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SEP - 9 2015



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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

9 **IN AND FOR THE COUNTY OF MARICOPA**

10 STATE OF ARIZONA, *ex rel.* MARK  
11 BRNOVICH, Attorney General,

12 Plaintiff,

13 vs.

14 P.I.C. CONSTRUCTION, INC dba Epcon  
15 Solar, an Arizona corporation; EPCON  
16 SOLAR, LLC, an Arizona limited liability  
17 company; and PABLO PANDURO CURIEL, a  
18 single man,

19 Defendants.

Case No.: CV 2015-010780

**CIVIL COMPLAINT**

18 Plaintiff, State of Arizona, *ex rel.* Mark Brnovich, Attorney General, alleges as follows:

19 **JURISDICTION AND VENUE**

20 1. This action is brought pursuant to the Arizona Consumer Fraud Act,  
21 A.R.S. § 44-1521 *et seq.*, to obtain restitution, injunctive relief, civil penalties, investigative  
22 expenses, reasonable attorney fees and other relief to prevent the unlawful acts and practices  
23 alleged in this Complaint and to remedy the consequences of such practices.

24 2. Venue is proper in Maricopa County, Arizona.

25 3. The Superior Court has jurisdiction to enter appropriate orders both prior to and  
26 following a determination of liability pursuant to A.R.S. § 44-1528.

1 PARTIES

2 1. Plaintiff is the State of Arizona, *ex rel.* Mark Brnovich, the Attorney General  
3 (“the State”), who is authorized to bring this action under the Arizona Consumer Fraud Act,  
4 A.R.S. § 44-1521 *et seq.*

5 2. Defendant P.I.C. Construction, Inc d/b/a Epcon Solar (“PIC” and/or “EPCON”)  
6 is an Arizona Corporation doing business in Maricopa County, Arizona at 1215 S. Park Lane,  
7 Suite 3 in Tempe, Arizona. Defendant PIC has engaged in the sale of photovoltaic energy  
8 production systems (“PV system” or “solar system”) and energy saving components from  
9 2012 to present.

10 3. Defendant Epcon Solar, LLC (“Epcon Solar”) is an Arizona Limited Liability  
11 Company doing business in Maricopa County, Arizona at 1215 S. Park Lane, Suite 3 in  
12 Tempe, Arizona.

13 4. Defendant Pablo Panduro Curiel (“Curiel”) is the President, CEO, and Director  
14 of Defendant PIC. At all times material to the Complaint, Defendant Curiel formulated,  
15 directed, ratified, controlled, had the sole authority to control, or participated in the acts and  
16 practices of Defendant PIC’s solar subdivision, which conducted business as Epcon Solar. As  
17 such, Defendant Curiel is personally responsible for certain acts, practices, omissions, and  
18 misrepresentations made by PIC regarding the sale or lease of photovoltaic solar systems.

19 5. When reference is made to PIC, it refers to the above named corporate  
20 Defendant, and to the actions of its owners, officers, managers, employees, agents and  
21 independent contractors.

22 6. When reference is made to Epcon, it refers to the above named corporate  
23 Defendant, and to the actions of its owners, officers, managers, employees, agents, and  
24 independent contractors.

1 **GENERAL ALLEGATIONS**

2 7. Defendant PIC is an Arizona corporation with a class B general residential  
3 contractor license granted by the Arizona Registrar of Contractors.

4 8. Around 2011, PIC decided to branch out from general contracting and began  
5 marketing, selling and installing photovoltaic (“PV” or “solar”) energy systems and other  
6 energy saving products (“solar operations”).

7 9. In 2012, PIC established a solar division and commenced solar operations under  
8 the trade name “Epcon Solar.”

9 10. Defendant PIC created Defendant Epcon Solar, LLC in 2013 for the purpose  
10 divesting its solar division into its own entity.

11 11. Defendant PIC never transferred the solar operations division to Epcon Solar,  
12 LLC, and continued to conduct all solar operations, under the name Epcon Solar, as a trade  
13 name of PIC Construction.

14 12. Defendant PIC’s solar operations are operated under the direction and control of  
15 Defendant Curiel as President and CEO. In his capacity as Director, President, and CEO,  
16 Defendant Curiel is responsible for the acts, practices, omissions and misrepresentations of  
17 PIC and its agents.

18 13. Defendants PIC, Epcon Solar, and Curiel (hereinafter collectively “Defendants”)  
19 market their solar operations through their Epconsolar.com website, print advertisements, and  
20 telephone solicitations.

21 14. Defendant PIC established a call center, and hired telephone solicitors, as  
22 defined in A.R.S § 44-1271, to market Epcon’s solar products and services by initiating  
23 outbound telemarketing calls. In doing so, Defendant PIC became a “seller” as defined in  
24 A.R.S § 44-1271.

1           15. Defendant PIC failed to register with the Arizona Secretary of State as a telephone  
2 solicitor, and did not otherwise comply with the Arizona Telephone Solicitations Statute's  
3 requirements for Arizona telephone solicitors pursuant to A.R.S § 44-1271 *et seq.*

4           16. Defendant PIC failed to register with or attain access to the National Do Not Call  
5 Registry ("DNC Registry") of telephone numbers maintained by the Federal Trade Commission  
6 pursuant to 16 C.F.R § 310.4(b)(1)(iii)(B).

7           17. While telemarketing its program, acting directly or through one or more  
8 intermediaries, Defendant PIC's telephone solicitors initiated numerous telephone solicitations  
9 to telephone numbers, belonging to Arizona consumers, that were registered on the DNC  
10 Registry and had been on the Registry for at least 30 days at the time PIC's representative  
11 initiated the call.

12           18. Defendant PIC failed to identify and remove all telephone numbers on the DNC  
13 Registry from their lead lists and/or automatic dialing system.

14           19. In violation of A.R.S. § 44-1276, Defendant PIC, acting directly or through one or  
15 more intermediaries, initiates numerous telemarketing calls that fail to disclose truthfully,  
16 promptly, and in a clear and conspicuous manner to the person receiving the call the identity of  
17 the caller and that the purpose of the call is to sell merchandise.

18           20. In violation of A.R.S. § 44-1276, Defendant PIC's telephone solicitors fail to  
19 identify themselves as calling from PIC. The telephone solicitors stated that they are calling  
20 from the "Arizona Institute of Energy," and refuse to identify themselves as calling from, or on  
21 behalf of, PIC.

22           21. Defendant PIC continues to initiate telephone solicitations to telephone numbers  
23 belonging to Arizona consumers that had previously asked PIC not to call their telephone  
24 numbers and without being excepted from such solicitations pursuant to A.R.S § 44-1278(B)(2)  
25 (a-d).  
26

1           22.    As part of the Defendant PIC's call script, the telephone solicitors claim that they  
2 are calling about a program "designed to save you money on your utility bill with no money out  
3 of pocket."

4           23.    In another script, Defendant PIC's callers are required to tell consumers that  
5 "...this program is a no cost, no obligation, solar energy program, that is partially funded by  
6 money that has been set aside by APS."

7           24.    A rebuttal response used by Defendant PIC's telemarketing callers states that  
8 consumers pay into the EPCON program through a surcharge on their utility bill. The callers  
9 insinuate that because the consumers paid into the program through their utility surcharge  
10 payments, they are entitled to get their money back through the program. Such statements are  
11 deceptive because the EPCON program does not factor utility surcharge payments into contract  
12 calculations and utility companies do not keep track of individual surcharge payments.

13          25.    Defendant PIC circulates advertisements that state consumers will "Pay \$0 money  
14 down, \$0 out of pocket," "eliminate your electric bill," "Increase the value of your home," "pay  
15 a fixed monthly solar bill," and "avoid rising energy costs" with an EPCON PV system.

16          26.    While Defendant PIC's program is designed to lower utility bills, some consumers  
17 pay significant amounts of money out-of-pocket by virtue of their obligation to pay costly  
18 monthly PV system lease or finance payments in excess of the monthly utility savings.

19          27.    Defendant PIC sends salespersons ("Energy Consultants") to consumers' homes to  
20 make sales presentations ("energy consultations").

21          28.    Defendant PIC's Energy Consultants provide consumers with projections  
22 indicating their utility bills will increase up to 10% yearly if a PV system is not obtained.

23          29.    Defendant PIC's Energy Consultants make misleading and deceptive statements  
24 and false promises to consumers regarding the potential energy cost savings that are attainable  
25 through Defendants' program.

26

1           30. Defendant PIC's Energy Consultants state that "we will save you money every  
2 month on your utility bill" and "you will benefit from increased market value of your home"  
3 without being able to substantiate such claims.

4           31. Defendants' Energy Consultants use several misleading and deceptive graphs,  
5 worksheets, and pictures to illustrate the overall deceptive premise that every consumer will  
6 save on utility costs with Defendants' PV systems.

7           32. Defendants' Energy Consultants promise consumers various monetary incentives  
8 such as payment of two or three electric bills obtaining a full PV system or payment of cash  
9 bonuses for customer referrals. Defendants delay or fail to make the incentive and bonus  
10 payments to some consumers.

11           33. In reliance upon the statements and promises made by Defendants' Energy  
12 Consultants, some consumers entered into costly PV system lease, purchase, and financing  
13 contracts.

14           34. Under such contracts, some consumers do not realize the energy cost savings  
15 represented and promised to them. These consumers experience higher overall energy costs,  
16 when including the PV system lease or finance payment, after installing the PV system than  
17 before.

18           35. Defendant PIC's Energy Consultants do not adequately explain the terms of the  
19 PV lease contracts negotiated with consumers, particularly provisions that institute an annual  
20 escalator for monthly lease payments.

21           36. Some consumers sought to exercise their right to terminate their contract with  
22 Defendants within three business days of entering into the contract pursuant to A.R.S § 44-5002,  
23 but Defendants refused to honor the consumers' cancellation requests.

24           37. Defendants fail to timely refund payments made on cancelled contracts pursuant to  
25 A.R.S § 44-5006.  
26



1 participation with them, directly or indirectly, from engaging in the course of conduct alleged  
2 in violation of A.R.S. § 44-1522(A), including, without limitation, the acts giving rise to the  
3 allegations above;

4 3. Order Defendants to pay restitution pursuant to A.R.S. § 44-1528;

5 4. Order Defendants to pay the State of Arizona up to \$10,000 per each willful  
6 violation of the Consumer Fraud Act pursuant to A.R.S. § 44-1531;

7 5. Order Defendants to pay the costs of investigation and reasonable attorneys' fees  
8 pursuant to A.R.S. § 44-1534;

9 6. Order the disgorgement of all profits, gains, gross receipts, or other benefit  
10 obtained by the Defendants as a result of their illegal conduct, as alleged herein, pursuant to  
11 A.R.S. § 44-1528; and

12 7. Order such other and further relief as the Court may deem just and proper.

13  
14  
15 RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of September, 2015.

16  
17 MARK BRNOVICH, ATTORNEY GENERAL

18  
19 BY:   
20 Jordan Christensen  
21 Assistant Attorney General  
22 Office of the Arizona Attorney General  
23 *Attorneys for State of Arizona*  
24  
25  
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