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Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue N.W.
Suite CC-5610 (Annex B)
Washington, DC 20580

RE: Comment for FTC Workshop Examining Competition and Consumer Protection Issues in the Rooftop Solar Business

The Arizona Attorney General's Office submits this comment to outline the consumer protection issues encountered in Arizona regarding the rooftop solar industry and the steps taken by this office to address such issues. Although solar technology has the potential to provide many benefits to consumers, misrepresentations about rooftop solar are regrettably common. Because Arizona is fortunate to have abundant year-round sunshine, many rooftop solar businesses look to do business in Arizona. This has positioned the Arizona Attorney General's Office to assume a leading role in confronting the unscrupulous side of the rooftop solar industry. This comment consists of, first, a summary of several categories of common misrepresentations this office encounters regarding rooftop solar and, second, a summary of cases brought by the Arizona Attorney General against companies that violated Arizona's Consumer Fraud Act.

COMMON MISREPRESENTATIONS

- **Solar panels will save consumers significant money on electricity costs and energy consumption**

These representations are aimed to convince consumers that they will immediately realize savings of between thirty and eighty percent on electric bills. These representations often occur without full explanations about how the cost of financing or leasing a rooftop system will affect such savings. Bill savings generally do not offset the cost of solar panels, whether purchased or leased, until years after installation. Thus, any savings consumers might immediately obtain in energy costs is often swallowed up by the monthly payments consumers make on a finance or lease contract, sometimes causing the consumer to see a substantial increase in overall monthly costs. Moreover, the initially high percentage of

estimated monthly savings is sometimes revised after a contract is signed to a much lower percentage.

- **Future utility rates will dramatically increase.**

Businesses may exaggerate future utility rates to convince consumers that the consumer can “lock in” lower energy costs through a rooftop solar system. Often such misrepresentations are bolstered by the use of charts and graphs to illustrate the supposedly rapid rise of utility costs. However, the figures showing increased rates are often artificial (i.e. made up by the business) and are not based on actual historical data. In reality, utility rate increases are generally much less severe than represented.

- **Homeowners will receive large tax savings and rebates.**

These representations are often made as blanket-statements that do not take into account the consumer's taxable income. They often accompany representations that such tax savings will account for a majority of the system's cost, leading consumers to conclude that they will end up paying very little to install a system that could cost thousands of dollars. Because solar tax credits are nonrefundable,¹ homeowners without taxable income receive no tax benefit for purchasing a rooftop system. Accordingly, some low-income consumers, relying on representations that they will not pay the full installation cost, are placed into considerable financial difficulty by assuming responsibility for paying the full cost of installation. In some cases, monthly payments for financed installations exceed what consumers otherwise pay to keep and maintain the property.

- **Loans for rooftop solar systems can be easily refinanced**

Businesses that sell rooftop systems will sometimes misrepresent the ease with which a consumer can refinance a loan to receive a lower interest rate. This is particularly true when the financing for a rooftop system is an unsecured loan with a high interest rate. In doing so, a business may represent that a consumer's local bank or credit union will refinance such loans at a much lower interest rate. Consumers only much later realize that refinancing is either not possible or not nearly as easy as was initially represented.

- **Using a non-profit or government imprimatur to induce consumers to hear sales presentations**

Some businesses will attempt to induce consumers to listen to a sales presentation by using an official-sounding name that is not the company name (examples in Arizona have included “Arizona Institute of Energy” and “Go Green Initiative”) to create a false appearance of authority regarding the solar industry.

CASES BROUGHT BY THE ARIZONA ATTORNEY GENERAL'S OFFICE

Since 2014, The Arizona Attorney General's Office has initiated several actions against rooftop solar companies for making many of misrepresentations previously discussed. This

¹ See *Energy Incentives for Individuals: Questions and Answers*, last updated January 19, 2016, <https://www.irs.gov/uac/energy-incentives-for-individuals-questions-and-answers>.

office has obtained several judgments to secure restitution for consumers and civil penalties for the State of Arizona. These cases are summarized below.

- **Paniolo Builders, LLC d/b/a Discover Energy Solutions; Go Green Today, LLC**

These Arizona limited liability companies worked together to sell and install rooftop solar systems. In so doing, they performed telemarketing that included calling phone numbers on the National Do Not Call Registry. These companies represented that consumers' utility rates would increase at a ten percent annual average unless consumers obtained a rooftop solar system and that consumers would realize significant savings based on a "5 year savings plan" derived from the falsely calculated ten percent annual increases. Misrepresentations made by these companies also likely included statements about tax credits and utility incentives.

In a judgment obtained by the Arizona Attorney General's Office, these companies admitted that their misrepresentations willfully violated the Arizona Consumer Fraud Act. Additionally, the companies agreed to reform their telemarketing practices to conform with state and federal law. The judgment imposed \$100,000 in civil penalties and \$25,000 in consumer restitution.

- **Going Green Solar, LLC; Gee Investments, LLC**

These companies targeted senior citizens in their sales efforts, which included telemarketing calls to phone numbers on the National Do Not Call Registry. Notwithstanding representations of significant savings, many of the senior citizen consumers that purchased rooftop solar systems from these companies could not realize the cost savings because of the significant time period required for the monthly energy savings to "break even" with the installation costs. Representations included calculations that a \$200 monthly electric bill would more than double to \$500 in ten years. After entering into agreements to install a rooftop system, some consumers experienced higher overall energy costs because of the new lease or finance payment they were now obligated to make in addition to their monthly electric bill.

The judgment obtained by the Arizona Attorney General's Office included admissions that these companies willfully violated the Arizona Consumer Fraud Act. The judgment imposed \$120,000 in civil penalties and approximately \$56,000 in consumer restitution.

- **Epcon Solar, LLC and related persons**

Similar to the other cases, Epcon Solar used telemarketing that included calling phone numbers on the National Do Not Call Registry. As part of its telemarketing, Epcon Solar also represented that its "program" was partially funded by money taken from consumers' monthly utility bill and was therefore a "no cost, no obligation" program for consumers' benefit. During in-home presentations, Epcon Solar represented that energy's future cost would increase up to ten percent annually and that a rooftop solar system would increase the market value of homes where such systems were installed. After entering into contracts, some consumers did not realize any savings because the new financing or lease payments the consumers' became obligated to make increased their overall monthly energy expense

beyond any savings resulting from the rooftop system. When some consumers attempted to cancel their contract within the statutory period for such cancellations, Epcon Solar refused to honor the request and failed to make timely refund payments.

The judgment obtained by the Arizona Attorney General's Office included admissions that Epcon Solar willfully violated both the Arizona Consumer Fraud Act and Arizona Telephone Solicitation Statute. The judgment imposed \$100,000 in civil penalties and \$40,000 in consumer restitution, as well as required Epcon Solar to reform its business and telemarketing practices.

CONCLUSION

Because Arizona's conditions make solar an attractive consumer option, the Arizona Attorney General's Office will continue to lead in confronting the dishonest side of the rooftop solar industry, as well as seek new ways to educate consumers about the information they need to make informed choices. Accordingly, this office will continue to bring actions that hold businesses accountable for misrepresentations related to the sale or advertisement of rooftop solar systems.