

Granted as Submitted

See eSignature page

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

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

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

13 Plaintiff,

14 vs.

15 STEALTH SOLAR, LLC; and FRED RICHIE
16 and SANDRA RICHIE, husband and wife,

17 Defendants

Case No.: CV2014-010486

STIPULATED CONSENT JUDGMENT

Assigned to the Hon. Douglas Gerlach

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

1 the settlement of these matters in dispute. Defendants stipulate that the Court may enter the
2 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 Stealth Solar, LLC (“Stealth Solar”) is an Arizona Limited Liability
8 Company doing business in Maricopa County, Arizona at 4222 E. Thomas Rd, Phoenix,
9 Arizona. Defendant Stealth Solar has engaged in the sale of Photovoltaic (“PV”) systems and
10 energy saving components since 2011.

11 3. Defendant Fred Richie is a member and manager of Defendant Stealth Solar. At
12 all times material to the Complaint, Defendant Fred Richie, as manager of Stealth Solar and in
13 his capacity as such, formulated, directed, ratified, controlled, had the sole authority to control,
14 or participated in the acts and practices of Stealth Solar, as set forth in the Complaint filed by
15 the State on August 11, 2014. As such, Defendant Fred Richie is responsible for the acts,
16 practices, omissions, and misrepresentations of Defendant Stealth Solar.

17 4. Defendant Sandra Richie is and was, at all relevant times, the wife of Defendant
18 Fred Richie, who acted on behalf of their marital community with respect to the allegations
19 contained in the Complaint. Defendant Sandra Richie is also a member of Stealth Solar.
20 Defendant Sandra Richie is named for her ownership interest in Stealth Solar and any interest
21 she had or has in the marital community property owned with Defendant Fred Richie.

22 5. When reference is made to Stealth Solar 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 **FINDINGS OF FACT**

2 1. Defendant Stealth Solar was formed in 2010 for the purpose of marketing,
3 selling, and coordinating the installation of photovoltaic systems and other energy saving
4 products.

5 2. Defendant Stealth Solar operated under the sole direction and control of
6 Defendant Fred Richie. As such, Defendant Fred Richie was responsible for the acts,
7 practices, omissions and misrepresentations of Stealth Solar and its agents.

8 3. Defendant Stealth Solar conducted marketing efforts that included radio
9 advertisements, print advertisements, flyers, and telephone solicitations.

10 4. Defendant Stealth Solar's telephone solicitors failed identify themselves as
11 calling from Stealth Solar. The telephone solicitors stated that they were calling about the "Go
12 Green Now Program" or on behalf of the "Institute For Solar Independence," and did not
13 identify themselves as calling from Stealth Solar.

14 5. Defendant Stealth Solar made telemarketing calls to consumers on the Federal
15 Trade Commission's National Do Not Call Registry.

16 6. Defendant Stealth Solar's telephone solicitors made the following false and
17 deceptive statements, false promises, and misrepresentations:

18 A. Consumers are eligible for a program that significantly and permanently
19 lowers electric bills 40-75%;

20 B. Consumers previously paid into programs through Federal, State, and
21 Utility taxes that allocate up to \$17,000 to them to purchase PV components that cut energy
22 usage and reduce utility bills;

23 C. The government is paying homeowners to save money and increase the
24 value of consumers' homes;

25 D. The Stealth Solar program "will cut your energy consumption and you will
26 realize a dramatic savings in utility costs," "our system is designed to lower your monthly

1 electric budget rather than raise it;” and “if your monthly electric bill averages \$150 or more,
2 you will see savings every month;”

3 E. Utility companies raise their rates every year by 8-14% and consumer
4 electric bills will rise at that rate for the next twenty years or longer; and

5 F. If consumers fail to take advantage of their program, their bills will only
6 increase, and the consumer will be subsidizing green energy programs for those who utilize
7 them.

8 7. Defendant Stealth Solar engaged in the deceptive act of mailing consumers
9 fictitious simulated checks issued by the National Rebate Center, an entity that does not exist.

10 8. Defendant Stealth Solar called its in-home salesmen “Certified Energy Analysts”
11 when the salesmen were not certified as such.

12 9. Defendant Stealth Solar’s in-home salesmen made the following false and
13 deceptive statements, false promises, and misrepresentations:

14 A. Consumers’ utility bills will increase 10% to 12.5% yearly if a PV system
15 is not obtained.

16 B. Consumers’ \$200 monthly electric bill will be \$1,900 in 20 years, and a
17 \$250 monthly electric bill will be \$2,343 per month in 20 years unless consumers obtain a PV
18 system.

19 C. 70% of the cost of PV systems are covered by federal, state, and local
20 incentives.

21 D. AeroSeal systems reduce energy usage by 10% to 15%.

22 E. KVAR systems reduce energy usage by 5% to 10%.

23 F. Stealth Barrier reduces energy usage by 10% to 15%.

24 G. Stealth Film reduces energy usage by 5% to 10%.

25 H. The return on investment with a Stealth PV system is one hundred thousand
26 to three hundred thousand dollars over the life of the equipment.

1 C. Misrepresenting to consumers that Defendants' telemarketing callers or
2 in-home sales consultants represent any program, institute, or entity other than the company
3 for which they are performing sales;

4 D. Representing to consumers that they will significantly and permanently
5 lower their electricity costs by any specific percentage or percentage range through the
6 purchase of PV products from Defendants;

7 E. Representing to consumers that they have expressly paid into government
8 programs that have allocated funds, to them specifically, to spend on their home, cut energy
9 usage, save on utility bills, and increase the value of their home.

10 F. Representing to consumers that purchasing a PV system will
11 unequivocally lower every consumer's monthly electric budget if their electric bills average
12 over \$150 a month;

13 G. Representing to consumers, over the telephone or in person, that utility
14 companies obtain an 8-14% yearly rate increase, or any other percentage yearly rate increase,
15 unless the percentage yearly rate increase is calculated as a representative percentage rate
16 increase average of the past five, ten, or twenty years of official rates published by the Arizona
17 Corporation Commission or the United States Energy Information Administration;

18 H. Mailing consumers, from a real or fictional entity, simulated checks or
19 any other simulated negotiable instrument;

20 I. Calling in-home sales representatives Certified Energy Analysts;

21 K. Representing to consumers that a specific percentage of the cost of a solar
22 system is covered by Federal, State, and Local incentives unless that percentage can be
23 substantiated;

24 L. Representing that KVAR, Aroseal, Stealth Barrier, Stealth Film, or any
25 other products or services sold by Defendants will reduce energy usage by a specific
26 percentage unless that percentage can be quantified and substantiated;

1 M. Failing to honestly and adequately explain the purchase contract
2 including, but not limited to, monthly payments in addition to electricity bills, annual lease
3 escalators, early termination penalties, and resale implications;

4 N. Making claims to consumers as to the projected cost of their average
5 monthly utility bill in ten or twenty years;

6 P. Using any worksheet or sales aid that inaccurately or imprecisely
7 estimates energy cost savings in any sales presentation;

8 Q. Giving consumers, verbally or in writing, an estimated return on
9 investment for a PV system;

10 R. Giving consumers an estimate of the increase in their home value through
11 the addition of a PV system; and

12 S. Giving consumers an estimate, verbally or in writing, of the percentage
13 total reduction in power usage or utility bills through the installation of a PV system.

14 2. Defendants shall, jointly and severally, pay to the Arizona Attorney General the
15 amount of Seventy Two Thousand dollars (\$72,000) in consumer restitution due at the time of
16 entry of this Judgment, with interest thereon at five percent (5%) per annum until paid.
17 Additionally, Defendants shall, jointly and severally, pay to the Arizona Attorney General an
18 additional amount, to be mutually agreed upon by the State and Defendants, for each consumer
19 complaint, based upon the allegations herein, received by the Attorney General from the date
20 this Consent Judgment is filed until July 1, 2015. Such additional restitution payments shall
21 not exceed \$20,000. The additional restitution payments shall be due by August 1, 2015, with
22 interest thereon accruing at five percent (5%) per annum from August 1, 2015 until paid. Any
23 additional restitution incurred shall be subject to the payment arrangement in paragraph 5
24 below. All restitution payments ordered herein shall be deposited by the Attorney General into
25 the consumer restitution subaccount of the interest-bearing consumer restitution and
26 remediation revolving fund pursuant to A.R.S. § 44-1531.02 (B) and distributed to eligible

1 consumers by the Attorney General's Office. For purposes of this Stipulated Consent
2 Judgment, "eligible consumers" mean consumers who file a complaint with the Arizona
3 Attorney General's Office before July 1, 2015, whose complaint arose as a result of the
4 consumer purchasing a photovoltaic/solar system or other energy saving component from
5 Stealth Solar. In the event the amount ordered as restitution herein is not sufficient to fully
6 restore eligible consumers the amounts they paid Stealth Solar, the amount shall be distributed
7 to them on a pro rata basis. In the event that any portion of the restitution ordered herein
8 cannot be distributed to eligible consumers, or exceeds the amount of restitution, such portion
9 shall be deposited by the Attorney General's Office into the Consumer Protection – Consumer
10 Fraud Revolving Fund in accordance with A.R.S. § 44-1531.01 and used for the purposes
11 specified therein.

12 3. Defendants shall, jointly and severally, pay to the Arizona Attorney General the
13 amount of Twenty Thousand dollars (\$20,000) in attorneys' fees, expert costs, and
14 investigative costs due at the time of entry of this Judgment, with interest thereon at five
15 percent (5%) per annum from the date of entry of this Consent Judgment until paid, to be
16 deposited into the Consumer Protection – Consumer Fraud Revolving Fund pursuant to A.R.S.
17 § 44-1531.01 and used for the purposes set forth therein.

18 4. Defendants shall, jointly and severally, pay to the Arizona Attorney General the
19 amount of One Hundred and Sixty Thousand dollars (\$160,000) in civil penalties, with interest
20 thereon at five percent (5%) per annum from the date of entry of this Consent Judgment until
21 paid, to be deposited into the Consumer Protection – Consumer Fraud Revolving Fund
22 pursuant to A.R.S. § 44-1531.01 and used for the purposes set forth therein. Said payment
23 shall be deferred until the full restitution portion of this judgment is paid. Defendants have
24 filed statements of personal and corporate financial condition with the State. Defendant
25 Stealth Solar's balance sheet displays significantly higher liabilities than assets. Defendant
26 Stealth Solar is highly insolvent, and is unlikely to become solvent. Similarly, Defendant Fred

1 Richie has a large number of outstanding personally guaranteed obligations, but does not have
2 the funds to meet such obligations. Accordingly, the One Hundred and Sixty Thousand dollars
3 (\$160,000) due under the civil penalty portion of this judgment shall be considered satisfied if
4 Defendant Fred Richie makes full, complete, and timely payment to the State of the restitution
5 portion of this consent judgment. For purposes of this paragraph and any subsequent
6 proceedings to enforce payment, including but not limited to a non-dischargeability complaint
7 filed in a bankruptcy proceeding, defendant waives any right to contest any of the allegations
8 in the State's Complaint.

9 5. Defendants shall make quarterly payments of no less than One Thousand Five
10 Hundred Dollars (\$1,500) each until the balance of restitution, civil penalties, fees and costs,
11 and interest has been paid. The payments ordered herein shall be made payable to the Office
12 of the Arizona Attorney General in quarterly payments, beginning on March 1, 2015, with
13 each payment due thereafter on the first day of the month on each successive third month
14 thereafter (e.g. June 2015, September 2015, December 2015, March 2016 etc.). The State
15 shall use the initial monies paid by Defendants to pay claims for restitution to all eligible
16 consumers, as defined in paragraph 4 above. After the distribution of restitution, payments
17 made by Defendants shall be applied to attorneys' fees, costs, interest, and civil penalties, if
18 the suspension is lifted on any such civil penalty.

19 6. If Defendants fail to make a payment under paragraph 5 above within fifteen
20 (15) days of the date it is due, Defendants will be deemed in default of their payment
21 obligation. In the event of a default of any payment obligation imposed by this Consent
22 Judgment, and in addition to any other relief or remedy elected or pursued by the State, all
23 payments set forth herein shall be accelerated and shall become due and owing in their entirety
24 as of the date of the default, including interest accrued at the rate of five percent (5%) per
25 annum from the date this Consent Judgment was entered.

26 7. The effective date of this Consent Judgment is the date it is entered by the Court.

CONSENT TO JUDGMENT

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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 Stealth Solar, LLC represents and warrants that the person signing
16 below on its behalf is duly appointed and authorized to do so.

17 DATED this 21st day of January, 2015.

19 By: _____

20 Defendant Stealth Solar, LLC
21 Fred Richie, Member and Manager

22 By: _____

23 Defendant Fred Richie

24 By: _____

25 Defendant Sandra Richie
26

APPROVED AS TO FORM AND CONTENT:

1
2 **Mark Brnovich**
3 **Attorney General**

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6 Jordan Christensen
7 **Assistant Attorney General**

8 #4260999



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By: _____
Peter Strojnik
Counsel for Defendants

eSignature Page 1 of 1

Filing ID: 6367369 Case Number: CV2014-010486
Original Filing ID: 6357940

Granted as Submitted



/S/ Douglas Gerlach Date: 1/27/2015
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2014-010486

SIGNATURE DATE: 1/27/2015

E-FILING ID #: 6367369

FILED DATE: 1/29/2015 8:00:00 AM

JORDAN JOHN CHRISTENSEN

PETER STROJNIK