

PAGA REPRESENTATIVE ACTION SETTLEMENT AND RELEASE AGREEMENT

This PAGA Representative Action Settlement and Release Agreement (“Agreement”) encompasses the claims asserted in two (2) related Private Attorneys General Act (“PAGA”) representative actions entitled *Whitworth, et al., v. SolarCity Corp. and Tesla Energy Operations, Inc.*, United States District Court for the Northern District of California Case No. 16-cv-01540-JSC (“*Whitworth*”) and *Arguelles v. Tesla Energy Operations, Inc.*, Los Angeles County Superior Court Case No. 20STCV47104 (“*Arguelles*”) (collectively, the “Actions”). This Agreement is made and entered into between Plaintiffs Ravi Whitworth, Javier Frias, Greg Carranza, and Joshua Arguelles (“Plaintiffs”), individually and as authorized proxies for the State of California and the Labor and Workforce Development Agency, and Defendant Tesla Energy Operations, Inc. (formerly known as SolarCity Corporation) (“Defendant”) (collectively with Plaintiffs, the “Parties”).

I. DEFINITIONS

The following terms, when used in this Agreement, shall have the following meanings:

1. “Approval Date” means the date the Court enters the Approval Order.
2. “Approval Order” means the Court’s order approving this Agreement.
3. “Court” means the United States District Court for the Northern District of California.
4. “Defendant’s Counsel” means Morgan, Lewis and Bockius LLP.
5. “Effective Date” means the latest of: (i) the Approval Date if no objection is made or filed to the Settlement and the Court issues the Approval Order; (ii) if an objection is made or filed and the Court nevertheless issues the Approval Order, but no appeal is filed, the expiration of the deadline for any appeals; and (iii) if an objection is made or filed and the Court nevertheless issues the Approval Order, and an appeal is filed, the date that an appeal is finally concluded resulting in a court order approving this Settlement.
6. “Eligible Pay Period(s)” means any pay period in which an individual worked in California for Defendant as a PAGA Settlement Employee during the PAGA Period.

7. “Funding Date” means the date thirty (30) calendar days after the Effective Date.
8. “Gross Settlement Amount” means the total maximum amount that Defendant will be required to pay under this Agreement, which, except as set forth below, is the gross sum of One Million and Five Hundred Thousand Dollars (\$1,500,000.00). The Gross Settlement Amount will pay Administration Costs, Attorneys’ Fees and Costs approved by the Court, Service Awards to Plaintiffs, and the PAGA Payment. The Gross Settlement Amount shall be “all in” with no reversion to Defendant. If the number of Eligible Pay Periods through March 15, 2022 increases above 451,897 by more than 10% (or 45,189), Defendant will increase the Gross Settlement Amount proportionately. For example, if the number of Eligible Pay Periods through March 15, 2022 is determined to be 11% higher than 451,897 (or 501,605), the Gross Settlement Amount will be increased by 1% (or \$15,000.00).
9. “Individual PAGA Payment” means the proportional pro rata share to be paid to each of the PAGA Settlement Employees from the 25% of the PAGA Payment attributable to civil penalties that are paid to PAGA Settlement Employees under Labor Code section 2699, with such individual shares to be based on the number of Eligible Pay Periods during which a PAGA Settlement Employee worked during the PAGA Period as a percentage of the total number of Eligible Pay Periods. The Settlement Administrator will issue IRS Form 1099s to PAGA Settlement Employees for their Individual PAGA Payments.
10. “Judgment” means the judgment to be executed and entered by the Court pursuant to this Agreement following entry of the Approval Order.
11. “LWDA” means the California Labor and Workforce Development Agency.
12. “LWDA Letters” means the Whitworth LWDA Letter, Frias and Carranza LWDA Letter, and Arguelles LWDA Letter.
13. “PAGA” means the Private Attorneys General Act, California Labor Code sections 2698 *et seq.*
14. “PAGA Claims” means any and all individual and representative PAGA claims or causes of action for civil penalties, attorneys fees or costs, and any other applicable relief under

PAGA that are alleged or that could have been reasonably alleged based on the facts asserted in the operative complaints in the Actions or LWDA Letters, including claims based on alleged violations and recoverable penalties under Labor Code sections 201-205, 210, 216, 221, 223, 225.5, 226, 226.2, 226.3, 226.7, 256, 510, 511, 512, 516, 551, 552, 553, 558, 1174, 1174.5, 1182.12, 1194-1197.1, 1198, and 2802.

15. “PAGA Payment” means the amount remaining to distribute to the LWDA and PAGA Settlement Employees after the following amounts, if approved by the Court, are subtracted from the Gross Settlement Amount: (a) Attorneys’ Fees up to 40% of the Gross Settlement (or \$600,000.00), (b) Plaintiffs’ Costs up to \$180,000.00, (c) Administration Costs which are estimated to be no more than \$ 25,000.00, and (d) Service Awards to Plaintiffs up to \$10,000.00 each (or up to \$40,000.00 combined). The entirety of the PAGA Payment shall be allocated to civil penalties under Labor Code section 2699, with 75% of the PAGA Payment going to the LWDA and 25% going to the Individual PAGA Payments.

16. “PAGA Period” means April 14, 2015 through September 1, 2022.

17. “PAGA Settlement Employees” means all current and former non-exempt employees who worked for Defendant with job titles such as Photo Installer, Junior Installer, Crew Lead, PV Installer and other similar job roles to install, repair, and/or maintain solar power units located in customers’ homes or worksites in California during the PAGA Period.

18. “PAGA Released Claims” means the PAGA Claims that Plaintiffs and the PAGA Settlement Employees release and forever discharge Defendant and the Released Parties from during the PAGA Period.

19. “Plaintiffs’ Counsel” means Outten & Golden, LLP, Christina Humphrey Law, P.C., Gundzik Gundzik Heeger LLP, and Caskey and Holzman.

20. “Released Parties” means Tesla Energy Operations, Inc., formerly known as SolarCity Corporation, including past, present, and future divisions, affiliates, parents, subsidiaries, predecessors, successors, predecessors, joint employers, heirs, assigns, shareholders, members, owners, officers, directors, managers, employees, agents, principals,

trustees, attorneys, accountants, representatives, administrators, fiduciaries, beneficiaries, subrogees, executors, partners, insurers and privies.

21. “Settlement Administrator” means ILYM Group, Inc.

II. SETTLEMENT OF DISPUTED CLAIMS

This Agreement and all associated exhibit(s) or attachment(s) are made for the purpose of settling the PAGA Claims, as described herein, in the Actions. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because the Actions are being settled under PAGA, the Court “shall review and approve any settlement of any civil action filed pursuant to [Labor Code §§ 2698 et seq.].” Cal. Lab. Code § 2699(l)(2).

Accordingly, the Parties enter into this Agreement and associated settlement on a conditional basis. If the Court does not enter the Approval Order and Judgment and/or the Approval Date does not occur, this Agreement shall be deemed null and void ab initio, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the negotiation of the Agreement shall remain subject to the provisions of California Evidence Code section 1152 and any other analogous rules of evidence that are applicable. In the event this Agreement is deemed null and void or the Effective Date does not occur, Defendant does not waive, but rather expressly reserves, all rights to challenge Plaintiffs’ PAGA Claims and Plaintiffs’ allegations in the Actions and LWDA Letters upon all procedural, merit, and factual grounds, including, without limitation, the ability to challenge representative treatment on any grounds, assert any and all other privileges and potential defenses, and to compel arbitration of Plaintiffs’ individual PAGA claims and seek dismissal of the remaining PAGA claims.

Because this is not a settlement of a class action but a PAGA settlement on behalf of the State of California, no person can opt out from being covered by the release of PAGA claims at any time.

III. RECITALS

1. Plaintiffs worked for Defendant as non-exempt employees in covered positions in

California during the PAGA Period.

2. On March 29, 2016, Plaintiff Whitworth filed a class, collective, and PAGA representative action complaint in *Whitworth*.

3. On April 14, 2016, Plaintiff Whitworth sent a letter to the LWDA notifying it and Defendant that Plaintiff Whitworth intended to pursue claims against Defendant under PAGA for violation of California Labor Code sections 201-203, 205, 226, 226.7, 256, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198, and 2802 (“Whitworth LWDA Letter”).

4. On July 23, 2016, Plaintiffs Frias and Carranza sent a letter to the LWDA notifying it and Defendant that Plaintiffs Frias and Carranza intended to pursue claims against Defendant under PAGA for violation of California Labor Code sections 201-204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 510, 511, 512, 516, 551, 552, 553, 558, 1174, 1174.5, 1194-1197.1, 1198, and 2802 (“Frias and Carranza LWDA Letter”).

5. On March 3, 2017, Plaintiff Whitworth filed his First Amended Complaint in *Whitworth*, adding Plaintiffs Frias and Carranza as named plaintiffs (“Whitworth First Amended Complaint”).

6. On June 28, 2018, the First Amended Complaint in *Whitworth* was amended through the Second Amended Complaint which dismissed the collective action claims (“Whitworth Second Amended Complaint”).

7. On August 20, 2020, Plaintiff Arguelles sent a letter to the LWDA notifying it and Defendant that Plaintiff Arguelles intended to pursue claims against Defendant under PAGA for violation of California Labor Code sections 201-204, 226, 226.2, 226.3, 226.7, 256, 510, 512, 558, 1194, 1197, 1197.1, and 2802 (“Arguelles LWDA Letter”).

8. On October 30, 2020, Plaintiff Arguelles filed a PAGA representative action complaint in *Arguelles*.

9. On January 19, 2021, Plaintiff Arguelles filed his First Amended Complaint in *Arguelles*, which asserted claims for civil penalties under PAGA for violations of Labor Code sections 201-203, 226, 226.2, 226.7, 510, 512, 1194, 1197, and 2802 (“Arguelles First Amended

Complaint”).

10. On June 1, 2021, the Second Amended Complaint in *Whitworth* was amended through the Third Amended Complaint which dismissed the class claims and dismissed Plaintiff Frias as a named plaintiff (“Whitworth Third Amended Complaint”).

11. On October 22, 2021, the Third Amended Complaint in *Whitworth* was amended through the Fourth Amended Complaint which added Plaintiff Frias back as a named Plaintiff (“Whitworth FAC”). The Whitworth FAC asserts claims for civil penalties under PAGA for violations of and claimed penalties based on Labor Code sections 201-203, 205, 210, 223, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 2802.

12. On August 26, 2022, the Parties filed a Stipulation and Proposed Order with the Court in *Whitworth* requesting leave to file a Fifth Amended Complaint to add Plaintiff Arguelles as a named plaintiff.

13. On September 6, 2022, Plaintiffs filed a Request for Dismissal without prejudice in *Arguelles*.

14. The Parties had early and ongoing settlement discussions and negotiations, including participating in mediation in January 2018 with Michael Loeb, in July 2019 with David Rotman, and on June 6, 2022 with Michael Dickstein, the last of which resulted in the Parties signing a memorandum of understanding on July 6, 2022 to settle the Actions. As part of the discussions, before any agreement was negotiated, Plaintiffs requested and Defendant produced extensive documentation including time and pay data, policy documents, information concerning the total number of alleged aggrieved employees during the PAGA Period, and information on the number of Eligible Pay Periods up to March 15, 2022. In short, Defendant provided formal and informal discovery sufficient to enable the Plaintiffs and Plaintiffs’ Counsel to rigorously evaluate the strengths and risks of the case and perform an analysis of the potential civil penalties arising from the claims made in the Actions.

15. Defendant denies all allegations in the Actions, the Whitworth LWDA Letter, the Frias and Carranza LWDA Letter, and the Arguelles LWDA Letter, and denies that it has

committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind as to the PAGA Settlement Employees.

16. The Parties understand, acknowledge, and agree that this Agreement constitutes a compromise of Plaintiffs' PAGA Claims, and that it is the desire and intention of the Parties to affect a final and complete resolution of the PAGA Claims against Defendant. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by Defendant of liability.

17. The Parties believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the PAGA Claims, and have arrived at the Settlement after extensive, arms-length negotiations in a full-day private mediation on June 6, 2022 with Michael Dickstein, taking into account all relevant factors, including the strengths and weaknesses of Plaintiffs' claims, Defendant's defenses on the merits, Defendant's contention that the Actions are not manageable, Defendant's contention regarding the enforcement of its arbitration agreements with each Plaintiff, and the risk that the Court would significantly reduce any penalties that could be awarded under Labor Code section 2699(e)(2).

18. California Labor Code section 2699(l) (2) requires Court approval of "any settlement of any civil action filed" pursuant to PAGA.

19. Plaintiffs and Plaintiffs' Counsel represent that they are not aware of and have no knowledge of any liens filed or placed on the Actions by any person.

IV. OPERATIVE TERMS OF AGREEMENT

The Parties agree as follows:

1. Non-Admission and Denial of Liability. Nothing in this Agreement shall be construed to be an admission by Plaintiffs that their claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiffs, the PAGA Settlement Employees, or any other person. Defendant specifically disclaims and denies any such liability or wrongdoing alleged in the Actions. The Parties have entered into this Agreement to avoid further disputes and litigation with the attendant inconvenience, nuisance, expenses, and risks. This Agreement and

any related court documents or orders are not and may not be cited or admitted as evidence of liability or wrongdoing by Defendant. The Parties agree that an express condition of this Agreement is that there has been no finding of liability on the merits, and that this Agreement therefore cannot be a basis to assert offensive collateral estoppel against Defendant.

Notwithstanding the foregoing, nothing in this Agreement shall limit Defendant's use of the Approval Order or Judgment to establish res judicata and/or collateral estoppel in any other action.

2. Gross Settlement Amount. In consideration for the covenants, promises, waivers, and releases contained in this Agreement, and subject to Court approval, Defendant shall pay One Million and Five Hundred Thousand Dollars and No Cents (\$1,500,000.00) as the Gross Settlement Amount to fully settle, resolve, and extinguish all the PAGA Claims and the Actions to the fullest extent permitted by law. Defendant will not pay more than the Gross Settlement Amount, which is an "all in" amount that includes, without limitation, all settlement administration costs, all attorneys' fees and costs, any service awards to Plaintiffs, and all PAGA penalties, except that, if the number of Eligible Pay Periods through March 15, 2022 increases above 451,897 by more than 10% (or 45,189), Defendant will increase the Gross Settlement Amount proportionately. For example, if the number of Eligible Pay Periods through March 15, 2022 is determined to be 11% higher than 451,897 (or 501,605), the Gross Settlement Amount will be increased by 1% (or \$15,000.00).

3. Deposit of Gross Settlement Amount. Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator by the Funding Date.

4. Components of the Gross Settlement Amount. The Parties agree to the following allocations to be paid from the Gross Settlement Amount:

a. Attorneys' Fees and Costs. Defendant will not oppose Plaintiffs' Counsel's request for attorneys' fees not to exceed forty percent (40%) of the Gross Settlement Amount (or \$600,000), and for costs not to exceed \$180,000 incurred in prosecuting the Actions. If the Court awards a lower amount in attorneys' fees and/or costs than requested by

Plaintiffs' Counsel, the difference will be added to the PAGA Payment. This payment will be reported on an IRS Form 1099 issued to Plaintiffs' Counsel by the Settlement Administrator. Except as set forth herein, each Party shall bear their own costs and fees in the Actions.

b. Administration Costs. The Settlement Administration Costs are currently estimated to be less than \$ 25,000.00. In the event these costs appear likely to or do exceed that amount, the Settlement Administrator will immediately notify the Parties, and the Parties will meet and confer as to whether the additional costs are justified and will then report to the Court with their views.

c. Service Awards to Plaintiffs. Subject to Court approval, up to \$10,000 to each of the Plaintiffs (for a total of \$40,000 combined) will be paid to Plaintiffs as a service payment and in consideration of a general release of all of Plaintiffs' individual non-PAGA claims against the Released Parties (as defined below). If the Court approves Service Awards of less than this amount, the difference will be added to the PAGA Payment.

d. PAGA Payment: The PAGA Payment shall be paid to the LWDA and PAGA Settlement Employees in settlement of the PAGA Released Claims (as defined below). The PAGA Payment will be subject to Court approval consistent with Labor Code section 2699. The PAGA Payment shall be distributed as follows:

- i. The LWDA shall receive 75% of the PAGA Payment; and
- ii. The PAGA Settlement Employees shall receive 25% of the PAGA Payment, which shall be allocated pursuant to the method identified in Paragraph IV.2 below.

5. Release.

a. Release by Plaintiffs on Behalf of the LWDA. In their capacity as private attorneys general "aggrieved employees" acting on behalf of themselves and as proxies or agents of the LWDA and State of California, Plaintiffs agree to release Defendant and the Released Parties, from any and all PAGA Released Claims that arose during the PAGA Period, and agree not to object to the settlement when presented to the Court for approval. Upon

approval of this Agreement, Plaintiffs, the LWDA, the State of California, and any other individual or entity acting on behalf of or purporting to act on behalf of the LWDA and/or the State shall be barred from asserting any of the PAGA Released Claims in any future litigation, arbitration, or other legal forum. Any party to this Agreement may use the Agreement to assert that this Agreement and the Judgment to be entered by the Court following approval of this Agreement bars any later-filed action asserting any of the PAGA Released Claims against any of the Released Parties during the PAGA Period. The provisions of this paragraph apply regardless of whether Plaintiffs and/or the PAGA Settlement Employees cash their Individual PAGA Payment checks.

b. Release by PAGA Settlement Employees. For and in consideration of the mutual promises and consideration set forth in this Agreement, Plaintiffs and the PAGA Settlement Employees, on behalf of themselves, and their heirs, successors, assigns, attorneys and agents, hereby release and forever discharge the Released Parties from any and all PAGA Released Claims, as defined herein, during the PAGA Period.

c. Release by Plaintiffs. In exchange for the Service Awards referenced above, Plaintiffs release Defendant and Released Parties up to the date this Agreement is executed of all known and unknown claims, including any wage and hour claims, claims under California Business & Professions Code section 17200, claims under the Labor Code, and all claims for indemnity or reimbursement of business expenses, overtime compensation, minimum wages, timely payment of wages, wage statement claims, meal and rest period claims, penalties, liquidated damages, and interest, and all other claims under state, federal, and local laws, as well as the common law, including laws related to maintaining payroll records, payment of sick leave, fraud, trespass, conversion, discrimination, harassment, or retaliation. Plaintiffs further agree that they expressly waive and relinquish to the fullest extent permitted by law, the rights and benefits of California Civil Code section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Notwithstanding the provisions set forth herein, and for the purpose of implementing a full and complete release, Plaintiffs expressly acknowledge that this Agreement is intended to include and does include its effect without limitation all claims which Plaintiffs do not know or suspect to exist in their favor against Defendant or the Released Parties, and that this Agreement contemplates extinguishment of any such claim or claims.

Additionally, Plaintiffs agree that they will not be or become a member of any other legal actions against the Released Parties asserting such released claims, will not be eligible for or accept any recovery in any such actions, and will opt out of any such actions if necessary.

6. Covenants and Representations by Plaintiffs.

a. Plaintiffs represent and warrant that they have not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be the subject of this Agreement.

b. Plaintiffs acknowledge that they have read the Agreement, that they fully understand their rights, privileges and duties under the Agreement, and enter into this Agreement freely and voluntarily. Plaintiffs further acknowledge that they have had the opportunity to consult with their attorneys to ensure they understand the terms of the Agreement and the consequences of signing the Agreement.

7. Confidentiality. Plaintiffs agree to maintain the terms and conditions of this Agreement as confidential and agree not to disclose the terms of this Agreement until the motion for approval is filed with the Court and/or submitted to the LWDA, after which time Plaintiffs shall refer any questions or comments about the settlement or this Agreement from PAGA Settlement Employees to Plaintiffs' Counsel. The Parties agree that this Paragraph is a material inducement to entering into this Agreement. Nothing in this Agreement shall limit Plaintiffs'

right to communicate with their spouse, legal counsel, personal certified accountant, financial adviser, or any other financial consultant, or as required or compelled by legal authority before or after the motion for approval is filed with the Court.

Before the motion for settlement approval is filed, Plaintiffs' Counsel shall not publicize the settlement on their websites or in advertising/marketing materials, other than filing documents with the Court in connection with seeking approval of the Agreement. After the Approval Order has been Entered by the Court, Plaintiffs and Plaintiffs' Counsel may: (1) as required by law, (2) as required under the terms of the Agreement, or (3) as required under Plaintiffs' Counsel's duties and responsibilities as counsel for the PAGA Settlement Employees, comment regarding the specific terms of the Agreement. In all other cases, Plaintiffs and Plaintiffs' Counsel agree to limit their statements regarding the terms of the Agreement, whether oral, written, or electronic, to say the Action has been resolved and that Plaintiffs and Plaintiffs' Counsel are satisfied with the terms of the Agreement, except that Plaintiffs' Counsel is expressly permitted to reference the public terms of the Action and the Agreement on their CVs or otherwise in connection with their credentials. Nothing in this paragraph is intended to interfere with Plaintiffs' Counsel's duties and obligations to faithfully discharge their duties as counsel for the PAGA Settlement Employees, including but not limited to, communicating with PAGA Settlement Employees regarding the Agreement, and nothing shall prohibit Plaintiffs' Counsel from referring to the settlement in adequacy of counsel declarations or related court filings.

8. Court Approval. The Parties stipulate that the Court is the proper forum for purposes of seeking court approval of the settlement of Plaintiffs' PAGA Claims. Subject to Defendant's review and approval prior to filing, Plaintiffs' Counsel shall be responsible for preparing and filing a motion for approval of the Agreement pursuant to California Labor Code § 2699(1)(2), which will set forth why the terms of the settlement are fair, adequate, and reasonable. Defendant shall not oppose such a motion provided that it is consistent with the terms of this Agreement. Plaintiffs' Counsel will provide Defendant's counsel with a draft of

said motion at least five (5) court days prior to filing with the Court in order to provide Defendant with an opportunity to comment on and propose revisions to the motion before it is filed. Counsel for the parties will jointly prepare and submit a proposed Approval Order granting the motion, which will include a Proposed Judgment consistent with the terms of this Agreement and settlement. The proposed Approval Order and Judgment will include a dismissal of Plaintiffs' individual and representative PAGA claims with prejudice. That Approval Order and Judgment will include a statement that the Court is retaining jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement. Plaintiffs will concurrently submit the proposed settlement to the LWDA as required by Labor Code Section 2699(1)(2). The Parties agree to undertake any reasonable efforts necessary for the Court to enter Judgment.

9. LWDA Notice. Plaintiffs shall serve the LWDA with the motion referenced above when Plaintiffs file the motion with the Court. Within ten (10) calendar days of the date the Court enters the Judgment, Plaintiffs shall also submit a copy of the Judgment to the LWDA consistent with Labor Code section 2699(1)(3).

10. Non-Approval of Agreement. Because settlement of the Actions requires Court approval pursuant to Labor Code section 2699(1)(2), the Agreement is conditional and contingent upon approval and entry of Judgment. If the Court does not approve this Agreement, or if appellate review is sought and on such review the Court's decision is materially modified or reversed, then each of the Parties by and through Counsel, will cooperate with each other and use their best efforts to seek to reach agreement to revise the affected term(s) of the Agreement in order to obtain approval. A reduction by the Court or on appeal as to the amount of Attorneys' Fees and Costs or Service Awards is allowed under and does not provide a basis for terminating this Agreement. If the Court ultimately denies approval of the Agreement, this Agreement shall be deemed null and void, shall be of no force or effect whatsoever, shall not be referred to or used for any purpose whatsoever, and the Parties shall be deemed to have reverted to their

respective status as of the date and time prior to the execution of the Memorandum of Understanding.

V. ADMINISTRATION OF SETTLEMENT

1. Settlement Administrator. The Settlement Administrator's duties shall include the following: update addresses for PAGA Settlement Employees via the USPS National Change of Address database and perform a skip tracing process to determine the most recent address prior to distribution of the Gross Settlement Amount; determine Individual PAGA Payment amounts for each PAGA Settlement Employee; distribute Individual PAGA Payments to PAGA Settlement Employees; re-mail undeliverable Individual PAGA Payment checks; distribute payments for Attorneys' Fees and Costs to Plaintiffs' Counsel; make payment to the LWDA for its 75% share of the PAGA Payment; perform related tax, accounting, and administration services, including, but not limited to, issuing IRS Form 1099s, if required, to PAGA Settlement Employees for their Individual PAGA Payments, and to Plaintiffs' Counsel for their Court approved attorneys' fees and costs; distribute funds from undeliverable or uncashed settlement checks by *cy pres* as described in sec. 4(a) below; provide status reports as appropriate, among other administrative duties; and other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities.

2. Individual PAGA Payments. The Settlement Administrator will pay PAGA Settlement Employees 25% of the PAGA Payment as their portion of the recovery of civil penalties under PAGA. Each PAGA Settlement Employee's Individual PAGA Payment will be calculated and apportioned based on the number of Eligible Pay Periods PAGA Settlement Employees worked during the PAGA Period. Specific calculations of Individual PAGA Payments will be made as follows:

a. Based on its records, Defendant will calculate the total number of Eligible Pay Periods worked by each PAGA Settlement Employee during the PAGA Period and the

aggregate total number of Eligible Pay Periods worked by all PAGA Settlement Employees during the PAGA Period.

b. The Settlement Administrator will use the following formula: 25% of the PAGA Payment will be divided by the aggregate total number of Eligible Pay Periods, resulting in the “Pay Period Value.” Each PAGA Settlement Employee’s Individual PAGA Payment will be calculated by multiplying each PAGA Settlement Employee’s total number of Eligible Pay Periods by the Pay Period Value.

3. PAGA Settlement Employee Information. Defendant will provide the necessary available information from its centralized records about the PAGA Settlement Employees (i.e., full name, last known address, social security number, and number of Eligible Pay Periods worked during the PAGA Period) to the Settlement Administrator within thirty (30) calendar days of the Approval Date. This information shall be treated as and remain confidential by the Settlement Administrator and shall be used solely to manage the notice and payment process described herein, shall not be disclosed to Plaintiffs’ Counsel, or to anyone other than the necessary staff of the Settlement Administrator, except as needed to effectuate the settlement, including to resolve any dispute over the eligibility for or amount of a PAGA Settlement Employee’s Individual PAGA Payment.

4. Distribution of Gross Settlement Amount.

a. Because this is a PAGA settlement and not a class action settlement, and because there is no claims procedure and no ability to “opt out,” there will be no prior notice to the PAGA Settlement Employees advising them of the PAGA settlement or any procedure by which the PAGA Settlement Employees must submit claims in order to receive a settlement payment. Within fifteen (15) calendar days after receipt of the Gross Settlement Amount from Defendant, the Settlement Administrator will issue to each PAGA Settlement Employee at their last known address a check for their Individual PAGA Payment, along with an explanatory notice substantially in the same form as Exhibit A, attached. The Parties have agreed on the form of Exhibit A, which is incorporated herein by reference). Checks will remain negotiable

for one hundred eighty (180) calendar days. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address or Social Security number of the PAGA Settlement Employee involved, and will then perform a single re-mailing. Funds in the amount of all settlement checks remaining uncashed for more than 200 calendar days after issuance shall be distributed by *cy pres* to the following child advocacy programs agreed to by the Parties: Legal Services for Children and Alliance for Children's Rights. The Settlement Administrator shall split the funds equally between the two organizations, thereby leaving no "unpaid residue" subject to any requirements of California Code of Civil Procedure Section 384, subd. (b), if applicable. A PAGA Settlement Employee's failure to claim or deposit any check issued by the Settlement Administrator shall have no effect on that PAGA Settlement Employee's release of all PAGA Released Claims set forth herein.

b. Within seven (7) calendar days after receipt of the Gross Settlement Amount from Defendant, the Settlement Administrator will pay from the Gross Settlement Amount to the LWDA the amount allocated to the LWDA and will pay to Plaintiffs' Counsel the Attorneys' Fees and Costs as approved by the Court as well as Plaintiffs' Service Awards. The Settlement Administrator shall use the Administration Costs to pay for any fees and costs associated with the administration of this settlement and distribution of the Gross Settlement Amount.

c. In the event that either Defendant's Counsel or Plaintiffs' Counsel takes the position that the Settlement Administrator is not acting in accordance with the terms of the Agreement, such party shall meet and confer first with opposing counsel and/or, if necessary, with the Settlement Administrator or the Court to attempt to resolve the issue.

d. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiffs, the PAGA Settlement Employees, Plaintiffs' Counsel, or the Settlement Administrator based on mailings, distributions, and payments made in accordance with this Agreement.

5. Accounting. The Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid out, including, but not limited to, the attorneys' fees and litigation costs paid to Plaintiffs' Counsel, the Service Awards paid to Plaintiffs, the administration costs the Settlement Administrator is paying to itself, the amount paid to the LWDA, and the total amount paid to PAGA Settlement Employees.

6. No Tax Representations. The Parties agree that all tax obligations, if any, which may arise from the payments set forth above shall be the sole obligation of Plaintiffs and/or PAGA Settlement Employees. Because the Individual PAGA Payments are a payment in compromise and settlement of claims for alleged civil penalties, one hundred percent (100%) of each Individual PAGA Payment will be considered non-wage income, not subject to any withholdings or deductions. The Settlement Administrator shall be responsible, to the extent necessary based on the amount of a payment, for all tax reporting and documentation related to Individual PAGA Payments, as well as all other payments made under the Agreement. Plaintiff acknowledges that Defendant makes no representations or warranties with respect to any tax consequences or characterization of the nature of any payment under this Agreement. Plaintiffs and Plaintiffs' Counsel each agree to hold Defendant harmless from and against any damage or penalty incurred by Defendant as a result of any taxing authority assessing any tax or penalty upon Defendant as a consequence of any tax being due and unpaid on each of their portions of the settlement. This hold harmless position does not apply for any damages or penalties caused as a result of Defendant's failure to perform its own tax obligations.

7. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an "other party") acknowledges and agrees that (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their

attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

VI. MISCELLANEOUS PROVISIONS

1. Drafting. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Party shall be considered the "drafter" of this Agreement for purposes of having terms construed against that Party.

2. Successors. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and her/its respective heirs, trustees, executors, administrators, successors, and assigns.

3. Costs and Fees. The Parties shall each bear their own costs, attorneys' fees, and other fees incurred in connection with this Agreement and in connection with the Actions, except as otherwise set forth specifically herein.

4. Authority. Defendant represents and warrants that the undersigned has the authority to act on behalf of Defendant and to bind Defendant to the terms of this Agreement. Plaintiffs represent and warrant that they have the capacity to act on their own behalf and on

behalf of all who might claim through them to bind them to the terms and conditions of this Agreement, including each and every PAGA Settlement Employee (which includes any legal heirs and/or successors-in-interest of each and every PAGA Settlement Employee) and the LWDA.

5. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. The Court shall retain jurisdiction solely with respect to the interpretation, implementation, and enforcement of the terms of this settlement, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith. In the event either party is reasonably required to seek to enforce any of the terms of this Agreement, the prevailing party shall be entitled to attorney's fees and costs.

6. Nullification of Agreement. In the event that the Court does not approve the Agreement and enter Judgment as provided herein, then this Agreement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

7. Enforcement Action. In the event that either Party institutes any legal action or other proceeding against the other Party to enforce the provisions of this Agreement or to declare rights and/or obligations under this settlement, the successful Party will be entitled to recover from the unsuccessful Party reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

8. Execution and Counterparts. This Agreement is subject only to the execution of all Parties. However, the Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including electronic, facsimile, and scanned copies of the signature page, will be deemed to be one and the same instrument.

9. Acknowledgments that the Settlement is Fair, Adequate, and Reasonable. The Parties believe this Agreement is a fair, adequate, and reasonable settlement of the Action. The

Parties have arrived at this Agreement after arm's-length negotiations by experienced counsel during mediation with an experienced mediator. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Agreement.

10. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to find all provisions of this Agreement valid and enforceable.

11. Waiver. No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right, or remedy.

12. Severability. If any term or provision of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will continue to be valid and will be performed, construed, and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

13. Representation by Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel, and reviewed in full.

14. Cooperation, Execution of Necessary Documents and Disputes. The Parties and their counsel will cooperate with each other in good faith and use their best efforts to effect the implementation of the Agreement and receive approval from the Court. The Court will retain continuing jurisdiction as to the implementation of the Agreement, interpretation of the

Agreement, the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement.

15. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Agreement, and further intend that this Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms. The Parties further agree that, as of the Approval Date, Plaintiffs, all other PAGA Settlement Employees, the LWDA, and Defendant shall be bound by this Agreement as to the Actions.

16. Arbitration. This Agreement shall not affect the validity of any arbitration agreements and/or release agreements applicable to Plaintiffs or any PAGA Settlement Employee. Defendant reserves the ability to enforce arbitration agreements in any other action, or in this action as to any arbitrable claims of PAGA Settlement Employees subject to an enforceable arbitration agreement should settlement not be finally approved. Nothing in this Agreement shall prevent or prohibit any PAGA Settlement Employees, including Plaintiffs, to assert any defenses or challenge to any purported arbitration agreements and/or release agreements.

17. Waiver of Right to Appeal. Provided that the Judgment is consistent with the terms and conditions of the Agreement, Plaintiffs and Defendant hereby waive any and all rights to appeal in connection with the Judgment, with the exception that Plaintiffs and/or Plaintiffs' Counsel may appeal any order denying or reducing their requested Attorneys' Fees and Costs.

18. Complete Agreement. The Parties each acknowledge and represent that no promise or representation not contained in this Agreement has been made to them and acknowledge and represent that this Agreement contains the entire understanding between them and constrains all terms and conditions pertaining to the compromise and settlement of the claims. This Agreement cannot be amended or modified except by a writing signed by the Parties hereto or their successors-in-interest.

IN WITNESS WHEREOF, the Parties each acknowledge that they have read the foregoing PAGA Representative Action Settlement and Release Agreement, accept and agree to the provisions contained in this Agreement and hereby execute it voluntarily and with full understanding of its consequences.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

Dated: October____, 2022

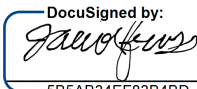
RAVI WHITWORTH

BY _____

Plaintiff

Dated: October 28, 2022

JAVIER FRIAS

BY  _____
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Plaintiff

Dated: October ____, 2022

GREG CARRANZA

BY _____

Plaintiff

Dated: October ____, 2022

JOSHUA ARGUELLES

BY _____

Plaintiff

Dated: October ____, 2022

TESLA ENERGY OPERATIONS, INC.

BY _____

Representative for Defendant

Dated: October____, 2022

MORGAN, LEWIS & BOCKIUS LLP

BY _____

John S. Battenfeld
Brian D. Fahy
Daniel R. Rodriguez
Attorneys for Defendant

Dated: October ___, 2022

RAVI WHITWORTH

BY _____

Plaintiff

Dated: October ___, 2022

JAVIER FRIAS

BY _____

Plaintiff

Dated: October ___, 2022

GREG CARRANZA

BY _____

Plaintiff

Dated: November __4, 2022

JOSHUA ARGUELLES

BY  _____

Plaintiff

Dated: October ___, 2022

TESLA ENERGY OPERATIONS, INC.

BY _____

Representative for Defendant

Dated: October ___, 2022

MORGAN, LEWIS & BOCKIUS LLP

BY _____

John S. Battenfeld
Brian D. Fahy
Daniel R. Rodriguez
Attorneys for Defendant

Dated: October 31, 2022

RAVI WHITWORTH

BY  _____

Plaintiff

Dated: October ___, 2022

JAVIER FRIAS

BY _____

Plaintiff

Dated: October ___, 2022

GREG CARRANZA

BY _____

Plaintiff

Dated: October ___, 2022

JOSHUA ARGUELLES

BY _____

Plaintiff

Dated: October ___, 2022

TESLA ENERGY OPERATIONS, INC.

BY _____

Representative for Defendant

Dated: October ___, 2022

MORGAN, LEWIS & BOCKIUS LLP

BY _____

John S. Battenfeld
Brian D. Fahy
Daniel R. Rodriguez
Attorneys for Defendant

Dated: October____, 2022

RAVI WHITWORTH

BY _____

Plaintiff

Dated:

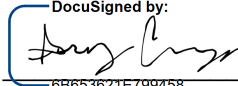
JAVIER FRIAS

BY _____

Plaintiff

Dated: 11/11/2022

GREG CARRANZA

BY  _____
6B653621E799458...

Plaintiff

Dated: October ____, 2022

JOSHUA ARGUELLES

BY _____

Plaintiff

Dated: October ____, 2022

TESLA ENERGY OPERATIONS, INC.

BY _____

Representative for Defendant

Dated: October____, 2022

MORGAN, LEWIS & BOCKIUS LLP

BY _____

John S. Battenfeld
Brian D. Fahy
Daniel R. Rodriguez
Attorneys for Defendant

Dated: October __, 2022

OUTTEN & GOLDEN LLP

BY _____

Jahan C. Sagafi

Attorneys for Plaintiffs Ravi Whitworth,
Javier Frias, Greg Carranza, and Joshua
Arguelles

Dated: October 28, 2022

CHRISTINA HUMPHREY LAW, P.C.

BY _____



Christina Humphrey

Attorney for Plaintiffs Ravi Whitworth,
Javier Frias, Greg Carranza, and Joshua
Arguelles

Dated: October³¹____, 2022

OUTTEN & GOLDEN LLP

BY 

Jahan C. Sagafi

Attorneys for Plaintiffs Ravi Whitworth,
Javier Frias, Greg Carranza, and Joshua
Arguelles

Dated: October____, 2022

CHRISTINA HUMPHREY LAW, P.C.

BY _____

Christina Humphrey

Attorney for Plaintiffs Ravi Whitworth,
Javier Frias, Greg Carranza, and Joshua
Arguelles

Dated: October ___, 2022

RAVI WHITWORTH

BY _____

Plaintiff

Dated: October ___, 2022

JAVIER FRIAS

BY _____

Plaintiff

Dated: October ___, 2022

GREG CARRANZA

BY _____

Plaintiff

Dated: October ___, 2022

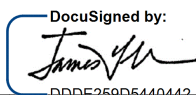
JOSHUA ARGUELLES

BY _____

Plaintiff

Dated: October 27, 2022

TESLA ENERGY OPERATIONS, INC.

BY  _____
James Y. Wu
Representative for Defendant

Dated: October 27, 2022

MORGAN, LEWIS & BOCKIUS LLP

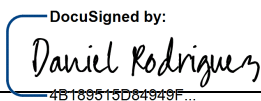
BY  _____
John S. Battenfeld
Brian D. Fahy
Daniel R. Rodriguez
Attorneys for Defendant

EXHIBIT A

NOTICE OF SETTLEMENT AND YOUR PAYMENT

Whitworth v. SolarCity Corp. and Tesla Energy Operations, Inc.

United States District Court for the Northern District of California, Case No. 16-cv-01540-JSC

Aggrieved Employee

Address

Address

Enclosed is a check for \$____, which is your settlement payment for your portion of the civil penalties agreed to be paid in the settlement of two related lawsuits now pending in the United States District Court for the Northern District of California, entitled *Whitworth, v. SolarCity Corp. and Tesla Energy Operations, Inc.*, Case No. 16-cv-01540-JSC (“*Whitworth*”) and *Arguelles v. Tesla Energy Operations, Inc.*, Los Angeles County Superior Court Case No. 20STCV47104 (“*Arguelles*”) (collectively, *Whitworth* and *Arguelles* are referred to as the “Actions”). *Arguelles* was filed in state court but the claims have been joined with *Whitworth* and the state court lawsuit has been dismissed. Your settlement check shall remain valid for one hundred eighty (180) calendar days from the date the check was mailed. Thereafter, the funds from all uncashed checks shall be distributed by *cy pres* to the following child advocacy programs: Legal Services for Children and Alliance for Children’s Rights.

You are receiving this check in connection with a Court-approved settlement (the “Settlement”) in the Actions brought on a representative basis under the California Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.* (“PAGA”). The Settlement provides for recovery of civil penalties for claimed violations (denied by Tesla) of the California Labor Code on behalf of all individuals who worked in California for Tesla Energy Operations, Inc. (formerly known as SolarCity Corporation) (“Tesla”) in job titles such as Photo Installer, Junior Installer, Crew Lead, PV Installer and other similar job roles to install, repair, and/or maintain solar power units located in customers’ homes or worksites during the PAGA Period, which is April 14, 2015 through [the Approval Date] (“Eligible Employees”). According to Tesla’s records, you are an Eligible Employee and are therefore entitled to a share of the Settlement based upon the Court-approved allocation. The PAGA statute provides that 75% of any recovery of penalties pursuant to the Settlement be paid to the State of California to enable the Labor & Workforce Development Agency to enforce Labor Code protections for workers and 25% of any such recovery be paid to the affected workers claimed to have sustained violations, which in this case is the group of Eligible Employees. Each Eligible Employee’s share from the 25% portion of the settlement allocated to the affected workers is based on a formula that takes into account the number of pay periods in which an Eligible Employee worked during the PAGA Period.

The Court has not made a determination about Plaintiffs’ claims. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claims. Tesla denies all claims and allegations in the Actions, denies that it owes any penalties, and maintains that it has fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Actions, Tesla has settled the Actions. By settling the Actions, Tesla is not admitting that it has done anything wrong.

The Settlement resolves all claims for civil penalties and extinguishes your right to bring, or to be represented by another person in, a PAGA lawsuit against Tesla that is predicated on the facts and legal theories that were alleged or could have been reasonably alleged in the Actions, or the letters submitted to the California Labor and Workforce Development Agency by the plaintiffs in the Actions, during the PAGA Period, including claims based on alleged violations and recoverable penalties under California Labor Code sections 201-205, 210, 216, 221, 223, 225.5, 226, 226.2, 226.3, 226.7, 256, 510, 511, 512, 516, 551, 552, 553, 558, 1174, 1174.5, 1182.12, 1194-1197.1, 1198, and 2802 (the “Released PAGA Claims”). This release applies to you, regardless of whether you cash your check, and regardless of whether this letter can be delivered to you. The Settlement does not affect the ability of an Eligible Employee to bring other claims.

PLEASE DO NOT CALL OR WRITE THE COURT OR OFFICE OF THE CLERK TO ASK QUESTIONS ABOUT THE SETTLEMENT. IF YOU HAVE ANY QUESTIONS, YOU MAY CALL OR WRITE TO THE SETTLEMENT ADMINISTRATOR AT:

[ADMIN NAME]

[ADDRESS]

[ADDRESS]

[ADDRESS]