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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
 9 **IN AND FOR THE COUNTY OF MARICOPA**

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

13 Plaintiff,

14 vs.

15 PANIOLO BUILDERS, LLC d/b/a Discover  
 16 Energy Solutions, an Arizona limited liability  
 17 company; GO GREEN TODAY, LLC, an  
 Arizona limited liability company,

18 Defendants

Case No.: CV2015-010079

**STIPULATED CONSENT JUDGMENT**

Assigned to the Hon. Dawn Bergin

19  
 20 Plaintiff, State of Arizona, *ex rel.* Mark Brnovich, Attorney General, filed a  
 21 complaint alleging violations of the Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et*  
 22 *seq.*, and Defendants Paniolo Builders, LLC and Go Green Today, LLC (collectively  
 23 “Defendants”) waived service of the Summons and Complaint. After being fully  
 24 advised of the right to a trial in this matter, each Defendant waived its right to trial and  
 25 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

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

4 **PARTIES**

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

8 2. Defendant Paniolo Builders, LLC (“Paniolo”) is an Arizona Limited  
9 Liability Company doing business in Maricopa County, Arizona at 2400 N. Central  
10 Ave. # 110, Phoenix, Arizona. Defendant Paniolo does business as Discover Energy  
11 Solutions (“Discover”). Paniolo has sold photovoltaic (“PV” or “solar”) energy  
12 systems, solar water heaters, and energy saving components in Arizona since 2011.

13 3. When reference is made to Defendant Paniolo, it refers to the above  
14 named corporate Defendant, and to the actions of its managers, employees, agents and  
15 independent contractors.

16 4. Defendant Go Green Today, LLC (“Go Green”) is an Arizona Limited  
17 Liability Company doing business in Maricopa County, Arizona at 398 S. Mill Ave  
18 Suite 202 in Tempe, Arizona. Defendant Go Green purchased Defendant Paniolo in  
19 2011 and has remained the sole member of Paniolo since. After its acquisition of  
20 Paniolo, Go Green managed, directed, and controlled Paniolo’s sales activities and  
21 conducted marketing and telemarketing efforts on behalf of Paniolo.

22 5. When reference is made to Go Green, it refers to the above named  
23 corporate Defendant, and to the actions of its managers, employees, agents, and  
24 independent contractors.

1 **FINDINGS OF FACT**

2 1. Defendant Paniolo was formed in 2002 and obtained a KB-2 Dual  
3 Residence and Small Commercial contractor's license from the Arizona Registrar of  
4 Contractors ("AZROC").

5 2. Defendant Go Green was formed in 2010 to market and sell PV energy  
6 systems, solar water heaters, and/or energy saving components.

7 3. In October of 2011, Defendant Go Green purchased Defendant Paniolo  
8 with the intention of using Paniolo's AZROC license to perform solar-related  
9 contracting.

10 4. Defendant Paniolo operated under the sole direction and control of  
11 Defendant Go Green. Go Green operated under sole direction and control of its  
12 members.

13 5. Defendant Go Green created a website, discoverenergysolutions.com, to  
14 market Paniolo's solar products.

15 6. Defendant Go Green established a call center, and hired telephone  
16 solicitors, as defined in A.R.S § 44-1271, to market Paniolo's solar products and  
17 services by initiating outbound telemarketing calls. In doing so, Defendant Go Green  
18 became a seller as defined in A.R.S § 44-1271.

19 7. Due to representations by a third-party leads vendor, Defendant Go Green  
20 believed it was not required to register with or attain access to the National Do Not Call  
21 Registry ("DNC Registry") of telephone numbers maintained by the Federal Trade  
22 Commission pursuant to 16 C.F.R § 310.4(b)(1)(iii)(B). As a result of the third-party  
23 lead sellers' representations, Defendant Go Green failed to register with or attain access  
24 to the DNC Registry.

25 8. While telemarketing its program, acting directly or through one or more  
26 intermediaries, Defendant Go Green initiated numerous telephone solicitations to

1 telephone numbers belonging to Arizona consumers that were registered on the DNC  
2 Registry and had been on the Registry for at least 30 days at the time Go Green initiated  
3 the call.

4 9. Third-party lead sellers represented to Go Green that its telemarketing leads  
5 were “opt-in” telephone leads, *i.e.*, marketing leads derived from sources where  
6 consumers purportedly agreed to be contacted telephonically by the source owner and its  
7 partners, even if the numbers had been previously registered on the DNC Registry. If  
8 the numbers were valid “opt-in” telephone leads, Go Green would have been exempt  
9 from having to register with, or attain access to, the DNC Registry pursuant to 16 CFR §  
10 310.4(b)(1)(iii)(B)(i) and (ii).

11 10. Due to the representations that such leads were “opt-in” telephone leads  
12 exempt from the Federal Trade Commission’s Telemarketing Sales Rule, Go Green  
13 failed to identify and remove all telephone numbers on the DNC Registry from its lead  
14 lists and/or automatic dialing system. Due to the third-party seller’s representations,  
15 Defendant Go Green mistakenly believed that it was exempt from having to identify and  
16 remove all telephone numbers on the DNC Registry from its lead lists and/or automatic  
17 dialing system.

18 11. The State received several consumer complaints from Arizona consumers  
19 that alleged Going Green’s telephone solicitors called them despite their being on the  
20 DNC Registry.

21 12. Go Green, acting directly or through one or more intermediaries, initiated  
22 some telemarketing calls that failed to truthfully, promptly, and in a clear and  
23 conspicuous manner disclose to the person receiving the call the identity of the caller  
24 and the purpose of the call.

25 13. Go Green’s telephone solicitors stated that they were calling from the “Go  
26 Green Campaign” or “Go Green Initiative,” failing to identify themselves as calling on

1 behalf of Paniolo, and failing to disclose the true nature of the goods/services being  
2 offered.

3 14. On at least one occasion, a Go Green telephone solicitor implied that the  
4 Go Green program was sponsored by, affiliated with, or operated in conjunction with,  
5 the federal government and local utility companies when no such sponsorship or  
6 affiliation existed.

7 15. Go Green's telephone solicitors arranged in-home sales presentation  
8 appointments between consumers and Paniolo sales representatives.

9 16. Paniolo's solar division does business as Discover Energy Solutions.

10 17. Paniolo calls its sales representatives "Energy Experts."

11 18. Paniolo's Energy Experts did not undergo any outside formal training or  
12 obtained any professional certification besides the sales training conducted by Paniolo.

13 19. Paniolo's Energy Experts conducted a PowerPoint presentation illustrating  
14 the benefits of obtaining Paniolo's solar products and services.

15 20. Paniolo's PowerPoint presentation inferred that consumers' household  
16 energy costs would increase unless they obtained Paniolo's solar products.

17 21. Paniolo's Energy Experts made numerous potentially misleading or  
18 deceptive statements or false promises to consumers regarding the potential energy cost  
19 savings that can be attained through Defendants' program.

20 22. Paniolo's Energy Experts used Paniolo's purchase order worksheet to  
21 illustrate the cost break-down of Paniolo's solar products and services after applying tax  
22 credits and utility incentives. Paniolo's Energy Experts may have overestimated the  
23 utility savings consumers could expect to receive. As a result, some consumers may  
24 have relied on incorrect utility savings estimates in making their decision to purchase  
25 Paniolo's products, only to later discover that their utility savings are less than the  
26 amount promised on the purchase order.

1           23. Paniolo's Energy Experts, in some instances, used a "5 Year Savings Plan"  
2 worksheet to illustrate the net monthly savings consumers would expect to achieve  
3 through their purchase of Paniolo's solar products. In some instances, this worksheet  
4 projected utility bill increases at a 10% average yearly rate, which lead consumers to  
5 believe that utility bill rate hikes would be so significant as to make their solar products  
6 increasingly profitable. Such illustrations falsely represented that consumers could  
7 expect to accumulatively save more than the cost of the system when total electricity  
8 cost savings were combined with available tax credits and utility rebates.

9           24. Paniolo's Energy Experts, in some instances, overstated the economic value  
10 or projected energy savings associated with energy saving components such as radiant  
11 barrier and Aeroseal duct sealing.

12           25. In reliance upon the statements and promises made by Paniolo's Energy  
13 Experts, Arizona consumers entered into costly long-term financing contracts for  
14 Paniolo's products.

15           26. Under several such contracts, consumers have failed to realize the energy  
16 cost savings represented and promised to them. Alternatively, such consumers  
17 experienced higher overall energy costs, when including the PV system finance  
18 payment, after installing the PV system than before.

19           27. Paniolo sometimes installed solar water heaters within one business day of  
20 the contract being signed. Due to the product being installed within one business day of  
21 the contract being signed, some consumer believed they were not given the opportunity  
22 to exercise their right to cancel such a home solicitation contract within three business  
23 days, in violation of A.R.S § 44-5002.

1 CONCLUSIONS OF LAW

2 28. The acts of Defendants, including, without limitation, those set forth in  
3 the Findings of Fact paragraphs 1 through 27 above, constitute deceptive or unfair acts  
4 or practices, fraud, false pretenses, false promises, misrepresentations or the  
5 concealment, omission, and suppression of material facts in violation of A.R.S § 44-  
6 1522, *et seq.*

7 29. Defendants were, at all times, acting willfully as defined by A.R.S. § 44-  
8 1522(B) while engaging in the acts and practices alleged herein.

9 30. The acts of Defendants, including, without limitation, those set forth in  
10 the Findings of Fact paragraphs 1 through 27 above, constitute violations of the Arizona  
11 Home Solicitations and Referral Sales Statutes, A.R.S § 44-5001 *et seq.*

12  
13 ORDER

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

18 A. Engaging in any and all deceptive or unfair acts or practices, fraud,  
19 false pretense, false promises, misrepresentations, and/or concealment, suppression or  
20 omission of material fact in violation of the Arizona Consumer Fraud Act, A.R.S. § 44-  
21 1522, *et seq.*, as it is currently written, or as it may be amended in the future;

22 B. Engaging in any and all conduct in violation of the Arizona  
23 Telephone Solicitations statute, A.R.S. § 44-1271, *et seq.*, as it is written and as it may  
24 be amended in the future.  
25  
26

1 C. Initiating an outbound telephone solicitation or appointment setting  
2 call to any person on the Federal Trade Commission's National Do Not Call registry  
3 unless:

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

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

9 D. Initiating any outbound telephone solicitation or appointment  
10 setting call to a person or when that party has previously stated that he or she does not  
11 wish to receive such telephone solicitations from, or on behalf of, Defendants, even if  
12 such person is not on the National Do Not Call Registry;

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

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

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

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

24 F. Relying on the representations of third-party sellers and failing to  
25 obtain other verification that each telephone number called is not on the National Do  
26 Not Call Registry before initiating each telephone solicitation;



1 G. Failing to disclose truthfully, promptly, and in a clear and  
2 conspicuous manner the Defendants' true identity, that the purpose of each outbound  
3 telephone call is to sell or set appointments to sell solar products and related services,  
4 and the nature of the goods or services;

5 H. Initiating any outbound telephone solicitation or appointment  
6 setting call in which Defendants fail to transmit or cause to be transmitted to any Caller  
7 Identification Service in use by the recipient of the call Defendants' name and customer  
8 service telephone number;

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

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

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

20 L. Representing that AeroSeal duct sealing, radiant barrier, or any  
21 other energy saving product or service will reduce energy usage by a specific  
22 percentage unless that percentage can be quantified and substantiated;

23 M. Failing to adequately explain all possible monetary obligations  
24 resulting from the purchase contract including, but not limited to, the existence of  
25 monthly payments in addition to electricity bills, financing payments, early termination  
26 penalties, and resale implications, if any;

1 N. Making claims to consumers as to the future projected cost of their  
2 average monthly utility bill if they do not purchase a solar product, unless such  
3 projections are based upon actual historical average electricity costs for the last ten (10)  
4 years for the locality or projected electricity costs for the locality as published by the  
5 United States Energy Information Administration;

6 O. Using any worksheets or illustrative materials to calculate  
7 projected monthly energy savings without being able to substantiate the numbers  
8 underlying such projected savings;

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

11 Q. Providing consumers an estimate of the increase in the value of  
12 their home through the addition of a PV system without being able to substantiate such  
13 an estimate; and

14 R. Failing to allow consumers to cancel their contracts within three  
15 business days of signing pursuant to A.R.S § 44-5002.

16 2. If Defendants purchase appointment leads from lead generators,  
17 Defendants shall regularly determine and review the methods used by such lead  
18 generators to obtain the leads sold to Defendants and, if the Defendants reasonably  
19 determine such leads were obtained by means that do not comply with this Consent  
20 Judgment, Defendant shall immediately cease purchasing such leads from such lead  
21 generator.

22 3. Defendants shall submit a quarterly report to the State containing a list of  
23 all telephone numbers from which Defendants initiated outbound telemarketing calls in  
24 the previous quarter. The first such quarterly report shall be submitted to the Arizona  
25 Attorney General on October 1, 2015, with each report thereafter due on the first day of  
26 the month on each successive third month thereafter (e.g January 2016, April 2016, July

1 2016, October 2016, etc.); provided, however, the Defendants shall only be required to  
2 submit such quarterly reports if Defendants are actively engaged in telemarketing  
3 activities during the preceding three month period.

4 4. Defendants shall, jointly and severally, pay to the Arizona Attorney  
5 General the amount of One Hundred Thousand dollars (\$100,000) in civil penalties, due  
6 at the time of entry of this Consent Judgment, with interest thereon at five percent (5%)  
7 per annum from the date of entry until paid, to be deposited into the Consumer  
8 Protection – Consumer Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01 and  
9 used for the purposes set forth therein. Seventy Five Thousand dollars (\$75,000) of  
10 such civil penalties shall be suspended contingent upon Defendants’ full compliance  
11 with all injunctive provisions in paragraph 1 above and timely payment of restitution,  
12 civil penalties, and attorneys’ fees and costs. If this Court later determines that  
13 Defendants have violated the injunctive provisions in paragraph 1 above or defaulted on  
14 their payment obligations, Defendants shall pay the suspended civil penalty, in full,  
15 within ten (10) business days of entry of the Court’s order, with interest thereon at ten  
16 percent (10%) per annum from the date of entry of the Court’s order until paid. In the  
17 event of such a determination, Defendants obligation to pay the suspended civil  
18 penalties shall be in addition to any other monetary or other sanctions which may be  
19 imposed for any such violations of this Consent Judgment.

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

1           6. Defendants shall, jointly and severally, pay to the Arizona Attorney  
2 General the amount of Twenty Five Thousand dollars (\$25,000) for consumer  
3 restitution, with interest thereon at five percent (5%) per annum from the date of entry  
4 of this Consent Judgment until paid. Additionally, Defendants shall, jointly and  
5 severally, pay to the Arizona Attorney General additional restitution for each consumer  
6 complaint, based upon the allegations herein, received by the Attorney General from  
7 the date this Consent Judgment is filed until December 31, 2015. The amount for  
8 additional restitution payments will be determined upon a mutual review, between the  
9 State and Defendants, of each eligible consumer's complaint. These additional  
10 restitution payments are due by January 31, 2016, with interest thereon accruing at five  
11 percent (5%) per annum from January 1, 2016 until paid. All restitution payments  
12 ordered herein shall be deposited by the Attorney General into the consumer restitution  
13 subaccount of the interest-bearing consumer restitution and remediation revolving fund  
14 pursuant to A.R.S. § 44-1531.02 (B) and distributed to eligible consumers by the  
15 Attorney General's Office. For purposes of this Stipulated Consent Judgment, "eligible  
16 consumers" shall include all consumers who (i) file a complaint with the Arizona  
17 Attorney General's Office before December 31, 2015, (ii) whose complaint arose as a  
18 result of the consumer purchasing a PV system or other energy saving components from  
19 Defendants, and (iii) whose complaint has been reasonably substantiated by the  
20 Attorney General after providing Defendants an opportunity to respond to the  
21 complaints. Such additional restitution payments shall not exceed Thirty Thousand  
22 Dollars (\$30,000). In the event the amount ordered as restitution herein is not sufficient  
23 to fully restore eligible consumers the amounts they paid Defendants, the amount shall  
24 be distributed to them on a pro rata basis. In the event that any portion of the restitution  
25 ordered herein cannot be distributed to an eligible consumer, or exceeds the amount of  
26 restitution due him or her, such portion shall be deposited by the Attorney General's

1 Office into the Consumer Protection – Consumer Fraud Revolving Fund in accordance  
2 with A.R.S. § 44-1531.01 and used for the purposes specified therein.

3 7. Defendants shall issue a cashier’s check, made payable to the Office of  
4 the Arizona Attorney General, for the civil penalty, attorney’s fees and investigative  
5 costs, and restitution ordered payable upon entry of the Consent Judgment immediately  
6 upon signature of this Consent Judgment. The State shall not negotiate such payment,  
7 until this Consent Judgment is entered by the court.

8 8. If Defendants fail to fulfill any payment obligation in this Consent  
9 Judgment within fifteen (15) calendar days of the date due, Defendants shall be deemed  
10 in default. In the event of a default, and in addition to any other relief or remedy  
11 elected or pursued by the State, all payments set forth herein shall be accelerated and  
12 shall become due and owing in their entirety as of the date of the default, including  
13 interest and any suspended civil penalties.

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

16 10. This Court retains jurisdiction of this matter for the purpose of  
17 entertaining an application by the State for the enforcement of this Consent Judgment.

18 11. This Consent Judgment does not in any way limit the right of the  
19 Attorney General to: (a) bring a legal action against Defendants for any future acts  
20 which violate the Consumer Fraud Act, whether or not such acts are in violation of this  
21 Consent Judgment; or (b) enforce this Consent Judgment.

22 12. Defendants shall not represent or imply that the Attorney General, the  
23 State, or any agency thereof, has approved any of Defendants’ past actions or has  
24 approved any of Defendants’ present or future actions or practices. Defendants are  
25 enjoined from representing anything to the contrary.

26

1           13. This Consent Judgment is entered as the result of a compromise and a  
2 settlement agreement to avoid unnecessary litigation and resolve this matter fully  
3 between the parties. Only the parties to this action may seek enforcement of this  
4 Consent Judgment. Nothing herein is intended to create a private right of action by  
5 other parties.

6           14. This Consent Judgment shall not limit the rights of any private party to  
7 pursue any remedies allowed by law.

8           15. Defendants shall not participate directly or indirectly in any activity to  
9 form a separate entity or corporation for the purpose of engaging in acts prohibited in  
10 this Consent Judgment or for any other purpose which would otherwise circumvent any  
11 part of this Consent Judgment or the spirit or purposes of this Consent Judgment.

12           16. No waiver, modification, or amendment of the terms of this Consent  
13 Judgment shall be valid or binding unless made in writing, signed by both parties,  
14 approved by the Court as necessary, and then only to the extent specifically set forth in  
15 such written waiver, modification, or amendment.

16           17. If any clause, provision, or section of this Consent Judgment shall, for any  
17 reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or  
18 unenforceability shall not affect any other clause, provision, or section of this Consent  
19 Judgment, and this Consent Judgment shall be construed and enforced as if such illegal,  
20 invalid, or unenforceable clause, section, or other provision had not been contained  
21 herein.

22           18. This Consent Judgment may be executed in counterparts, and a facsimile  
23 or .pdf signature shall be deemed to be, and shall have the same force and effect as, an  
24 original signature.




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4. Defendant Paniolo Builders, LLC represents and warrants that the person signing below on its behalf is duly appointed and authorized to do so.

5. Defendant Go Green Today, LLC represents and warrants that the person signing below on its behalf is duly appointed and authorized to do so.

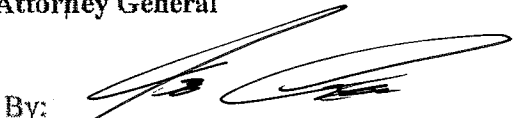
DATED this 18<sup>th</sup> day of August, 2015.


By:   
Defendant Paniolo Builders, LLC

By:   
Defendant Go Green Today, LLC

**APPROVED AS TO FORM AND CONTENT:**

Mark Brnovich  
Attorney General

By:   
Jordan Christensen  
Assistant Attorney General

By:   
Brett W. Johnson  
Matt Lockin  
Counsel for Defendants

#4357651 V4  
21906767



# eSignature Page 1 of 1

Filing ID: 6820937 Case Number: CV2015-010079  
Original Filing ID: 6804878

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Granted as Submitted



/S/ Dawn Bergin Date: 8/25/2015  
Judicial Officer of Superior Court

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**ENDORSEMENT PAGE**

CASE NUMBER: CV2015-010079

SIGNATURE DATE: 8/25/2015

E-FILING ID #: 6820937

FILED DATE: 8/26/2015 8:00:00 AM

JORDAN JOHN CHRISTENSEN

GO GREEN TODAY L L C  
NO ADDRESS ON RECORD

PANIOLO BUILDERS L L C  
NO ADDRESS ON RECORD