

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BRIAN RICHARDSON, *et al.*, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

VERDE ENERGY USA, INC.,

Defendant.

No.: 5:15-cv-06325-WB

AMENDED STIPULATION AND AGREEMENT OF SETTLEMENT

This Amended Stipulation and Agreement of Settlement (the “Stipulation” or “Settlement” or “Agreement”) is entered into pursuant to Rule 23 of the Federal Rules of Civil Procedure, subject to the approval of the Court, by Plaintiffs Brian Richardson, Michelle Hunt, Jacqueline Bowser, Kris Villiger, and Donna Schley (collectively, “Plaintiffs”) on behalf of the Settlement Class (as defined below), and Defendant Verde Energy USA, Inc. (“Verde” or “Defendant” and, together with Plaintiffs, collectively the “Parties”). The Settlement is intended by the Parties to fully and finally compromise, resolve, release, discharge and settle the Released Claims (as defined below) as against all Released Parties (as defined below), subject to the terms and conditions set forth below and final approval of the Court.

WHEREAS:

A. All terms with initial capitalization shall have the meanings ascribed to them in this Stipulation;

B. On November 25, 2015, Plaintiffs Brian Richardson and Michelle Hunt filed a Class Action Complaint (Dkt. 1) against Defendant in the Action (as defined below) individually

and as a class action for violation of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. 227, *et seq.*; Jacqueline Bowser was added as a Plaintiff in the Action via an Amended Complaint filed on February 26, 2016 (Dkt. 15); and Kris Villiger and Donna Schley were added as Plaintiffs via a Consolidated Amended Class Action Complaint filed on November 1, 2017 (Dkt. 61);

C. Among other things, Plaintiffs alleged that Defendant called the telephones of Plaintiffs and other members of the Settlement Class using automatic telephone dialing systems (“ATDS”) and/or artificial/recorded voice for purposes of telemarketing without obtaining prior express written consent, in violation of the TCPA;

D. Following motion practice on the pleadings, Defendant filed its Answer (Dkt. 70) to the Consolidated Amended Class Action Complaint on November 15, 2017 (Dkt. 61), denying any and all liability with respect to the claims alleged;

E. On December 19, 2018 (Dkt. 108), the Court granted in part and denied in part Defendant’s motion for partial summary judgment; among other things, the Court dismissed Plaintiffs’ claims as to Defendant’s alleged use of an ATDS;

F. On March 29, 2019 (Dkt. 122), Plaintiffs filed a Second Amended Class Action Complaint (“Complaint”) to conform the allegations to the Court’s ruling on summary judgment;

G. Prior to and throughout the Action, Plaintiffs’ Counsel (as defined below) have conducted a thorough examination and investigation of the facts and law relating to the matters in the Action, including, but not limited to, examining certain documents and data produced by Defendant and deposing certain relevant witnesses;

H. The Parties first agreed to mediate the Action in 2017 and retained the Honorable Diane M. Welsh, U.S. Magistrate Judge for the Eastern District of Pennsylvania (Retired) to serve as the mediator;

I. On May 4 and July 13, 2017, Judge Welsh conducted full day mediation sessions between the Parties;

J. During the spring of 2019, the Parties again agreed to mediate the Action and retained the Honorable Lawrence F. Stengel, United States District Judge for the Eastern District of Pennsylvania (Retired) to serve as the mediator (the “Mediator”);

K. On April 15, 2019, the Mediator conducted a full day in-person mediation session between the Parties which took place in Philadelphia, Pennsylvania;

L. At the conclusion of the mediation on April 15, 2019, the Parties accepted the Mediator’s proposed settlement, subject to the satisfaction of certain conditions, including the negotiation of a definitive settlement agreement and the approval of the Settlement by the Court in accordance with FED. R. CIV. P. 23;

M. Following the Court’s ruling from the bench that it would not grant preliminary approval of the Settlement as written, the Parties engaged in further settlement negotiations and agreed to a substantial increase in the amount of the Settlement being made available to the Settlement Class;

N. Prior to agreeing to the Settlement as set forth herein, Plaintiffs’ Counsel analyzed and evaluated the merits of all Parties’ contentions and the Settlement as it impacts all Parties, including the Settlement Class Members (as defined below). Plaintiffs and Plaintiffs’ Counsel, after taking into account the risks and costs of further litigation, are satisfied that the terms and

conditions of the Settlement are fair, reasonable, and adequate, and that the Settlement is in the best interest of the Settlement Class Members;

O. Defendant, while continuing to deny all allegations of wrongdoing and disclaiming any liability with respect to any and all claims, considers it desirable to resolve the Action on the terms stated herein, in order to avoid further expense, inconvenience, and interference with ongoing business operations, and to dispose of burdensome litigation; and

P. The Settlement reflects a compromise between the Parties and shall in no event be construed as or be deemed an admission or concession by any of the Parties of the truth of any allegation or the validity of any purported claim or defense asserted in any of the pleadings in the Action, or of any fault or liability on the part of Defendant.

NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among the Parties, through their respective attorneys, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and the other conditions set forth herein, in consideration of the benefits flowing to the Parties and the Settlement Class, that the Action and all of the Released Claims (as defined below) as against all Released Parties (as defined below) shall be fully, finally and forever compromised, settled, released, discharged, and dismissed, with prejudice, upon and subject to the terms and conditions set forth below:

I. DEFINITIONS

As used in this Stipulation, the following terms shall have the meanings specified below. As used herein, the plural of any defined term includes the singular thereof and the singular of any defined term includes the plural thereof, as the case may be.

1.1. “Action” means collectively *Richardson, et al. v. Verde Energy USA, Inc.*, No. 5:15-cv-06325 (E.D. Pa.), and *Schley v. Verde Energy USA, Inc.*, No. 2:17-cv-00887 (E.D. Pa.).

1.2. “Authorized Claimant” means a Settlement Class Member who does not exclude himself or herself from the Settlement by timely opting out of the Settlement and who submits a timely and valid Claim Form to the Settlement Administrator in accordance with the requirements set forth in this Stipulation and established by the Court, which is approved by the Settlement Administrator for payment.

1.3. “Calculated Payment” is defined as set forth in Section 2.2 of this Stipulation.

1.4. “Claimant” means a Settlement Class Member who does not exclude himself or herself from the Settlement by timely opting out of the Settlement and who submits a timely and valid Claim Form to the Settlement Administrator in accordance with the requirements set forth in the Stipulation and established by the Court, seeking to be eligible to share in the proceeds of the Settlement.

1.5. “Claim Form” means the Claim Form substantially in the form attached hereto as Exhibit C that a Settlement Class Member must complete and timely submit if that Settlement Class Member seeks to be eligible to share in the proceeds of the Settlement. Claim Forms may be returned to the Settlement Administrator by U.S. mail, facsimile, email, or through a Settlement website established by the Settlement Administrator for this purpose, on which documents relevant to the Settlement will be downloadable, including the Settlement Agreement and its exhibits, and any Court Orders regarding the Settlement.

1.6. “Court” means the United States District Court for the Eastern District of Pennsylvania.

1.7. “Defendant’s Counsel” means Eckert Seaman Cherin & Mellott, LLC.

1.8. “Effective Date” means the date of the Court’s Final Approval Order and the expiration date of the time for filing notice of any appeal from the Final Approval Order if no

appeal is filed, or if an appeal is filed, the latest of (a) the date of final affirmance of that Order, (b) the expiration of the time for a petition for writ of certiorari to review the Order if affirmed and, if the certiorari is granted, the date of final affirmance of the Order following review pursuant to that grant; or (c) the date of final dismissal of any appeal from the Order or the final dismissal of any proceeding on certiorari to review the Order that has the effect of confirming the Order.

1.9. “Escrow Agent” means the Settlement Administrator.

1.10. “Final Approval Hearing” means the hearing set by the Court under Rule 23(e) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

1.11. “Immediate Family” means an individual’s spouse, parents, siblings, children, grandparents and grandchildren; the spouses of his or her parents, siblings and children; and the parents and siblings of his or her spouse, and includes step and adoptive relationships. In this section, “spouse” shall mean a husband or wife.

1.12. “Litigation Expenses” mean the out-of-pocket costs and litigation expenses incurred or disbursed by Plaintiffs’ Counsel in or for the Action for which Plaintiffs’ Counsel intends to apply to the Court for reimbursement out of the Settlement Fund, which amount shall not exceed \$100,000 in the aggregate.

1.13. “Maximum Settlement Amount” means the total amount of Five Million Dollars (\$5,000,000).

1.14. “Net Settlement Fund” means the Settlement Fund less: (i) any attorneys’ fees and Litigation Expenses awarded by the Court; (ii) any Service Awards awarded by the Court; and (iii) any Notice and Administration Costs.

1.15. “Notice” means the Notice of Class Action Settlement (substantially in the form attached hereto as Exhibit B), which is to be sent by the Settlement Administrator to the Settlement Class Members. The Notice with a perforated and detachable Claim Form (Exhibit C) will form a double-postcard for purposes of mailing notice to the Settlement Class.

1.16. “Notice and Administration Costs” mean the taxes and reasonable costs and fees of notice and administration of the Settlement that are incurred by the Settlement Administrator in connection with providing Notice to the Settlement Class, administering the Claim Form process, and distributing the Settlement Fund.

1.17. “Order and Final Judgment” or “Final Approval Order” means the Court’s order and final judgment granting final approval of the Settlement (substantially in the form of Exhibit D attached hereto).

1.18. “Plaintiffs’ Counsel” means Berger Montague PC, Hughes Ellzey, LLP, Bursor & Fisher, P.A., and Marcus & Zelman, LLC.

1.19. “Plan of Allocation” means the proposed plan for allocating Settlement payments to Authorized Claimants as set forth in the Notice and as the Court shall approve.

1.20. “Preliminary Approval Order” means the Court’s order (substantially in the form attached hereto as Exhibit A) to be entered by the Court preliminarily approving the Settlement and directing that Notice be provided to the Settlement Class.

1.21. “Released Claims” mean any and all claims, liens, demands, actions, causes of action, obligations, damages, liabilities, and/or costs, including attorneys’ fees, of any nature whatsoever that arose during the time period from October 16, 2013 through the date of the Preliminary Approval Order, whether legal or equitable or otherwise, that actually were, or could have been, asserted against the Released Parties in the Action based upon the facts alleged in the

Action that arise from any violation of any provision of the TCPA, or any similar statute, and any claim arising directly or indirectly out of, or in any way relating to, the claims that actually were, or could have been, asserted in the Action based upon the facts alleged in the Complaint and amendments thereto filed in the Action. “Released Claims” also means any and all claims, liens, demands, actions, causes of action, obligations, damages, liabilities and/or costs, including attorneys’ fees, of any nature whatsoever which Plaintiffs (but not the Settlement Class Members) had, or which arose, against Verde, and/or its subsidiaries, divisions, affiliates, predecessors, successors and assigns, from October 16, 2013 through the date of the Preliminary Approval Order. Finally, “Released Claims” also means any and all claims, actions and/or causes of action which Plaintiffs’ Counsel has or may have against the Released Parties for attorneys’ fees or costs arising from, or incurred, for the Action (beyond those that may be awarded by the Court as part of the Settlement).

1.22. “Released Parties” mean Verde, and all of its past and present parents, subsidiaries, divisions, affiliates and persons and entities directly or indirectly under their control in the past or in the present; its assignors, predecessors, successors and assigns; and the past or present partners, members, directors, officers, managers, employees, stockholders, agents, licensees, agencies, attorneys, insurers, accountants, representatives, heirs and estates of any and all of the foregoing.

1.23. “Service Award(s)” means an award of up to five thousand dollars (\$5,000) payable to each of the Plaintiffs for their representation of the Settlement Class, subject to the approval of the Court.

1.24. “Settlement Administrator” means Angeion Group LLC.

1.25. “Settlement Class” means all individuals in the United States who received a call made by or on behalf of Verde Energy USA, Inc. to the individual’s cellular or landline telephone, through the use of a pre-recorded or artificial voice, from October 16, 2013 to February 14, 2019. Excluded from the Settlement Class are (i) Verde; (ii) any affiliates of Verde; and (iii) any employee of Verde or members of their Immediate Family. The Parties have met and conferred and agreed that there are approximately 357,387 Settlement Class Members, which is a material term of this Settlement.

1.26. “Settlement Class Member” means a person who is a member of the Settlement Class.

1.27. “Settlement Fund” means the total amount of Three Million Dollars (\$3,000,000), to be maintained in an escrow account by the Escrow Agent, plus any interest earned thereon.

1.28. “Supplemental Fund” is defined as set forth in Section 2.2 of this Stipulation.

II. THE SETTLEMENT CONSIDERATION AND PAYMENTS TO CLAIMANTS

2.1. Subject to the terms and conditions of this Agreement, Defendant shall wire only the amount of the Settlement Fund into an escrow account established by the Settlement Administrator within ten (10) business days after the Effective Date, except that Defendant shall pay the Settlement Administrator’s actual and reasonably incurred Notice costs within fourteen (14) days of the Court’s entry of the Preliminary Approval Order, said amount to be credited against the Settlement Fund and said amount not to exceed \$300,000.

2.2. The Net Settlement Fund will be used to make Settlement payments to the Authorized Claimants who submit timely and valid Claim Forms on a *pro rata* basis (the “Calculated Payment”); provided, however, that if an Authorized Claimant’s Calculated Payment totals less than One Hundred Dollars (\$100), the Calculated Payment will be deemed to be \$100,

and Defendant will provide additional funds to the Settlement Administrator equal to the lesser of (i) the amount necessary to ensure that each Authorized Claimant receives a Calculated Payment of \$100, or (ii) Two Million Dollars (\$2,000,000) (such lesser amount, the “Supplemental Fund”). The amount of the Supplemental Fund, if any, will be set forth in the Final Approval Order, and Defendant shall wire such amount into an escrow account established by the Settlement Administrator within ten (10) business days after the Effective Date. The foregoing provisions of this Section 2.2 are subject to the provisions of Section 2.3 of this Stipulation. Under no circumstances shall Defendant’s liability under the Settlement exceed the Maximum Settlement Amount.

2.3. In the event that the aggregate total dollar value of all Calculated Payments (under Section 2.2 of this Stipulation) submitted by the Authorized Claimants exceeds the Net Settlement Fund plus the Supplemental Fund, each Authorized Claimant’s Calculated Payment shall be reduced and the Authorized Claimant shall receive, as his/her/its Calculated Payment, a *pro rata* share of the Net Settlement Fund plus the Supplemental Fund.

2.4. This Agreement does not create any property interest or unclaimed property or *cy pres* rights for Settlement Class Members who do not submit a timely and valid Claim Form, or do not cash or negotiate a settlement check/payment, or if the Settlement is terminated.

2.5. Other than the Supplemental Fund, Defendant shall have no obligation to contribute any further amounts.

III. USE OF SETTLEMENT FUND

3.1. The Settlement Fund shall be used to pay: (i) any attorneys’ fees and Litigation Expenses approved by the Court; (ii) any Service Awards approved by the Court; and (iii) any Notice and Administration Costs. The balance remaining in the Settlement Fund, *i.e.*, the “Net

Settlement Fund,” shall be distributed to Authorized Claimants as provided herein. In no event shall Defendant or any Released Parties bear any responsibility for any such amounts, fees, costs or expenses beyond Defendant’s responsibility to pay the Settlement Fund, pursuant to Section 2 above.

3.2. The Net Settlement Fund shall be distributed to Authorized Claimants as provided in Section 2 and in the Plan of Allocation. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in an escrow account maintained by the Escrow Agent, and shall only be distributed as approved by the Court in its Final Approval Order.

3.3. The Parties agree to treat the Settlement Fund at all times as a Qualified Settlement Fund within the meaning of Internal Revenue Code § 468B, as amended, and all rules and regulations thereunder, including U.S. Treas. Reg. §§ 1.468B-1 to 1.468B-5, 26 C.F.R. §§ 1.468B-1 to 1.468B-5. The Escrow Agent, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Such returns shall be consistent with this section and in all events shall reflect that all taxes on the income earned on the Settlement Fund shall be paid out of the Settlement Fund as part of the Notice and Administration Costs. The Escrow Agent shall also be solely responsible for causing payment to be made from the Settlement Fund for any taxes owed with respect to the Settlement Fund. The Escrow Agent, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a “relation back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified

Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

3.4. Under no circumstances will Defendant be entitled to any return of any portion of the Settlement Fund, unless the Settlement does not receive final judicial approval or is otherwise terminated as permitted by this Stipulation. If any portion of the Settlement Fund remains following distribution (or redistribution) to Authorized Claimants pursuant to this Stipulation and is of such an amount that in the discretion of Plaintiffs' Counsel it is not cost effective or efficient to redistribute the amount to the Authorized Claimants, then such remaining funds shall be, after payment of any further Notice and Administration Costs and taxes and tax expenses, distributed by the Settlement Administrator to Community Legal Services of Philadelphia as a *cy pres* recipient, subject to the approval of the Court in its Final Approval Order.

IV. CLASS SETTLEMENT PROCEDURES

4.1. Plaintiffs shall promptly file with the Court and Defendant shall not oppose, subject to the opportunity by Defendant's counsel to review and comment, a Motion for Preliminary Approval of the Settlement, along with this Stipulation and all exhibits hereto, and move for entry of the Preliminary Approval Order substantially in the form attached hereto as Exhibit A.

4.2. For purposes of the Settlement only, Plaintiffs will request as part of the Preliminary Approval Order and the Order and Final Judgment that the Court: (a) certify this Action as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and approve the definition of the Settlement Class; (b) appoint Plaintiffs to serve as the Settlement Class representatives; and (c) appoint Plaintiffs' Counsel to serve as counsel for the

Settlement Class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure. For purposes of the Settlement only, Defendant will not oppose the request.

4.3. The Settlement Administrator shall discharge its duties under Plaintiffs' Counsels' supervision and subject to the jurisdiction of the Court. Defendant, the Released Parties and Defendant's Counsel shall have no responsibility whatsoever for the administration of the Settlement and shall have no liability whatsoever to any person, including, but not limited to, the Settlement Class Members, in connection with any such administration. The Settlement Administrator shall cause to be mailed on one occasion the Notice and Claim Form to those Settlement Class Members who may be identified through reasonable effort.

4.4. Membership in the Settlement Class and eligibility for the Settlement shall be conclusively determined from Defendant's records, as reasonably available. Based on its records of unique telephone numbers called, using a pre-recorded or artificial voice between, October 16, 2013 and February 14, 2019, the Settlement Class includes approximately 357,387 members. The number of Settlement Class Members is a material term to the Settlement. Within five (5) business days after the Preliminary Approval Order, to the extent reasonably available to it, Defendant shall provide the Settlement Administrator with all data necessary for administration of the Settlement, including, for the Settlement Class Members, their names, addresses, telephone numbers, email addresses, and any other identifying information maintained by Defendant or on its behalf. Defendant agrees to reasonably cooperate with Plaintiffs' Counsel in identifying the names and addresses of the Settlement Class Members as Plaintiffs' Counsel may reasonably request. In addition, the Settlement Administrator may use the National Change of Address Database to obtain current addresses for Settlement Class Members.

4.5. Claim Forms must be submitted within sixty (60) days from the date the Notice is initially mailed by the Settlement Administrator. Any objections or requests for exclusion must be properly submitted within sixty (60) days from the date the Notice is initially mailed by the Settlement Administrator. A Settlement Class Member requesting exclusion from the Settlement shall be requested to provide certain information to the Settlement Administrator as set forth in the Notice. If a Settlement Class Member submits both a timely Claim Form and a timely request for exclusion, the Settlement Administrator shall promptly attempt to contact that individual to ascertain his or her intent, and if those efforts are unsuccessful, the Claim Form shall govern. Any Settlement Class Member who does not submit a timely written request for exclusion as provided by the Notice shall be bound by the Settlement.

4.6. The Settlement Administrator shall scan and send electronic copies of all objections and requests for exclusion to Defendant's Counsel and Plaintiffs' Counsel expeditiously (and in no event more than three (3) business days) after the Settlement Administrator receives any such documents. As part of the motion papers in support of final approval of the Settlement, Plaintiffs' Counsel will file a list identifying all persons who have requested exclusion from the Settlement, and shall include all objections as an attachment to the motion.

4.7. Notwithstanding the fact that the Effective Date has not yet occurred, the Settlement Administrator, after the issuance of the Preliminary Approval Order, may expend up to \$300,000 from the Settlement Fund, without further approval from Defendant or order of the Court, to pay reasonable Notice and Administration Costs. Such costs and expenses shall include, without limitation, the costs of printing and mailing the Notice and administering the Settlement as set forth in this Agreement. In the event that the Settlement is terminated pursuant to the terms of this Stipulation or not approved by the Court, all Notice and Administration Costs reasonably

paid or incurred as of the date of the termination or lack of approval shall not be returned or repaid to Defendant. In no event shall Plaintiffs, Plaintiffs' Counsel or the Escrow Agent be required to reimburse Defendant for any Notice and Administration Costs actually paid from the Settlement Fund.

4.8. Other than the Notice and Administration Costs, there shall be no distribution of any of the Settlement Fund until after the Effective Date.

V. SETTLEMENT ADMINISTRATOR DUTIES

5.1. In addition to issuing Notice as set forth in this Agreement, the Settlement Administrator shall process and administer the Claim Forms submitted by Settlement Class Members, calculate Settlement Class Members' claims pursuant to this Agreement and the Plan of Allocation, oversee distribution of the Settlement Fund and perform all claims administration procedures necessary or appropriate in connection therewith, all in accordance with the terms of this Agreement. The Settlement Administrator shall also issue to each Plaintiff, Authorized Claimant, and Plaintiffs' Counsel an IRS Form 1099 for any award or amount paid pursuant to this Stipulation. Defendant, Defendant's Counsel and the Released Parties shall not have any liability or responsibility for any taxes or tax expenses resulting from the Settlement.

5.2. The Parties shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms. Defendant, Defendants' Counsel and the Released Parties shall, however, have no liability, obligation or responsibility, except as provided for in Section 4.4 above, for the Notice, administration or processing of Claim Forms or disbursement of the Settlement Fund. As long as each submitted Claim Form complies with this Stipulation and the Final Approval Order, Defendant shall not contest or object to any Claim Form or any decision of the Settlement Administrator with respect to accepting or rejecting any Claim Form.

5.3. The Settlement Administrator shall receive the Claim Forms and administer them according to this Agreement and the Plan of Allocation, which is included in the Notice attached hereto as Exhibit B.

5.4. Subject to Section 4.5, any Settlement Class Member who fails to submit a timely and valid Claim Form, and does not timely exclude himself/herself from the Settlement, shall not be eligible to receive any distribution from the Net Settlement Fund or otherwise under this Agreement, but shall in all other respects be bound by all of the terms of this Stipulation, including the terms of the Order and Final Judgment and the releases provided for herein, and shall be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind against any of the Released Parties concerning any of the Released Claims. A Claim Form shall be deemed to be submitted when posted if received with a postmark indicated on the envelope, or on the date emailed or electronically submitted.

5.5. Within thirty (30) calendar days after the Effective Date, the Settlement Administrator shall send to each Authorized Claimant his, her, or its Calculated Payment. All Settlement checks issued to an Authorized Claimant will be valid and negotiable for a period of one hundred eighty (180) days. Any amounts from uncashed Settlement checks, which funds were paid from the Net Settlement Fund, after the 180 day period, will be paid to the *cy pres* recipient identified in Section 3.4, subject to approval by the Court in the Final Approval Order, and any amounts from uncashed Settlement checks, which funds were paid from the Supplemental Fund, shall be timely returned to Defendant.

5.6. Payment pursuant to the Court-approved Settlement, this Stipulation, the Plan of Allocation, or as otherwise ordered by the Court shall be final and conclusive against any and all Settlement Class Members, who do not exclude themselves from the Settlement. No person shall

have any claim against Plaintiffs, Plaintiffs' Counsel, Defendant, Defendant's Counsel, any of the other Released Parties, or the Settlement Administrator based on actions or distributions made substantially in accordance with the Court-approved Settlement, this Stipulation, the Plan of Allocation, or as otherwise ordered by the Court.

5.7. All proceedings with respect to the administration, processing and determination of Claim Forms and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claim Forms, shall be subject to the jurisdiction of the Court.

VI. ATTORNEYS' FEES, LITIGATION EXPENSES AND SERVICE AWARDS

6.1. Plaintiffs' Counsel will apply to the Court for an award from the Settlement Fund of attorneys' fees of one-third of the Settlement Fund (\$1,000,000). In addition, Plaintiffs' Counsel will apply to the Court for payment from the Settlement Fund of their Litigation Expenses not to exceed One Hundred Thousand Dollars (\$100,000). Defendant agrees not to oppose such application for attorneys' fees and Litigation Expenses.

6.2. In recognition to their time and efforts on this litigation, and service to the Settlement Class, Plaintiffs may apply to the Court for a Service Award payable to each Plaintiff in an amount up to Five Thousand Dollars (\$5,000). Defendant agrees that it will not oppose an application that does not exceed that amount, in addition to any other benefits to which Plaintiffs are entitled by virtue of their status as a Settlement Class Member.

6.3. The Court-awarded attorneys' fees, Litigation Expenses and Service Awards shall be paid from the Settlement Fund, and Plaintiffs' Counsel shall allocate and distribute all such monies. Attorneys' fees, Litigation Expenses and Service Awards that are awarded by the Court shall be paid within fourteen (14) business days after the Effective Date.

6.4. Defendant, Defendant's Counsel and the Released Parties shall have no responsibility for, and no liability with respect to, the allocation or payment of attorneys' fees, Litigation Expenses or Service Awards that the Court may award in this Action or for any allocation or payment of any portion of the Settlement Fund to any other person who may assert some claim thereto.

6.5. The procedure for and amounts of any award of attorneys' fees, Litigation Expenses and Service Awards, and the allowance or disallowance by the Court thereof and the allocation of same, shall not be deemed material or a condition of the Settlement, provided that any such awards/amounts do not exceed the amounts set forth in Sections 6.1 and 6.2 above. Plaintiffs' Counsel shall file a separate Motion for Attorneys' Fees, Litigation Expenses and Service Awards, to address these issues within two weeks prior to the deadline to submit objections to the Settlement. The finality of the Settlement shall not be conditioned on any ruling by the Court concerning Plaintiffs' Counsel's application for attorneys' fees, Litigation Expenses or Service Awards.

VII. TERMS OF THE ORDER AND FINAL APPROVAL

7.1. The Settlement is expressly conditioned upon, among other things, the entry of an Order and Final Judgment substantially in the form attached hereto as Exhibit D.

7.2. At the Final Approval Hearing, Plaintiffs shall request entry of the Order and Final Judgment:

- (a) certifying the Settlement Class for purposes of the Settlement only;
- (b) finally approving the Settlement, without material alteration, as fair, reasonable, and adequate, within the meaning of Federal Rule of Civil Procedure 23, and directing its consummation pursuant to its terms;

(c) providing that each Settlement Class Member who has not properly and timely excluded himself or herself from the Settlement in accordance with the Court's prior order and terms of the Settlement shall be bound by all provisions of the Settlement and the Order and Final Judgment;

(d) directing that the Action and all claims in the Action be dismissed without costs to either side, except as provided for herein, and with prejudice, and releasing as against the Released Parties, the Released Claims; and

(e) reserving jurisdiction over the Action, including all future proceedings concerning the administration, consummation and enforcement of the Settlement.

7.3. Except as provided in Section 6.5, Defendant and Plaintiffs each shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so ("Termination Notice") to the other within ten (10) business days of the date on which: (a) the Court declines to enter the Preliminary Approval Order or makes a material change thereto; (b) the Court refused to approve the Settlement or any material part of it; (c) the Court declines to enter the Order and Final Judgment or makes a material change thereto; (d) the Order and Final Judgment is vacated, modified or reversed in any material respect; or (e) the Effective Date otherwise does not occur. Further, if five percent (5%) or more of the Settlement Class Members or any of the Plaintiffs exclude themselves from the Settlement, Defendant shall, in its sole and independent discretion, have the right to terminate the Settlement and this Stipulation by providing written notice thereof within five (5) business days of receiving notice from the Settlement Administrator that the 5% threshold has been reached or that a Plaintiff has excluded himself/herself from the Settlement. The foregoing provisions are not intended to limit or impair the Parties' rights under the law of contracts with respect to any breach of this Stipulation. In the

event the Settlement and this Stipulation are terminated, the provisions of Section 7.3 to 7.5 shall survive termination.

7.4. Except as otherwise provided herein, in the event the Settlement and this Stipulation are terminated or if the Effective Date fails to occur for any reason, the Parties shall be deemed to have reverted *nunc pro tunc* to their respective status in the Action as of the date of execution of this Stipulation, and except as otherwise expressly provided, the Parties shall proceed in all respects as if this Stipulation and any related orders had not been entered and without any prejudice in any way from the negotiation, fact, or terms of the Settlement.

7.5. Except as otherwise provided herein, in the event this Stipulation is terminated or if the requirements for determining the Effective Date fail to be satisfied for any reason, then within fifteen (15) business days after the Termination Notice is sent by Plaintiffs' Counsel or Defendant's Counsel, the balance of the Settlement Fund, less any Notice and Administration Costs then incurred to date by the Settlement Administrator, shall be refunded to Defendant pursuant to written instructions from Defendant's Counsel, including any interest accrued thereon.

7.6. Upon the Effective Date, Plaintiffs' Counsel, Plaintiffs and all Settlement Class Members (except each person or entity who has submitted a proper and timely request for exclusion from the Settlement) shall release and forever discharge the Released Parties from the respective Released Claims.

7.7. This Stipulation reflects, among other things, the compromise and settlement of disputed claims among the Parties hereto, and neither this Stipulation nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out the Settlement are intended to be, nor may they be deemed or construed to be, an admission or concession of

liability, or the validity of any claim, or defense, or of any point of fact or law (including but not limited to matters respecting class certification, jurisdiction and applicable law) on the part of any of the Parties. Defendant denies the allegations of the Complaint. Neither this Stipulation nor the fact of the Settlement, nor the Settlement proceedings, nor Settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by Defendant or any of the Released Parties, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by Defendant or any of the Released Parties in any proceeding, other than such proceedings as may be necessary to consummate, interpret, or enforce this Stipulation.

VIII. MISCELLANEOUS PROVISIONS

8.1. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that a conflict or inconsistency exists between the terms of this Stipulation and the terms of any exhibit hereto, the terms of this Stipulation shall prevail.

8.2. The Parties and their respective counsel of record agree that they will act in good faith to obtain all necessary approvals of the Court required by this Stipulation.

8.3. Verde, or the Settlement Administrator acting on Verde's behalf at Verde's request, shall timely give all notice that might be required pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA"), including by mailing the CAFA notice within ten (10) days of the filing of the motion seeking the issuance of the Preliminary Approval Order with the Court. Verde, or the Settlement Administrator, shall provide Plaintiffs' Counsel with written notice that such timely mailing has occurred and shall provide to Plaintiffs' Counsel a copy of all such notices. Verde shall exclusively pay all costs and expenses associated with all such notices,

and in no event shall any such costs be paid from the Settlement Fund or by Plaintiffs or Plaintiffs' Counsel.

8.4. Verde warrants that, as to the payments made by or on behalf of it, at the time of such payment that Verde made or caused to be made pursuant to Section 2.1 above, Verde was not insolvent, nor will the payment required to be made by it or on its behalf render it insolvent, within the meaning of and/or for the purposes of the United States Code (Bankruptcy), including Sections 101 and 547 thereof. This representation is made by Verde and not by Defendant's Counsel.

8.5. This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed on behalf of all Parties or their successors-in-interest.

8.6. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

8.7. The Parties intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Parties or the Settlement Class against any and all of the Released Parties with respect to the Released Claims. Accordingly, Plaintiffs, Plaintiffs' Counsel, Defendant, and Defendant's Counsel agree not to assert any claim under Rule 11 of the Federal Rules of Civil Procedure or any similar law, rule or regulation, that the Action, and any claim or defense therein, was brought or defended in bad faith or without a reasonable basis. The Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's length in good faith by the Parties with the assistance of the Mediator, and reflect a settlement that was reached voluntarily based upon adequate information and after consultation with experienced legal counsel.

8.8. The time periods and dates described in this Stipulation with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Plaintiffs' Counsel and Defendant's Counsel, without notice to Settlement Class Members.

8.9. If the date for performance of any act required by or under this Stipulation falls on a Saturday, Sunday or Court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Stipulation.

8.10. The terms and conditions set forth in this Stipulation, including the exhibits hereto, constitute the complete and exclusive statement of the agreement between the Parties hereto relating to the subject matter of the Settlement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Stipulation constitutes the complete and exclusive statement of its terms as between the Parties hereto, and that no extrinsic evidence whatsoever may be introduced in any agency or judicial proceeding, if any, involving this Stipulation.

8.11. The Parties intend the Settlement to be a final and complete resolution of all disputes between them with respect to the Action and the Released Claims. The Settlement compromises claims that are contested and shall not be deemed an admission by any of the Parties to the merits of same.

8.12. The construction, interpretation, operation, effect, and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the internal laws of the Commonwealth of Pennsylvania without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

8.13. The determination of the terms of, and the drafting of, this Stipulation has been by mutual agreement after negotiation, with consideration by and participation of all Parties hereto and their counsel. The rule that any uncertainties in a contract are interpreted against the party causing an uncertainty to exist is hereby waived by all Parties. This Stipulation shall not be construed more strictly against one of the Parties than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that this Stipulation is the result of arm's-length negotiations among the Parties and all Parties have contributed substantially and materially to the preparation of this Stipulation.

8.14. This Stipulation shall be binding upon and inure to the benefit of the respective heirs, estates, successors and assigns of the Parties hereto, including any and all Released Parties and any corporation, partnership or other entity into or with which any of the Parties may merge, consolidate or reorganize.

8.15. The waiver by any of the Parties of any provision or breach of this Stipulation shall not be deemed a waiver of any other provision or breach of this Stipulation.

8.16. Except as expressly provided herein, each of the Parties shall bear his, her or its own attorneys' fees and expenses in connection with the Action and the Settlement.

8.17. Each counsel signing this Stipulation represents that such counsel has authority to sign this Stipulation on behalf of Plaintiffs or Defendant, as the case may be, and that they have the authority to take appropriate action required or permitted to be taken pursuant to this Stipulation to effectuate its terms.

8.18. Neither Plaintiffs or Plaintiffs' Counsel nor Defendant or Defendant's Counsel shall conduct a press conference or issuance a press release in connection the Settlement. If the

Parties are contacted by the press, media or any industry association, they will respond only that this Action has been amicably resolved to the Parties' mutual satisfaction.

8.19. The Parties agree to the stay of all proceedings in the Action, except such proceedings as may be necessary to complete and implement the Settlement, pending the issuance of the Order and Final Judgment by the Court.

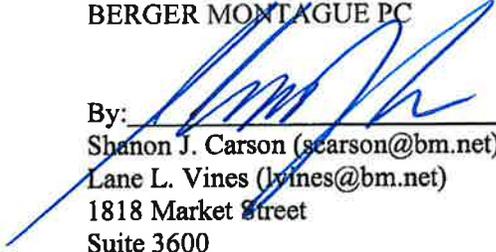
8.20. The administration, consummation, and enforcement of the Settlement as embodied in this Stipulation shall be under the authority of the Court and the Parties intend that the Court retain jurisdiction for the purpose of, *inter alia*, entering orders, providing for awards of attorneys' fees, Litigation Expenses and a Service Award, and enforcing the terms of this Stipulation and the Settlement.

8.21. Notices required by this Stipulation shall be submitted by any form of overnight mail, electronic mail, facsimile, or in person to each of the signatories below.

8.22. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via electronic mail. Each counterpart when so executed shall be deemed to be an original, and all such counterparts together shall constitute the same instrument.

The Parties have caused this Stipulation to be executed by their duly authorized attorneys
as of December 19, 2019.

BERGER MONTAGUE PC

By: 
Shanon J. Carson (scarson@bm.net)
Lane L. Vines (lvines@bm.net)
1818 Market Street
Suite 3600
Philadelphia, PA 19103
Tel.: (215) 875-3000
Fax: (215) 875-4604

W. Craft Hughes (craft@hughesellzey.com)
Jarrett L. Ellzey (jarrett@hughesellzey.com)
HUGHES ELLZEY, LLP
2700 Post Oak Boulevard, Suite 1120
Galleria Tower I
Houston, TX 77056
Tel.: (713) 554-2377
Fax: (888) 995-3335

Scott A. Bursor (scott@bursor.com)
Joseph I. Marchese (jmarshese@bursor.com)
Joshua D. Arisohn (jarisohn@bursor.com)
BURSOR & FISHER, P.A.
888 Seventh Avenue
New York, NY 10019
Tel.: (646) 837-7150
Fax: (212) 989-9163

Ari H. Marcus (ari@marcuszelman.com)
MARCUS & ZELMAN, LLC
701 Cookman Avenue, Suite 300
Asbury Park, NJ 07712
Tel.: (732) 695-3282
Fax: (732) 298-6256

*Attorneys for Plaintiffs and the Proposed
Settlement Class*

ECKERT SEAMANS CHERIN &
MELLOTT, LLC

By: 
Kevin P. Allen (kपालल@eckertseamans.com)
Joel L. Lennen (jlennen@eckertseamans.com)
Louis A. DePaul
(ldepaul@eckertseamans.com)
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
Tel.: (412) 566-6866
Fax: (412) 566-6099

—and—

Albert G. Bixler
(abixler@eckertseamans.com)
Two Liberty Place
50th South 16th Street - 22nd Floor
Philadelphia, PA 19102
Tel.: (215) 851-8412
Fax: (215) 851-8383

*Attorneys for Defendant Verde Energy USA,
Inc.*

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

_____)	
BRIAN RICHARDSON, <i>et al.</i> ,)	No. 15-cv-06325-WB
individually and on behalf of all others)	
similarly situated,)	[PROPOSED] PRELIMINARY
)	APPROVAL ORDER
Plaintiffs,)	
)	
v.)	
)	
VERDE ENERGY USA, INC.,)	
)	
Defendant.)	
_____)	

WHEREAS, the above-captioned class action lawsuit, which includes *Schley v. Verde Energy USA, Inc.*, No. 2:17-cv-00887 (E.D. Pa.), is pending before this Court;

WHEREAS, the Court has received and reviewed Plaintiffs’ Motion for Preliminary Approval of Settlement Agreement (Dkt. ____), and the Parties’ Settlement Agreement dated December __, 2019 and accompanying exhibits (the “Settlement Agreement”), entered into by Plaintiffs Brian Richardson, Michelle Hunt, Jacqueline Bowser, Kris Villager, and Donna Schley (“Plaintiffs”), on behalf of themselves and the proposed Settlement Class (as defined in the Settlement Agreement), and Defendant Verde Energy USA, Inc. (“Defendant”);

WHEREAS, the Parties have agreed, subject to final approval by this Court following notice to the Settlement Class and a Final Approval Hearing, to settle this Action pursuant to the terms and conditions set forth in the Settlement Agreement; and

WHEREAS, Plaintiffs have moved pursuant to Rule 23 of the Federal Rules of Civil Procedure for an Order preliminarily certifying the Settlement Class for settlement purposes only, and preliminarily approving the Settlement Agreement as fair, reasonable, and adequate;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court preliminarily finds, for settlement purposes only, that the Settlement Class is so numerous that joinder of all members is impracticable, that there are questions of fact and law common to the Settlement Class and that those questions predominate over questions affecting only individual Settlement Class Members, that Plaintiffs' claims are typical of the claims of the Settlement Class, that Plaintiffs will fairly and adequately protect the interests of the Settlement Class, and that class treatment is superior to individual litigation by Settlement Class Members.

2. In light of the above findings, preliminarily and solely for purposes of settlement, the Court certifies the following Settlement Class pursuant to FED. R. CIV. P. 23(a) and (b)(3), consisting of:

all individuals in the United States who received a call made by or on behalf of Verde Energy USA, Inc. to the individual's cellular or landline telephone through the use of a pre-recorded or artificial voice, from October 16, 2013 to February 14, 2019 (the "Settlement Class").

Excluded from the Settlement Class are: (i) Defendant; (ii) any affiliates of Defendant; and (iii) any employee of Defendant or members of their Immediate Family.

3. For settlement purposes only, the Court preliminarily appoints Plaintiffs as the Class Representatives, and appoints Shanon J. Carson and Lane L. Vines of Berger Montague PC, W. Craft Hughes and Jarrett L. Ellzey of Hughes Ellzey, LLP, Joshua Arisohn of Bursor & Fisher, P.A., and Ari H. Marcus of Marcus & Zelman, LLC to serve as Class Counsel.

4. The Court preliminarily approves the Settlement Agreement as a fair, reasonable, and adequate resolution to the claims of Plaintiffs and the Settlement Class subject to further consideration at the Final Approval Hearing.

5. The Final Approval Hearing is scheduled for _____, 2020, at _____ .m., at the United States District Court for the Eastern District of Pennsylvania, United States Courthouse, 601 Market Street, Courtroom _____, Philadelphia, PA 19106, to determine whether the Court should grant final approval of the Settlement Agreement.

6. The Court approves the Parties' proposed Notice of Class Action Settlement ("Notice") and Claim Form ("Claim Form") attached as Exhibits B and C, respectively, to the Settlement Agreement, authorizes the mailing and distribution of the Notice and Claim Form to the Settlement Class as set forth in the Settlement Agreement, and finds that the proposed manner and form of Notice is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

7. Angeion Group, LLC is appointed to serve as the Settlement Administrator and shall perform all notice and settlement administration duties set forth in the Settlement Agreement.

8. Settlement Class Members who wish to participate in the Settlement shall timely and fully complete and submit a Claim Form in accordance with the terms and conditions of the Settlement Agreement, and the Settlement Administrator shall accept and process Claim Forms as set forth in the Settlement Agreement.

9. Any Settlement Class Member who does not exclude himself or herself from the Settlement, may appear at the Final Approval Hearing if he or she wishes to show good cause why the Settlement Agreement should not be approved as fair, reasonable, and adequate, provided that they must first have delivered by hand or served by U.S. first class mail to Berger Montague PC, Attn.: Shanon J. Carson, Lane L. Vines, 1818 Market Street, Suite 3600, Philadelphia, PA 19103; and Eckert, Seamans, Cherin & Mellott, LLC, Attn.: Kevin P. Allen, Joel L. Lennen, Louis A. DePaul, 600 Grant Street, 44th Floor, Pittsburgh, PA 15219, written objections that specifically

state the grounds for any objection, such that they are received or postmarked within sixty (60) days from the date that the Notice is initially mailed by the Settlement Administrator. Any Settlement Class Member who does not make his or her objection in the manner set forth in the Notice and the Settlement Agreement shall be deemed to have waived such objection and shall be foreclosed from making any objection to any aspect of the Agreement.

10. Any requests for exclusion must be submitted such that they are received or postmarked within sixty (60) days from the date the Notice is initially mailed by the Settlement Administrator. Any Settlement Class Member who does not timely request exclusion from the Settlement Class in the manner stated in the Notice shall be deemed to have waived his or her rights to be excluded from the Settlement Class.

11. All Notice and Administration Costs, reasonably incurred by the Settlement Administrator, which amount shall not exceed \$300,000, shall be paid from the Settlement Amount as set forth in the Settlement Agreement without further order of the Court. In the event that the Settlement Agreement is terminated pursuant to the terms of this Settlement, all Notice and Administration Costs that were actually incurred by the Settlement Administrator up to the date that the Settlement Agreement is terminated shall not be returned or repaid to Defendant.

14. In accord with the above, the Court approves the following deadlines:

Event	Time for Compliance
Deadline for mailing the Notice and Claim Form to Settlement Class Members	No later than 60 days after entry of Preliminary Approval Order
Deadline for Class Counsel to file with the Court proof, by affidavit or declaration, of the mailing of the Notice	With Plaintiffs' Motion for Final Approval of Class Action Settlement

Event	Time for Compliance
Deadline for Plaintiffs to file a Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees and Expenses	21 days prior to the Final Approval Hearing
Deadline for Settlement Class Members to opt-out or object to the settlement	60 days after the Notice and Claim Form is mailed by the Settlement Administrator
Deadline for filing reply papers by the parties in further support of the settlement and/or in response to any written objections	Seven (7) days prior to the Final Approval Hearing
Deadline for filing the declaration from the Settlement Administrator specifying the number of Settlement Class Members who requested exclusion or submitted objections; all costs incurred by the Settlement Administrator to date; an estimate of the costs for mailing the checks to the Authorized Claimants and completing the settlement administration; and the estimated amount that will be distributed to each Authorized Claimant	Fourteen (14) days prior to the Final Approval Hearing
Final Approval Hearing (approximately 160 days after entry of the Preliminary Approval Order, scheduled at the Court's convenience)	_____, 2020, at _____ .m., at the United States District Court for the Eastern District of Pennsylvania, United States Courthouse, 601 Market Street, Courtroom _____, Philadelphia, PA 19106
Deadline for Settlement Class Members to file Claim Forms	60 days after the Notice and Claim Form is mailed by the Settlement Administrator.

15. All other deadlines pending in this Action are hereby stayed.

IT IS SO ORDERED:

DATED: _____

HON. WENDY BEETLESTONE
UNITED STATES DISTRICT JUDGE

EXHIBIT B

VERDE SETTLEMENT
 1650 ARCH ST., STE 2210
 PHILADELPHIA, PA 19103

Postage Required.
 US Postal Service
 will not deliver
 without

NOTICE OF CLASS ACTION SETTLEMENT

Richardson, et al. v. Verde Energy USA, Inc.
 No. 5:15-cv-06325 (E.D. Pa.) and
Schley v. Verde Energy USA, Inc.
 No. 2:17-cv-00887 (E.D. Pa.)

If you received a telephone call made by or on behalf of Verde Energy USA, Inc. (“VERDE”) on your cellular or landline telephone using a pre-recorded or artificial voice message during the period from October 16, 2013 to February 14, 2019, then you are entitled to participate in the Settlement and receive a monetary payment.

A U.S. Federal Court authorized this Notice. This is not a solicitation from a lawyer. Your legal rights will be affected whether you act or not. Please read this Notice carefully and visit www.INSERT.com.

<<UNIQUE ID BARCODE>>

Postal Service: Please do not mark barcode.

<<UNIQUE ID>>
 <<FIRST>><<LAST>>
 <<CO>>
 <<ADDR1>><<ADDR2>>
 <<CITY>><<ST>><<ZIP>>
 <<COUNTRY>>

What Is The Case About? This class action lawsuit alleges that VERDE violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, by calling individuals’ cellular and landline telephones without proper consent using a pre-recorded or artificial voice message during the period from October 16, 2013 to February 14, 2019 (the “Settlement Class”). VERDE denies the allegations. Under the proposed settlement that has been preliminarily approved by the Court, VERDE will pay a non-reversionary amount of \$3,000,000 (the “Settlement Amount”), and, as needed pursuant to the terms of the settlement, additional funds up to the Maximum Settlement Amount of \$5,000,000, in order to resolve the alleged claims. A complete copy of the Settlement Agreement and a longer form of this Notice is available at the Settlement Website, www.INSERT.com.

Why Am I Receiving This Notice? The Court ordered that this Notice be sent to all Settlement Class Members to advise them of the terms of the Settlement Agreement and their right to be heard at a Final Approval Hearing to be held before the United States District Court for the Eastern District of Pennsylvania at the U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106 in Courtroom __ on [INSERT](#), 2020 at [TIME](#), regarding the fairness, reasonableness, and adequacy of the Settlement and the application for attorneys’ fees and expenses to Class Counsel, and related matters. The time, date, and place of the Final Approval Hearing may be changed by the Court without notice but will be posted on the Settlement Website above.

How Do I Get A Settlement Payment? In order to receive a cash settlement payment, you must submit a valid and timely Claim Form to the Settlement Administrator, Angeion Group, LLC. A Claim Form is enclosed with this Notice and is also available online at www.INSERT.com. Claim Forms may be submitted: (1) online at www.INSERT.com; (2) by U.S. mail by sending the Claim Form to VERDE Settlement, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103; (3) by email to [INSERT](#) (by submitting the Claim Form as an attachment); or (4) by fax to the Settlement Administrator at [INSERT](#). You must submit your Claim Form to the Settlement Administrator by [INSERT](#), 2020. If mailed, the submission must be postmarked by no later than [INSERT](#), 2020.

Do I have a lawyer? Plaintiffs and the Settlement Class are represented by Berger Montague PC, Hughes Ellzey, LLP, Bursor & Fisher, P.A., and Marcus & Zelman, LLC who have been appointed by the Court as Class Counsel. You will not be charged personally for these lawyers. You may hire an attorney at your own expense to represent you and speak on your behalf at the Final Approval Hearing. Class Counsel will ask the Court at the Final Approval Hearing for approval for the following items to be paid out of the Settlement Amount: (a) attorneys’ fees of \$1,000,000; reimbursement of litigation expenses up to \$100,000; service awards of \$5,000 to each of the five named plaintiffs; and notice and administration costs of up to \$300,000.

How do I exclude myself from the Settlement or object? Each Settlement Class Member will be bound by the Court’s determinations and judgments, including concerning the Settlement, unless he/she opts out by mailing a request for exclusion from the Settlement, by first-class mail addressed to: VERDE Settlement, Attn.: Exclusions, 1650 Arch St., Ste. 2210, Philadelphia, PA 19103, which is received or postmarked by [INSERT](#), 2020. Any Settlement Class Member who does not request exclusion may submit a written objection to the Settlement and may appear at the Final Approval Hearing if they wish to show good cause why the Settlement should not be approved as fair, reasonable, and adequate. The deadline to submit a written objection is [INSERT](#), 2020. Please visit the Settlement Website at www.INSERT.com for complete instructions on how to opt out or object should you wish to do so.

Long Form Notice for Settlement Website

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

)	
BRIAN RICHARDSON, <i>et al.</i> , individually)	No. 15-cv-06325-WB
and on behalf of all others similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
VERDE ENERGY USA, INC.,)	
)	
Defendant.)	
)	
)	

NOTICE OF CLASS ACTION SETTLEMENT

A United States Federal Court authorized this Notice. This is not a solicitation from a lawyer. Your legal rights will be affected whether or not you act. Please read this Notice carefully.

Your rights may be affected by the proposed settlement (“Settlement”) of the above-captioned class action lawsuit, and *Schley v. Verde Energy USA, Inc.*, No. 2:17-cv-00887 (E.P. Pa.) (collectively, the “Action”), if you received a call made by or on behalf of Verde Energy USA, Inc. (“VERDE”) on your cellular or landline telephone where the call was made using a pre-recorded or artificial voice messages during the period from October 16, 2013 to February 14, 2019 (the “Settlement Class”).

If you are covered by the above description of the Settlement Class, you are a Settlement Class Member and you are entitled to a monetary payment if you submit a Claim Form. If you received this Notice, you are probably a Settlement Class Member. The amount of the actual payment that you may receive depends on the number of valid Claim Forms received.

What are My Options? As a Settlement Class Member, you have the following options:

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:	
DO NOTHING.	Get no payment. Remain a Settlement Class Member. Give up certain rights.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:	
SUBMIT A CLAIM FORM ONLINE AT THE SETTLEMENT WEBSITE, BY EMAIL, BY FAX, OR BY MAIL POSTMARKED BY INSERT, 2020.	If you wish to obtain a cash payment as a Settlement Class Member, you must timely fill out and return a Claim Form (“Claim Form”) which is included with this Notice and also available online at www.INSERT.com . Claim Forms must be completed, signed and submitted to the Settlement Administrator online, by email, or by fax no later than INSERT , 2020, or by mail if postmarked no later than INSERT , 2020. If you lose your Claim Form, you can obtain one at the Settlement Website.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS (OPT OUT) BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS POSTMARKED NO LATER THAN INSERT, 2020.	If you exclude yourself from the Settlement, you will receive no payment pursuant to this Settlement. This is the only option that allows you to ever potentially be part of any other lawsuit or other legal proceeding against VERDE concerning the claims asserted in this Action.
OBJECT TO THE SETTLEMENT SO THAT THE OBJECTION IS RECEIVED NO LATER THAN INSERT, 2020	You may write to the Court about why you do not like the Settlement. You can do this only if you do not exclude yourself from the Settlement.

What Is the Case About? This class action lawsuit claims that VERDE violated a law called the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”), by calling cellular and landline phones without proper consent using a pre-recorded or artificial voice messages during the period from October 16, 2013 to February 14, 2019. VERDE denies that it violated the law or did anything wrong and has asserted many defenses, including that VERDE obtained the requisite consents prior to making calls to the Settlement Class Members, among other things. VERDE does not admit any wrongdoing. Under the proposed Settlement, which must be approved by the Court, VERDE will pay a non-reversionary amount of Three Million Dollars (\$3,000,000) (the “Settlement Amount”) and, as needed pursuant to the terms of the Agreement, additional funds up to the Maximum Settlement Amount of Five Million Dollars. Note that capitalized terms used in this Notice not otherwise defined have the meanings ascribed to them in the Parties’ Settlement Agreement dated December **INSERT**, 2019 (the “Agreement”). A copy of the Agreement, this Notice, the Claim Form, and other relevant documents related to this Action may be accessed online at the Settlement Website, www.INSERT.com.

Why am I receiving this Notice: The Court overseeing this lawsuit has ordered that notice of the Settlement be sent to all Settlement Class Members as defined above, to advise them of (a) the terms of the proposed Settlement, (b) their rights concerning the Settlement, and (c) their rights in connection with a final approval hearing to be held before the United States District Court for the Eastern District of Pennsylvania (the “Court”), at the U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106 in Courtroom **INSERT** on **INSERT**, 2020 at **INSERT** to consider the fairness, reasonableness, and adequacy of the Settlement and the application for attorneys’ fees and reimbursement of litigation expenses to Class Counsel, and related matters (the “Final Approval Hearing”). The time and date of the Final Approval Hearing may be changed by the Court without further notice to the Settlement Class but will be posted on the Settlement Website. This Notice also describes the steps to be taken by those who wish to be excluded from the

- 2 -

Settlement Class and, for those who remain in the Settlement Class, the steps necessary to obtain his/her share of the distribution of the Net Settlement Fund in the event that the Settlement is approved by the Court. Current and former affiliates and employees of VERDE, and their legal representatives, heirs, successors and assigns, may not participate in this Settlement or receive a payment.

Can I get money from the Settlement? Yes, if you are a Settlement Class Member and submit a valid and timely Claim Form, you will be an Authorized Claimant and entitled to a portion of the Settlement. The total amount available to make the various payments set forth in the Agreement is up to \$5,000,000 (*i.e.*, the Maximum Settlement Amount). How much each Authorized Claimant receives will depend on how many Settlement Class Members submit valid and timely Claim Forms, and the amount remaining after deducting Court-approved attorneys' fees and costs, administration costs, and service awards.

What Do I Give Up by Participating in the Settlement? Each Settlement Class Member who does not file a valid and timely request to be excluded from the Settlement Class, regardless of whether they file a Claim Form, will be deemed to have forever released and discharged the Released Parties from the Released Claims, including any and all claims, liens, demands, actions, causes of action, obligations, damages, liabilities and/or costs, including attorneys' fees, of any nature whatsoever that arose during the time period from October 16, 2013 through [insert date of the Preliminary Approval Order], whether legal or equitable or otherwise, that actually were, or could have been, asserted against the Released Parties in the Action based upon the facts alleged in the Action that arise from any violation of any provision of the TCPA (Telephone Consumer Protection Act) or any similar state statute, and any claim arising directly or indirectly out of, or in any way relating to, the claims that actually were, or could have been, asserted in the Action. The term Released Parties means VERDE and all of its past and present parents, subsidiaries, divisions, affiliates and persons and entities directly or indirectly under their control in the past or in the present; its assignors, predecessors, successors and assigns; and the past or present partners, members, directors, officers, managers, employees, stockholders, agents, licensees, agencies, attorneys, insurers, accountants, representatives, heirs and estates of any and all of the foregoing.

How do I make a Settlement claim? A Claim Form was sent to Settlement Class Members and is also available online through the Settlement Website at www.INSERT.com. You must submit your claim by completing and signing a Claim Form and submitting it to the Settlement Administrator (Angeion Group, LLC), in one of the following ways: (1) by submitting your Claim Form online through the Settlement Website www.INSERT; (2) by mail to: VERDE Settlement, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103; (3) by email to INSERT (by submitting this Claim Form as an attachment); or (4) by fax to the Settlement Administrator at [INSERT](tel:INSERT). You must submit a Claim Form to the Settlement Administrator *by no later than* INSERT, 2020. If mailed, the submission must be postmarked *by no later than* INSERT, 2020.

Do I have a lawyer? Plaintiffs and the Settlement Class are represented by the law firms of Berger Montague PC, Hughes Ellzey, LLP, Bursor & Fisher, P.A., and Marcus & Zelman, LLC who have been appointed by the Court as Class Counsel. You will not be charged personally for these lawyers. You may, however, hire an attorney at your own expense to represent you and speak on your behalf at the Final Approval Hearing.

What costs are to be deducted from the Settlement? Plaintiffs' Counsel will ask the Court for an award of attorneys' fees of \$1,000,000; reimbursement of Litigation Expenses of up to \$100,000; and a Service Award up to \$5,000 payable to each of the five named Plaintiffs for their service in representing the Settlement Class in this Action. Notice and administration costs of up to \$300,000 will also be paid out of the Settlement Amount.

How do I exclude myself from the Settlement? Each Settlement Class Member will be bound by the Court's determinations and judgments, including concerning the Settlement, unless such person mails a request for exclusion from the Settlement, by first-class mail addressed to: VERDE Settlement, Attn.: Exclusions, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103. The exclusion request must be received or postmarked **by no later than INSERT, 2020**. Each request for exclusion must clearly indicate the name, address and telephone number of the person seeking exclusion; that the sender requests to be excluded from the Settlement Class in the Action; and must be signed personally by the Settlement Class Member seeking exclusion, even if they are represented by counsel. Requests for exclusion must be submitted individually, and cannot be made collectively. Any request for exclusion shall not be effective unless it provides the required information and is made within the time stated above. If you exclude yourself from the Settlement Class, you will not be able to participate in the Settlement and you will receive no payment.

How can I object to the Settlement? Any Settlement Class Member who does not request exclusion may submit a written objection to the Settlement and may appear at the Final Approval Hearing if they wish to show good cause why the Settlement Agreement should not be approved as fair, reasonable, and adequate, provided that they must first have delivered by hand or served by U.S. first class mail to Berger Montague PC, Attn.: Shanon J. Carson, Lane L. Vines, 1818 Market Street, Suite 3600, Philadelphia, PA 19103; and Eckert, Seamans, Cherin & Mellott, LLC, Attn.: Kevin P. Allen, Joel L. Lennen, Louis A. DePaul, 600 Grant Street, 44th Floor, Pittsburgh, PA 15219, written objections that specifically state with specificity the grounds for any objection, such that they are received or postmarked by **INSERT, 2020**. All written objections must include: (a) the case caption and the full name, address and telephone number of the objecting Settlement Class Member; (b) a written statement of all grounds for the objection accompanied by any legal support for the objection; (c) copies of any papers, briefs, exhibits, or other documents upon which the objection is based; (d) a list of all persons who will appear at the Final Approval Hearing in support of the objection; (e) a statement of whether the objector intends to appear at the Final Approval Hearing; and (f) the objector's signature, even if represented by counsel. Any Settlement Class Member who does not timely make his or her objection in the manner provided herein shall be deemed to have waived such objection and shall be foreclosed from making any objection to any aspect of the Agreement.

What if I have a question about the Settlement? You can get more information about the Settlement by visiting the Settlement Website at www.INSERT.com. You can also contact the Settlement Administrator, toll free at **INSERT** or by email at **INSERT**.

Please Do Not Contact The Court

EXHIBIT C

CLAIM FORM -- Richardson, et al. v. Verde Energy USA, Inc.

No. 15-cv-06325-WB, United States District Court for the Eastern District of Pennsylvania

[Class Member Name]
[Class Member Address]
Claim Number: [Claim Number]

Name/Address Changes (if any):	
Name:	_____
Address:	_____

You are a Settlement Class Member if you received a telephone call made by or on behalf of Verde Energy USA, Inc. (“VERDE”) on your cellular or landline telephone using a pre-recorded or artificial voice message during the period from October 16, 2013 to February 14, 2019. If you are a Settlement Class Member, you are entitled to participate in the Settlement and receive a monetary payment.

To obtain a payment, you must timely sign and return this Claim Form attesting that you are a Settlement Class Member.

To obtain a payment, you must sign and return this Claim Form attesting that you are a Settlement Class Member.

Claim Forms may be submitted: (1) online through the Settlement Website www._____.com; (2) by U.S. mail by sending this Claim Form to VERDE Settlement, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103; (3) by email to verdesettlement@angeion.com (by submitting this Claim Form as an attachment); or (4) by fax addressed to Verde Settlement Administrator at **INSERT**. You must submit your Claim Form to the Settlement Administrator, Angeion Group, LLC, ***by no later than INSERT, 2020***. If mailed, the submission must be postmarked ***by no later than INSERT, 2020***.

By submitting this Claim Form, I verify under penalty of perjury that I am a Settlement Class Member.

By: _____ Date: _____

Postage Required. US Postal Service will not deliver without postage

VERDE Settlement
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

_____)	
BRIAN RICHARDSON, <i>et al.</i> , individually)	No. 15-cv-06325-WB
and on behalf of all others similarly situated,)	
)	[PROPOSED] ORDER AND FINAL
Plaintiff,)	JUDGMENT
)	
v.)	
)	
VERDE ENERGY USA, INC.,)	
)	
Defendant.)	
_____)	

This matter came for hearing on _____ (the “Final Approval Hearing”), to determine whether the terms and conditions of the Parties’ Amended Stipulation and Agreement of Settlement (“Settlement Agreement”) are fair, reasonable, and adequate, and whether final approval should be granted. Due and adequate notice having been given to the Settlement Class in accordance with the terms of the Settlement Agreement and the Court’s Preliminary Approval Order, and the Court having considered all papers filed and proceedings in this Action and otherwise being fully informed, and good cause appearing therefore, IT IS HEREBY ORDERED:

1. This Order and Final Judgment (the “Final Approval Order” or “Order”) incorporates by reference the definitions in the Settlement Agreement, and all capitalized terms used herein shall have the same meanings as set forth in the Settlement Agreement, unless otherwise set forth below.
2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action.

3. The Court preliminarily approved the Settlement Agreement by entering the Preliminary Approval Order dated _____ (Dkt. No. _____) and notice was subsequently given to all Settlement Class Members pursuant to the terms of the Settlement Agreement and Preliminary Approval Order.

4. The Court finds, for settlement purposes only, that:

(a) the Settlement Class is so numerous that joinder of all members is impracticable;

(b) there are questions of law or fact common to the Settlement Class;

(c) Plaintiffs' claims are typical of the claims of the Settlement Class;

(d) Plaintiffs and Plaintiffs' Counsel will fairly and adequately protect the interest of the Settlement Class;

(e) the questions of law or fact common to the Settlement Class Members, and which are relevant for settlement purposes, predominate over the questions affecting only individual Settlement Class Members; and

(f) certification of the Settlement Class is superior to other available methods for the fair and efficient adjudication of the controversy.

5. In light of the above findings and solely for purposes of the Settlement, the Court certifies this Action as a class action pursuant to FED. R. CIV. P. 23(a) and 23(b)(3). The Settlement Class consists of:

all individuals in the United States who received a call made by or on behalf of Verde Energy USA, Inc. to the individual's cellular or landline telephone, through the use of a pre-recorded or artificial voice, from October 16, 2013 to February 14, 2019.

Excluded from the Settlement Class are (i) Defendant; (ii) any affiliates of Defendant; and (iii) any employee of Defendant and members of their Immediate Family.

6. The Court appoints, solely for purposes of the Settlement, Plaintiffs Brian Richardson, Michelle Hunt, Jacqueline Bowser, Kris Villiger, and Donna Schley to serve as the Class Representatives.

7. The Court appoints, solely for purposes of the Settlement, Shanon J. Carson and Lane L. Vines of Berger Montague PC, W. Craft Hughes and Jarrett L. Ellzey of Hughes Ellzey, LLP, Joshua D. Arisohn of Bursor & Fisher, P.A., and Ari H. Marcus of Marcus & Zelman, LLC to serve as Class Counsel.

8. Pursuant to FED. R. CIV. P. 23, the Court approves the Settlement as set forth in the Settlement Agreement and finds that:

(a) the Settlement is fair, reasonable, and adequate and in the best interest of the Settlement Class;

(b) there was no collusion in connection with the Settlement;

(c) the Settlement was the product of informed, arm's-length negotiations among competent, able counsel with the assistance of a well-respected mediator; and

(d) the record is sufficiently developed and complete to have enabled Plaintiffs and Defendant to have adequately evaluated and considered their positions, and reached an informed settlement.

9. Accordingly, the Court authorizes and directs implementation and performance of all terms of the Settlement Agreement and this Order. The Court hereby dismisses the Action and the claims asserted in the Action with prejudice. The Parties are to bear their own costs except as, and to the extent provided in, the Settlement Agreement and this Order.

10. Upon the Effective Date, as defined in the Settlement Agreement and by operation of this Order, Plaintiffs and each Settlement Class Member who did not properly and timely exclude himself or herself from the Settlement, shall be bound by the terms of the Settlement as set forth in the Settlement Agreement and this Order, shall be deemed to have released, dismissed and forever discharged the Released Claims against each and every one of the Released Parties, with prejudice and on the merits, without costs to any of the Parties, and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any of the Released Claims against any of the Released Parties in any forum of any kind, whether directly or indirectly, whether on their own behalf or otherwise.

11. The Notice given to the Settlement Class was the best notice practicable under the circumstances, including individual notice to all Settlement Class Members who could be identified through reasonable effort, and constituted due and sufficient notice to all persons. The form and method of the Notice fully satisfied the requirements of FED. R. CIV. P. 23 and due process. Thus, it is hereby determined that all Settlement Class Members are bound by this Final Approval Order.

12. This Court finds that Defendant properly and timely notified the appropriate state and federal officials of the Settlement under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA”), and that more than ninety (90) days have elapsed since Defendant provided the required notice, as required by 28 U.S.C. §1715(d).

13. The Plan of Allocation submitted by Plaintiffs’ Counsel whereby each Authorized Claimant will receive an equal share of the Net Settlement Fund is approved.

14. Neither the Settlement nor the Settlement Agreement nor any act performed or document executed pursuant to or in furtherance of the Settlement or the Settlement Agreement:

(a) shall be used, offered or received against any of the Released Parties as evidence of, or be deemed to be evidence of, any presumption, concession or admission by any of the Released Parties with respect to the truth of any fact alleged by any of the Parties or the validity or lack thereof, of any claim or counterclaim, or the existence of any class that has been or could have been asserted in the Action or in any other litigation against Defendant, or the deficiency of any defense that has been or could have been asserted in the Action or in any other litigation against Defendant, or of any liability, negligence, fault or wrongdoing of any of the Released Parties;

(b) shall be used, offered or received against the Released Parties as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any of the Released Parties, or against any of the Released Parties as evidence of any infirmity in the claims asserted in the Action;

(c) shall be used, offered or received against any of the Released Parties as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Parties, in any arbitration proceeding or other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Settlement Agreement; provided, however, that the Released Parties may refer to the Settlement Agreement and Settlement to effectuate the liability protection granted them hereunder; and

(d) shall be used or construed against any of the Released Parties as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial.

15. Any of the Released Parties may use or file the Settlement Agreement and/or this Final Approval Order in any other action that may be brought against them in order to support a defense, claim or counterclaim, including, but not limited to, based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

16. Without affecting the finality of this Final Approval Order, in any way, this Court hereby retains continuing jurisdiction over the administration, consummation and enforcement of the Settlement Agreement.

17. In the event that the Settlement does not become Final in accordance with the terms of the Settlement Agreement and/or if the Effective Date does not occur, then all proceedings in connection with the Settlement shall be without prejudice to the *status quo ante* rights of the Parties to the Settlement Agreement. In such instance, the Settlement and the Settlement Agreement shall be void *ab initio* and treated as if they never occurred, except as described in the Settlement Agreement.

18. There is no just reason for delay in the entry of this Final Approval Order and Entry of Judgment and immediate entry by the Clerk of the Court is expressly directed.

IT IS SO ORDERED:

DATED: _____

HON. WENDY BEETLESTONE
UNITED STATES DISTRICT JUDGE