

February 20, 2024

Hon. Charles S. Poochigian (Acting Presiding Justice)
Hon. M. Bruce Smith (Associate Justice)
Hon. Thomas DeSantos (Associate Justice)
California Court of Appeal
Fifth Appellate District
2424 Ventura Street
Fresno, CA 93721

RE: *Jones v. Solgen Construction, LLC*, Case No. F085918 (filed Feb. 2, 2024)

Dear Justices Poochigian, Smith, and DeSantos:

The Center for Consumer Law and Economic Justice at the University of California, Berkeley, School of Law; Bay Area Legal Aid; East Bay Community Law Center; Elderly Law & Advocacy; Legal Assistance for Seniors; Legal Services of Northern California; National Association of Consumer Advocates; National Consumer Law Center; Public Counsel, and Public Law Center write to respectfully request that this Court order its opinion in *Jones v. Solgen Construction, LLC* (*Jones*) certified for publication. (Cal. Rules of Court, rule 8.1120.)

The Court's opinion in *Jones* provides a thoughtful consideration of evidentiary issues related to door-to-door sales in the home improvement industry. The opinion aptly describes a number of dubious practices that, in the experience of the undersigned organizations, are frequently employed in obtaining the "agreement" of homeowners to improvements and financing they cannot afford. And the opinion deftly considers both evidentiary issues and standards of review that will provide useful guidance to trial courts.

Because the opinion would benefit California litigants and trial courts and meets at least three of the standards for publication (Cal. Rules of Court, rule 8.1105(c)(2), (3), (6)), we believe it merits appearance in the Official Reports.

I. Statement of Interest.

The organizations submitting this letter serve communities across California, particularly elderly homeowners on a fixed income, who are regularly the targets of high-pressure home solar installation sales tactics of the type described in the Court's opinion. The homeowners we represent and/or advocate for regularly report that door-to-door salespeople have manipulated

them into signing home improvement installation and financing contracts they cannot afford without giving them sufficient information or time to review the contracts, as was the case here. The undersigned therefore urge this Court, on behalf of the communities they serve, to publish its well-reasoned and instructive opinion.

II. The Opinion Instructively Applies the Law of Formation of Contracts in the Context of Door-to-Door Sales.

Contracts for home energy systems, like all contracts, are a matter of consent. Yet as the Court’s opinion elucidates, Ms. Jones—a then 81-year-old woman who lives solely on her Social Security checks and does not know how to access her email—could hardly have “consented” to a contract with terms she did not understand that a sales agent presented to her at her home on a tablet computer for less than 40 seconds via an email sent to someone else’s email address. (See Opn. at pp. 22-23.)

If published, the Court’s thorough, fact-laden opinion would provide helpful guidance to trial courts confronted with the exceptional circumstances that may warrant invalidating home improvement contracts. (See Cal. Rules of Court, rule 8.1105(c)(2) [calling for publication of an opinion that “applies an existing rule of law to a set of facts significantly different from those stated in published opinions].) The door-to-door home solicitation industry has long been recognized as one characterized by “high pressure sales tactics” that take advantage of individuals transacting in an unusual place for business: inside their homes. (*Louis Luskin & Sons, Inc. v. Samovitz* (1985) 166 Cal.App.3d 533, 536-537 [interpreting the Home Solicitation Sales Act, Civ. Code, § 1689.6 *et seq.*].) Both the courts and the Legislature state have evinced particular concern for consumers dealing with door-to-door vendors in light of the “types of pressures that typically can arise when a salesman appears at a buyer’s home,” including the “buyer being forced to make an immediate decision regarding a product or service which he had not contemplated acquiring,” or that “the seller may be an intimidating presence once inside the buyer’s home.” (*Weatherall Aluminum Products Co. v. Scott* (1977) 71 Cal.App.3d 245, 248.) Circumstances like these can compromise an individual’s ability to freely and mutually consent to a contract.

The Court’s opinion helpfully describes the type of circumstances that point to coercion, not consent. Walking through each piece of evidence adduced at the trial court, the opinion recounts a high-pressure transaction involving a homeowner whose “age and income make it unlikely that [she] would sign a 25-year loan for \$52,000.” (Opn. at p. 23.) The opinion notes that the sales agent “manipulated Jones’s cell phone” and had her electronically sign a 21-page contract presented for 27 seconds despite her “almost nonexistent technological ability,” and he “knowingly gave false information” to the lender before having her sign a financing contract in under 40 seconds. (Opn. at pp. 22-23, 25.) In these circumstances, the opinion concludes, the

homeowner did not have “ha[ve] an adequate opportunity and ability to review and understand the contracts at issue,” and thus that she “did not sign and enter into an agreement to arbitrate.” (Opn. at p. 22.)

The analysis of these facts warrants publication in the Official Reports. We are aware of no published decision that deals so carefully and clearly with the question of consent in door-to-door home improvement contracts.

III. The Opinion Warrants Publication Because It Explains Consent Arbitration Provisions in Electronic Contracts.

The Court’s opinion usefully applies bedrock principles of contract law in the particular context of modern digital devices used in door-to-door sales. (See Cal. Rules of Court, rule 8.1105(c)(3) [warranting publication of an opinion that “explains” an existing rule of law].) Although the use of e-signature technology can be fully consistent with traditional contract law (opn. at p. 11 & fn. 4), the “full context of any transaction” conducted through a contract “presented to a consumer on a computer screen” is critical to evaluating consent. (*Doe v. Massage Envy Franchising, LLC* (2022) 87 Cal.App.5th 23, 30.)

As the opinion aptly concludes, a process that involves a sales agent who impersonates his supervisor, sends the installation contract to his own email address rather than the consumer’s, and requires an elderly customer with “virtually no technological ability” to review a 21-page contract on a tablet in under a minute is “inconsistent” with valid contract formation. (Opn. at p. 26.) We believe that the Court’s opinion will add significantly to the published caselaw, which deals primarily with cases in the employment context and does not address the particular issues raised by the use of a digital consumer contract presented to an elderly technological novice. (See, e.g., *Gamboa v. Northeast Community Clinic* (2021) 72 Cal.App.5th 158, 163 [former employee’s e-signature on new hire paperwork]; *Bannister v. Marinidence Opco, LLC* (2021) 64 Cal.App.5th 541, 543 [same]; *Espejo v. Southern Cal. Permanente Med. Group* (2016) 246 Cal.App.4th 1047, 1051-1052 [same]; *Ruiz v. Moss Bros. Auto Group, Inc.* (2014) 232 Cal.App.4th 836, 839-840 [same].)

IV. The Opinion Helpfully Addresses Legal Issues Arising in the Growing Area of Door-to-Door Sales of Solar Equipment.

Finally, if published, the Court’s opinion will contribute to developing the law in the fast-developing area of home solar and other clean energy sales. (See Cal. Rules of Court, rule 8.1105(c)(6) [calling for publication of an opinion that “involves a legal issue of continuing public interest”].) California is the nation’s leading producer of solar energy, generating almost a

third of the total solar supply in the U.S.¹ Solar installations have grown exponentially over the past decade, and the state now supports nearly two million solar projects.²

Yet the growth of solar energy has been accompanied by an increase in questionable practices that often target elderly and other vulnerable homeowners.³ These practices have been particularly prevalent in the Central Valley.⁴ At one point, an inter-governmental taskforce made up of state agencies and the Fresno County District Attorney’s Office sent bulletins to some 300,000 residents in Fresno County warning about solar fraud in their community.⁵ In 2021, the Legislature created a \$5,000,000 Solar Energy System Restitution Fund administered by the Contractors State License Board to compensate victims of solar fraud⁶—a fund that was exhausted in less than a year.

In other words, Ms. Jones’s story is far from unique, as the legal services organizations submitting this letter are keenly aware. Publication of this opinion would provide valuable guardrails to the solar industry and helpful guidance for consumers. It would also offer trial courts effective direction and instruction.

V. Conclusion.

For the foregoing reasons, this Court’s opinion in *Jones v. Solgen Construction* is worthy of inclusion in the Official Reports. The opinion explains an existing rule of law, applies a rule of law to a significantly different set of facts, and involves a legal issue of significant public interest.

We respectfully request that the Court order the opinion certified for publication.

¹ U.S. Energy Information Statistics, *California* (as of Apr. 20, 2023) “Renewable Energy,” <https://perma.cc/EFU6-2D5Z>.

² Cal. Solar Initiative, Cal. Distributed Generation Statistics (as of Dec. 31, 2023), <https://perma.cc/BF36-LK29>.

³ See Faith Wakefield, *Solar Scams and How To Avoid Them* (2024), MarketWatch (Dec. 28, 2023), <https://perma.cc/A8H4-VVD6>.

⁴ See, e.g., Marie Edinger, *More FOX26 Viewers Say They Were Victimized By Eco Bright Solar. How Many More Are There?* Fox26News (Apr. 4, 2022), <https://perma.cc/Q83V-XP9T> (describing a Fresno-area contractor who would “pressure his employees to install panels he knew were broken or cracked, and force them to do work that was in some cases sketchy, and in some, illegal”); John Cox, *Homeowner Fears Losing Property Over Solar Loan*, Bakersfield Californian (Apr. 24, 2020), <https://perma.cc/NC6C-CDYA> (describing a 71-year-old Lake Isabella homeowner and disabled veteran who faced over \$20,000 in arrears on home-energy loans and was facing foreclosure); Dale Yurong, *198 Fresno County Residents Cheated in Solar Power Scam*, ABC30 Action News (Sept. 19, 2019) (noting that of the 198 Fresno area residents who had filed complaints with the state about solar systems, 50 came from just one neighborhood alone), <https://perma.cc/J6GM-EGWQ>.

⁵ Solar Consumer Protection Government Taskforce, *State and County Agencies Join to Advise Fresno Area Utility Customers of Steps to Avoid Fraud When Going Solar* (Sept. 19, 2019), <https://perma.cc/YTR7-8QXG>.

⁶ See Assem. Bill No. 137, Stats. 2021 (2021-2022 Reg. Sess.) § 1 (enacted at Bus. & Profs. Code, § 7086 *et seq.*).

Sincerely,



Seth E. Mermin

David S. Nahmias

CENTER FOR CONSUMER LAW & ECONOMIC JUSTICE

UC BERKELEY SCHOOL OF LAW

tmermin@law.berkeley.edu

dnahmias@law.berkeley.edu

(510) 643-3519

BAY AREA LEGAL AID

EAST BAY COMMUNITY LAW CENTER

ELDER LAW & ADVOCACY

LEGAL ASSISTANCE FOR SENIORS

LEGAL SERVICES OF NORTHERN CALIFORNIA

NATIONAL ASSOCIATION OF CONSUMER ADVOCATES

NATIONAL CONSUMER LAW CENTER

PUBLIC COUNSEL

PUBLIC LAW CENTER

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