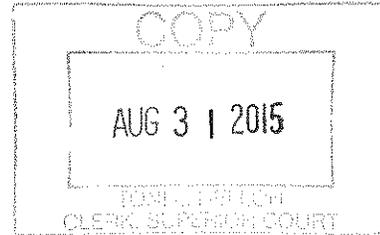


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9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
10 **IN AND FOR THE COUNTY OF PIMA**

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

12 Plaintiff,

13 vs.

14 CONDOSMART LLC, an Arizona limited  
15 liability company, a/k/a CS Marketing, CSR  
Financial, and Condosmart Marketing; Roy J.  
16 Swartz, Individually; Roy J. Swartz and Jane  
17 Doe Swartz, as a marital community; John Doe  
1-5, Individually; ABC Companies 1-5,

18 Defendants.  
19

Case No.: **C20154003**

**CIVIL COMPLAINT FOR INJUNCTIVE  
AND OTHER RELIEF**

Unclassified Civil

Assigned to the Honorable \_\_\_\_\_

**LESLIE B. MILLER**

20 Plaintiff, State of Arizona, *ex rel.* Mark Brnovich, Attorney General, alleges as follows:

21 **JURISDICTION AND VENUE**

22 1. The State of Arizona brings this action pursuant to the Arizona Consumer Fraud Act,  
23 A.R.S. §§ 44-1521 through 44-1534, and the Arizona Telephone Solicitations Act, A.R.S. § 44-1271  
24 through 44-1281, to obtain restitution, declaratory and injunctive relief, civil penalties, disgorgement,  
25 attorney's fees and costs, investigative expenses, and other relief to prevent the unlawful acts and  
26 practices alleged in this Complaint and to remedy the consequences of such practices.





1 Defendants' Actions to Defraud Consumers

2 18. Defendant Condosmart employs and/or hires telephone solicitors to call consumers who  
3 own timeshare properties and to solicit these consumers to pay Condosmart an up-front fee ranging  
4 from \$995.00 to \$1990.00 for its services.

5 19. Upon information and belief, Defendant Condosmart solicited some consumers to pay  
6 an up-front fee of more than \$1,990.00 for its services.

7 20. Upon information and belief, beginning on or about November 14, 2012, Defendants  
8 induced consumers to pay up-front fees and enter into Rental Marketing Agreements.

9 21. Defendants made unsolicited telemarketing calls to consumers who own timeshare  
10 properties.

11 22. When making most of these telemarketing calls to consumers, Defendants had  
12 information about these consumers' timeshare properties, such as the names and locations of the  
13 properties.

14 23. Defendants' made specific misrepresentations to induce consumers to purchase  
15 Defendants' timeshare resale and/or rental services. These misrepresentations included, but were not  
16 limited to:

17 A. Consumers' had bonus weeks and/or getaway weeks through their timeshare exchange  
18 companies that were available for consumers to sell and/or rent to third parties;

19 B. Consumers' timeshares had a specific resale and/or rental value, in most cases this  
20 dollar amount being \$1,050.00 per week;

21 C. Defendants had agreements with well-known corporations that were interested in  
22 purchasing or renting the consumers' timeshare properties for large events, such as automobile  
23 races, sporting events, and trade shows;

24 D. Defendants had ready renters and/or buyers available to rent getaway and/or bonus  
25 weeks available to consumers through consumers' timeshare exchange companies;

26

1 E. That these renters and/or buyers were willing to pay consumers a specific dollar  
2 amount for their timeshare properties, in most cases this dollar amount being \$1,050.00 per week  
3 for each timeshare week consumers made available to Defendants;

4 F. That these renters or buyers were looking to rent or purchase several weeks from  
5 consumers, generally 10 to 12 weeks;

6 G. Defendants guaranteed the rental or sale of consumers' timeshare properties;

7 H. Defendants guaranteed that the rental or sale would occur within a specific period of  
8 time, such as 90 days; and/or

9 I. That Defendants would send consumers' rental proceeds by a specified time or, in some  
10 instances, Defendants represented that the large, well-known corporations who were ready to rent  
11 consumers' timeshare properties would send checks directly to the consumers by a specified time.

12 24. Defendants then informed consumers that they must pay an up-front "activation,"  
13 "advertising," or "maintenance" fee, generally ranging from \$995.00 to \$1,990.00, and upon  
14 information and belief, sometimes more than \$1990.00, to secure the deal.

15 25. Defendants induced numerous consumers to pay an up-front fee during telephone  
16 solicitations and obtained credit card information from consumers during the telemarketing call.

17 26. Once consumers provided their credit card information, upon information and belief,  
18 Defendants would charge the consumers' credit cards. Defendants would then tell consumers that a  
19 written contract confirming the terms and conditions of their agreement would be sent to them shortly,  
20 usually by facsimile or email. Consumers were instructed to sign the written contract, and return the  
21 documents to Defendants as soon as possible.

22 27. Despite Defendants' misrepresentations regarding ready and available renters or  
23 buyers, payments of inflated prices, guaranteed rental of consumers' timeshare properties and  
24 promised proceeds to be mailed to consumers by a specified time, the written contract disclaims such  
25 promises and guarantees.

26

1           28.     In some instances, consumers contacted Defendants by email after reviewing the  
2 contract and learning that the contract disclaims such promises and guarantees. Instead of responding  
3 to these consumers in writing, Defendants would call the consumers and induce the consumers to sign  
4 and return the contract by again assuring the consumers that Defendants already had a client available  
5 to rent the timeshare weeks.

6           29.     The contract Defendants entered into with consumers provides a seven day cancellation  
7 period.

8           30.     The contract Defendants entered into with consumers states: "In Arizona[,] this  
9 agreement is between you (the purchaser) and Condosmart LLC (the provider)."

10          31.     In most instances, after receiving the contract, consumers learn for the first time about  
11 the alleged advertisements Defendants claim to put on their website for consumers' timeshare  
12 properties.

13          32.     Consumer complaints relate that after consumers pay the up-front "activation,"  
14 "maintenance" or "advertising" fee, Defendants led consumers on for approximately three to six  
15 months with false promises that a rental was imminent or that consumers would receive their proceeds  
16 shortly. During this three- to six-month period, in most instances, Defendants did reply to consumers'  
17 telephone calls, emails and voicemail messages.

18          33.     After the three- to six-month period ended, Defendants no longer responded to  
19 consumers' telephone calls, emails or voicemail messages. In most instances, the phone numbers that  
20 Defendants used to contact consumers were disconnected.

21          34.     When consumers sought a refund from Defendants, Defendants either ignored them or  
22 flatly denied a return of their "activation," "maintenance" or "advertising" fee.

23          35.     Although Defendants promised and guaranteed that consumers' timeshare properties  
24 would be rented and consumers would receive a profit of \$1,050.00 per week for each timeshare week  
25 consumers made available to Defendants, consumers never received a check for rental income.  
26

1           36.    In many instances, consumers would have violated the terms and conditions of their  
2 timeshare exchange programs had any of the consumers' bonus and/or getaway weeks been rented to  
3 third parties for profit.

4           37.    Defendants knew or should have known that the rental or sale of bonus and/or getaway  
5 weeks from certain timeshare exchange companies violated the timeshare companies' terms and  
6 conditions. On February 11, 2014, a timeshare exchange company, Interval International, Inc.,  
7 notified Defendant Condosmart, in writing, that "Interval memberships may be used only for personal  
8 and non-commercial purposes. Members are expressly prohibited from selling or exchanging a  
9 deposit or a confirmation based upon an exchange or a Getaway for cash, barter, or other  
10 consideration."

11           38.    In several instances, Defendants contacted consumers several months after the original  
12 transaction and stated that the consumers' timeshare weeks had been rented, that Defendants had a  
13 check in amounts ranging from \$3380.00 to \$12,000.00 ready to be sent to the consumers, but that the  
14 consumers first had to pay "taxes" before Defendants would release the check. These "tax" amounts  
15 ranged from \$405.00 to \$630.00, and Defendants told consumers that the "taxes" were for different  
16 purposes, including "Nevada Taxes" and "Florida Hotel Taxes."

17           39.    In at least one instance, Defendants contacted consumers for the first time and stated  
18 that they had a check for the consumer for timeshare weeks that had been rented, and the consumer  
19 had to pay "taxes" before Defendants would release the check, although the consumer had not  
20 contracted with Defendants to rent the consumer's timeshare property.

21           40.    Consumers state that, after consumers paid Defendants the amounts for "taxes," they  
22 did not receive any checks for the purchase or rental of their timeshare weeks.

23    Marital Community

24           41.    If Defendants were married at the time the alleged actions occurred, Defendants actions  
25 benefited their marital communities, were intended to benefit their marital communities, and/or each  
26 spouse consented to or ratified the other spouse's conduct.

1 **VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT**

2 **A. FIRST CLAIM FOR RELIEF**

3 42. The State re-alleges and incorporates by reference all preceding paragraphs as though  
4 fully set forth herein.

5 43. Defendants, in connection with the sale or advertisement of merchandise, used or  
6 employed deception, deceptive or unfair acts or practices, fraud, false pretenses, false promises,  
7 misrepresentations or concealment, suppression or omission of material fact with the intent that others  
8 rely on such concealment and/or suppression and/or omission, in violation of A.R.S. § 44-1522(A).<sup>1</sup>

9 44. These acts include, but are not limited to, making unsolicited phone calls to consumers  
10 and making misrepresentations to consumers to induce consumers to pay up-front fees and enter into  
11 contracts disclaiming these misrepresentations, and by inducing consumers into paying fees for  
12 "taxes" by promising to release and send checks to consumers for rental proceeds.

13 45. Defendants have engaged in a pattern and practice of misrepresentations and deceptive  
14 conduct in the sale and advertisement of merchandise to consumers.

15 46. Each instance in which Defendants engaged in deceptive or unfair acts and practices as  
16 described herein is a separate and distinct violation of the Arizona Consumer Fraud Act.

17 **B. SECOND CLAIM FOR RELIEF**

18 47. The State re-alleges all allegations in the preceding paragraphs as though fully set forth  
19 herein.

20 48. Defendants acted as a "seller" of "merchandise" as defined under the Arizona  
21 Telephone Solicitations Act, A.R.S. §§ 44-1271 through 44-1281.<sup>2</sup> The Arizona Telephone  
22

23 <sup>1</sup>A violation of the Arizona Consumer Fraud Act means "[t]he act, use or employment by any person of any deception,  
24 deceptive or unfair act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or  
25 omission of any material fact with intent that others rely on such concealment, suppression or omission, in connection with  
26 the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged  
thereby, is declared to be an unlawful practice." A.R.S. § 44-1522(A). Pursuant to the Arizona Consumer Fraud Act,  
"[m]erchandise" means any objects, wares, goods, commodities, intangibles, real estate or services. . . ." A.R.S. § 44-  
1521(5).

<sup>2</sup>Pursuant to the Arizona Telephone Solicitations Act, a "seller" is defined as "a person who, directly or through a solicitor,  
does any of the following: Initiates telephone calls to provide or arrange to provide merchandise to consumers in exchange

1 Solicitations Act requires all sellers who initiate telephone calls to provide merchandise to consumers  
2 in exchange for payment to: (1) file a verified registration statement with the Arizona Secretary of  
3 State before any solicitations are made to any consumer from a location in this state or any consumer  
4 located in this state; and (2) file a one hundred thousand dollar bond (\$100,000.00) with the Arizona  
5 State Treasurer.

6 49. Defendants did not file a registration statement with the Arizona Secretary of State.

7 50. Defendants did not file a bond in the amount of one hundred thousand dollars  
8 (\$100,000.00) with the Arizona State Treasurer.

9 51. Pursuant to A.R.S. § 44-1278(C), Defendants' unlawful actions and failures to comply  
10 with the Arizona Telephone Solicitations Act, A.R.S. §§ 44-1271 through 44-1281, are violations of the  
11 Arizona Consumer Fraud Act, A.R.S. §§ 44-1521 through 44-1534.

12 **C. THIRD CLAIM FOR RELIEF**

13 52. The State re-alleges all allegations in the preceding paragraphs as though fully set forth  
14 herein.

15 53. With regard to the foregoing violations, Defendants knew or should have known that the  
16 above acts and practices violated A.R.S. § 44-1522 and those violations were, therefore, wilful within  
17 the meaning of A.R.S. § 44-1531(A).<sup>3</sup>

18 **PRAYER FOR RELIEF**

19 WHEREFORE, the State respectfully requests that the Court:

20 54. Prohibit Defendants from violating A.R.S. § 44-1522, as it is currently written or may be  
21 amended in the future;

22 55. Prohibit Defendants from violating the Arizona Telephone Solicitations Act, A.R.S. §§  
23 44-1271 through 44-1281, as it is currently written or may be amended in the future;

24 56. Prohibit Defendants from owning or operating any business in, into, or from the state of

25  
26 for payment." A.R.S. § 44-1271(15)(a). "Merchandise" is defined under the Arizona Telephone Solicitations Act as  
meaning "objects, wares, goods, commodities, intangibles, real estate, securities, or services." A.R.S. § 44-1271(8).

<sup>3</sup>"[A] wilful violation occurs when the party committing the violation knew or should have known that his conduct was of the  
nature prohibited by § 44-1522." A.R.S. § 44-1531(B).

1 Arizona, including timeshare rental and advertisement services;

2 57. Permanently enjoin and restrain Defendants and their officers, agents, servants,  
3 employees and attorneys and all persons in active concert or participation with them, directly or  
4 indirectly, from engaging in the course of conduct alleged herein as a violation of A.R.S. § 44-1522.  
5 Such conduct includes, but is not limited to, soliciting consumers to advertise the rental of timeshare  
6 properties, misrepresenting to consumers that Defendants have renters in place to rent the timeshare  
7 properties in order to induce consumers to pay Defendants up-front fees and enter into contracts  
8 disclaiming such representations, and misrepresenting to consumers that if they pay monies for "taxes"  
9 Defendants will provide consumers with checks for rental proceeds;

10 58. Permanently enjoin and restrain Defendants and their officers, agents, servants,  
11 employees and attorneys and all persons in active concert or participation with them, directly or  
12 indirectly, from engaging in the course of conduct alleged herein as a violation of the Arizona  
13 Telephone Solicitations Act, A.R.S. §§ 44-1271 through 44-1281. Such conduct includes, but is not  
14 limited to, engaging in any business in Arizona that includes outbound telemarketing calls as a means  
15 to generate sales without filing a registration statement with the Arizona Secretary of State and filing a  
16 bond in the amount of one hundred thousand dollars (\$100,000.00) with the Arizona State Treasurer.

17 59. Order Defendants to restore to all persons any money or property, real or personal, that  
18 was acquired by means of any practice alleged herein to be a violation of A.R.S. §§ 44-1521 through  
19 44-1534, and such additional amounts as may be deemed proper by the Court, pursuant to A.R.S. § 44-  
20 1528(A)(2) and/or A.R.S. § 44-1531.02;

21 60. Order a rescission of each and every sale effectuated by Defendants who were not  
22 registered under the Arizona Telephone Solicitations Act and allow consumers who purchased from  
23 Defendants to recover all financial damages caused by the unregistered Defendants, pursuant to A.R.S.  
24 § 44-1279;

25 61. Order Defendants to pay the State of Arizona up to ten thousand dollars (\$10,000.00) for  
26 each violation of the Arizona Consumer Fraud Act, pursuant to A.R.S. § 44-1531;

