

The Parties and the Parties' counsel agree to use their best efforts to obtain Court approval of this Settlement, subject to the Parties' rights to terminate this Settlement Agreement as stated in Section XII.

B. No Admission

This Settlement Agreement, whether or not it shall become final, and any and all negotiations, communications, and discussions associated with it, shall not be:

1. Offered or received by or against any Party as evidence of, or be construed as or deemed to be evidence of, any presumption, concession, or admission by a Party, of the truth of any fact alleged by Plaintiffs or defense asserted by Defendant of the validity of any claim that has been or could have been asserted in this Litigation, or the deficiency of any defense that has been or could have been asserted in this Litigation, or of any liability, negligence, fault, or wrongdoing on the part of Plaintiffs or Defendant;

2. Offered or received by or against Plaintiffs or Defendant as a presumption, concession, admission, or evidence of any violation of any state or federal statute, law, rule, or regulation or of any liability or wrongdoing by Defendant, or of the truth of any of the claims made in this Litigation, and evidence thereof shall not be directly or indirectly admissible in any way (whether in this Litigation or in any other action or proceeding), except for purposes of enforcing this Settlement Agreement and the Final Order and Judgment including, without limitation, asserting as a defense the Release and waivers provided herein; or

3. Offered or received by or against Plaintiffs or Defendant as evidence of a presumption, concession, or admission with respect to a decision by any court regarding the certification of a class, or for purposes of proving any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against Defendant, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement; provided, however, that if this Settlement Agreement is approved by the Court, the Plaintiffs or Defendant may refer to it to enforce their rights hereunder.

C. Confidentiality

1. Neither Plaintiffs nor the Momentum Released Parties, nor their respective counsel, shall advertise the fact of the settlement, other than under the limited circumstances set

forth herein. Class Counsel shall be permitted to list the name of the case and settlement result on their respective firm websites, shall be permitted to correspond with Class Members and the Court about the Settlement without restrictions, and shall be permitted to disclose the Settlement in the regular course of their civil litigation practice, *i.e.*, in unrelated litigation matters (briefs, firm resumes, memoranda, *etc.*) to the extent relevant to the issues therein. Otherwise, and unless other language is agreed upon by the parties, Plaintiffs, the Momentum Release Parties, and their respective counsel shall respond to any inquiries about the lawsuit with words to the effect that “the matter was resolved.”

D. Entire Agreement

1. This Settlement Agreement, including all Exhibits hereto, shall constitute the entire agreement among the Parties with regard to the Settlement and shall supersede any previous agreements, representations, communications and understandings among the Parties with respect to the subject matter of this Settlement Agreement. This Settlement Agreement may not be changed, modified, or amended except in a writing signed by all Parties and, if required, approved by the Court.

E. Choice of Law and Venue

This Settlement Agreement shall be construed under and governed by the laws of the State of New Jersey, applied without regard to laws applicable to choice of law. Federal law shall govern approval of the Settlement, preliminary and final certification and of the Settlement Class, and all related issues, such as Plaintiffs’ fee and expense petition. Any dispute by the Parties or their counsel resulting in a legal proceeding arising out of, relating to, or to enforce any term of this Settlement shall be brought only in federal court in the District of New Jersey, which court shall have exclusive jurisdiction over any such dispute. All Parties and their counsel consent to personal jurisdiction in the District of New Jersey for any legal proceeding arising out of, relating to, or to enforce any term of this Settlement.

F. Execution by Counterparts

This Settlement Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures sent by e-mail shall be treated as original signatures and shall be binding.

G. No Assignment

Plaintiffs and Class Counsel represent and warrant that none of Plaintiffs' Claims referred to in this Litigation or this Settlement Agreement have been assigned, encumbered, or in any manner transferred in whole or in part.

H. Binding Effect

This Settlement Agreement shall be binding upon, and inure to the benefit of, the heirs, successors, assigns, executors and legal representatives of the Parties and all Released Parties.

I. Reasonable Extensions

The Parties may agree to reasonable extensions of time to carry out any of the provisions of this Settlement Agreement. Consent to a request for extension of time shall not be unreasonably withheld.

J. No Primary Drafter of Settlement Agreement

The determination of the terms of, and the drafting of, this Settlement Agreement has been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto and their counsel.

None of the Parties shall be considered to be the primary drafter of this Settlement Agreement. None of the Parties shall have the right to have any provision of the Settlement construed against the other as the drafter of the Settlement.

K. Effect of Waiver of Provisions

The waiver by any Party of any provision of this Settlement Agreement shall not constitute a waiver of any other provision of this Settlement Agreement.

L. Variance in Terms

In the event of any variance between the terms of this Settlement Agreement and any of the Exhibits hereto, the terms of this Settlement Agreement shall control and supersede the Exhibit(s).

M. Authorization to Enter Settlement Agreement

The individuals signing this Settlement Agreement on behalf of Defendant represent that they are fully authorized by Defendant to enter into, and to execute, this Settlement Agreement on behalf of Defendant. Class Counsel represent that they are fully authorized to conduct settlement negotiations with Defendant's counsel on behalf of the Class Representatives, and to enter into, and to execute, this Settlement Agreement on behalf of the Settlement Class, subject to Court approval pursuant to Federal Rule of Civil Procedure 23(e). The Class Representatives enter into and execute this Settlement Agreement on behalf of themselves, and as representatives of and on behalf of the Settlement Class, subject to Court approval pursuant to Federal Rule of Civil Procedure 23(e).

N. Tax Consequences

No opinion concerning the tax consequences of this Settlement Agreement to any Settlement Class Member is given or will be given by Defendant, Defendant's counsel, or Class Counsel, nor is any Party or his/her/its counsel providing any representation or guarantee respecting the tax consequences of the Settlement as to any Settlement Class Member. The Class Notice will direct Settlement Class Members to consult their own tax advisors regarding the tax consequences of the Settlement and any tax reporting obligations with respect thereto. Each Settlement Class Member is responsible for his/her tax reporting and other obligations respecting the Settlement, if any.

O. Information Rights

In the event that notice has not been provided in accordance with Section III(F), then within ten (10) days of the sale of any equity interests of Momentum, Momentum shall provide written notice to Class Counsel identifying the type of equity interests sold, the date of the closing and the



purchase price. Within five (5) business days of receipt of such notice, Class Counsel may request further information as reasonably required to confirm compliance with this Settlement and Momentum shall have five (5) business days to respond to that request. For the avoidance of doubt, the information rights allowed pursuant to this section shall not be triggered by a transfer of equity interests without provision of consideration in return.

P. Notices

All notices to the Parties or counsel required by this Settlement Agreement shall be made in writing and communicated by mail and e-mail to the following addresses:

If to the Class Representatives or Class Counsel:

**SMITH KRIVOSHEY, PC**

Yeremey Krivoshey  
166 Geary Str STE 1500-1507  
San Francisco, CA 94108  
415-839-7000  
yeremey@skclassactions.com

**BURSOR & FISHER, PA**

Joseph Marchese  
1330 Avenue of the Americas, 32<sup>nd</sup> Floor  
New York, NY 10019  
646-837-7410  
jmarchese@bursor.com

**MAZIE SLATER KATZ & FREEMAN, LLC**

Matthew Mendelsohn  
103 Eisenhower Parkway, Suite 207  
Roseland, NJ 07068  
973-228-9898  
mrm@mazieslater.com

If to Momentum or Momentum's counsel:

**SCHENCK PRICE SMITH & KING, LLP**

Thomas J. Cotton  
220 Park Avenue  
Florham Park, NJ 07932  
937-539-1000  
tjc@spsk.com


Dated: 09 / 20 / 2024

  
\_\_\_\_\_  
Thomas Niemczyk

Dated: 09 / 19 / 2024

  
\_\_\_\_\_  
Rick Hill

Dated: 09 / 19 / 2024

  
\_\_\_\_\_  
Barry Wolford

Dated:


**MOMENTUM SOLAR LLC**

By \_\_\_\_\_

Its \_\_\_\_\_


Dated: 09 / 20 / 2024

**SMITH KRIVOSHEY PC**

By   
\_\_\_\_\_  
Yeremey Krivoshey  
*Attorney for Plaintiffs and the Settlement Class*

Dated: 09 / 20 / 2024

**BURSOR & FISHER, PA**

By   
\_\_\_\_\_  
Joseph I. Marchese  
*Attorney for Plaintiffs and the Settlement Class*

Dated: 09 / 20 / 2024

**MAZIE SLATER KATZ & FREEMAN, LLC**

By   
\_\_\_\_\_

If to Momentum or Momentum's counsel:

**SCHENCK PRICE SMITH & KING, LLP**

Thomas J. Cotton  
220 Park Avenue  
Florham Park, NJ 07932  
937-539-1000  
tjc@spsk.com

Dated:

\_\_\_\_\_  
Thomas Niemczyk

Dated:

\_\_\_\_\_  
Rick Hill

Dated:

\_\_\_\_\_  
Barry Wolford

Dated: 9-19-2024

**MOMENTUM SOLAR LLC**

By Arthur G. Smith

Its CEO

Dated:

**SMITH KRIVOSHEY PC**

By \_\_\_\_\_

Yeremey Krivoshey  
*Attorney for Plaintiffs and the Settlement Class*

Dated:

**BURSOR & FISHER, PA**

By \_\_\_\_\_

Joseph I. Marchese  
*Attorney for Plaintiffs and the Settlement Class*

Dated:

**MAZIE SLATER KATZ & FREEMAN, LLC**

By \_\_\_\_\_

Matthew R. Mendelsohn  
*Attorney for Plaintiffs and the Settlement Class*

Dated: 9/20/24

**SCHENCK, PRICE, SMITH & KING, LLP**

By \_\_\_\_\_  
Michael J. Marotte  
*Attorney for Defendant Momentum Solar LLC*