BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General, Civil Division
ARUN G. RAO
Deputy Assistant Attorney General, Civil Division
AMANDA N. LISKAMM
Director
RACHAEL L. DOUD
Assistant Director
COLEEN SCHOCH
NICOLE FRAZER
Trial Attorneys
Consumer Protection Branch
Civil Division, U.S. Department of Justice
450 5th Street, NW, Suite 6400-South
Washington, DC 20044-0386
Telephone: (202) 305-7386
Facsimile: (202) 514-8742
Email: Nicole.Frazer@usdoj.gov
Email: Coleen.Schoch@usdoj.gov
Attorneys for Plaintiff United States of America

KRISTIN K. MAYES
Attorney General
(Firm State Bar No. 14000)
LAURA DILWEG (BAR NO. 036066)
JOSEPH HUBBLE (BAR NO. 037113)
Assistant Attorneys General
Office of the Attorney General
2005 North Central Avenue
Phoenix, AZ 85004-1592
Telephone: (602) 542-7753
Telephone: (602) 542-8766
Facsimile: (602) 542-4377
Email: Consumer@azag.gov
Email: Laura.Dilweg@azag.gov
Email: Joseph.Hubble@azag.gov
Attorneys for Plaintiff State of Arizona

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

United States of America, and

State of Arizona, *ex rel.* Kristin K. Mayes, Attorney General,

Plaintiffs,

v.

No. _____

COMPLAINT FOR PERMANENT INJUNCTION, CIVIL PENALTIES, AND OTHER RELIEF AND DEMAND FOR JURY TRIAL

Vision Solar LLC, a limited liability company,

Solar Xchange LLC, a limited liability company, also d/b/a Energy Exchange, and

Mark Getts, individually and as an officer of Solar Xchange LLC,

Defendants.

Plaintiffs, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("Commission" or "FTC"), pursuant to Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 56(a)(1), and the State of Arizona, *ex rel.* Kristin K. Mayes, Attorney General, for their Complaint allege:

1. The United States brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a), and 57b, and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6105, to obtain a permanent injunction, monetary civil penalties, and other relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule ("TSR"), as amended, 16 C.F.R. Part 310.

2. The State of Arizona, by and through its Attorney General, Kristin K. Mayes, brings this action pursuant to the Arizona Consumer Fraud Act ("ACFA"), Arizona Revised Statutes ("A.R.S.") §§ 44-1521 to 44-1534, and the Arizona Telephone Solicitation Act ("ATSA"), A.R.S. §§ 44-1271 to 44-1282, to obtain permanent injunctions, civil penalties, and other equitable relief, and reimbursement of costs and attorneys' fees for Defendants' acts or practices.

SUMMARY OF CASE

3. Defendant Vision Solar LLC ("Vision Solar") sells residential solar panels and installation services to consumers. To generate leads for its sales, Vision Solar pays telemarketers to call consumers and persuade them to schedule an appointment for an at-home consultation with a Vision Solar salesperson. Vision Solar pays its telemarketers fees based on the number of appointments its salespeople attend with potential customers.

4. Defendant Solar Xchange LLC ("Solar Xchange") is one of the leading telemarketers that develops leads for Vision Solar's home solar panels and installation services by initiating outbound telephone calls to consumers. Solar Xchange obtains consumers' telephone numbers from third-party lead generators and then calls those consumers for the purpose of scheduling appointments with Vision Solar salespeople at their homes. Solar Xchange's telemarketing agents often falsely tell consumers that their company (which they sometimes identify as "Energy Exchange") is affiliated with an electric utility company or government entity. Solar Xchange and Vision Solar also make false, misleading, or unsubstantiated claims regarding the benefits that consumers will receive by installing and using solar panels at their homes, telling them, among other things, that they will save between 20% and 50% off their current energy bills by installing Vision Solar's panels, that their monthly payment for solar panels will replace their current utility bill, and that they will accrue savings from the first month.

5. Since at least 2019, Vision Solar's telemarketers, including Solar Xchange, have placed tens of millions of calls to phone numbers on the National Do Not Call Registry maintained by the FTC (the "Do Not Call Registry" or "Registry"). Over 150,000 consumers have been called at least 50 times, and over 12,000 consumers have been called at least 100 times. Some consumers have also continued to receive telemarketing calls from telemarketers on behalf of Vision Solar despite previously requesting that they no longer receive such calls. These calls violate Section 5 of the FTC Act, 15 U.S.C. § 45, and the TSR, 16 C.F.R. Part 310, and such calls placed to Arizona consumers violate the ATSA and the ACFA.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355.

7. This Court has supplemental jurisdiction over the State of Arizona's claims pursuant to 28 U.S.C. § 1367.

8. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (c)(2), 1395(a), and 15 U.S.C. § 53(b). Defendants transact business in this District.

DEFENDANTS

9. Defendant Vision Solar LLC ("Vision Solar") is a Pennsylvania limited liability company with its principal place of business at 501 East Black Horse Pike, Blackwood, New Jersey 08012. Vision Solar sells residential solar panels and installation services to consumers, mostly through in-person sales presentations at consumers' homes. Vision Solar pays telemarketers to generate leads and schedule appointments with potential customers. Vision Solar currently operates its business in Arizona, Connecticut, Florida, Massachusetts, New Jersey, Pennsylvania, and Texas. Vision Solar transacts or has transacted business in this District and throughout the United States.

10. Defendant Solar Xchange LLC, also doing business as Energy Exchange ("Solar Xchange"), is a New Jersey limited liability company with its principal place of business at 214 Cherry Street, Voorhees, New Jersey 08043. Solar Xchange is one of the telemarketers that Vision Solar pays to generate consumer leads and schedule appointments with potential customers at their homes. Solar Xchange transacts or has transacted business in this District and throughout the United States.

11. Defendant Mark Getts ("Getts") is the sole owner and Chief Executive Officer of Solar Xchange and is a resident of Pennsylvania. At all times relevant to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Solar Xchange, including the acts and practices set forth in this Complaint. Among other things, Getts

wrote the scripts used by Solar Xchange's telemarketers, purchased telephone numbers from third-party lead generators, oversaw contracts with telephone service providers, and managed Solar Xchange's finances and bank accounts. Defendant Getts, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

COMMERCE

12. At all times relevant to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

THE TELEMARKETING SALES RULE AND THE NATIONAL DO NOT CALL REGISTRY

13. In 1994, Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101–6108. The FTC adopted the original TSR in 1995, extensively amended it in 2003, and amended certain sections thereafter. 16 C.F.R. Part 310.

14. Among other things, the 2003 amendments to the TSR established the Do Not Call Registry, maintained by the Commission, of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at donotcall.gov.

15. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call or over the Internet at donotcall.gov, or by otherwise contacting law enforcement authorities.

16. The TSR defines "telemarketing" as a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. 16 C.F.R. § 310.2(gg).

17. Under the TSR, a "telemarketer" is any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. 16 C.F.R. § 310.2(ff).

18. Under the TSR, a "seller" is any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration. 16 C.F.R. § 310.2(dd).

19. The FTC allows sellers, telemarketers, and other permitted organizations to access the Registry over the Internet at telemarketing.donotcall.gov, to pay any required fee(s), and to download the numbers not to call.

20. Under the TSR, an "outbound telephone call" means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution. 16 C.F.R. § 310.2(x).

21. The TSR prohibits sellers and telemarketers from initiating an outbound telephone call to numbers on the Registry unless the seller or telemarketer can demonstrate that the seller (1) has obtained the consumer's express agreement, in writing, to place such calls, or (2) has an established business relationship with that consumer, and the consumer has not stated that he or she does not wish to receive such calls. 16 C.F.R. § 310.4(b)(1)(iii)(B). Valid written consent to receive a live telemarketing call to a number on the Registry requires: (i) a writing signed by the consumer, (ii) clearly evidencing authorization to receive calls placed on behalf of a specific seller, and (iii) stating the phone number to which such calls may be placed. *Id.* § 310.4(b)(1)(iii)(B)(1). An established business relationship means a relationship between a seller and a consumer based on (1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and the seller, within the eighteen months immediately preceding the date of the telemarketing call; or (2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three months immediately preceding the date of the telemarketing call. *Id.* § 310.2(q).

22. The TSR prohibits sellers and telemarketers from initiating any outbound telephone call to a person when that person has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made by or on behalf of the charitable organization for which a charitable contribution is being solicited. 16 C.F.R. § 310.4(b)(1)(iii)(A).

23. The TSR prohibits sellers and telemarketers from causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number. 16 C.F.R. § 310.4(b)(1)(i).

24. The TSR also prohibits a person from providing "substantial assistance or support" to any seller or telemarketer when that person "knows or consciously avoids knowing" that the seller or telemarketer is engaged in any act or practice that violates Sections 310.3(a), (c) or (d) or Section 310.4 of the TSR. 16 C.F.R. § 310.3(b).

25. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and shall be treated as a violation of a rule regarding unfair or deceptive acts or practices pursuant to Section 18 of the FTC Act, 15 U.S.C. § 57a.

ARIZONA'S TELEPHONE SOLICITATION ACT

26. The ATSA governs telephone solicitations to or from numbers in Arizona.

27. The ATSA defines "seller" as a person who directly, or through a solicitor, among other things, "[i]nitiates telephone calls to provide or arrange to provide merchandise to consumers in exchange for payment." *See* A.R.S. § 44-1271(15).

28. A "solicitor" is a "person, other than a seller or employee of a seller, who uses a telephone to seek sales or rentals of merchandise on behalf of a seller or uses a telephone to verify sales or rentals for a seller." A.R.S. § 44-1271(16).

29. A "telephone solicitation" is any "voice communication from a live operator, announcing device or otherwise that offers merchandise for sale or rent and that is to or from a person located in [Arizona]." A.R.S. § 44-1271(18).

30. The State of Arizona takes telephone solicitations seriously—so much so that the legislature explicitly clarified that any violations of the ATSA also are a violation of the ACFA. *See* A.R.S. § 44-1278(C). Among other things, the ATSA seeks to protect consumers from repeated and unwanted sales calls.

31. To that end, the ATSA requires businesses to honor "do not call" requests. Specifically, A.R.S. § 44-1278(B)(2) makes it unlawful for a seller or anyone acting on their behalf to make a call to any person who "has previously stated a desire not to receive outbound telephone calls made by or on behalf of the seller whose goods or services are being offered."

32. Exceptions to A.R.S. § 44-1278(B)(2) are narrow. The statute imposes strict compliance requirements in order to prevent repeated unwanted calls. Under A.R.S. § 44-1278(B)(2), a seller or solicitor escapes liability only if all of the following apply:

a. "The seller or solicitor has established and implemented written procedures to comply with this paragraph [A.R.S. § 44-1278(B)(2)]."

b. "The seller or solicitor has trained the seller's or solicitor's personnel according to the written procedures prescribed in subdivision (a) of this paragraph."

c. "The seller or the solicitor acting on behalf of the seller establishes and maintains a no call list comprised of all persons who request not to be contacted and keeps all do not call requests for at least ten years."

d. "The initial outbound call or any subsequent outbound call made by the seller or the solicitor is the result of an error."

33. Arizona law similarly protects consumers who opt to be placed on the National Do Not Call Registry. In 2003, the state legislature amended the ATSA and

explicitly clarified that calling individuals on the Registry is a violation of the ATSA and the ACFA. *See* A.R.S. § 44-1282(B).

DEFENDANTS' BUSINESS ACTIVITIES

34. Vision Solar is a "seller," and Solar Xchange is a "telemarketer," who are engaged in "telemarketing" as those terms are defined in the TSR. Vision Solar is a "seller," and Solar Xchange is a "solicitor," as those terms are defined in the ATSA.

35. Solar Xchange and other telemarketers paid by Vision Solar initiated outbound telephone calls to consumers throughout the United States to induce the purchase of solar panels and installation services from Vision Solar.

36. Defendants are engaged in telemarketing by a plan, program, or campaign conducted to induce the purchase of residential solar energy systems by the use of one or more telephones and which involves more than one interstate telephone call.

37. During these telemarketing calls, Solar Xchange asks consumers scripted questions to assess their interest in and eligibility for a home solar energy system. If the consumer expresses interest and meets the eligibility requirements, Solar Xchange schedules an appointment with the consumer for an at-home consultation. Solar Xchange then forwards that consumer's appointment information to Vision Solar, which sends a salesperson to the consumer's home at the appointed time. Vision Solar pays Solar Xchange for each appointment that its salespeople attend with consumers, regardless of whether the consumers ultimately purchase solar panels from Vision Solar. Solar Xchange schedules appointments exclusively for Vision Solar.

38. During these telemarketing calls, Solar Xchange often identifies itself as "Energy Exchange" because it has learned that consumers often hang up when they first hear the word "solar."

39. In many instances, Solar Xchange falsely tells consumers that it is affiliated with a government program or electric utility company. For example, Solar Xchange may tell consumers that they are required to call the consumer due to a state mandate or that they are working in partnership with the local utility company.

40. Solar Xchange also makes various false or unsubstantiated representations about how consumers can save money on their electric bills by installing solar panels on their homes with no money down, such as telling consumers their monthly payment for solar panels replaces their current electric bill and provides a fixed rate that is up to 30% lower than their current electric bills.

41. Solar Xchange typically does not identify Vision Solar as the entity that will be providing the at-home consultation. In fact, Vision Solar has stated that its telemarketers are not permitted to use Vision Solar's name when scheduling appointments with consumers.

42. Vision Solar also makes various false or unsubstantiated representations during at-home sales pitches about how consumers will benefit by installing and using solar panels from Vision Solar, often telling consumers they will save an average of 20-40% compared to their current electric bills and that they will start seeing savings immediately. Vision Solar also makes false or unsubstantiated representations to consumers about the installation process, available tax credits and rebates, and other terms and conditions relating to the sale and use of solar panels.

43. In fact, in numerous instances, consumers have had to wait several months after signing a contract with Vision Solar to get their solar panels installed and operational, during which time they are required to pay fees for the solar panels as well as their existing utility for electricity. Additionally, Vision Solar and Solar Xchange lack substantiation for their cost savings claims.

44. Since at least 2019 and as part of their campaign to market residential solar energy systems, Vision Solar's telemarketers, including Solar Xchange, have initiated tens of millions of outbound telemarketing calls to the phone numbers of consumers whose phone numbers were on the Do Not Call Registry.

45. For millions of these consumers whose telephone numbers were on the Do Not Call Registry and who received these telemarketing calls, Vision Solar, its telemarketers, including Solar Xchange, and their third-party lead generators did not have

evidence of an established business relationship with Vision Solar, nor did they have evidence that the consumer had given express written consent to receive telemarketing calls made on behalf of Vision Solar.

46. In many instances, consumers who received telemarketing calls from Solar Xchange requested that they no longer receive such calls, yet Solar Xchange continued to call them on behalf of Vision Solar. In some instances, Solar Xchange made rude or harassing comments to consumers who asked not to be called.

47. Vision Solar's telemarketers, including Solar Xchange, also have made thousands of telephone calls that caused telephones to ring, or engaged people in telephone conversations, repeatedly or continuously. For example, Vision Solar's telemarketers called at least 150,000 different phone numbers over 50 times, and they called at least 12,000 phone numbers over 100 times. Many of these consumers received multiple calls almost every day for one or more months, with some consumers regularly receiving 5 or more calls per day. Defendants made these calls with the intent to annoy, abuse, or harass any person at the called number.

48. Vision Solar caused its telemarketers, including Solar Xchange, to engage in these abusive telemarketing acts or practices or, alternatively, provided substantial assistance to its telemarketers including by continuing to use and pay for their services that Vision Solar knew or consciously avoided knowing were violating the TSR.

49. Vision Solar and Solar Xchange are both aware of their obligations with respect to the Do Not Call Registry and the TSR. Among other things:

a. Vision Solar's contracts with Solar Xchange require Solar Xchange to comply with the Telephone Consumer Protection Act ("TCPA") and all regulations promulgated thereunder, which mirror the provisions in the TSR prohibiting calls to persons whose numbers are on the Do Not Call Registry. *See* 47 C.F.R. § 64.1200.

b. Solar Xchange's contract with Five9, Inc., one of its telephone service providers, required Solar Xchange to comply with all federal, state, and/or local laws in connection with its use of telephone services, including compliance with the TSR

and the Do Not Call Registry. Defendant Getts has corresponded directly with Five9, Inc., about Solar Xchange's obligations and its compliance with FTC rules, including the TSR.

c. Solar Xchange submitted some—but not all—of the telephone numbers it called to a third-party compliance firm for comparison against various registries, including the Do Not Call Registry.

50. Defendants also have been sued numerous times by consumers for placing unsolicited or abusive telemarketing calls. For example, in *Smith v. Vision Solar LLC*, Case No. 2:20-cv-2825 (E.D. Pa. filed May 6, 2020), the plaintiffs alleged they had received calls from telemarketers on behalf of Vision Solar despite having their numbers listed on the Do Not Call Registry. In *Zelma v. Vision Solar LLC*, Case No. 2:20-cv-20595 (D.N.J. removed Dec. 30, 2020), the plaintiff alleged that he had received calls from or on behalf of Solar Xchange (named as Solar Xchange, Inc.) and/or Vision Solar despite having his numbers listed on the Do Not Call Registry. Vision Solar, Solar Xchange (named as Solar Xchange, Inc.), and Getts each were named defendants in the *Zelma* lawsuit. In *Doane v. Vision Solar LLC*, Case No. 1:21-cv-11285 (D. Mass. removed Aug. 5, 2021), the plaintiff alleged that he had received calls from telemarketers (including Solar Xchange and "Energy Exchange") on behalf of Vision Solar despite having his number listed on the Do Not Call Registry.

51. Defendants' conduct is ongoing. Between August 30, 2021, and June 16, 2022, Solar Xchange continued to place more than 50 percent of its calls on behalf of Vision Solar to numbers on the Do Not Call Registry. And consumers whose numbers are listed on the Do Not Call Registry continue to complain about unsolicited phone calls from Solar Xchange and Vision Solar.

52. Based on the facts and violations of law alleged in this Complaint, Plaintiffs have reason to believe that Defendants are violating or are about to violate laws enforced by the Commission and the Arizona Attorney General because, among other things: Defendants engaged in their unlawful acts and practices repeatedly over a period

of several years; Defendants continue their unlawful acts or practices despite knowledge of government investigations and private lawsuits related to their conduct; Defendants remain in business and maintain the means, ability, and incentive to resume their unlawful conduct.

VIOLATIONS OF THE FTC ACT

(By the United States of America)

53. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

54. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

Count I – Misrepresentations of Affiliation

(Solar Xchange and Getts)

55. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of solar panels and installation services, Defendants Solar Xchange and Getts have represented, directly or indirectly, expressly or by implication, that Solar Xchange is affiliated with a government entity or utility company.

56. In truth and in fact, Solar Xchange is not affiliated with a government entity or any utility company.

57. Therefore, Defendants Solar Xchange and Getts's representations as set forth in Paragraph 55 are false, misleading, and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count II –Deceptive Claims Regarding Solar Panels

(All Defendants)

58. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of solar panels and installation services, Defendants have made representations, directly or indirectly, expressly or by implication, regarding the benefits that consumers will receive by installing and using solar panels and the terms and conditions that will apply to the sale and use of solar panels. Such representations

include, but are not limited to, claims: that installation will happen along a particular timeframe; that specific tax incentives and rebates will apply to the purchase; and that consumers will realize specified savings from solar panels, such as that the monthly payment for solar panels will replace their current electric utility bill, that the monthly payments on average will be 20-40% less than their current electric bills, and that they will begin to realize savings immediately.

59. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 58, the representations were false or misleading or were not substantiated at the time the representations were made.

60. Therefore, the making of the representations as set forth in Paragraph 58 constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE TELEMARKETING SALES RULE

(By the United States of America)

Count III – Calls to Persons Registered on the Do Not Call Registry

(All Defendants)

61. In numerous instances, in connection with telemarketing, Defendants have engaged, or caused a telemarketer to engage, in initiating an outbound telephone call to a person's telephone number on the Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

Count IV – Repeated or Continuous Calls

(All Defendants)

62. In numerous instances, in connection with telemarketing, Defendants have engaged, or caused a telemarketer to engage, in causing telephones to ring, or have engaged persons in telephone conversations, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(i).

Count V – Failure to Honor Do Not Call Requests

(All Defendants)

63. In numerous instances, in connection with telemarketing, Defendants have engaged, or caused a telemarketer to engage, in initiating an outbound telephone call to a person who previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(A).

Count VI – Assisting and Facilitating Violations of the TSR

(Vision Solar)

64. Defendant Vision Solar has provided substantial assistance or support to Solar Xchange, a telemarketer, whom Defendant Vision Solar knew or consciously avoided knowing was engaged in conduct that violated § 310.4 of the TSR, including by continuing to use and pay for its telemarketing services.

65. Defendant Vision Solar's substantial assistance or support as set forth in Paragraph 64 violates the TSR, 16 C.F.R. § 310.3(b).

VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT

(By the State of Arizona)

66. The ACFA makes it unlawful for any person to use "any deception, deceptive or unfair act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely on such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby." A.R.S. § 44-1522(A).

67. At all times relevant to this Complaint, Defendants acted willfully as defined in A.R.S. § 44-1531.

Count VII – Misrepresentations of Affiliation

(Solar Xchange and Getts)

68. As described above, in connection with the sale or advertisement of solar panels and installation services, Defendants Solar Xchange and Getts have represented, directly or indirectly, expressly or by implication, that Solar Xchange is affiliated with a government entity or utility company.

69. In truth, Solar Xchange is not affiliated with a government entity or any utility company.

70. Defendant Solar Xchange also has identified itself to consumers as "Energy Exchange." Solar Xchange has stated that it does this because consumers are less likely to hang up if they do not hear the term "solar."

71. Defendants Solar Xchange and Getts's representations as set forth in Paragraphs 68 and 70 are false, misleading, and constitute deceptive acts or practices in violation of the ACFA, A.R.S. § 44-1522(A).

Count VIII – Omissions of Affiliation

(All Defendants)

72. At the direction of Vision Solar, Solar Xchange refuses to identify to consumers for whom they are setting appointments.

73. Defendants' omissions as set forth in Paragraph 72 are material, misleading, and made with the intent that consumers rely on these omissions in violation of the ACFA, A.R.S. § 44-1522(A).

Count IX – Deceptive Claims Regarding Solar Panels

(All Defendants)

74. In numerous instances in connection with the sale or advertisement of solar panels and installation services, Defendants make representations, directly or indirectly, expressly or by implication, regarding the benefits that consumers will receive by installing and using solar panels and the terms and conditions that will apply to the sale and use of solar panels. Such representations include, but are not limited to, claims regarding the installation process; claims regarding available tax incentives and rebates; and claims regarding the savings that consumers will realize from solar panels, including

claims that the monthly payment for solar panels will replace their current electric utility bill, that the monthly payments will be on average 20-40% less than their current electric bills, and that they will begin to realize savings immediately.

75. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 74, the representations were false or misleading or were not substantiated at the time the representations were made.

76. Therefore, Defendants' representations as set forth in Paragraph 74 are deceptive and/or unfair acts or practices in violation of the ACFA, A.R.S. § 44-1522(A).

77. In addition, in many circumstances, substantiation of the representations described in Paragraph 74 is required under A.R.S. §§ 44-1763(B) and (C). Therefore, failure to provide such substantiation is a material omission under A.R.S. § 44-1522(A).

VIOLATIONS OF THE ARIZONA TELEPHONE SOLICITATIONS ACT

(By the State of Arizona)

78. Pursuant to A.R.S. § 44-1278(C), any violation of the ATSA is also a violation of the ACFA, A.R.S. § 44-1522.

79. Pursuant to A.R.S. § 44-1278(B) of the ATSA, it is unlawful for a seller or solicitor or anyone acting on behalf of a seller or solicitor to initiate an outbound telephone call to any Arizona consumers except as provided in 16 C.F.R. § 310.4. Such violations constitute per se violations of the ACFA, pursuant to A.R.S. § 44-1278(C).

80. Pursuant to A.R.S. § 44-1282(A) of the ATSA, it is unlawful for a seller or solicitor or anyone acting on behalf of a seller or solicitor to initiate an outbound telephone call to any Arizona consumers whose numbers were registered on the Do Not Call Registry without the express written consent of a consumer. These violations of the ATSA constitute per se violations of the ACFA, pursuant to A.R.S. § 44-1282(B).

81. Vision Solar is a "seller," and Solar Xchange is a "solicitor," for purposes of the ATSA. *See* A.R.S. §§ 44-1271(15), 44-1271(16).

Count X – Failure to Honor Do Not Call Requests

(All Defendants)

82. Defendants, directly or through a third party on their behalf, made outbound telephonic solicitations to Arizona consumers after the solicited consumers had stated their desire not to receive such telephone calls and without complying with the safe harbor of A.R.S. § 44-1278(B)(2)(a-d).

83. Defendants' acts or practices alleged in Paragraph 82 above constitute per se violations of the ACFA, pursuant to A.R.S. § 44-1278(B).

Count XI – Calls to Arizona Consumers on the Do Not Call Registry

(All Defendants)

84. Defendants, directly or through a third party acting on their behalf, initiated outbound telephone solicitations to Arizona consumers whose telephone numbers were registered on the Do Not Call Registry without being able to demonstrate that they had obtained the express agreement, in writing, of such persons.

85. Defendants' acts or practices alleged in Paragraph 84 above constitute violations of A.R.S. § 44-1282(A).

86. These violations constitute per se violations of the ACFA, A.R.S. § 44-1522(A), pursuant to A.R.S. § 44-1282(B)-(C).

CONSUMER INJURY

87. Consumers in the United States have suffered and will continue to suffer substantial injury as a result of Defendants' violations of Section 5 of the FTC Act and the TSR, as well as the ACFA. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

88. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief to prevent and remedy any violation of any provision of law enforced by the FTC.

89. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d), authorizes this Court to

award monetary civil penalties of up to $50,120 for each violation of the TSR, 16 C.F.R. § 1.98(d). Defendants' violations of the TSR were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

90. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to allow Plaintiff State of Arizona to enforce its state law claims against Defendants in this Court for violations of the ACFA, and to grant such relief as provided under state law, including injunctive relief, restitution, civil penalties, costs and attorneys' fees, and such other relief to which the State of Arizona may be entitled.

91. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by Defendants' violations of the TSR and the FTC Act.

PRAYER FOR RELIEF

Wherefore, Plaintiff United States of America, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. §§ 53(b), and Section 4(b) of the Telemarketing Sales Rule, 15 U.S.C. § 6102(c); and Plaintiff State of Arizona, pursuant to the Arizona Consumer Fraud Act, Chapter 44, Article 6, request that the Court:

A. Enter judgment against Defendants and in favor of Plaintiffs for each violation alleged in this Complaint;

B. Enter a permanent injunction to prevent future violations of the FTC Act, the TSR, and the ACFA by Defendants;

C. Award Plaintiff United States of America monetary civil penalties from each Defendant for every violation of the TSR, pursuant to 16 C.F.R. § 1.98(d);

D. Award Plaintiff State of Arizona monetary civil penalties of up to $10,000 per violation per violator of the ACFA pursuant to A.R.S. § 44-1531;

E. Award Plaintiff State of Arizona monetary civil penalties of up to $1,000 per violation of A.R.S. § 44-1282, per violator; and

F. Award Plaintiffs any additional relief as the Court may determine to be just and proper.

Respectfully submitted this 14th day of July 2023,

FOR THE UNITED STATES OF AMERICA

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
Civil Division

ARUN G. RAO
Deputy Assistant Attorney General
Civil Division

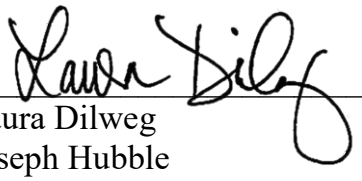
AMANDA N. LISKAMM
Director, Consumer Protection Branch

RACHAEL L. DOUD
Assistant Director, Consumer Protection Branch

Coleen Schoch
Nicole Frazer
Trial Attorneys
Consumer Protection Branch
Civil Division, U.S. Department of Justice
450 5th Street, NW, Suite 6400-South
Washington, DC 20044-0386
Telephone: (202) 305-7386
Facsimile: (202) 514-8742
Email: Coleen.Schoch@usdoj.gov
Email: Nicole.Frazer@usdoj.gov

FOR THE STATE OF ARIZONA

KRISTIN K. MAYES
Attorney General, State of Arizona



Laura Dilweg
Joseph Hubble
Assistant Attorneys General
Office of the Attorney General
2005 North Central Avenue
Phoenix, AZ 85004-1592
Telephone: (602) 542-7753
Telephone: (602) 542-8766
Facsimile: (602) 542-4377
Email: consumer@azag.gov
Email: Laura.Dilweg@azag.gov
Email: Joseph.Hubble@azag.gov

OF COUNSEL:

Alan Bakowski
Robin Rock
Attorneys
Federal Trade Commission
233 Peachtree Street N.E., Suite 1000
(404) 656-1363; abakowski@ftc.gov
(404) 656-1368; rrock@ftc.gov