

May 31, 2016

Re: Our Client: Solar Media Team  
Our File No.: 43089.0001

Dear Solar Media Team Clients:

The undersigned firm represents Solar Media Team explaining how Solar Media Team abides by the Telemarketing Sales Rule (“TSR”) and Telephone Consumer Protection Act (“TCPA”).

Our analysis is based on the business of Solar Media Team (“company” or “client”) as described to us by the company and in documents we have received from it. This is a letter of explanation of the company’s business model as we understand it, and our discussion and analysis contained herein is restricted to information provided by the company to us. While we have reminded the company of its obligation, pursuant to your request, to be comprehensive in its release of information to our firm, we have undertaken no independent analysis of the same.

## **I. SUMMARY OF THE BUSINESS**

The way Solar Media Team’s current process works is that it markets and generates leads for solar installations. It does so through calling aged internet leads that have, pursuant to the company’s disclosure to us, opted-in to receive auto-dialed calls relating to solar power. Solar Media Team speaks with the interested consumers, finds a plan that works for the individual (with government grants available) and enrolls them for their clients who then sets up an installation and processes the deal.

As explained to us by the company, its leads are generated through various online means such as internet surveys on home improvement and saving money relating to such, or someone who is applying for a loan refinance and is asked if they would be interested in solar. Prospects also visit landing pages or websites seeking information on solar. All websites or surveys that generate consumer interest have lead forms containing language that indicates that the consumer is interested in learning more about solar services and consent to receive calls from such providers like our client.

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Solar Media Team confirms that it does not “cold-call” anyone and all of the leads that it purchases to directly dial have been scrubbed against the federal No Call list, and it similarly rescrubs them prior to calling the consumers. The company confirms that it does not text message, transmit SMS, e-mail or fax market any prospects.

During the introductory call, Solar Media Team verbally discloses their filed d/b/a name (Renew or Green Concepts), and if the consumer is interested in solar power and being put in touch with a company to assist, Solar Media Team identifies their clients company name before handing off the consumer to the company, noting the general nature of the goods or services offered for sale. Notably, Solar Media Team does not sell anything during the call itself or complete any transactions so it does not advise of the full cost of all offers, any conditions or restrictions associated with the offers, or their business policies, such as handling service cancellations. Rather, Solar Media Team determines whether certain consumers are appropriate referrals for a live transfer to its clients.

## **II. APPLICABLE LAW SUMMARY**

### **I. The Amended TSR**

The Amended Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, has a number of key provisions relating to telemarketing<sup>1</sup> that apply to Solar Media Team: It (a) prohibits calling consumers who have put their names on the National Do Not Call Registry unless certain exceptions exist, (b) prohibits misrepresentations, (c) limits when telemarketers may call consumers, (d) requires transmission of Caller ID information, (e) prohibits too much abandonment of outgoing calls, and (f) requires that certain business records be retained for two years. Many TSR requirements do not apply to Solar Media Team since it does not actually sell goods, services or charge consumers for same.<sup>2</sup> The company has shown us documents to support its business practices and explained to us that it complies with the above applicable terms.

#### *a. Do Not Call Registry*

Although a company is not permitted to call consumers listed on the National Do Not Call Registry, there are certain exceptions. For example, a company may call a consumer who has given the company express written permission to call, even if the consumer’s number is on the Registry. 16 C.F.R. § 310.4. As noted above, however, the leads that Solar Media Team receives come via consumers who opt in online to be called. Notwithstanding such opt-ins, Solar Media Team does not call anyone on DNC lists since it scrubs the numbers ahead of time. If a

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<sup>1</sup> Per 16 C.F.R 310.2, *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.

<sup>2</sup> Numerous TSR provisions pertain to required disclosures prior to a consumer consenting to pay, including costs and refund policies, unauthorized billing, as well as making false or misleading statements in order to induce the purchase of goods or services. See 16 C.F.R 310.3(a)(1), (2), (3), & (4); 16 C.F.R 310.4(a)(7). Notably, Solar Media Team does not present the ultimate good or service that is sold and does not charge consumers anything, so the provisions are not applicable.

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consumer requests to be placed on an internal DNC list, Solar Media Team adds that consumer. The consumer maintains policies and procedures for DNC compliance.

*b. Misrepresentations*

Section 310.3 of the TSR (16 C.F.R. § 310.3) pertains to deceptive telemarketing acts or practices. It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

- (1) Before a customer consents to pay for goods or services offered, failing to disclose truthfully, in a clear and conspicuous manner, the following material information: (i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer, (ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer, and (iii) If the offer includes a negative option feature, all material terms and conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take;
- (2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information: (i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer; (ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer; (iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer; (iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;
- (3) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s);
- (4) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services, directly or indirectly, without the customer's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z, or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E;
- (5) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

Simply stated, Solar Media Team does not actually sell, bill or cause to be billed any of the consumers that it refers along to their clients. Moreover, it follows a very basic script before

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it performs a live transfer of the lead to their clients. Solar Media Team prepares and completes a script for each individual campaign with their client's final approval.

*c. Pattern of calls*

Section 310.4(b) of the TSR (16 C.F.R. § 310.4(b)) pertains to deceptive telemarketing acts or practices. It lists various requirements which can be summarized as follows. It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls, including, but not limited to, harassing any person who makes such a request; made;

(iii) Initiating any outbound telephone call to a person when: (A) That person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered; or (B) That person's telephone number is on the "do-not-call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services. (there are exceptions to this such as the receipt of express consent to being contacted, which is precisely what Solar Media Team obtains)

(iv) Abandoning any outbound telephone call. An outbound telephone call is "abandoned" under this section if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person's completed greeting.

(v) Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor. There are exceptions to this rule, but they are not relevant as Solar Media Team does not use prerecorded messages when it calls consumers.

It is not Solar Media Team's business practice to annoy, abuse or harass any consumers. If a consumer does not wish to be called, the company places them on its DNC list. Indeed, Solar Media Team does not even call consumers who have opted in to being called but who are on national DNC lists. Moreover, Solar Media Team's telephone system is a Vici dial system that has a default that calculates call abandonment to assist in preventing the company from abandoning calls or doing so more than 3% during a monthly campaign. The company does not initiate prerecorded messages. Rather, it uses live agents.

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*d. Training Personnel*

A seller or telemarketer will not be liable for violating §310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

(i) It has established and implemented written procedures to comply with §310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to §310.4(b)(3)(i);

(iii) The seller, or a telemarketer or another person acting on behalf of the seller, has maintained and recorded a list of telephone numbers the seller may not contact, in compliance with §310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to §310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the “do-not-call” registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller monitors and enforces compliance with the procedures established pursuant to §310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating paragraph (b)(1)(ii) or (iii) of this section is the result of error and not of failure to obtain any information necessary to comply with a request pursuant to paragraph (b)(1)(iii)(A) of this section not to receive further calls by or on behalf of a seller or charitable organization.

I have reviewed Solar Media Team’s current DNC Policy and it comports with the requirements addressed above. It is my understanding that Solar Media Team has trained its employees to follow the practices outlined in its internal DNC policy.

*e. Hours when calls may be made*

The Amended TSR limits sales calls to the hours between 8 AM and 9 PM in the recipient’s time zone (unless the consumer consents to calls outside those parameters). 16 C.F.R. § 310.4 (c).

Solar Media Team has confirmed that it abides by the time restrictions for calling consumers noted above. Indeed, it calls between the hours of 9 AM and 8:30 PM in the consumers’ respective time zones.

*f. Transmission of Caller ID information*

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Per 16 C.F.R. § 310.4(a)(8), it is unlawful to fail to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; provided that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller on behalf of which a telemarketing call is placed, and the seller's customer service telephone number, which is answered during regular business hours.

Solar Media Team has confirmed that it abides by the requirements to transmit its caller identification information noted above. Indeed, Solar Media Team noted that when the consumer calls the number that is shown on their caller ID, it rings back to Solar Media Team.

*g. Limitation on call abandonment*

Per 16 C.F.R. § 310.4(b), the telemarketer may not abandon calls (i.e. if a person answers the call, the telemarketer must connect within two (2) seconds of the person's completed greeting.)

Solar Media Team has confirmed that it abides by the call abandonment limitations noted above.

*h. Retain certain business records*

Any telemarketer must retain for a period of 24 months from the date the record is produced the following records relating to telemarketing activities: All substantially different advertising, brochures and telemarketing scripts. They must similarly retain, "name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services." Additionally, the TSR requires all verifiable authorizations and records of express informed consent or express agreement be retained for the two year period. 16 C.F.R. § 310.5.

It is my understanding that Solar Media Team retains its call script for at least two years. It does not engage in other marketing, nor does it sell anything or collect monies, so the other requirements are not applicable to the business.

## **II. The TCPA**

The TCPA was passed into law in 1991. The Federal Communications Commission ("FCC") is empowered to issue rules and regulations implementing the TCPA. Among other things, the TCPA allows individuals to file lawsuits and collect damages for receiving unsolicited telemarketing calls, faxes, pre-recorded calls, autodialed calls or SMS messages. The TCPA, through the TSR, also requires telemarketers to transmit Caller ID in all sales calls, not to abandon or dead air calls over 3% during any calling campaign, the requirement that interactive opt-out mechanisms be announced at the outset of any prerecorded message and be available during the duration of the call and the prohibition on auto dialing cell phones or using pre-recorded messages without express written consent. The company has shown us documents to

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support its business practices and explained to us that it complies with the above applicable terms.

- a. *As of October 16, 2013, prior express written consent is required for all autodialed and/or pre-recorded calls/texts sent/made to cell phone and pre-recorded calls made to residential land lines for marketing purposes.*

Compliance with the E-SIGN Act satisfies this requirement, meaning that electronic or digital forms of signature are acceptable (i.e., agreements obtained via email, website form, text message, telephone keypress or voice recording). The burden is on the calling party to prove the consent was provided. Consumer consent must be unambiguous, meaning that the consumer must receive a “clear and conspicuous disclosure” that he/she will receive future calls that deliver autodialed and/or pre-recorded telemarketing messages on behalf of a specific advertiser; that his/her consent is not a condition of purchase; and he/she must designate a phone number at which to be reached (which should not be pre-populated by the advertiser in an online form). Limited exceptions apply to this requirement, such as calls/texts from the consumer’s cellular carrier, debt collectors, schools, informational notices and healthcare-related calls.

If a dispute concerning consent arises, the advertiser bears the burden of proof to demonstrate that a clear and conspicuous disclosure was provided and that the consumer unambiguously consented to receive telemarketing calls to the number he/she specifically provided. It is a best practice for advertisers to maintain each consumer’s written consent for at least four (4) years, which is the federal statute of limitations to bring an action under the TCPA.

Evidence of Internet-provided written consent includes, but is not limited to, website pages that contain consumer consent language and fields, associated screenshot of the consent webpage as seen by the consumer where the phone number was inputted, complete data record submitted by the consumer (with time and date stamp), together with the applicable consumer IP address.

Solar Media Team has disclosed to us that it purchases on-line leads where consumers provided TCPA consent. Moreover, the company has confirmed that all of the leads that it purchases include files that show the time, date stamp, and IP address of the person who opted in. For any non-internet leads that Solar Media Team purchases, the company has stated that it obtains the written records. Solar Media Team maintains and circulates a TCPA Compliance policy as well as a DNC policy.

The company appreciates this opportunity to respond to your inquiry and confirm its practices to Solar Media Teams clients. If you have further questions, please do not hesitate to contact me.

Very truly yours,  
GREENSPOON MARDER, P.A.  
Robby H. Birnbaum, Esq.  
For the Firm