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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
 single man,

18 Defendants.

Case No.: CV2015-010780

STIPULATED CONSENT JUDGMENT

(Assigned to the Honorable David Gass)

19
 20 Plaintiff, State of Arizona, *ex rel.* Mark Brnovich, Attorney General, filed a complaint
 21 alleging violations of the Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*, and
 22 Defendants P.I.C. Construction, Inc., Epcon Solar, LLC, and Pablo Panduro Curiel
 23 (collectively “Defendants”) waived service of the Summons and Complaint. After being fully
 24 advised of their right to a trial in this matter, Defendants have waived their right to trial and
 25 have admitted that this Court has jurisdiction over the subject matter and the parties for the
 26 purposes of entry and enforcement of this Consent Judgment. The State and Defendants have

1 agreed on a basis for the settlement of these matters in dispute. Defendants stipulate that the
2 Court may enter the following Findings of Fact, Conclusions of Law, and Judgment.

3 **PARTIES**

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

7 2. Defendant P.I.C. Construction, Inc. d/b/a Epcon Solar (“PIC” and/or “EPCON”)
8 is an Arizona Corporation doing business in Maricopa County, Arizona at 1215 S. Park Lane,
9 Suite 3 in Tempe, Arizona. Defendant PIC has engaged in the sale of photovoltaic energy
10 production systems (“PV system” or “solar system”) and energy saving components from
11 2012 to present.

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

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

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

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

1 **FINDINGS OF FACT**

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

4 2. 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 3. In 2012, PIC established a solar division and commenced solar operations under
8 the trade name “Epcon Solar.”

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

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

14 6. Defendant PIC’s solar operations are operated under the direction and control of
15 Defendant Curiel as President and CEO. Defendant Curiel delegated much of the decision
16 making authority for the solar operations to other owners, executive managers, and marketing
17 directors. In his capacity as Director, President, and CEO, Defendant Curiel is responsible for
18 the acts, practices, omissions and misrepresentations of PIC and its agents with respect to its
19 solar operations.

20 7. Defendants PIC, Epcon Solar, and Curiel (hereinafter collectively “Defendants”)
21 marketed their solar operations through their Epconsolar.com website, print advertisements,
22 and telephone solicitations.

23 8. While currently registered, for a period of time Defendants PIC and EPCON
24 were not registered with the Arizona Secretary of State as a telephone solicitor, and did not
25 otherwise comply with the Arizona Telephone Solicitations Statute’s requirements for
26 Arizona telephone solicitors pursuant to A.R.S § 44-1271 *et seq.*

1 9. While currently registered, for a period of time Defendant PIC failed to register
2 with or attain access to the National Do Not Call Registry (“DNC Registry”) of telephone
3 numbers maintained by the Federal Trade Commission pursuant to 16 C.F.R §
4 310.4(b)(1)(iii)(B).

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

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

12 12. In numerous instances, Defendant PIC, acting directly or through one or more
13 intermediaries, initiated numerous telemarketing calls that failed to disclose truthfully,
14 promptly, and in a clear and conspicuous manner to the person receiving the call the identity
15 of the caller and the purpose of the call, in violation of A.R.S. § 44-1276.

16 13. Defendant PIC’s telephone solicitors failed to identify themselves as calling
17 from PIC. The telephone solicitors stated that they were calling from the “Arizona Institute
18 of Energy,” and did not identify themselves as calling from, or on behalf of, PIC, in violation
19 of A.R.S. § 44-1276.

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

24 15. As part of the Defendant PIC’s call script, the telephone solicitors claimed that
25 they were calling about a program “designed to save you money on your utility bill with no
26 money out of pocket.”

1 16. In another script, Defendant PIC’s callers were required to tell consumers that
2 “...this program is a no cost, no obligation, solar energy program, that is partially funded by
3 money that has been set aside by APS.”

4 17. A rebuttal response used by Defendant PIC’s callers stated that the consumers
5 paid into the EPCON program through a surcharge on their utility bill. The callers insinuated
6 that because the consumers paid into the program through their utility surcharge payments,
7 they were entitled to get their money back through the program. Such statements are
8 deceptive as the EPCON program does not factor utility surcharge payments into contract
9 calculations, and utility companies do not keep track of individual surcharge payments.

10 18. Defendant PIC circulated advertisements that stated consumers would “Pay \$0
11 money down, \$0 out of pocket,” “eliminate your electric bill,” “Increase the value of your
12 home,” “pay a fixed monthly solar bill,” and “avoid rising energy costs” with an EPCON PV
13 system.

14 19. While Defendant PIC’s program was designed to lower utility bills, some
15 consumers paid significant amounts out of pocket by virtue of their obligation to pay costly
16 monthly PV system lease or finance payments in excess of the monthly utility savings.

17 20. Defendant PIC sent salespersons (“Energy Consultants”) to consumers’ homes to
18 make sales presentations (“energy consultations”).

19 21. Defendant PIC’s Energy Consultants provided consumers with projections
20 indicating those consumers’ utility bills will increase up to 10% yearly if a PV system was not
21 obtained.

22 22. Defendant PIC’s Energy Consultants made misleading and deceptive statements
23 and false promises to consumers regarding the potential energy cost savings that were
24 attainable through Defendants’ program.

1 23. Defendant PIC's Energy Consultants stated 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 24. Defendants' Energy Consultants used 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 25. Defendants' Energy Consultants promised consumers various monetary
8 incentives such as paying two or three electric bills upon signing a contract with defendants
9 or cash bonuses for customer referrals. Defendants delayed making the incentive and bonus
10 payments to some consumers, often for several months.

11 26. 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 27. Under such contracts, some consumers claimed they did not realize the energy
15 cost savings represented and promised to them. Some of such consumers experienced higher
16 overall energy costs, when including the PV system lease or finance payment, after installing
17 the PV system than before.

18 28. Defendants' Energy Consultants did not adequately explain the terms of some
19 PV lease contracts negotiated with consumers, particularly provisions that instituted an annual
20 escalator for monthly lease payments.

21 29. 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-
23 5002, but Defendants refused to honor the consumers' cancellation requests.

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

1 **CONCLUSIONS OF LAW**

2 31. The acts of Defendants, including, without limitation, those set forth in the
3 Findings of Fact paragraphs 7 through 30 above, constitute deceptive and unfair acts and
4 practices, fraud, false pretenses, false promises, misrepresentations or the concealment,
5 omission, and suppression of material facts in violation of A.R.S § 44-1522, *et seq.*

6 32. Defendants were, at all times, acting willfully as defined by A.R.S. § 44-1522(B)
7 while engaging in the acts and practices alleged herein.

8 33. The acts of Defendants, including, without limitation, those set forth in the
9 Findings of Fact paragraphs 7 through 30 above violated the Arizona Telephone Solicitation
10 Statute, A.R.S § 44-1271 *et seq.*, and the Arizona Home Solicitations and Referral Sales
11 Statutes, A.R.S § 44-5001 *et seq.*

12 **ORDER**

13 1. Defendants and their officers, agents, servants, employees, and attorneys, and
14 upon those persons in active concert or participation with them, directly or indirectly, in
15 connection with the advertisement, sale, or brokerage of any merchandise are permanently
16 enjoined from:

17 A. Engaging in any and all deceptive acts or practices, fraud, false pretense,
18 false promises, misrepresentations, and/or concealment, suppression or omission of material
19 fact in violation of the Arizona Consumer Fraud Act, A.R.S. § 44-1522, *et seq.*, as it is
20 currently written, or as it is amended in the future;

21 B. Initiating an outbound telephone solicitation or appointment setting call to
22 any person on the DNC Registry unless:

23 i. Defendants have obtained express agreement, in writing, of such person
24 to place such calls to him or her, or

25 ii. Defendants have an established business relationship with such person
26 and such person has not previously stated that he or she does not wish to receive such calls;

1 C. Initiating any outbound telephone solicitation or appointment setting call
2 to a person when that person has previously stated that he or she does not wish to receive such
3 telephone solicitations from, or on behalf of, Defendants, even if such person is not on the
4 DNC Registry;

5 D. Abandoning any outbound telephone solicitation or appointment setting
6 call to a person by failing to connect the call to a live operator within two (2) seconds of the
7 person's completed greeting unless:

8 i. Defendants employ technology that ensures abandonment of no more than
9 three percent (3%) of all calls answered by a person, measured over the duration of a single
10 calling campaign or thirty (30) days, whichever occurs first;

11 ii. Defendants allow each telephone solicitation call to ring for at least
12 fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and

13 iii. Defendants promptly play a recorded message that states Defendants'
14 name and telephone number when a live operator is not available to speak with the answering
15 person within two (2) seconds of the completed greeting;

16 E. Failing to obtain independent verification that each telephone number
17 called is not on the DNC Registry before initiating each telephone solicitation;

18 F. Failing to disclose truthfully, promptly, and in a clear and conspicuous
19 manner the Defendants' true identity, that the purpose of each outbound telephone call is to
20 sell or set appointments to sell goods or services, and the nature of the goods or services;

21 G. Initiating any outbound telephone solicitation or appointment setting call
22 in which Defendants fail to transmit or cause to be transmitted to any Caller Identification
23 Service in use by the recipient of the call Defendants' name and customer service telephone
24 number;

25 H. Representing to consumers that they will significantly and permanently
26 lower their electricity costs by any specific percentage or percentage range through the

1 purchase of PV products from Defendants without being able to substantiate such
2 representations;

3 I. Representing to consumers that they have paid into government programs
4 that have allocated funds, to them specifically, to spend on their home, cut energy usage, save
5 on utility bills, and/or increase the value of their home;

6 J. Representing to consumers that purchasing a PV system will
7 unequivocally lower their monthly electric budgets;

8 K. Representing to consumers, over the telephone or in person, that utility
9 companies obtain an 10% yearly rate increase, or any other percentage yearly rate increase,
10 unless the percentage yearly rate increase is calculated as a representative percentage rate
11 increase average of the past five, ten, or twenty years of official rates published by the Arizona
12 Corporation Commission or the United States Energy Information Administration;

13 L. Representing that KVAR, duct sealing, radiant barrier, or any other
14 energy saving products or services will reduce energy usage by a specific percentage unless
15 that percentage can be quantified and substantiated;

16 M. Failing to adequately explain all possible monetary obligations resulting
17 from the purchase contract including, but not limited to, the existence of monthly lease or
18 finance payments in addition to electricity bills, annual lease escalators, early termination
19 penalties, and resale implications;

20 N. Making any representations to consumers as to the projected cost of their
21 average monthly utility bill in ten or twenty years, although they may provide historical data as
22 to past utility costs;

23 O. Using any worksheet or other illustrative material to calculate projected
24 monthly energy savings without being able to substantiate such projected savings;

25 P. Representing to consumers, verbally or in writing, a projected payback
26 period for a PV system without being able to quantify and substantiate such a projection; and

1 Q. Presenting consumers with an estimated home value increase with the
2 addition of a PV system without being able to substantiate such an estimate.

3 2. If Defendants purchase appointment leads from lead generators, Defendants
4 shall regularly determine and review the methods used by such lead generators to obtain the
5 leads sold to Defendants and, if the Defendants reasonably determine such leads were obtained
6 by means that do not comply with this Consent Judgment, Defendant shall immediately cease
7 purchasing such leads from such lead generator.

8 3. Defendants shall submit a quarterly report to the State containing a list of all
9 telephone numbers from which Defendants initiated outbound telemarketing calls in the
10 previous quarter. The first such quarterly report shall be submitted to the Arizona Attorney
11 General on November 1, 2015, with each report thereafter due on the first day of the month on
12 each successive third month thereafter (e.g February 2016, May 2016, August 2016,
13 November 2016, etc.)

14 4. Defendants shall, jointly and severally, pay to the Arizona Attorney General the
15 amount of One Hundred Thousand dollars (\$100,000) in civil penalties, with interest thereon
16 at ten percent (10%) per annum from the date of entry until paid, to be deposited into the
17 Consumer Protection – Consumer Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01 and
18 used for the purposes set forth therein. Seventy Thousand dollars (\$70,000) of such civil
19 penalties shall be suspended contingent upon Defendants’ full compliance with all injunctive
20 provisions in paragraph 1 above and timely payment of restitution, civil penalties, and
21 attorneys’ fees and costs. If this Court later determines that Defendants have violated the
22 injunctive provisions in paragraph 1 above or defaulted on their payment obligations,
23 Defendants shall pay the suspended civil penalty, in full, within ten (10) business days of entry
24 of the Court’s order, with interest thereon at ten percent (10%) per annum from the date of
25 entry of the Court’s order until paid. In the event of such a determination, Defendants
26

1 obligation to pay the suspended civil penalties shall be in addition to any other monetary or
2 other sanctions which may be imposed for any such violations of this Consent Judgment.

3 5. Defendants shall, jointly and severally, pay to the Arizona Attorney General the
4 amount of Eighteen Thousand dollars (\$18,000) in attorneys' fees, expert costs, and
5 investigative costs, with interest thereon at ten percent (10%) per annum from the date of entry
6 of this Consent Judgment until paid, to be deposited into the Consumer Protection – Consumer
7 Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01 and used for the purposes set forth
8 therein.

9 6. Defendants shall, jointly and severally, pay to the Arizona Attorney General the
10 amount of Forty Thousand dollars (\$40,000) for consumer restitution, with interest thereon at
11 ten percent (10%) per annum from the date of entry of this Consent Judgment until paid.
12 Additionally, Defendants shall, jointly and severally, pay to the Arizona Attorney General the
13 amount of Five Thousand (\$5,000) for each valid and substantiated consumer complaint, that
14 references one or more of the allegations herein, and is received by the Attorney General from
15 the date this Consent Judgment is filed until March 1, 2016. These additional restitution
16 payments are due by March 31, 2016, with interest thereon accruing at ten percent (10%) per
17 annum from March 31, 2016 until paid. All restitution payments ordered herein shall be
18 deposited by the Attorney General into the consumer restitution subaccount of the interest-
19 bearing consumer restitution and remediation revolving fund pursuant to A.R.S. § 44-1531.02
20 (B) and distributed to eligible consumers by the Attorney General's Office. For purposes of
21 this Stipulated Consent Judgment, "eligible consumers" shall include all consumers who file a
22 complaint with the Arizona Attorney General's Office before March 1, 2016, whose complaint
23 arose as a result of the consumer purchasing a PV system or other energy saving components
24 from Defendants. In the event the amount ordered as restitution herein is not sufficient to fully
25 restore eligible consumers the amounts they paid Defendants, the amount shall be distributed
26 to them on a pro rata basis. In the event that any portion of the restitution ordered herein

1 cannot be distributed to an eligible consumer, or exceeds the amount of restitution due him or
2 her, such portion shall be deposited by the Attorney General's Office into the Consumer
3 Protection – Consumer Fraud Revolving Fund in accordance with A.R.S. § 44-1531.01 and
4 used for the purposes specified therein.

5 7. Defendants shall make quarterly payments of no less than Ten Thousand Dollars
6 (\$10,000) each until the balance of restitution, civil penalties, fees and costs, and interest has
7 been paid. The payments ordered herein shall be made payable to the Office of the Arizona
8 Attorney General in quarterly payments, beginning on November 1, 2015, with each payment
9 due thereafter on the first day of the month on each successive third month thereafter (*e.g.*
10 February 2016, May 2016, August 2016, November 2016 etc.). The State shall use the initial
11 monies paid by Defendants to pay claims for restitution to all eligible consumers, as defined in
12 paragraph 4 above. After the distribution of restitution, payments made by Defendants shall
13 be applied to the civil penalties award as provided above until paid, and the remaining
14 payments shall be applied to attorneys' fees, costs, and interest.

15 8. If Defendants fail to make a quarterly payment, as enumerated in paragraph 5,
16 within 15 calendar days of the date due, Defendants shall be deemed in default of their
17 payment obligation. In the event of a default, and in addition to any other relief or remedy
18 elected or pursued by the State, all payments set forth herein shall be accelerated and shall
19 become due and owing in their entirety as of the date of the default, including interest accrued
20 at the rate of ten percent (10%) per annum from the date this Consent Judgment was entered.

21 9. The effective date of this Consent Judgment is the date it is entered by the Court.

22 10. This Court retains jurisdiction of this matter for the purpose of entertaining an
23 application by the State for the enforcement of this Consent Judgment. The State may institute
24 an action or proceeding to enforce the terms and provisions of this Consent Judgment or to
25 take action based on future conduct by the Defendants.
26

1 **CONSENT TO JUDGMENT**

2 1. Defendants state that no promise of any kind or nature whatsoever was made to
3 them to induce them to enter into this Consent Judgment and have entered into the Consent
4 Judgment voluntarily.

5 2. Defendants, or their authorized representative, have fully read and understand
6 this Consent Judgment, understand the legal consequences involved in signing it, assert that
7 this is the entire agreement of the parties, and that there are no other representations or
8 agreements not stated in writing herein, and no force, threats, or coercion of any kind have
9 been used to obtain its signature.

10 3. Defendants understand that acceptance of this Consent Judgment is solely for the
11 purpose of settling this litigation and does not preclude the Plaintiff, or any other agency or
12 officer of this State, or subdivision thereof, from instituting other civil or criminal proceedings
13 as may be appropriate for any acts unrelated to this litigation or committed after the entry of
14 this Consent Judgment.

15 4. Defendant P.I.C Construction, Inc. represents and warrants that the person
16 signing below on its behalf is duly appointed and authorized to do so.

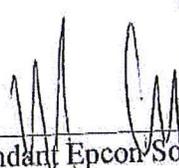
17 5. Defendant Epcon Solar, LLC represents and warrants that the person signing
18 below on its behalf is duly appointed and authorized to do so.

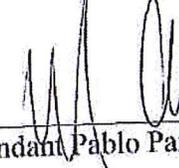
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DATED this 10th day of September, 2015.

By: 
Defendant P.I.C Construction, Inc.

By: 
Defendant Epcon Solar, LLC

By: 
Defendant Pablo Panduro Curiel

APPROVED AS TO FORM AND CONTENT:

Mark Brnovich
Attorney General

By: 
Jordan Christensen
Assistant Attorney General

By: 
Charles R. Berry
Counsel for Defendants

eSignature Page 1 of 1

Filing ID: 6859437 Case Number: CV2015-010780
Original Filing ID: 6857869

Granted as Submitted



/S/ David Gass Date: 9/11/2015
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2015-010780

SIGNATURE DATE: 9/11/2015

E-FILING ID #: 6859437

FILED DATE: 9/15/2015 8:00:00 AM

CHARLES R BERRY

JORDAN JOHN CHRISTENSEN