

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SHOSHANA SMITH, SORAIDA CORDERO
and CHRISTIE ALVAREZ, BRIANA
GRAYBUSH, and RICHARD GAYLE,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

LUMIO, HX, INC.,
ATLANTIC KEY ENERGY, LLC,
FIFTH THIRD BANK, NATIONAL
ASSOCIATION d/b/a DIVIDEND FINANCE,
and DIVIDEND FINANCE, INC.,

Defendants.

Case No.: 2:23-cv-849-SPC-KCD

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs Shoshana Smith, Soraida Cordero and Christie Alvarez, Briana Graybush, and Richard Gayle, individually and on behalf of the other members of the Nationwide Classes and Statewide Classes defined below, file this Second Amended Class Action Complaint against Defendants Lumio HX, Inc. (“Lumio”), Atlantic Key Energy, LLC (“AKE”), Fifth Third Bank, National Association d/b/a Dividend Finance, Inc. (“Fifth Third Bank”), and Dividend Finance, Inc. (“Dividend Finance”), and allege:

I. DEFENDANTS’ FRAUDULENT BUSINESS PRACTICES

1. Lumio, AKE, and their other co-conspirators have profited greatly at the expense of Plaintiffs and the Classes through unlawful sales tactics and false

promises of energy savings and tax rebates associated with the sale of rooftop solar energy systems.

2. To effectuate their scheme, Defendants routinely: overstate the amount consumers stand to save on their electricity bills by purchasing and installing rooftop solar; falsely represent that solar would replace 100% of the customer's electricity needs; falsely represent that the solar panels would pay for themselves because the monthly energy savings would be the same or more as the amount the customer was paying for the panels; and make similar statements intended to lure the customer into thinking that the solar panels would be "free" or "pay for themselves."

3. Defendants know that these promises are false because it's impossible to predict any particular home's future energy needs, the utility rates that might be charged in the future, or any of the many other variables that could result in a consumer having to continue to pay electric bill despite having solar energy.

4. Defendants also know that these promises are false because they have the ability to monitor their customers' energy usage, and as such see that their homes are not fully supplied by solar. They have also received voluminous complaints from homeowners who, like Plaintiffs and the Class, have been saddled with two bills (the electric bill plus the solar energy system financing bill).

5. Similarly, Defendants also routinely mischaracterize the availability and effect of government tax credits. For instance, Defendants have trained their salespersons to falsely represent that the Tax Relief and Health Care of Act 2006

provides a “rebate” or would entitle the homeowner to a check for installing solar. The Act does no such thing. Instead, it simply instituted a 30% Investment Tax Credit (“ITC”) for commercial and residential solar energy systems.

6. Even worse, customers’ financing agreements often increase if the 30% “rebate” is not paid toward the panels. Because there is no cash “rebate,” this ensured that the monthly payments for the solar contract would soar to significantly higher payments after the first twelve to eighteen months.

7. Defendants and their co-conspirators are sophisticated corporations and are perfectly capable of determining which homeowners would benefit from the federal ITC. Despite having this knowledge, Defendants induce homeowners into entering expensive contracts under the false pretense that the government will send them a check to cover a significant portion of the cost.

8. The Defendants effectuate their false sales tactics both directly at a corporate level via their company advertising—circulated through the mail and electronic media—as well as through the training and scripts they provide to their door-to-door sales personnel.

9. Defendants’ sales representatives are typically given little technical training as to the tax credits and utility company relationships they are touting, or with respect to the proper design and operation of solar panels.

10. Instead, the sales representative training provided focuses on hard and high-pressure tactics like refusing to leave until a deal is signed and by having customers sign agreements on small, difficult to read tablets.

11. The high-pressure sales tactics are particularly effective given that Defendants require homeowners to “sign” lengthy and complicated financial contracts on small handheld tablets. After presenting a sales pitch that solar panels would “pay for themselves” and that homeowners would receive checks from the government, the representatives present a tablet for the homeowner to “sign up” for this too-good-to-be-true program. The homeowner is not told that their signature would be transposed onto a written contract, and the homeowner is not given the opportunity to review the terms of a written contract.

12. The use of a tablet further enables the Defendants to bypass critical disclosures and consumer protection requirements, including Fla. Stat. § 501.031 and Fla. Stat. § 520.23(13), which impose a 3-day cooling off period in which the consumers could revoke the contract. Because the contract is signed on a tablet, the consumer does not receive a complete physical copy of the agreement upon signing and is therefore effectively deprived of the cooling-off period.

13. Further, Defendants’ sales representatives are instructed to verbally provide technical assessments of a home’s potential to benefit from solar which the non-technically trained representative is unqualified to make (i.e., stating that the customer’s house is “perfect” or “ideal” for solar panels even when the home is shaded, or the roof faces a direction that is not ideal).

14. Notably, industry standards mandate that solar energy systems be designed and installed only by professionals who are properly trained and certified by the North American Board of Certified Energy Practitioners (“NABCEP”). Such

training and certification are necessary because each home solar energy system is unique and presents individualized challenges in terms of the home's energy needs, available sunlight, nearby trees and shading, direction and pitch of the roof, and other factors that dictate the performance of the system. In other words: a non-technically trained sales representative should never make representations as to how a solar energy system will perform.

15. Further, the fraudulent schemes employed by Defendants are aided in large part by the availability of financing for those solar energy systems by various "Finance Partners," as they are known in the industry. Those Finance Partners—including Fifth Third Bank and Dividend Finance—are large financial institutions which specialize in providing loans for home solar energy systems. The deals are structured such that the salespersons funnel customers to ready and willing lenders, which in turn release funds to the solar company after the solar contract certifies the project as completed.

16. In theory, the financing is only supposed to be released once the system is installed and properly operating. In practice, however, the solar company rushes through installation and then certifies that the work is complete, often before permits have been pulled or when problems preventing proper system performance have yet to be resolved, so that the funds are then released to the solar company. The customers are often then left holding the bag, paying for both monthly finance charges for non-performing or underperforming solar energy systems and their traditional utility bills.

17. The fraudulent practices employed by the Lumio Enterprise are enabled through acts of wire and mail fraud by sending out false, misleading, and fraudulent advertisements, communications, training materials and instructions through the mails and wires (by internet, telephone, and/or fax) as alleged herein.

18. As a result, thousands of homeowners have been duped into signing expensive solar contracts under the belief that they would be saving money on their monthly energy costs. Rather than saving money, these homeowners are left with malfunctioning equipment, hefty bills, leaky roofs, and property damage.

19. The unlawful business practices alleged herein were standardized, uniform practices employed by Defendants and resulted in unlawful and deceptive sales of solar energy systems to thousands of putative Class Members.

II. PARTIES, JURISDICTION, AND VENUE

20. Plaintiff Shoshana Smith (“Plaintiff Smith”) is a citizen of Florida and resident of Lehigh Acres, Lee County, Florida. On September 5, 2021, Plaintiff Shoshana Smith’s then-husband, Gary Smith, contracted with Defendant Atlantic Key Energy to install a solar energy system consisting of 18 solar panels on their single-family home in Lehigh Acres, Lee County, Florida. On November 10, 2022, Plaintiff Shoshana Smith assumed the loan on the system.

21. Plaintiffs Soraida Cordero and Plaintiff Christie Alvarez (the “Corderos”) are citizens of Miramar, Florida. On August 13, 2021, Plaintiffs Cordero and Alvarez contracted with Defendant AKE to install a solar energy system consisting of 42 solar panels on their house in Miramar, Florida.

134. Plaintiff Briana Graybush (“Ms. Graybush”) is a citizen of Port St. Lucie, Florida. On November 3, 2022, Ms. Graybush contracted with AKE/Lumio to install a solar energy system consisting of 18 solar panels on her single-family home in Port St. Lucie.

135. Plaintiff Richard Gayle (“Mr. Gayle”) is a citizen of Port St. Lucie, Florida. On April 20, 2022, Mr. Gayle contracted with AKE/Lumio to install a solar energy system consisting of 23 solar panels on his single-family home in Port St. Lucie.

22. Defendant Atlantic Key Energy, LLC (“AKE”) is a Florida limited liability company with offices located at 7006 Stapoint Ct., Suite B, Winter Park, Florida 32792. AKE’s sole members are Brian Schonbeck and Judd Stanger, who are both citizens of Utah.

23. Defendant AKE holds itself out as “[t]he Energy Experts” in solar energy and represents “[w]e stand behind everything we install and giving you peace of mind that you are protected.”¹

24. On or around June 21, 2021, Defendant AKE, and companies DECA Living, LLC, Smart Energy Today, Inc., Lift Energy, and Our World Energy, merged to form Lumio HX, Inc.²

¹ *Atlantic Key Energy website*, Home webpage, <https://atlantickeyenergy.com/> (Last visited September 19, 2023).

² *Five Solar Companies Merge to Form Lumio*, Tech Buzz, <https://www.techbuzz.news/five-solar-companies-merge-to-form-lumio/> (Last visited September 20, 2023).

25. Defendant Lumio HX, Inc. (“Lumio”) is a Utah corporation with its principal place of business located at 1550 W. Digital Dr., Suite 500, Lehi, Utah 84043.

26. Defendant Lumio answers calls from consumers and responds via email to consumers who purchased solar energy systems from Defendant AKE.

27. Fifth Third Bank is a national banking association with its principal place of business in Ohio and registered to conduct business in the State of Florida, with a registered agent for service of process in Florida, and no less than 154 locations throughout the State of Florida.

28. Dividend Finance, Inc. is a Delaware corporation with its principal place of business located in San Francisco, California, up until May 2022. After that time, it appears that Dividend Finance is now headquartered in Ohio, following its acquisition by Fifth Third Bank.

29. Fifth Third Bank acquired Dividend Finance, Inc. in or around May 10, 2022. Following its acquisition, Fifth Third Bank described Dividend Finance, Inc. as being a “division” of Fifth Third. Additionally, Fifth Third’s website states: “Fifth Third Bank does business under the trade name Dividend,” and that “All lending is originated by Fifth Third Bank, National Association.”³

30. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) because at least one Class Member is of diverse citizenship from one

³ <https://www.dividendfinance.com/>

Defendants, there are more than 100 Class Members, and the aggregate amount in controversy exceeds \$5,000,000 exclusive of costs and interest.

31. This Court has personal jurisdiction over Defendants because Defendants' contacts with the State of Florida are systematic, continuous, and sufficient to subject them to personal jurisdiction in this Court. Specifically, Defendants purposefully availed themselves of the privilege of conducting business in the forum state by advertising and selling solar energy systems within the forum state. Additionally, Defendants have maintained systematic and continuous business contacts within the forum and are registered to conduct business in the State.

32. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and/or omissions giving rise to Plaintiffs' claims occurred within this District. Defendants have marketed, advertised, and sold solar energy systems and otherwise conducted extensive business within this District.

III. THE LUMIO ENTERPRISE

33. Lumio is the brainchild of Jonathan Gibbs, Rex Schade, and Yumi Schade—executives of the Washington solar company, Smart Energy Today, Inc.

34. In 2020, Gibbs, Rex Schade, and Yumi Schade started looking to acquire other “similar businesses [] to create one large Home Services company.”⁴

⁴ LinkedIn, Yumi Schade, available at <https://www.linkedin.com/in/yumi-schade/>.

35. After interviewing over 70 companies, Gibbs, Rex Schade, and Yumi Schade, along with co-founder Greg Butterfield, created Lumio in December 2020 as “the result of combining five leading regional U.S. residential solar providers: Atlantic Key Energy, DECA, Lift Energy, Our World Energy, and Smart Energy Today.”⁵

36. According to Lumio, it was “an instant Top-Five U.S. residential solar provider” immediately upon its founding.⁶

37. The Lumio Enterprise consists of itself and the companies it acquired: AKE, DECA, Lift Energy, Our World Energy, and Smart Energy Today, and the Financing Partners that fund the Enterprise. Lumio has explicitly sought to distance itself from AKE in this litigation by stating that it merely purchased “certain assets” of AKE—representing that AKE and the other member entities are separate and distinct from Lumio for purposes of the Civil RICO Act.⁷

38. Lumio subsequently received \$110 million dollars from an investment led by White Oak Financial, LLC with participation by Fiera Comox.

⁵ Press Release, *New Solar Company, Lumio, Co-founded by Greg Butterfield and Jonathan Gibbs, Announces Formal Convergence of Five Leading U.S. Regional Firms*, available at <https://www.businesswire.com/news/home/20210609005762/en/New-Solar-Company-Lumio-Co-founded-by-Greg-Butterfield-and-Jonathan-Gibbs-Announces-Formal-Convergence-of-Five-Leading-U.S.-Regional-Firms> (June 9, 2021).

⁶ *Id.*; see also Lumio, *Partners*, available at <https://www.lumio.com/partners/> (last visited March 4, 2024).

⁷ Lumio’s Answer, Dkt. 25, ¶¶ 11-13, 24, 25, 48, 84-90, 97-98.

39. Each of the Lumio companies maintain active websites separate and apart from Lumio, in which they purport to offer solar energy services and products. Each of the Lumio entities maintain separate and distinct corporate structures and documents.

40. The entities forming the Lumio Enterprise have a documented history of defrauding consumers, including through the tactics described in the preceding section. After earning reputations for deceitful and predatory business practices, the Lumio entities conspired to create a new entity, Lumio, through which they could “sell” all their assets, avoid liabilities for their fraudulent work, and start anew under a new name, allowing them to continue to defraud homeowners into purchasing solar energy systems through false information, undelivered promises, and deceptive business practices. The entities forming the Lumio Enterprise will be described in further detail below.

41. It appears now that Lumio is or may be attempting to rebrand once again to hide from its earned reputation for fraud. Now the company is referring to itself as “Lumio Home Experts,” according to recent social media postings. The rebrand attempt also features a new logo:



a. Smart Energy Today, Inc.

42. Smart Energy Today, Inc. (“Smart Energy”) is a Washington corporation founded under the name of Schade Investment Corporation by Rex and Yumi Schade in 2008.⁸

43. In 2012, Schade Investment Corporation changed its name to Smart Energy and entered business as a solar energy provider. Smart Energy is an active corporation according to the Washington Secretary of State. Smart Energy maintains a website separate and distinct from the Lumio website, which purports to offer solar energy products and services.

44. Also in 2012, Jonathan Gibbs joined the operation as Chief Sales and Marketing Officer and Strategist.⁹

45. Prior to his involvement with Smart Energy, Gibbs was the ringleader of a fraudulent timeshare scheme involving twenty-six shell companies all owned by Gibbs. The scheme involved Gibbs offering to transfer timeshare ownership from consumers who no longer wished to own their timeshares. He would then facilitate a “transfer,” but would not pay the underlying obligation or maintenance on the properties. Without telling consumers, he transferred timeshares to his own businesses, trained employees to make fraudulent sales pitches, and paid people to have their signatures put on title documents.

⁸ LinkedIn, Rex Schade, available at <https://www.linkedin.com/in/rex-schade-7612a57a/> (last visited March 6, 2024).

⁹ The Org, Johnathan Gibbs, available at <https://theorg.com/org/neto/org-chart/jonathan-gibbs>.

46. In 2013, the Washington Attorney General sued Gibbs and the various shell companies for fraudulently inducing consumers into paying Gibbs to transfer timeshares. Part of the allegations raised in the lawsuit included instructing employees to provide false and deceptive information during sales presentations and forging signatures of consumers.

47. The lawsuit ultimately resulted in a settlement, in which the Attorney General's Office recovered \$1.2 million from Gibbs. As part of the settlement, Gibbs and his various shell companies were ordered to cease all timeshare-related activities:

- a. Defendants shall not offer for sale any timeshare-related transfer services, including but not limited to advertising, marketing, calling, selling, and transferring title, points or any part of any ownership of any timeshare. The only exception to this injunctive provision is set forth in Paragraphs 3.4(c) and (d) relating to the return of titles or other ownerships interests, such as points, to timeshare resorts as part of this Consent Decree;
- b. Defendants shall cease performing or offering to perform the transfer of timeshare ownerships as of the date of entry of this Consent Decree;
- c. Defendants shall cease performing or offering to perform lien release services as of the date of the entry of this Consent Decree;
- d. Defendants shall not practice law, individually or through any business entity; nor provide any legal advice, including any legal advice regarding tax law, legal processes, or powers of attorney as of the entry of this Consent Decree;
- e. Defendants shall not offer for sale any travel-related services, including but not limited to advertising, marketing, calling, selling travel memberships or any other promotional travel-related business;

f. Defendants shall not dispose of personal and/or financial information relating to any consumer except as in conformance with the laws relating to destruction of personal and financial information.

48. The Gibbs timeshare-fraud settlement was finalized in September 2013.¹⁰

49. Being effectively banned from the timeshare industry, Gibbs quickly refocused his fraudulent intentions on another industry ripe for fraud: the solar industry.

50. Guided by Gibbs's fraudulent experience, Smart Energy's solar business quickly earned a reputation for deceptive and unfair sales practices, promising consumers significant energy savings and hefty tax rebates that proved to be blatant misrepresentations. As one consumer explained:

Once the system is installed they drop the ball and don't give you any information on how to get the rebates that were promised or come to find out that you aren't eligible for the rebates. . . . We did not received the rebates even after [] the company said he would make sure we get them. Another issue is that we were expecting to get battery backups with the solar system. That did not happen. If we weren't going to get them we would have never gotten the solar system. Thirdly is that we were told that the solar system energy provided would enough energy that we wouldn't have a power bill, another false promise. We are an elderly couple and this is definitely put a strain on our finances.¹¹

¹⁰ Washington, Office of the Attorney General, *AG Bob Ferguson announces settlement of major timeshare scam case*, available at <https://www.atg.wa.gov/news/news-releases/ag-bob-ferguson-announces-settlement-major-timeshare-scam-case>.

¹¹ Better Business Bureau, *Smart Energy Today Inc.*, available at <https://www.bbb.org/us/wa/olympia/profile/solar-energy-contractors/smart-energy-today-inc-1296-22714840/complaints?page=3>.

51. Smart Energy's fraudulent schemes continue today through the Lumio Enterprise.

b. Defendant Atlantic Key Energy

52. AKE was a Florida limited liability company that was voluntarily dissolved on November 7, 2023 (shortly after this lawsuit was filed). Despite filing its voluntary dissolution, though, AKE's website remains active with AKE branding. The AKE website also continues to list its Winter Park, Florida, office as the AKE headquarters.¹²

53. AKE operates in Arkansas, Florida, Georgia, New Jersey, and Texas, and serves as Lumio's foothold in those states.

54. AKE was founded by Brian Schonbeck and Judd Stanger.

55. Mr. Schonbeck was the Chief Executive Officer of AKE from January 2019 through November 2023. He also served as the Chief Operating Officer for Lumio from June 2021 through November 2023—i.e., with over two and a half overlapping years in which he served as a high-ranking officer in both AKE and Lumio.¹³

56. Mr. Stanger served as the Co-Owner of AKE from October 2018 through January 2022. He also served as Lumio's Vice Price of East Coast Sales

¹² www.atlantickeyenergy.com

¹³ LinkedIn, Brian Schonbeck, available at <https://www.linkedin.com/in/brian-schonbeck-2a8709b8/> (last visited March 4, 2024).

from January 2022 through January 2023 and as Lumio’s Chief Sales Officer from January 2023 through November 2023.¹⁴

57. AKE has a documented history of deceptive and unfair sales practices. As one example, the Cape Coral, Florida police “warned homeowners of a new in-person scam” in June 2021 after receiving complaints concerning AKE’s door-to-door salespersons. Local media interviewed one homeowner, who reported that the AKE sales representatives “said this would be cheap. It wouldn’t cost us a thing. The word ‘free’ came out.”¹⁵

58. In response to news coverage surrounding the scam alert, AKE Co-Founder Judd Stanger told a local media outlet that the company was attempting to make “changes” to the way its sales representatives were trained.¹⁶

59. AKE’s tactics did not change, however, as its representatives made the exact same misrepresentations to Plaintiff Smith and her husband in September 2021, as detailed below.

60. AKE’s misrepresentations were not isolated to the verbal sales pitches made by its door-to-door salesmen. The company’s pamphlets made the same exact types of misrepresentations, including by, for instance, falsely promising that the customer’s “payment for electricity will never go up!”:

¹⁴ LinkedIn, Judd Stanger, available at <https://www.linkedin.com/in/judd-stanger-2bob6279/> (last visited March 4, 2024).

¹⁵ NBC-2.com, *Solar panel company claims they’re legitimate after CCPD scam alert*, available at <https://www.nbc-2.com/article/cape-coral-police-warn-of-scammer-offering-to-replace-lcec-power-meters/46736156> (June 9, 2021).

¹⁶ *Id.*

ABOUT US

Our goal at Atlantic Key Energy is to help you take advantage of the sun. We help homeowners generate clean rooftop energy and lock-in affordable energy rate. So that when your neighbors are paying never ending rate increased, your payment for electricity will never go up! We are firm believers that solar homes sell for more! It just makes sense, who wouldn't want to buy a home that already has solar?

61. In sum: AKE has a demonstrated history of fraudulent solar advertising and sales and has perpetrated that conduct in furtherance of the Lumio Enterprise.

c. DECA f/k/a Zenith Security aka Zenith.

62. DECA Living, LLC, was formerly known as Zenith Security, which was founded in 2009 by Oscar Luna, who went on to serve as a Lumio Director.

63. DECA is based in Texas and serves as Lumio's foothold in that state.

64. Perhaps unsurprisingly, as Zenith, the company used the services of famed fraudster, Jordan Belfort (also known as the "Wolf of Wall Street"), to train its salespeople. Mr. Belfort was convicted of fraud in the late 1990's and sentenced to four years in prison. After serving his prison sentence, Mr. Belfort reinvented himself as a motivational speaker, teaching other salespersons how to utilize his fraudulent sales practices. Zenith is one company who utilized Belfort to train its salespeople.

65. After becoming saddled with a reputation for widespread fraud, Zenith changed its name to "DECA" in an attempt to avoid the reputation won by Zenith. That reputation earned it a one-star rating from the Better Business Bureau and Yelp websites, supported by many negative customer reviews and complaints.

66. Indeed, DECA continues to attempt to distance itself from Zenith, falsely stating on its website that it began as “DECA Security” in 2009, when, in fact, there is no “DECA Security” on file with the Texas government. Instead, the company was founded as “Zenith Security LLC” in 2009.

67. DECA/Zenith maintains an active website under the domain name getzenithsolar.com. DECA’s website tracks the false sales tactics outlined above, telling prospective customers to this day that they will no longer have to pay electrical bills after installing solar:

NO MONEY

Although we offer to purchase the panels upfront for cash if the customer wishes. The vast majority of customers choose to own their power with **NO MONEY** out of their pocket. Still allowing your monthly payment on the panels to be less than what you used to pay on a regular power bill. Not adding a second payment, simply replacing the current light bill with a fixed amount toward the panels. Allowing the panels to produce your power and you owning your rooftop power plant.¹⁷

68. Lumio has continued the fraudulent sales practices that caused DECA to change its name in the hopes of avoiding Zenith’s bad reputation. These actions have been documented in complaints made to the Texas Attorney General, as reported by an Austin media outlet:

More Texans are adopting clean energy, but a warning before you invest in solar panels; hundreds of Texans are filing complaints with

¹⁷ Zenith Solar, About, available at <https://getzenithsolar.com/about/> (last visited March 6, 2024).

the State of Texas after they say some companies misled and misinformed them about their solar investment.

“They made it sound so great, so we did it,” said Renee Morgan who lives in Florence, Texas.

...

“When I initially got the contract, before signing it, it showed where the payment would go up. I was like, 'Look. If that's the case, I don't want to do this. I'm backing out. I'm not signing,' and he's like, 'No. No. No. You're going to get this big tax credit and it's going to be \$12,000 and you can put that toward what you owe and then your payments won't go up,’” Morgan said. The conversation happened in writing through text messages Morgan showed CBS Austin she still has saved.

However, the Morgans later learned they weren't eligible for the tax credit and now they're stuck paying over \$200 per month for solar panels with an electric bill that hasn't budged one bit.

...

The company the Morgans used is called Lumio—well known for making door-to-door sales in Texas. A records request CBS Austin filed with the Texas Attorney General's Office returned more than 20 complaints against Lumio in 2022. In those complaints, consumers allege “false statements, gross exaggerations” and guarantees for 30 percent tax credits.¹⁸

69. In sum: Zenith/DECA built its business model around the same fraudulent schemes as those employed by AKE, and it continues to perpetrate those schemes in Texas on behalf of the Lumio Enterprise.

¹⁸ Torre, *Texans file growing number of complaints against solar companies*, available at <https://cbsaustin.com/news/local/texans-file-growing-number-of-complaints-against-solar-companies> (Dec. 15, 2023).

d. Lift Energy.

70. Lift Energy is a Utah corporation founded by Mike Hayes (Lift Energy CRO), Jordan Melhoff (Lift Energy CEO), and David Hosking (Lift Energy COO).

71. Lift Energy operates in Utah and California and serves as Lumio's foothold in those states.

72. Mike Hayes and Jordan Melhoff each served as SVPs of Sales Experience for Lumio.

73. David Hosking served as the VP of West American Operations for Lumio from January 2018 through December 2022.

74. Homeowners report that Lift Energy employs the same fraudulent schemes as those outlined above. As a result, Lift Energy's solar business quickly earned a reputation similar to that of AKE, Zenith, and DECA, racking up numerous consumer complaints to the Better Business Bureau, Yelp, and similar forums. As one consumer reported:

When The solar associate came to my house to sell me solar. He (****) along with one of his coworkers informed my husband and I that we would receive 9,000 dollars at the time of filing our taxes the next year we installed the solar. If we returned the 9,000 dollars to the solar company our payment would remain the same through the 25 year contract. To my surprise when we filed taxes they informed my husband and I that this was a credit and would not receive the money. I contacted Lift energy to speak about the miss communication and not have my monthly payment go up. since February till now may that i keep calling I keep receiving the run arounds that a manager will contact me and hold **** accountable. At the time of signing the contract **** also expressed that for the 25 years that i would be in contract with them they would take care of any true up bill and reevaluate my house to add additional panels at no charge. When i call about my other concern i express that i never received a copy of the

specific document I signed with **** about the true up. They keep trying to give me a copy which does not contain my signature and does not include the information i signed with **** at the time. I keep getting told I will be contacted by supervisors almost 3 months later and still no resolution.

75. In sum: Lift Energy built its business model around the same fraudulent schemes as those employed by Smart World, AKE, and Zenith/DECA and it continues to perpetrate those schemes in Utah and California on behalf of the Lumio Enterprise.

e. Our World Energy.

76. Our World Energy LLC (“Our World”), was created in 2018 by Caleb Daneil Antonucci. Our World is an active LLC in good standing with the Arizona Secretary of State.

77. Our World Energy maintains an active website under the domain ourworldenergy.com.

78. Our World Energy operates in Arizona, Colorado, New Mexico, and Texas, and serves as Lumio’s foothold in those states.

79. Not surprisingly, Our World Energy employed the same fraudulent tactics as the other enterprise entities and fraudulently induced homeowners into entering contracts for the purchase of solar energy systems based on false promises of significant tax rebates and energy savings—none of which were true. The following consumer complaint sums up the scheme:

In 2022 we purchased solar from our world energy. First off Id like to say they came and lied straight to our face about the tax rebate. They said we would get this ***** dollars right off the bat in our taxes to

put back into the solar to keep the interest rate low.. that was a lie. So now we are ending up paying way more for the system. On top of that we are paying for a huge system ***** dollars and they installed panels on a shady part of my roof which make them useless! I noticed when my bill was higher than what it should be reached out and they admitted and sent me pictures of this. I have been reaching out almost a year now to get this resolved and all they tell me is were working on it. I contact them at least every month about this and same thing. We are getting nowhere. I want them to take those panels off as they are useless and give me my money back for those pointless panels they installed half fast because they didnt know where else to out them. I have asked to talk to a supervisor and nothing. This company will scam you! Its ridiculous how much Im paying for the solar and on top of that its not even functioning the way it should which makes my APS bill higher! Im saving no money and the fact that these people knowingly did this is absolutely sick!¹⁹

80. In sum: Our World built its business model around the same fraudulent schemes as those employed by Smart World, AKE, Lift, and Zenith/DECA and it continues to perpetrate those schemes in Arizona, Colorado, New Mexico, and Texas on behalf of the Lumio Enterprise.

f. The LumiBros and Snapper Academy.

81. Door-to-door sales are the heart of the Lumio Enterprise’s business model. The top door-to-door sales team within Lumio is referred to as “The LumiBros.”

¹⁹ Better Business Bureau, Our World Energy LLC, available at <https://www.bbb.org/us/az/peoria/profile/solar-energy-products/our-world-energy-llc-1126-1000055984/complaints#722338691> (last visited March 6, 2024).

82. The LumiBros describe themselves as “one of the teams that is apart [sic] of the company Lumio. Started in November of 2021 we have been the leading sales team that is providing home improvement services across the nation.”²⁰

83. The LumiBros post online sales training tutorials on various social media platforms, including YouTube, TikTok, and Instagram. These tutorials are often run under the auspices of the so-called “Snapper Academy,” which is a sales training platform. Snapper Academy boasts that its “Secret Sales System Reveals How Solar Sales Reps Can Make \$500K - \$1 Million Per Year.”²¹

84. The LumiBros was founded by Will Ellermets, who was a Lumio Regional Manager from August 2021 through July 2023.²² He is known as “The Red Snapper.” Hence, the branding of the “Snapper Academy.”

85. The LumiBros instructional videos specifically tell Lumio sales representatives to engage in the type of fraudulent practices outlined above.

86. For instance, a YouTube video entitled “Rule #1 on the LumiBros is, ‘Don’t be a weirdo’ – Solar Sales Blitz Day 8”²³ shows multiple LumiBro sales representatives boasting of sales successes. In one story, a LumiBro brags about selling solar to an 80-year-old homeowner by convincing him that he was not “too

²⁰ LinkedIn, Snapper Academy, available at <https://www.linkedin.com/in/snapperacademy/> (last visited March 5, 2024).

²¹ Snapper Academy, Special, available at <https://snapperacademy.com/special/> (last visited March 5, 2024).

²² LinkedIn, Will Ellermets, available at <https://www.linkedin.com/in/will-ellermets-1872b458/> (last visited March 4, 2024).

²³ https://www.youtube.com/watch?v=O_hT2yG2sq8 (uploaded Dec. 17, 2021).

old” and that his niece would “never” have to pay a power bill after she inherited the home:

LumiBro 1: Yeah, boy got my first deal today with Nate. He f***ing killed it f***ing close the deal close it down The guy was 80 years old ...

LumiBro 2: This was actually a crazy story. You were talking about it in the meeting yesterday. So the guy was like, I'm too old for solar, you know, I'm probably not gonna go for it. And you said, well, who are you giving the house to?

LumiBro 1: Right?

LumiBro 2: No, I said, what's going to happen to the house after you die? And he said, I really want to give it to my niece. And I said, well, going solar is something that's not only going to save you money the first month you switch, but it's going to increase the equity of the home for your niece.

And then she's never going to have to pay a power bill again, neither will her kids. Boom. And they went solar today.

87. In a May 28, 2023 video entitled “How to Sell Solar in Florida – Door to Door Sales,”²⁴ a LumiBro repeatedly tells homeowners that they are letting people know that the “state and federal government” are “forcing Duke to make some adjustments,” and that if they qualified as one of the 30% of homes eligible for solar, they would have a \$0 electrical bill and that the only money they would owe would be for the solar panels:

So we're just helping you guys out, letting you know some of the changes going on in the neighborhood. Basically, state and federal and government, they're forcing Duke to make some adjustments.

²⁴ https://www.youtube.com/watch?v=xHkMVi_tYq4 (May 28, 2023).

No money up front, no money out of pocket to get everything up and running installed done. Once it's done, your bill now looks like this. \$0, but we live in America, so you know nothing's free. All you're gonna do is take that same 200, put half of that money back in you guys' pocket, put the rest towards your panels.

So if you're eligible, not only is it a day one cheaper bill, it never changes, never goes up, and has an end date. So that's all if you're even eligible for this program. All we do is check you guys off the list.

...

That's kind of why we're out here. All they're doing is selecting 30% of homes in your neighborhood . . . to see who's eligible to transition to solar. And so if you're a part of that 30%, you don't spend a single dollar at all.

...

Now you don't spend a single dollar at all. No money upfront, no money out of pocket to get everything up and running installed. Done. Once it's installed, your electricity bill goes from 150, 170, whatever it was, to zero.

And you take that same 150, put half of that back in your pocket, put the rest towards your panels. So not only is it a day one cheaper bill, it never changes, never goes away.

...

But not only do you eliminate your Duke bill, replace it with a day one cheaper bill, it never changes, never goes up and has an end date. So all of that sounds great, but only for 30% of homes. And we're just here to see if you're even eligible, not for you to make a decision, yes or no or anything like that.

88. In a January 18, 2023 Instagram post,²⁵ LumiBro Red Snapper is seen pitching solar under the false pretense that the “New Green Deal” was “just passed

²⁵ Instagram, snapperacademy and will elements, <https://www.instagram.com/p/CnkAb82vIQV/> (Jan. 18, 2023).

into law” (*it was not, as the “New Green Deal” has never been passed into law and remains a hot button political issue*) and that the homeowner would be losing out on “\$20,000” if they did not sign up for solar (*see above for why this is a misrepresentation of how the ITC works*):

You’ve got 20 guys come by and knock on your door. But what we do is a little different. . . . It’s because of the new law the President. . . signed into legislation a couple of weeks ago. You probably saw on the TV. It’s a New Green Deal. And what it is they’ve allocation \$400 billion dollars to help homeowners make the switch over to solar. So you either take that \$20,000 with the tax credit, put that back into the value of your house. Or you literally pay the \$20,000 with them taxing coal, oil, and fossil fuel. So we’re just here to see what camp you’re in.

89. In short: Lumio trained its sales representatives—including through online videos transmitted throughout the nation utilizing interstate wires—to misrepresent the potential savings offered by solar, the application and effect of the ITC, the existence of government programs such as the so-called “New Green Deal” that has yet to be implemented into law, and other schemes along the lines of those discussed above.

g. The Lumio Enterprise’s “Finance Partners.”

90. Lumio’s home energy systems are very expensive—so much so that the average homeowner is typically unable to front all money needed at the time of installation.

91. Given the substantial expense associated with the installation of a solar energy system, most homeowners require some type of financing to move forward with the transaction.

92. The Lumio Enterprise employs a standardized practice of pushing homeowners into expensive loans with Enterprise's Finance Partners. The Finance Partners are a group of financial institutions that specialize in providing loans to homeowners purchasing solar.

93. Specifically, the Finance Partners include:

- a. Dividend Finance, Inc., a division of Fifth Third Bank.
- b. GoodLeap, LLC, formally Loanpal, secured by Citigroup Global Markets, Inc., Goldman Sachs & Co., LLC, Bank of America Securities, Inc., Barclays Capital Inc., and ATLAS SP Securities.
- c. Solar Mosaic, LLC, and its lending/financing partners Truist, WebBank, DCU, and Connexus Credit Union.
- d. Sunlight Financial Holdings, Inc., which was recently acquired by a consortium of investors including Greenbacker Capital Management, Sunstone Credit, IGS Ventures, and Cross River Bank.

94. The scheme works like this: the Lumio companies receive the full amount of the contracted-for price of the solar energy system from the pertinent Finance Partner upon notification to the Finance Partner that the solar project has been completed.

95. The incentive for the Lumio Enterprise, therefore, is to rush to certify completion of the project as soon as possible so that the Finance Partner will disburse the full payment for the job.

96. As soon as the Finance Partner disburses payment, the homeowner begins paying expensive monthly bills, inclusive of principal and interest to the Finance Partner.

97. This means, then, that homeowners who have fallen prey to the Lumio Enterprise are saddled with two bills instead of one: (1) one bill to the utility company because there is no complete energy offset as promised by the misleading sales pitches; and (2) another bill from the Finance Partner.

98. The Lumio Enterprise's relationship with Finance Partners has proven to be incredibly lucrative for the Lumio Enterprise and the Finance Partners at the expense of Plaintiffs and the Classes, who are left footing two bills instead of one.

99. Additionally, homeowners are offered a financing deal with a low initial monthly payment. If homeowners pay off a significant portion of the loan within the first eighteen months of the loan, the initial low payment amount gets "locked in" for the remainder of the loan. If the homeowner does not make an additional payment in the initial period, the monthly payment amount is significantly increased.

100. The Enterprise convinces homeowners to enter this tiered financing agreement by misrepresenting the so-called ITC tax "rebates." According to Enterprise's misrepresentations, homeowners are misled into believing that they will receive a significant tax rebate (sometimes as high as \$30,000), that the homeowner can then put toward the financing of the system. Once that lump

payment is made, homeowners believe that they will be “locked” into their initial low monthly payment amount.

101. Of course, the ITC is not a tax “rebate,” homeowners do not receive a check from the government, and homeowners are unable to meet the initial payment requirements, resulting in a significant increase in their monthly payments to the financing companies.

102. The Finance Partners are all sophisticated financial lenders, backed by some of the largest financial institutions in the country. These sophisticated players are aware of how the federal ITC works and are capable of determining when and if a specific homeowner would benefit from the ITC.

103. Despite being well aware that many (if not most) of the solar customers are not eligible for the ITC, the Finance Partners conspired with the Lumio companies to lock homeowners into expensive payment obligations under the pretense that those payments would be remain at a lower rate through use of the make-believe ITC “rebate.”

104. In sum, each of the Lumio entities, individually and together as Lumio, lured homeowners into expensive solar contracts with false promises of “free solar panels” and that the system would “pay for itself.” Homeowners were told that they could completely “replace” their utility bill with a solar loan, which would be “locked in” for thirty years at a low rate.

105. Sales presentations were carefully scripted to convince consumers that the Enterprise was “working with” the local utility provider, which would pay homeowners for the energy their panels produced.

106. Additionally, homeowners were promised hefty tax rebates that could be put toward the cost of the solar system, at which point their introductory low monthly payment amount would be “locked in” for the life of the loan.

107. Of course, there is no cash rebate, and most customers targeted by the Lumio enterprise do not qualify for the tax credit provided by the ITC.

108. These misrepresentations made by Lumio and the other Lumio entities have been continuous throughout the operation of the Lumio Enterprise and the operations of the Lumio companies. The Lumio Enterprise continues to disseminate these misrepresentations to consumers through today.

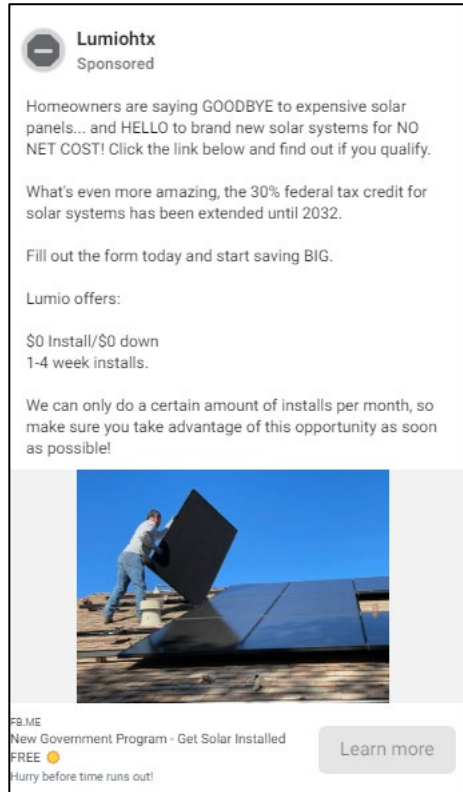
109. Plaintiffs and all members of the putative class are individuals who fell for Lumio’s promises of “free solar.” However, instead of replacing their utility bills, homeowners are left with paying both their monthly utility bills and their monthly loan payments. Because there was no cash rebate, homeowners were unable to make a lump sum payment toward their loans, causing their monthly loan payments to balloon to unsustainable amounts. Rather than cost savings, Plaintiffs and the putative Classes are left with significantly increased energy costs.

V. The Lumio Enterprise’s Predicate Acts.

110. In addition to door-to-door salesman, the Lumio Enterprise uses the internet, including websites, social media platforms, YouTube, and email communications, to further its fraudulent scheme.

111. In nearly all instances, the advertisements promised savings on electricity, tax credits and rebates, and other fraudulent statements such a “free solar.”

112. The following advertisement was sponsored by Lumio and was transmitted electronically to consumers on Facebook and Instagram through advertisements run from April 8, 2023, through April 18, 2023, and claimed to allow homeowners to “Get Solar Installed FREE.”



113. The following advertisement was sponsored by AKE and was transmitted electronically to consumers on Facebook and Instagram through advertisements run from October 3, 2019 through November 7, 2019, and again from January 29, 2020, through April 16, 2020, claiming that consumers can “Go Solar Without Spending a Penny Out of Pocket!”:

Florida Homeowners can now SAVE THOUSANDS owning their own mini rooftop generators!


🔔 Click LEARN MORE to see if you qualify to switch to Solar for \$0 today!

...

⚠️ Ad removed

“How much money have you paid your power company?”

Me:

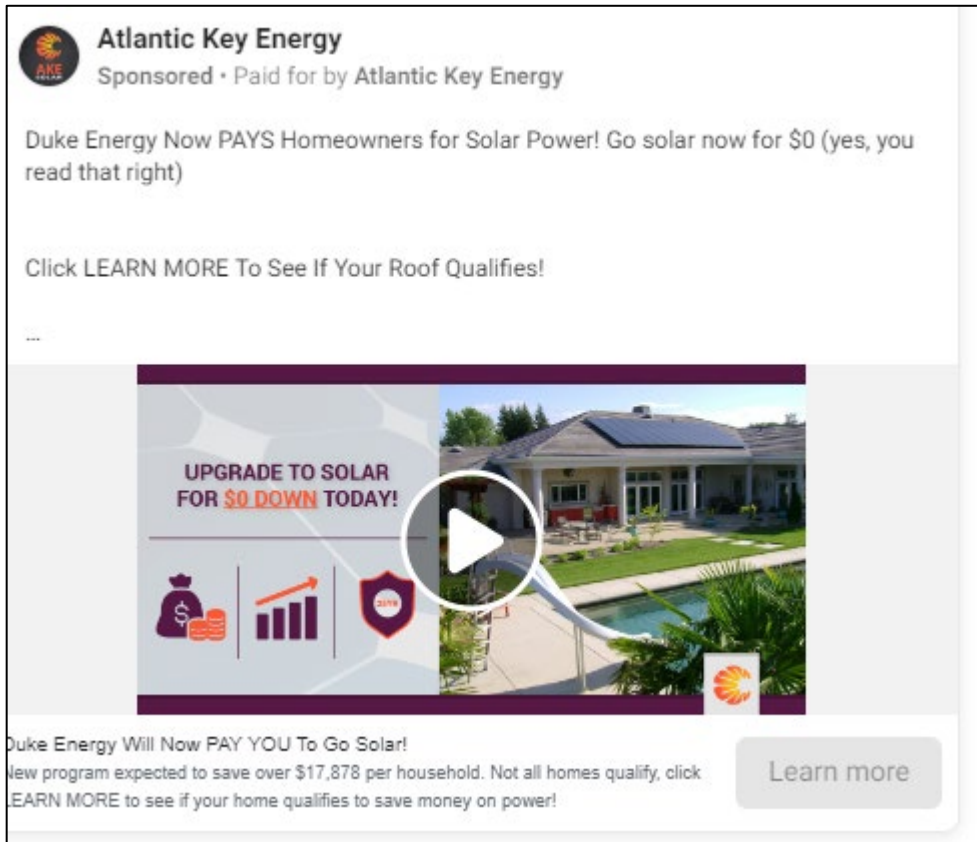


Go Solar Without Spending A Penny Out Of Pocket! 🔔

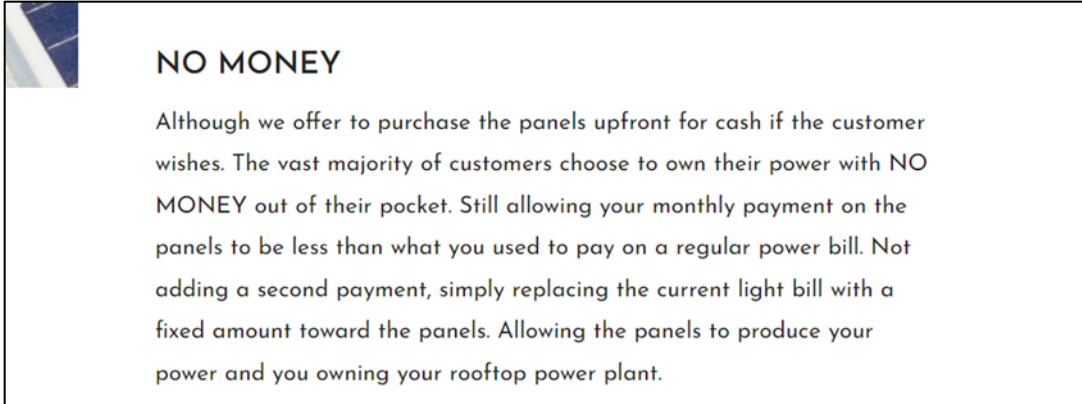
New 2020 program expected to save over \$17,878 per Florida household. *Not all homes qualify, cli...

Learn more

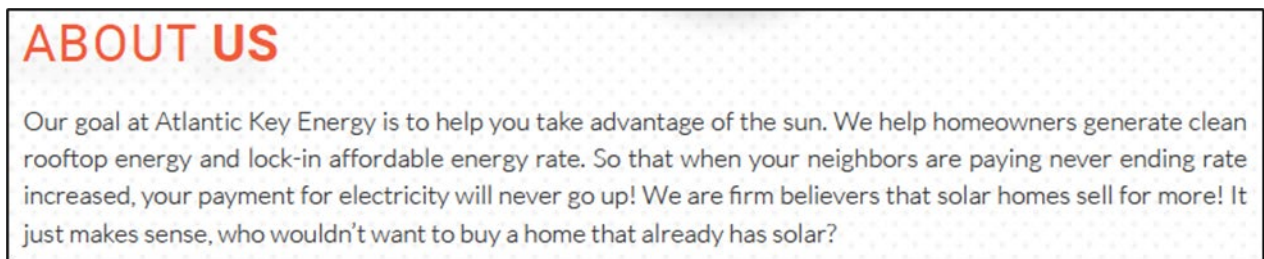
114. In another ad, transmitted electronically through Instagram and Facebook from July 30, 2019, through August 20, 2019, AKE claims that “Duke Energy Now PAYS Homeowners To Go Solar” and that homeowners can expect “to save over \$17,878 per household.”



115. The Enterprise’s fraudulent scheme is prominently featured on the Zenith/DECA website, which informs consumers that solar would “replace” the consumers energy bill:



116. The Enterprise makes fraudulent statements in email communications to consumers. The following statement is emailed to consumers representing that their payments for electricity “will never go up!”:



117. In sum, Lumio and other members of the Lumio Enterprise made fraudulent misrepresentations to consumers using interstate wire communications, specifically advertisements on social medial platforms, on the Enterprise’s own websites, and through the email communications.

VI. Examples of Consumer Complaints.

118. Consumers have repeatedly complained of the Enterprise’s fraudulent scheme to the Better Business Bureau and via online forums such as SolarReviews.com, Yelp, and other similar sites.

119. Examples of complaints from other Class Members submitted to the Better Business Bureau include:

- a. Putative Class Member Ryan H complained:

I bought into this scam in 2020. Dallen was our consultant and man did he lie to us...I should have known they were rotten when it took almost a full year to have the panels up and working. Then come to find out they don't even support my home. The purpose of this purchase was to replace Duke, but now I'm paying Duke and for the panels....\$400-600 a month. How do we protect ourselves from scams like this?

- b. Putative Class Member Yamary F complained:

*I wish this guy "Rees *****" from the company AKE would never have shown up at my door with the offer of solar panels is too much, there is not a day that I go to sleep calmly thinking about what was the best option for my family, I've been regretting it all this time, the government never gave me help to pay, now I have to pay \$335 + LCEC \$30 + \$500 a year offer that I accepted because it was all about bill savings of electricity, and it was the least I have been able to do, the best thing is that since they installed the solar panels they have ruined my roof, they have come to fix it three times and my roof is still destroyed . . . I have to pay an outrageous amount to have it removed and reinstalled, I have to pay almost 10,000 dollars, it is insane, the company has come three times and even I still have the same leak . . . now I have a debt of 74,000 dollars for the solar panels. This company is a scam once you sign the contract and a lie now I have a lifelong debt and ruined roof*

- c. Putative Class Member Virginia C, age 76, complained:

Four times Thomas came to my house and I said no to solar. The solar would cost 30,395.95 and I would receive a check for 7,902.95 which would cost me 22,493.00 and I would pay 97.00 a month. I am 76 year old and did not get to read the contract. I was told to intial here and here and here. Thomas gave me his number guess what can not reach him at all. Now the solar is on my house a permit has not been posted and

has not been inspected so the panels are sitting on my roof doing nothing. I have a piece of paper Thomas wrote all this down but like I said can not reach Thomas. I called Atlantic Key and all you get is a run around saying the district manager will call I was told this two times. How stupid can I be.

- d. Putative Class Member Mary H, an elderly woman, complained:

*I am a elderly woman who lives on social security , I believed Altantic Key that I would be saving money on my electric bill , It took months for them to get the panels up and running . Now i am stuck paying 60% light bill and paying for the solar panels , I believe this company is selling inferior panels , I consulted my neighbor about her solar panels that she has had for 7 years , same amonut of panels same size home , she pays the electric company nothing except for the use of the meter. I have read these reviews and wondering WHY these people are allowed to keep in business . All I want is for them to make this right or come and remove these panels from my home. Because it will break my budget trying to pay for both. I sincerely hope this can be taken care of. I live in Beverly Hills Florida , My name is Mary ***** , Or I need for someone to inform me if there is a advocate for the state of Florida that handles scammers . thank you*

- e. Putative Class Member Trevor C complained:

*This company will striaght out lie to you. I left a 5 star review first week. Since October the only thing I have is solar panels on the roof. They never called to have an inspection done. I had to do it myself. Then called to find out why my meter has not been switched out. The company never told them to nor did duke know that I had solar put in. . . . I will be paying for the panels in January 5th and I am not even up and running. Due to the lack of AKE doing what they needed to. . . DO NOT LET A SALES PERSON TELL YOU THIS HAS BEEN FIXED. AS OF NOW ITS NOT AND I WILL BE PAYING ***** AND PANELS. SO something that should have saved me money will now cost me more money.*

- f. Putative Class Member Susan F complained:

I agree with the other one star reviews. Was sold on the fact that I would be saving money and generating clean energy, but for who? I certainly am not seeing any savings, so I guess I'm just generating power for the power companies? Had 22 panels installed on my front house, and 6 on my mother in law quarters in the back. The 6 panels on the back house have not been connected for almost a year and a half, meanwhile I've been making timely payment on the \$60,000 they charged me for the panels themselves. No savings on my electric bill, 6 panels not even connected, 1 1/2 year of trying to get the system working, and a \$60,000 bill? Definitely not worth the time, energy (what energy), money, and aggrevation. Please do not waste your time! BEWARE!!!

- g. Putative Class Member Chris Q complained:

*Do not us this company Lumio solar for a solar purchase. When I purchase the panels the company was Deca solar and now it's Lumio solar. They claim that they merged with Deca Solar. It has been one year and six months since my panels were installed and still not functioning. . . . I have contacted Goodleap that financed this company about the issue with the solar company which was last week and the person that was assigned the issue claims that they have talked to a person from solar company and that person claims that he has contacted me about receiving a reimbursement which is a lie. The person from ***** informed me that he would get back with me and I have not receive a response from him. I have called that person from Goodleap and now does not return any of my calls. I also sent a group text message to person that Goodleap claims they have talked to with Goodleap and another person from Lumio solar included in the text and no response from anyone. Also in April 2022 needed my roof replaced and the roofing company that the replaced my roof had a difficult time getting any response from this company, it took two months till anything was done.*

h. Putative Class Member Joseph P complained:

*If you are reading this and thinking of going Solar DO NOT do business with LUMIO, ZEINTH or DECA, they are under the same Crappy Umbrella. I wish I would have done better research, I wish I would have NEVER opened my door to these Scammers. It has been 8 going on 9 month and my system still isn't operational I am Paying the electric company and GOODLEAP the loan company, There are giant nails coming through my Patio roof, Holes in my wall because the first installers put the 3 boxes on the wrong side of the house, 25 feet away from where it should have been installed. They have failed 2 City inspections and one from the ***** is the F#Ing WORST no one will answer your calls and if you are lucky enough to get in contact with someone your issue will not get resolved I am thing of getting a lawyer this is just horrible, I have soo many regrets about Solar Panel, Its just not worth it....For the record I am a real customer.*

i. Putative Class Member Van S complained:

*Evening. This complaint concerns my house's solar system installation. This company misrepresented the system's financial benefits, which bothered me. Zenith, which later became Deca Solar and is now Lumio, promised me a zero-dollar electricity bill. My registration contract guaranteed a \$187 monthly fee for 25 years, exempting me from electricity charges. The person also showed me a nearby homeowner's zero-balance invoice for a similar-sized property. Goodleap announced a \$246 payment increase after 12 months. This adjustment resulted from an unreported tax advantage. Corporate dishonesty hurts me and my family by making empty promises. A Lumio person told me I needed more panels to get zero balance, which would cost extra, after I left a review. My monthly electric bill is \$100\$230. Zenth overbilled me for my panels. The ***** network of over ***** 2023,*

*Deca became Lumio Solar. The multiple alterations would void each customer's warranty, making roof repairs during replacement more expensive. *** or **** at Lumio says that Zenith has been acquired. The guy blame-shifted, making the conversation meaningless. They said farmer buy-back reimburses 4%. The government presented the legislation. My solar panels produce **** kilowatts, and my energy needs are *****, according to the individual. I have all my messages from the rep and all my emails from the company. Like I said they were Zentith Solar, then Deca, then Lumio.*

j. Putative Class Member Raymond F complained:

*Trust has been broken by nearly everyone I have talked to at Smart Energy Today/Lumio. It has been over EIGHT months now since my first signing with your sales representative, *****. Summer has come and gone, and we STILL have no working solar panels with zero communication from anyone in your organization on when this will be completed. They promised me a gift card to pay for the first three months of payments, and that was given for a lower amount. Still have not received any communication from anyone on when the next steps will take place.*

k. Putative Class Member Sherill R complained:

We have gone 4 months now without a working solar battery. We have made many phone calls to Lumio and gotten a lot conflicting information from different agents. We have been promised return phone calls many times, with no calls. Last week nobody showed up for a confirmed work appointment. When we called Lumio we were told that the team was on their way. This turned out to be absolutely UNTRUE! We have called every day since then, only to learn finally that the one person who is responsible for scheduling work has been out of the office for many days. Our solar panels were installed by Smart Energy Today in 2020, shortly before Lumio took over the company. We are really sorry that

we are involved with Lumio. We are looking into changing companies.

l. Putative Class Member Merinda M complained:

Beware! I would give ZERO stars if this were an option.I signed a contract with Lift Energy in March 2021. When I signed my contract I was told the process would take six to eight weeks. When I read the contract, the timeline was estimated to be eight to ten weeks. Panels were installed on my roof in June 2021. It is now January 2022 (TEN MONTHS LATER) and I still do not have an active system.

m. Putative Class Member Gloria P complained:

Awful fraud company.Pocketed \$45,000 and Never did the job;16 months already passed.Now Im taking matters to litigation.I already paid 10 payments to mosaic loan without any service.

n. Putative Class Member Joanne L complained:

*Made a huge mistakeI was told I would get the Federal Tax credit .. (all this info before the Mosaic documents arrived)No tax credit.Im paying Mosaic for panels,paying Duke energy a monthly fee.I was paying less for power before solar panels DONT LET LUMIO SELL YOU ANYTHING, its a scam.I keep calling A.W. (salesmans) cell number, he never replies! I am so disappointed and I hope someday **** is confronted and understands what he has done,I trusted your words ***** :(*

o. Putative Class Member David M complained:

Closed with Lumio for my solar panels in Oct. 2022. Still waiting for them to actually work. I understand it's a complex deployment but the lack of communication is what is worrisome. I have received two gift card payments but now they have gone silent with the next batch which is still to come. Meanwhile Mosaic takes out my payment like clockwork. I have managed to find

Lumio exec emails from their website and began to CC them on my emails . . . They are horrible communicators and coming into 8 months of non working panels, I am starting to review / question what legal venues I have. I would really like someone at Lumio to just be my main POC and not disappear for months with no answer. An actual project manager so at least the panels can be turned on. Otherwise, I want out of this contract.

IV. PLAINTIFFS, LIKE THE CLASS, WERE DEFRAUDED BY DEFENDANTS

a. Plaintiff Smith

120. On September 25, 2021, Plaintiff Shoshana Smith's then husband, Gary Smith, contracted with AKE/Lumio to install a 16.32 kW solar energy system ("the system") consisting of 48 solar panels on their single-family home in Lehigh Acres, Florida as set forth in the Atlantic Key Energy ("AKE") Sales Agreement ("the Agreement") and is attached as Exhibit A. The financing agreement with Goodleap is attached as Exhibit B.

121. The purchase and installation cost of the system was \$68,912.

122. On September 25, 2021, the AKE/Lumio sales agent made an unsolicited sales call to the Smiths' home.

123. The AKE/Lumio sales agent represented that he would "replace the power meter with solar panels."

124. The AKE/Lumio sales agent represented that the "system would pay for itself."

125. The AKE/Lumio sales agent represented that their electric utility company would "pay" them for contributing electricity to the power grid; this

proved to be false because the net metering process allows for credits—not payments.

126. The AKE/Lumio sales agent represented that the Smiths would no longer have an electric bill—only a service charge; this proved to be false.

127. The AKE/Lumio sales agent failed to explain to the Smiths that the monthly payment to the financing company for the loan on the system would increase from \$219 to \$297.

128. The AKE/Lumio sales agent represented that the Smiths would receive a \$14,000 “cash rebate” from the government, not a tax credit.

129. The Smiths subsequently found out that they would not receive the promised \$14,000 “cash rebate” nor were they eligible for a tax credit.

130. The AKE/Lumio sales agent represented to the Smiths that the condition of their roof allowed for the installation of the system; this proved to be false.

131. The AKE/Lumio sales agent represented to the Smiths that their electrical panel allowed for the installation of the system; this proved to be false.

132. In the Agreement, AKE/Lumio represented that the system would provide a proposed solar offset of 100%; in other words, the system was designed to provide 100% of Ms. Smith’s home energy needs.

133. AKE/Lumio represented in the Agreement that “AKE shall perform the Services in a manner consistent with that level of care and skill ordinarily

exercised by members of the profession currently working under similar conditions in the Property's locality."²⁶

134. AKE/Lumio represented that "AKE will warrant its workmanship for 10 years from the date of Installation, stating that all components have been installed according to manufacturer's instructions and guidelines, and according to the engineered plans and local building codes and requirements". The warranty also provided for a "10 Year Limited Roofing Penetration Warranty. AKE warrants Customer's roof against damage and water infiltration at each roofing penetration made by AKE in connection with the installation of the system and the surrounding area of each penetration."

135. AKE/Lumio's representations and warranties against roof damage and water infiltration at each roofing penetration required that AKE/Lumio repair or replace roofs damaged during system installations.

136. On or around November 19, 2021, Ms. Smith's system was completed and was tested for five (5) days, then shut down.

137. On or around January 4, 2022, the system passed final inspection but was not producing power.

138. In May 2022, the electric utility provider bill shows an interconnection charge of \$300, meaning that the new bi-directional meter was installed. The system was still not producing power.

²⁶ *Id.* at p. 2.

139. A bi-directional meter allows for net-metering, a process which allows energy produced by the homeowner to flow into the power grid for credit from the homeowner's electric utility provider.

140. The bi-directional meter should have been installed shortly after the system passed final inspection to allow Ms. Smith the benefits of net-metering.

141. On August 15, 2022, Ms. Smith's system began producing energy for the first time since the test run in November 2021, a delay of over nine (9) months.

142. On November 10, 2022, Ms. Smith assumed the loan on the system.²⁷

143. On March 8, 2023, Ms. Smith's system stopped producing energy.

144. On or around April 17, 2023, Ms. Smith informed AKE/Lumio that the system was not functioning and scheduled a service call.

145. The system started producing energy again on April 18, 2023.

146. The system produced energy for two (2) days then stopped producing energy on April 20, 2023.

147. The system failed to produce energy again until June 9, 2023 when it produced energy for twenty-seven (27) days then was intentionally shut down to be removed from the roof to facilitate the repair of Ms. Smith's roof, presumably due to weather damage.

148. As a result of the roof damage specifically caused by the system installation, Ms. Smith had to pay an additional \$1,365 for the replacement of

²⁷ *Goodleap Assumption DocuSign Packet.*

damaged building materials because Ms. Smith's homeowners insurance covered only the damage caused by the weather.

149. Following the repair of Ms. Smith's roof, AKE/Lumio charged Ms. Smith \$9,600 to re-install the system. Ms. Smith paid the amount in full.

150. On September 28, 2023, the system became operable again.

151. In summary, Ms. Smith's system passed final inspection on January 24, 2022 and was uninstalled on July 6, 2023, totaling five hundred and twenty-eight (528) days. During that time period, Ms. Smith's system produced energy for only two hundred and thirty-four (234) days, or approximately 44.3% of the time.

152. Even when the system is producing energy, it is only producing approximately 79% of Ms. Smith's energy needs and does not produce 100% of her energy consumption as promised.

153. During the installation process AKE/Lumio damaged Ms. Smith's roof, requiring Ms. Smith to pay an additional \$10,965 for repairs, building materials, and the re-installation of the system which were directly attributed to AKE/Lumio's faulty system installation.

154. Plaintiff Smith continues to pay a monthly bill to her utility company, and a monthly bill toward her solar energy system financing agreement with GoodLeap.

b. Plaintiff Soraida Cordero and Plaintiff Christie Alvarez

155. On August 13, 2021, Plaintiff Soraida Cordero (“Ms. Cordero”), contracted with AKE/Lumio to install a 14.28 kW solar energy system consisting of 42 solar panels on her single-family home in Miramar, Florida as set forth in the Atlantic Key Energy Sales Agreement (“the Agreement”), which is attached as Exhibit C.²⁸

156. The purchase and installation cost of the solar energy system (“the system”) was \$54,836.

157. Ms. Cordero is 70 years old.

158. She speaks Spanish as her first language and speaks limited English.

159. Ms. Cordero and her daughter, Christie Alvarez (“Ms. Alvarez” and collectively “the Corderos”), both live in the home.

160. In and around August 2021, AKE/Lumio sales agents made three (3) unsolicited sales call to the Corderos’ home.

161. The AKE/Lumio sales agents represented their services were a “free government program for qualifying families and homes.”

162. The AKE/Lumio sales agents represented that AKE/Lumio would replace the Corderos’ meter with solar panels and that the panels would be “free”.

163. The AKE/Lumio sales agents represented that the system would provide 100% of the home’s energy needs and would “pay for itself”.

²⁸ *AKE Sales Agreement*, p. 1.

164. Per the Agreement, the “Proposed Solar Offset”—the percentage of the home’s energy needs that the system would produce—was “99.1%.”²⁹

165. During the sales presentation, the AKE/Lumio sales agent represented to Ms. Cordero that she would receive a tax “rebate.” The AKE/Lumio sales agent **did not** explain that the tax incentive was a potential tax *credit*, and not a cash “rebate.”

166. Ms. Cordero does not recall the amount of the promised tax “rebate.”

167. The AKE/Lumio sales agent represented to the Corderos that the system was a “one-time deal,” and was available only that day.

168. The AKE/Lumio sales agent represented to the Corderos that their electric utility provider would pay them for contributing energy to the power grid.

169. The AKE/Lumio sales agent represented that AKE/Lumio would remove the panels for free if the Corderos ever had to make roof repairs.

170. The AKE/Lumio sales agent represented that AKE/Lumio would repair any water leaks in the roof arising from the installation of the system.

171. The AKE/Lumio sales agent did not inform Ms. Cordero that she had three (3) days to cancel the Agreement.

172. The AKE/Lumio sales agent insisted that Ms. Cordero sign the Agreement during the visit on August 13, 2021, staying for several hours until 7:30 pm, during which he repeatedly pressured Ms. Cordero to execute the Agreement.

²⁹ *Id.*

173. When executing the Agreement, Ms. Cordero was not able to read the document because the sales agent scrolled down the screen too rapidly and the font was too small.

174. Along with Ms. Cordero, Ms. Alvarez co-signed the financing agreement for the system with Goodleap, a lender that AKE/Lumio recommended. A copy of the finance agreement is attached as Exhibit D.

175. The Agreement provides a three (3) day cancellation period³⁰:

9. **CANCELLATION AFTER ROR.** Pursuant to the Right of Refusal (ROR) attached to this Agreement, Customer may cancel for any reason without penalty within three days from the date this Agreement is signed. If Customer cancels or terminates this Agreement without cause after the three days given in the ROR, then AKE may charge Customer a cancellation fee to reimburse AKE for costs incurred, including but not limited to costs of permits, shipping, delivery, site survey(s), travel, engineering, and time.
If seller fails to give both oral and written notice of the buyer's right to cancellation, the cooling-off period does not begin to run until actual notice is given, and the buyer is no longer obliged to return the goods in substantially the same condition.

YOU, THE CUSTOMER, MAY CANCEL THIS TRANSACTION AT ANY TIME, UP TO THREE (3) DAYS AFTER THE DATE OF THE EXECUTED SALES AGREEMENT. SEE THE BELOW NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

NOTICE OF CANCELLATION 08/13/2021 (Date)

176. Sometime later, after the three (3) day cancellation period set forth in the Agreement had expired, Ms. Alvarez requested a copy of the Agreement and AKE/Lumio emailed an electronic copy of the Agreement.

177. When Ms. Cordero prepared her tax return in early 2022 for the year 2021, she found out that she was not eligible for any deduction allowed for a solar energy system installation. As a result, Ms. Cordero did not receive a “rebate” or

³⁰ *Id.* at pp. 3 and 9.

even a tax credit. Because she was unable to put the “rebate” towards payment of her loan, her monthly payment obligations significantly increased.

178. After the install, the system remained inoperable and not connected to the power grid. Ms. Cordero contacted AKE/Lumio with concerns that the system was not producing energy.

179. AKE/Lumio represented that it would send out technicians to evaluate the Cordero’s system, but to date, the AKE/Lumio technicians have failed to make the system operable.

180. In or around November 2023, Ms. Cordero sent a letter to Lumio requesting a cancellation of the Agreement and removal of the panels.

181. In a letter dated November 21, 2023, Lumio responded that it would honor Ms. Cordero’s request on the condition that she pay an upfront fee of \$34,237.60.

182. To date, the system has failed to pass inspection.

183. To date, the system is inoperable and not producing energy to offset the Corderos’ electric utility bills and the Corderos are now paying both the loan payment on the system and their full electric utility bill.

184. To date, Ms. Alvarez is making the monthly payment to Goodleap, the Financing Partner that financed the system.

c. Plaintiff Briana Graybush

185. On November 3, 2022, Plaintiff Briana Graybush (“Ms. Graybush”), contracted with AKE/Lumio to install a 7.2 kW solar energy system consisting of

18 solar panels on her single-family home in Port St. Lucie, Florida as set forth in the AKE Sales Agreement (“the Agreement”). A copy of the AKE agreement is attached as Exhibit E.

186. The purchase and installation cost of the solar energy system (“system”) was \$29,079.45.

187. On November 3, 2022, an AKE/Lumio sales agent made an unsolicited sales call to Ms. Graybush’s home.

188. During the sales call, the AKE/Lumio sales agent stated that he was working with “FPL”—Florida Power & Light, the electric utility provider for that area.

189. The AKE/Lumio sales agent represented to Ms. Graybush that he had permission to come on to the property.

190. The AKE/Lumio sales agent represented to Ms. Graybush that he would replace her power meter with solar panels and that the solar panels would be “free”.

191. The AKE/Lumio sales agent represented to Ms. Graybush that the proposed solar energy system would provide 100% of her home’s energy needs and would “pay for itself” because FPL would pay her for contributing electricity to the power grid.

192. The AKE/Lumio sales agent represented to Ms. Graybush that she would pay “only FPL’s \$25 connection fee” each month after the panels were installed.

193. In December 2022, approximately one (1) month after Ms. Graybush contracted for the system install, AKE/Lumio technicians came to the Ms. Graybush's home and installed the system.

194. To date, the system is not producing 100% of the Graybush's home energy needs, and Ms. Graybush has never paid only \$25 to FPL. For example, in January 2024, a very temperate month in south Florida when little or no air conditioning was required, Ms. Graybush paid \$80.46 as her monthly electric bill to FPL in addition to paying her monthly loan payment to Dividend, the company financing the system, which has been \$98.51 from February 2023 through April 2024, but will increase to \$141.39 starting in May 2024. A copy of the Dividend contract is attached as Exhibit F.

d. Plaintiff Richard Gayle

195. On April 20, 2022, Plaintiff Richard Gayle ("Mr. Gayle"), contracted with AKE/Lumio to install a 9.6 kW solar energy system consisting of 24 solar panels on his single-family home in Port St. Lucie, Florida as set forth in the Atlantic Key Energy Sales Agreement ("the Agreement"). A copy of the AKE agreement is attached as Exhibit G. A copy of the finance agreement with Mosaic is attached as Exhibit H.

196. The purchase and installation cost of the solar energy system ("the system") was \$44,110.

197. In and around April 2022, AKE/Lumio sales agents made approximately (8) unsolicited sales call to the Gayles' home.

198. The AKE/Lumio sales agents represented they had permission to enter the Gayles' property.

199. During the final sales call, two (2) AKE/Lumio sales agents represented that AKE/Lumio would replace the Gayles' meter with solar panels.

200. The AKE/Lumio sales agents represented that the system would provide 100% of the Gayles' home energy needs and would "pay for itself".

201. The AKE/Lumio sales agent required that Mr. Gayle initial a box for "preapproval" and did not explain that the authorization would bind him in a contract. Mr. Gayle was not able to read the documents because the font was too small.

202. During the sales call, the AKE/Lumio sales agent represented to Mr. Gayle that he would receive \$12,000 "cash" from the government. The AKE/Lumio sales agent did not explain that the tax incentive was a potential tax credit, and not a cash "rebate" and promised \$12,000 "cash" as a specific amount.

203. Mr. Gayle later found out that he was ineligible for the tax credit and did not receive a rebate or credit.

204. The AKE/Lumio sales agents represented to Mr. Gayle that his electric utility provider would pay him for contributing energy to the power grid.

205. The AKE/Lumio sales agents provided an exact amount for his monthly electric utility bill that later proved to be false. Specifically, the AKE/Lumio sales agents stated that Mr. Gayle's electric utility bill would be \$70 per month.

206. The AKE/Lumio sales agents provided an exact amount for his monthly loan payment to the financing company, Mosaic Solar, that later proved to be false. Specifically, the AKE/Lumio sales agents represented that his monthly loan payment would be \$140 per month, and then would drop to \$90 per month after Mr. Gayle applied the aforementioned \$12,000 “cash” that he would receive after his nineteenth (19th) payment to Mosaic Solar.

207. The AKE/Lumio sales agents represented that Mr. Gayle had to sign that day to receive a 2% discount that would later increase to a 3% discount.

208. The AKE/Lumio sales agents did not inform Mr. Gayle that he had three (3) days to cancel the Agreement.

209. The AKE/Lumio sales agents did not provide a copy of the Agreement to Mr. Gayle within the three (3) day period.

210. The Agreement provides a three (3) day cancellation period:

211. The AKE/Lumio sales agents represented to Mr. Gayle that the condition of Mr. Gayle’s roof allowed for the installation of the system. In fact, AKE/Lumio represented that a “satellite” inspection of the roof had been performed.

212. The AKE/Lumio sales agents represented to Mr. Gayle that AKE/Lumio would remove the solar panels for free if he ever had to make roof repairs.

213. The AKE/Lumio sales agents represented to Mr. Gayle that AKE/Lumio would move the solar panels if he ever had to move to another home.

214. The AKE/Lumio sales agents represented to Mr. Gayle that AKE/Lumio would fix any water leaks arising from the installation of the system.

215. Approximately four (4) months after the installation of the system, the Gayles experienced water leakage through the roof.

216. Upon information and belief, some or all of the leakage was caused by the faulty installation of the system.

217. Following the installation of the system, the Mr. Gayle found out that the roof should have been replaced before the system was installed.

218. The Gayles' roof cannot be repaired or replaced without the removal of the solar panels.

219. Mr. Gayle informed Lumio/AKE that he needed the solar panels removed to replace the roof, and Lumio/AKE represented that it would charge \$250 per panel, totaling \$6,000.

220. Mr. Gayle then informed Lumio/AKE that it had represented that it would remove the panels for free, and that he was not told that Lumio/AKE would charge him to remove the panels.

221. The Lumio/AKE agent then agreed to charge \$175 per panel, totaling \$4,200.

222. Mr. Gayle also asked for the "satellite" inspection report that had been performed; to date Lumio/AKE has failed to provide the "satellite" inspection report that it represented had been performed.

223. The Agreement provides for a 10 Year Limited Roofing Penetration Warranty.

224. To date, AKE/Lumio has refused to honor the 10 Year Limited Roofing Penetration Warranty set forth in the Agreement.

225. To date, the system produces a fraction of the energy needs for the Gayles' home. For example, in August 2023, the Gayles paid \$346.53 to their electric utility provider for that month's energy consumption.

V. THE LIMITATIONS PERIODS ARE TOLLED

a. Discovery Rule Tolling.

226. Plaintiffs and Class Members could not have discovered through reasonable diligence that Defendants employed fraudulent sales practices detailed above.

227. Therefore, Plaintiff's claims and the claims of all Class Members did not accrue until they discovered Defendants' wrongful conduct.

b. Fraudulent Concealment Tolling.

228. Throughout the time period relevant to this action, Defendants concealed and failed to disclose to Plaintiff and Class Members vital information about Defendants: (1) that the solar energy systems would not fully replace their utility bills, (2) that they would not be entitled to a cash-back government rebate, and (3) that the utility company would not "pay" homeowners for the power generated by their solar energy systems.

229. Defendants kept Plaintiffs and Class Members ignorant of vital information essential to the pursuit of their claims, and as a result, neither Plaintiffs nor the other Class Members could have discovered Defendants' false representations and omissions, even upon reasonable exercise of diligence.

230. Prior to the date of this Complaint, Defendants knew their misrepresentations and omissions withheld vital information, but continued to make misrepresentations about material facts, or concealed material facts, from Plaintiffs and the Class.

231. In doing so, Defendants concealed from or failed to notify Plaintiffs and Class Members about the false and deceptive nature of Defendants' misrepresentations and omissions to induce Plaintiffs and Class Members to contract with Defendants to install solar energy systems.

232. Plaintiffs and Class Members justifiably relied on Defendants to disclose that Defendants would install a system that would fully replace their energy bills.

233. Defendants' misrepresentations and omissions were not discoverable through reasonable efforts by Plaintiffs and Class Members.

234. Thus, the running of all applicable statutes of limitation has been tolled and suspended with respect to any claims that the Plaintiffs and the other Class Members have sustained as a result of Defendants' misrepresentations and omissions by virtue of the fraudulent concealment doctrine.

c. Estoppel.

235. Defendants were under a continuous duty to disclose to Plaintiffs and Class Members that Defendants: (1) employed fraudulent sales practices as detailed above; (2) failed to install solar energy systems that are operable and produce the amount of energy promised; and/or (3) failed to honor warranties for roof damage and water infiltration caused by solar energy system installations.

236. Defendants actively concealed these material facts from Plaintiffs and Class Members.

237. Plaintiffs and Class Members reasonably relied upon Defendants knowing and actively concealing these material facts.

238. Defendants are accordingly estopped from relying on any statute of limitations in defense of this action.

VI. CLASS ACTION ALLEGATIONS

239. Pursuant to Fed. R. Civ. P. 23, Plaintiffs brings this action on behalf of themselves and on behalf of a Nationwide Class and Nationwide Dividend Subclass, defined as:

Nationwide Class

All persons and entities within the United States (including their Territories and the District of Columbia) who contracted with Defendants Lumio and AKE for the installation of solar energy systems at any time since January 1, 2019.

Nationwide Dividend Subclass

All persons and entities within the United States (including their Territories and the District of Columbia) who contracted with Defendants Lumio, AKE, Fifth

Third Bank, and Dividend Finance for the installation and finance of solar energy systems at any time since January 1, 2019.

240. In the addition to the Nationwide Class, and pursuant to Fed. R. Civ. P. 23(c)(5), Plaintiffs seek to represent the following Florida Class and Florida Dividend Subclass as well as any subclasses or issue classes as Plaintiffs may propose and/or the Court may designate at the time of class certification:

Florida Class

All persons and entities within the State of Florida who contracted with Defendants Lumio and AKE for the installation of solar energy systems at any time since January 1, 2019.

Florida Dividend Subclass

All persons and entities within the State of Florida who contracted with Defendants Lumio, AKE, Fifth Third Bank, and Dividend Finance for the installation and finance of solar energy systems at any time since January 1, 2019.

241. Excluded from all classes are Defendants, as well as Defendants' employees, affiliates, officers, and directors, and the judge and court staff to whom this case is assigned.

242. Plaintiffs reserve the right to modify and/or add to the Nationwide and/or State Class prior to class certification.

243. Although the precise number of Class Members is unknown to Plaintiffs at this time and can only be determined through proper discovery, Plaintiffs are informed and believe that the Classes of persons affected by

Defendants' unlawful acts consist of thousands of people and are so numerous that joinder of all Class Members is impracticable. Thus, the numerosity requirements under Rule 23(a)(1) are satisfied.

244. Numerous common questions of law and fact predominate over any questions affecting individual Class Members including, but not limited to, the following:

- a. Whether an enterprise existed for purposes of RICO;
- b. Whether the enterprise affected interstate commerce;
- c. Whether the Defendants conducted or participated in the conduct of the enterprise;
- d. Whether such conduct of the enterprise was through a pattern of racketeering activities;
- e. Whether the Defendants committed acts of mail or wire fraud;
- f. Whether Defendants made representations related to the sale of solar energy systems that were false, misleading, and/or fraudulent;
- g. Whether Defendants' conduct amounted to an unfair business practice;
- h. Whether Defendants materially breached uniform contracts;
- i. Whether Plaintiffs were injured by reason of Defendants' violations;
and
- j. Whether and what type of relief Plaintiffs and the Classes are entitled to receive.

245. Plaintiffs have the same interests in this matter as all other members of the Class and their claims are typical of the claims of all members of the Classes. If brought and prosecuted individually, the claims of each Class Member would require proof of substantially the same material and substantive facts, utilize the same complex evidence (e.g. expert testimony), rely upon the same legal theories, and seek the same type of relief.

246. The claims of the Plaintiffs and other Class Members have a common cause and their damages are of the same type. The claims originate from the fraudulent and misleading sales practices of the Lumio Enterprise.

247. Plaintiffs' claims are sufficiently aligned with the interests of the absent Class Members to ensure that the Classes' claims will be prosecuted with diligence and care by Plaintiffs as representatives of the Classes. Plaintiffs will fairly and adequately represent the interests of the Classes and they do not have interests adverse to the Classes.

248. Plaintiffs have retained the services of counsel who are experienced in complex class action litigation. Plaintiffs' counsel will vigorously prosecute this action and will otherwise protect and fairly and adequately represent the Plaintiffs and all absent Class Members.

249. A class action is superior to other methods for the fair and efficient adjudication of the controversies raised in this Complaint because:

- a. Individual claims by the Class Members would be impracticable as the costs of pursuit would likely exceed what any one Class Member has at stake;
- b. Individual claims by Class Members would create a risk of inconsistent or varying adjudications, which would present the Defendant with incompatible standards of conduct;
- c. Little or no individual litigation has been commenced over the controversies alleged in this Complaint and individual Class Members are unlikely to have an interest in separately prosecuting and controlling individual actions;
- d. In view of the complexity of the issues and the expenses of litigation, the separate claims of individual Class Members are likely insufficient in amount to support the costs of filing and litigating separate actions;
- e. The Plaintiffs seek relief relating to the Defendant's common actions and the equitable relief sought would commonly benefit the Class as a whole; and
- f. The proposed class action is manageable.

VII. COUNTS

**Count I: Violation of the Federal Racketeer Influenced and Corrupt
Organizations Act ("Federal RICO Act"), 18 U.S.C. § 1962(c)
Brought by all Plaintiffs on Behalf of the National Class
Against Lumio and AKE**

250. Plaintiffs, individually and on behalf of the Nationwide Class, bring this count for violation of the Federal RICO Act against Lumio and AKE and realleges paragraphs 1-249 in support.

251. Each Defendant is a “person” under 18 U.S.C. § 1961(3) because it is an entity capable of holding, and does hold, “a legal or beneficial interest in property.”

252. Section 1962(c) makes it “unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity.” 18 U.S.C. § 1962(c).

253. The Lumio Enterprise constitutes an enterprise within the meaning of the Federal RICO Act, consisting of:

- a. Lumio, stands at the head of the enterprise and organizes and perpetuates the fraudulent schemes employed by the regional solar providers.
- b. Lumio’s Founders, Executives, and Officers, who have collaborated and colluded with each other and with other associates-in-fact in the Lumio Enterprise to deceive Plaintiffs and the Class members into purchasing solar energy systems using false and illicit marketing schemes.

- c. Smart World Energy Today, which serves as the foothold for the Lumio Enterprise in Washington, Oregon, California, Idaho, Montana, and Pennsylvania, and which perpetuates the fraudulent schemes outlined above within those markets.
- d. Smart World Energy Today's Founders, Executives, and Officers, who have collaborated and colluded with each other and with other associates-in-fact in the Lumio Enterprise to deceive Plaintiffs and the Class members into purchasing solar energy systems using false and illicit marketing schemes.
- e. AKE, which serves as Arkansas, Florida, Georgia, New Jersey, and Texas footholds for the Lumio Enterprise and perpetuates the fraudulent schemes outlined above within those markets.
- f. AKE's Founders, Executives, and Officers, who have collaborated and colluded with each other and with other associates-in-fact in the Lumio Enterprise to deceive Plaintiffs and the Class members into purchasing solar energy systems using false and illicit marketing schemes.
- g. DECA, which serves as the Texas foothold for the Lumio Enterprise and perpetuates the fraudulent schemes outlined above within that market.
- h. DECA's Founders, Executives, and Officers, who have collaborated and colluded with each other and with other associates-in-fact in

the Lumio Enterprise to deceive Plaintiffs and the Class members into purchasing solar energy systems using false and illicit marketing schemes.

- i. Lift Energy, which serves as the Utah and California footholds for the Lumio Enterprise and perpetuates the fraudulent schemes outlined above within that market.
- j. Lift Energy's Founders, Executives, and Officers, who have collaborated and colluded with each other and with other associates-in-fact in the Lumio Enterprise to deceive Plaintiffs and the Class members into purchasing solar energy systems using false and illicit marketing schemes.
- k. Our World Energy, which serves as Arizona, Colorado, New Mexico, and Texas footholds for the Lumio Enterprise and perpetuates the fraudulent schemes outlined above within that market.
- l. Our World Energy's Founders, Executives, and Officers, who have collaborated and colluded with each other and with other associates-in-fact in the Lumio Enterprise to deceive Plaintiffs and the Class members into purchasing solar energy systems using false and illicit marketing schemes.
- m. The Finance Partners, which serve as an integral cog in the Lumio Enterprise by providing the funding mechanism that enables the

other co-conspirators to receive a one-time payment for the total system installation cost with interest being paid to the Finance Partners—all on the backs of Plaintiffs and the Class, who are left paying for an electric bill and a solar energy system financing bill.

254. The Lumio Enterprise engaged in and affected interstate commerce and is an association-in-fact of individuals and corporate entities within the meaning of 18 U.S.C. § 1961(4), and it consists of “persons” associated together for a common purpose. The Lumio Enterprise had an ongoing organization with an ascertainable structure and functioned as a continuing unit with separate roles and responsibilities, and directly engaged in the marketing and sale of goods and services in interstate commerce (i.e., solar energy systems).

255. Defendants each had an existence separate and distinct from the Lumio Enterprise while participating in the Enterprise’s conduct.

256. Defendants each conducted and participated in the conduct of the affairs of the Lumio Enterprise through a pattern of racketeering activity that has lasted since at least December 2020, and that consisted of numerous and repeated uses of the interstate mail and wire facilities to execute a scheme to defraud, in violation of 18 U.S.C. §§ 1341 and 1343, all in violation of the Federal RICO Act, 18 U.S.C. §§ 1962(c). Such acts include:

- a. Creating, designing, approving, and delivering misleading and false advertising materials;

- b. Creating, designing, approving, and delivering sales instructions and strategies which were intended to deceive and mislead consumers with respect to tax credit for solar, the energy savings to be received from solar, the elimination of all utility bills after solar was installed, and the other misrepresentations detailed above; and
- c. Receiving profit from distributions flowing directly from customer payments for fraudulently sold, ill-functioning home solar systems which were procured through misrepresentations made to purchasers.

257. The Lumio Enterprise functions in many states, delivering advertisements and sales techniques and strategies created, designed, approved, and delivered by Defendants across state lines through the mails and wires, and receiving payments across state lines through the mails and wires.

258. Plaintiffs and the Class members suffered injury to their property because the Lumio Enterprise caused them to pay enormous sums of money for home solar energy systems that did not perform anywhere near as well as they were represented to perform, often in long-term monthly installment contracts which had to be paid alongside energy bills that did not materially decrease.

259. Defendants profited from the injuries suffered by Plaintiff and the Class Members and used the proceeds from the fraudulent schemes to advance the Lumio Enterprise by, among other things, funding and operating their marketing

and sales efforts through the use of the mails and interstate wires to continue growing the Enterprise, causing further injury to the Class members.

260. Defendants conspired to defraud Plaintiffs and the Class members, who purchased home solar energy systems under the belief that they would save money over time, that they would not have to pay energy bills after the systems had been installed, would receive more benefits from the ITC tax credits than they in fact would receive, and the other misrepresentations detailed above.

261. Defendants' countless advertisements and training materials demonstrate the continuity of the Lumio Enterprise's conduct over multiple years and on an ongoing basis, representing numerous separate and distinct instances of mail and wire fraud, each of which constituting its own separate and distinct predicate act.

262. The Lumio Enterprise members committed thousands of separate acts of mail and wire fraud, and as such, these acts and transactions were not isolated and instead were related and part of the same fraudulent scheme, were directed at Plaintiffs and the Class members, were committed in the same or similar manner, and resulted from the same or similar fraudulent and improper intent by Defendants.

263. Defendants and the Lumio Enterprise received payments and value from the fraudulently marketed solar energy systems through interstate wire facilities, with such wirings serving an integral part of the pattern of Defendants' racketeering activity.

264. Defendants transferred between and among themselves, and received from Plaintiffs and the Class, monetary proceeds of the Lumio Enterprise, in furtherance of their scheme to defraud Plaintiffs and the Class members in violation of 18 U.S.C. § 1343.

265. Defendants' violations of 18 U.S.C. § 1962(c) were committed with specific intent to defraud, thereby entitling Plaintiffs and the Class members to treble damages under 18 U.S.C. § 1964(c).

266. Defendants' violations of 18 U.S.C. § 1962(c) have directly and proximately caused injuries and damages to Plaintiffs and Class members, and Plaintiffs and Class members are entitled to bring this action for three times their actual damages, as well as injunctive/equitable relief and costs and reasonable attorneys' fees, pursuant to 18 U.S.C. §§ 1964(c). They seek all available monetary, declaratory, and injunctive relief to which they are entitled, including the relief identified in the Prayer for Relief below.

**Count II: Violation of the Federal Racketeer Influenced and Corrupt
Organizations Act ("Federal RICO Act"), 18 U.S.C. § 1962(d)
Brought by all Plaintiffs on Behalf of the National Class
Against Lumio and AKE**

267. Plaintiffs, individually and on behalf of the National Class, bring this count for conspiring to violate the Federal RICO Act against Lumio and AKE and reallege paragraphs 1-249 in support.

268. Section 1962(d) of the Act makes it unlawful for "any person to conspire to violate" Section 1962(c). 18 U.S.C. § 1962(d).

269. Defendants conspired and agreed to engage in a pattern of fraudulent and misleading sales tactics and advertising for the significant financial gain of both as the means to accomplish their overall objective.

270. The overall objective of Defendants' conspiracy was to maximize the financial gains they stood to obtain through their pattern of fraud on vulnerable solar customers.

271. Defendants regularly communicated to coordinate their acts in furtherance of their fraudulent scheme.

272. Defendants utilized the mail and wires in their fraudulent pursuits on occasions too numerous to list herein as evidenced by the widespread fraudulent advertisement and training materials distributed thereby.

273. Overall, Defendants agreed to engage in fraudulent acts for the purpose of maximizing their monetary gains and committed numerous predicate acts of mail and wire fraud in furtherance of this agreed-upon purpose.

274. As a result of Defendants' acts alleged herein, Plaintiffs and the Class were injured in their business and/or property, in amounts including the price of their solar energy systems and all associated financing and accommodation costs. They seek all available monetary, declaratory, and injunctive relief to which they are entitled, including the relief identified in the Prayer for Relief below.

Count III: Fraudulent Inducement
Brought by all Plaintiffs on Behalf of the National Class
Against Lumio and AKE

275. Plaintiffs, individually and on behalf of the National Class, bring this count for fraudulent inducement against Lumio and AKE and realleges paragraphs 1-249 in support.

276. Defendants Lumio and AKE made false statements of material fact, including by:

- a. Falsely representing that Plaintiffs and the Class would save money on their monthly energy costs by purchasing solar energy systems; falsely representing that solar would take care of 100% of the customer's electricity needs; falsely representing that the solar panels would pay for themselves because the monthly energy savings would be the same or more as the amount the customer was paying for the panels; and similar statements intended to lure the customer into thinking that the solar panels would be "free" or "pay for themselves"; and
- b. Mischaracterizing the availability and effect of government tax credits, including by falsely stating that the customer would receive a "rebate" or otherwise entitled the homeowner to a check from the government for installing solar.

277. Defendants knew that the representations were false because:

- a. Based on their experience in the industry, Defendants knew it's impossible to predict any particular home's future energy needs, the utility rates that might be charged in the future, or any of the many other variables that could result in a consumer having to continue to pay electric bill despite having solar energy;
- b. Defendants received complaints for numerous consumers that the energy systems did not deliver the promised offsets;
- c. Defendants had the ability to monitor the energy generated by the systems and could see that the systems were not providing 100% of the energy offset needs;
- d. Defendants are sophisticated companies with knowledge of how the ITC credits worked; and
- e. Defendants are capable of determining which homeowners would qualify for the ITC tax credit.

278. Defendants made the false statements in order to induce Plaintiffs and the Class to enter into expensive solar energy system contracts under the false belief that they would no longer have to pay for electricity and could instead just finance a solar energy system that would produce all the necessary energy.

279. Plaintiffs and the Class were injured due to Defendants' false statements of fact because they signed expensive solar energy system installation contracts and financing contracts. They seek all available monetary, declaratory,

and injunctive relief to which they are entitled, including the relief identified in the Prayer for Relief below.

Count IV: Unjust Enrichment
Brought by all Plaintiffs on Behalf of the National Class
Against Lumio and AKE

280. Plaintiffs, individually and on behalf of the Nationwide Class, bring this count for unjust enrichment against Lumio and AKE and realleges paragraphs 1-249 in support.

281. Plaintiffs and Class Members conferred a benefit on Defendants by contracting with Defendants to install solar energy systems.

282. Defendants voluntarily accepted and retained the benefit conferred by Plaintiffs and Class Members in the form of profits.

283. The benefits that Defendants received and retained are unjust, and inequity has resulted.

284. Defendants knowingly accepted the unjust benefit of their misconduct.

285. It is inequitable and unconscionable for Defendants to retain those unjust benefits without paying value to Plaintiffs and the Class.

286. As a result of Defendants' misconduct, the amount of their enrichment should be disgorged and returned to Plaintiffs and the Class in an amount to be proven at trial. They seek all available monetary, declaratory, and injunctive relief to which they are entitled, including the relief identified in the Prayer for Relief below.

**Count V: Violations of Florida’s Deceptive and Unfair Trade Practices Act (“FDUTPA”), Fla. Stat. §§ 501.202, et seq.
Brought by all Plaintiffs on Behalf of the Florida Class
Against Lumio and AKE**

287. Plaintiffs, individually and on behalf of the National Class, bring this count for violation of Florida’s Deceptive and Unfair Trade Practices Act (“FDUTPA”), Fla. Stat. §§ 501.202, et seq. against Lumio and AKE, and realleges paragraphs 1-249 in support.

288. FDUTPA protects consumers from those “who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” § 501.202(2), Fla. Stat. A violation of FDUTPA may be based on “unfair, deceptive, or unconscionable acts or practices.” § 501.203(3)(c), Fla. Stat.

289. At all relevant times, Plaintiffs and Class Members were “consumers” as defined by Section 501.203(7), *Florida Statutes*.

290. AKE’s contracts include an express choice of law provision such that FDUTPA and Florida law applies to all contracts they’ve entered with Plaintiffs and the Class.

291. At all relevant times, Lumio and AKE were and are engaged in “trade or commerce” as defined by Section 501.203 (8), *Florida Statutes*.

292. Lumio and AKE engaged in a deceptive and unfair trade practice by:

- a. Falsely representing that Plaintiffs and the Class would save more on energy than they would, falsely representing that solar would

take care of 100% of the customer's electricity needs, that the solar panels would pay for themselves because the monthly energy savings would be the same or more as the amount the customer was paying for the panels, and similar statements intended to lure the customer into thinking that the solar panels would be "free" or "pay for themselves";

- b. Mischaracterizing the availability and effect of government tax credits, including by falsely stating that the customer would receive a "rebate" or be otherwise entitled to a check for installing solar;
- c. Instructing their sales staff to engage in unfair and deceptive high-pressure sales tactics, including by having consumers sign contracts on small, difficult to read tablets, instructing the customer to click on certain portions while verbally misstating the terms of the agreement;
- d. Instructing their sales staffs to provide verbal technical assessments a home's potential to benefit from solar which the non-technically trained representative is unqualified to make (i.e., stating that the customer's house is "perfect" or "ideal" for solar panels even when the home is shaded or the roof faces a direction that is not ideal);
- e. Certifying completion of a project to Finance Partners prior to the system being properly installed, properly permitted, and otherwise

operable so that funds would be released to Defendants, at which point the consumer becomes liable to making monthly payments to the Finance partner; and

- f. Failing to honor warranty provisions requiring the repair of roofs due to damage caused by the solar energy systems.

293. Defendants also routinely violated Florida's Home Solicitation Sales Act ("FHSSA"), Fla. Stat. §§ 501.021-501.047. Each FHSSA violation constitutes a per se FDUTPA violation because the FHSSA is a law which proscribes unfair methods of competition and unfair, deceptive, or unconscionable acts or practices. Defendants' FHSSA violations include:

- a. Failing to provide the cooling-off disclaimer mandated by Fla. Stat. § 501.031, which requires a caption specifically stating "BUYER'S RIGHT TO CANCEL" followed by the following exact language:

This is a home solicitation sale, and if you do not want the goods or services, you may cancel this agreement by providing written notice to the seller in person, by telegram, or by mail. This notice must indicate that you do not want the goods or services and must be delivered or postmarked before midnight of the third business day after you sign this agreement. If you cancel this agreement, the seller may not keep all or part of any cash down payment.

- b. Misrepresenting the terms or conditions of the sale in violation of Fla. Stat. § 501.047(1), including by falsely stating the amount of energy savings and implications of tax credits.

- c. Misrepresenting the seller's affiliation with the parent company or sponsor in violation of Fla. Stat. § 501.047(2), including by leaving the homeowner with the impression that the salesperson works with the local power company or a governmental program.
- d. Misrepresenting the seller's reasons for soliciting sale in violation of Fla. Stat. § 501.047(3), including by falsely stating that the salesperson is simply looking for homes which might qualify for a special program or similar deceptive pitches which make it seem as though the homeowner has been uniquely selected for a special offer.
- e. Performing other acts which constitutes misrepresentation in violation of Fla. Stat. § 501.047(5), including all such misrepresentations identified in the general allegations above.

294. Defendants also routinely violated Florida's Distributed Energy Generation System Sales Act, Fla. Stat. §§ 520.20, et seq. as detailed in the next Count. Each such violation constitutes a per se FDUTPA violation because the Distributed Energy Generation System Sales Act is a law which proscribes unfair methods of competition and unfair, deceptive, or unconscionable acts or practices.

295. As a direct and proximate result of Defendants' FDUTPA violations, Plaintiffs and the Class incurred actual damages, including the amount of money expended towards their solar panels. They are entitled to recoup those damages in this action, along with declaratory and injunctive relief, attorney's fees, and costs.

They seek all available monetary, declaratory, and injunctive relief to which they are entitled, including the relief identified in the Prayer for Relief below.

**Count VI: Violation of Florida’s Distributed Energy Generation
System Sales Act, Fla. Stat. §§ 520.20, et seq.
Brought by all Plaintiffs on Behalf of the Florida Class
Against Lumio and AKE**

296. Plaintiffs, individually and on behalf of the Florida Class, bring this count for violation of Florida’s Distributed Energy Generating System Sales Act), Fla. Stat. §§ 520.20, *et seq.* against Lumio and AKE, and realleges paragraphs 1-249 in support.

297. The solar energy systems Defendants sold to Plaintiffs and the Class are “distributed energy generation systems” as defined by Fla. Stat. § 520.20(3).

298. Florida’s Distributed Energy Generating System Sales Act required Defendants to provide certain disclosures to prevent the type of consumer fraud which has occurred in this case. Defendants failed to provide all required disclosures, including:

- a. A written statement indicating whether the distributed energy generation system is being purchased or leased.
 - i. For leased systems, a disclosure in substantially the following form: “You are entering into an agreement to lease a distributed energy generation system. You will lease (not own) the system installed on your property.”

- ii. For owned systems, a disclosure in substantially the following form: “You are entering into an agreement to purchase a distributed energy generation system. You will own (not lease) the system installed on your property.”
- b. A description of the assumptions used to calculate any savings estimates provided to the buyer or lessee, and if such estimates are provided, a statement in substantially the following form: “It is important to understand that future electric utility rates are estimates only. Your future electric utility rates may vary.”
- c. A statement notifying the buyer whether the distributed energy generation system is being financed and, if so, a statement in substantially the following form: “If your system is financed, carefully read any agreements and/or disclosure forms provided by your lender. This statement does not contain the terms of your financing agreement. If you have any questions about your financing agreement, contact your finance provider before signing a contract.”
- d. A statement notifying the buyer whether the seller is assisting in arranging financing of the distributed energy generation system and, if so, a statement in substantially the following form: “If your system is financed, carefully read any agreements and/or disclosure forms provided by your lender. This statement does not contain the terms of your financing agreement. If you have any questions about your

financing agreement, contact your finance provider before signing a contract.”

- e. A provision notifying the buyer or lessee of the right to rescind the agreement for a period of at least 3 business days after the agreement is signed.
- f. A description of the distributed energy generation system design assumptions, including the make and model of the major components, system size, estimated first-year energy production, and estimated annual energy production decreases, including the overall percentage degradation over the estimated life of the distributed energy generation system, and the status of utility compensation for excess energy generated by the system at the time of contract signing. A seller who provides a warranty or guarantee of the energy production output of the distributed energy generation system may provide a description of such warranty or guarantee in lieu of a description of the system design and components.
- g. A description of the ownership and transferability of any tax credits, rebates, incentives, or renewable energy certificates associated with the distributed energy generation system, including a disclosure as to whether the seller will assign or sell any associated renewable energy certificates to a third party.

- h. A statement in substantially the following form: “You are responsible for property taxes on property you own. Consult a tax professional to understand any tax liability or eligibility for any tax credits that may result from the purchase of your distributed energy generation system.”
- i. The approximate start and completion dates for the installation of the distributed energy generation system.
- j. A disclosure as to whether maintenance and repairs of the distributed energy generation system are included in the purchase price.
- k. A disclosure as to whether any warranty or maintenance obligations related to the distributed energy generation system may be sold or transferred by the seller to a third party and, if so, a statement in substantially the following form: “Your contract may be assigned, sold, or transferred without your consent to a third party who will be bound to all the terms of the contract. If a transfer occurs, you will be notified if this will change the address or phone number to use for system maintenance or repair requests.”
- l. A disclosure notifying the buyer or lessee of the party responsible for obtaining interconnection approval.
- m. A statement in substantially the following form: “You are responsible for obtaining insurance policies or coverage for any loss of or damage

to the system. Consult an insurance professional to understand how to protect against the risk of loss or damage to the system.”

- n. A disclosure notifying the buyer or lessee whether the seller or lessor will place a lien on the buyer's or lessee's home or other property as a result of entering into a purchase or lease agreement for the distributed energy generation system.
- o. A disclosure notifying the buyer or lessee whether the seller or lessor will file a fixture filing or a State of Florida Uniform Commercial Code Financing Statement Form (UCC-1) on the distributed energy generation system.
- p. A disclosure identifying whether the agreement contains any restrictions on the buyer's or lessee's ability to modify or transfer ownership of a distributed energy generation system, including whether any modification or transfer is subject to review or approval by a third party.
- q. A blank section that allows the seller to provide additional relevant disclosures or explain disclosures made elsewhere in the disclosure form.

299. As a result of the foregoing violations, Plaintiffs and the Class are entitled to the amount they paid for their solar energy system, along with attorneys' fees and costs, pursuant to Fla. Stat. § 520.25. They seek all available monetary,

declaratory, and injunctive relief to which they are entitled, including the relief identified in the Prayer for Relief below.

Count VII: Breach of Contract
Brought by all Plaintiffs on Behalf of the Florida Class
Against Lumio and AKE

300. Plaintiffs, individually and on behalf of the Florida Class, brings this count for breach of contract against Lumio and AKE, and realleges paragraphs 1-249 in support.

301. As alleged above, Plaintiffs and the Class contracted with Defendants to install solar energy systems on their homes by executing the Atlantic Key Energy Sales Agreement (“the Agreement”).

302. The Agreement is a valid contract between Plaintiffs, the Class, and Defendants.

303. Defendants represented in the Agreement that “AKE shall perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently working under similar conditions in the Property’s locality”:³¹

1. **SERVICES.** AKE shall provide to Customer the services (the “Services”) set forth herein. Additional services shall be deemed accepted and incorporated into this Agreement only if signed by AKE and the Customer. AKE shall provide the services in accordance with the terms and subject to the conditions set forth herein using personnel of required skill, experience, and qualifications in a professional manner. AKE shall perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently working under similar conditions in the Property’s locality. AKE is not responsible for any representations regarding the scope of AKE’s work made by third parties to Customer. Any change orders must be in writing and signed by Customer.

³¹ *Atlantic Key Energy Sales Agreement*, p. 2.

304. Defendants represented that “AKE will warrant its workmanship for 10 years from the date of Installation, stating that all components have been installed according to manufacturer's instructions and guidelines, and according to the engineered plans and local building codes and requirements”. The warranty also provided for a “10 Year Limited Roofing Penetration Warranty. AKE warrants Customer’s roof against damage and water infiltration at each roofing penetration made by AKE in connection with the installation of the system and the surrounding area of each penetration”:³²

8. **WARRANTIES.** AKE will warrant its workmanship for 10 years from the date of Installation, stating that all components have been installed according to the manufacturer’s instructions and guidelines, and according to the engineered plans and local building codes and requirements. The solar panels come with a 25-year production warranty. Enphase Microinverters come with a manufacturer’s warranty of 25 years. Any additional adders will warrant a workmanship warranty of one year or fall under the warranty of the sub-contractor performing the installation. AKE shall provide a 10 Year Limited Roofing Penetration Warranty. AKE warrants Customer’s roof against damage and water infiltration at each roofing penetration made by AKE in connection with the installation of the system and the surrounding area of each penetration. All warranties within this Agreement remain with the owner of the Property.

305. Defendants represented that “AKE will install the components according to state and manufacturer specifications.”:³³

29. STATE SPECIFIC PROVISIONS

- a. Florida: AKE agrees to supply and install all necessary material and labor in order to complete the installation of a Solar Electric grid tie system pursuant to the terms of this Sales Agreement. AKE will install the components according to state and manufacturer specifications. If the system installed has a capability greater than 11.7 kW DC or 10kW AC and equal to or less than 100 kW AC, the Customer agrees to provide and maintain not less than one million dollars (\$1,000,000) of Personal Injury and Property Damage Liability Insurance. Proof of said insurance shall be provided by the Customer and attached to this Interconnection Agreement.

³² *Id.* at p. 3.

³³ *Id.* at p. 5.

306. Defendants' representations and warranties that they would "install the components according to state and manufacturer specifications", that all components would be "installed according to manufacturer's instructions and guidelines", and that the solar energy systems would be installed "in a manner consistent with that level of care and skill ordinarily exercised by members of the profession" required that Defendants install solar energy systems that were operable and produced energy.

307. Defendants' representations and warranties against roof damage and water infiltration at each roofing penetration required that Defendants repair or replace roofs damaged during solar energy system installations.

308. In systemic, continuous and repetitive conduct, Defendants materially breached the terms of the Agreement by 1) failing to install solar energy systems that are operable and produce energy; and 2) failing to honor warranties for roof damage and water infiltration caused by PV system installations.

309. Plaintiffs and Class Members were damaged because Plaintiff and Class Members 1) were deprived of the use of their PV systems and/or 2) had their roofs damaged.

310. Plaintiffs and Class Members have been forced to pay the full amount of their electric utility bills **and** their monthly loan payments for their PV systems while the systems are inoperable and not producing energy.

311. Plaintiffs and Class Members have not been allowed the benefits of net metering, a billing process which allows homeowners to receive credit from

their electric utility companies for energy [produced by the homeowners' solar energy systems] that flows into the power grid.

312. Plaintiffs and Class Members have paid to have their roofs repaired and to remove and/or re-install their PV systems incidental to the roof repairs.

313. In summary, Plaintiff and the Class have suffered quantifiable financial harm in the amount 1) paid to their electric utility companies for energy that their PV systems would have produced if the systems had been operable and producing energy and/or 2) paid to repair their roofs and remove and re-install the PV systems.

314. Plaintiffs and the Class demand judgment against Defendants and request compensatory damages, together with interest, costs of suit, attorneys' fees, and such further relief as the Court deems equitable and just. They seek all available monetary, declaratory, and injunctive relief to which they are entitled, including the relief identified in the Prayer for Relief below.

**COUNT VII: Derivative Liability Under the Holder Rule
Brought by Plaintiff Graybush on Behalf of the National Dividend
Subclass and Florida Dividend Subclass
Against Fifth Third Bank and Dividend**

315. Plaintiff Graybush, individually and on behalf of the National Dividend Subclass and Florida Dividend Subclass, brings this count for derivative liability against Fifth Third Bank and Dividend under the Holder Rule.

316. Fifth Third Bank and Dividend have included the following provision in their contracts with Plaintiff Graybush and the Class:

Claims and Defenses. NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Exhibit F, p. 11.

317. This language tracks that provided in the Federal Trade Commission's ("FTC") "Holder Rule," 16 C.F.R. § 433.

318. Plaintiff Graybush and the Classes have paid substantial sums of money to Fifth Third Bank and Dividend under solar contracts subject to the Holder Rule and containing the language quoted above.

319. Plaintiff Graybush and the National Dividend Subclass have valid derivative claims against Dividend for the causes of action asserted against Lumio and AKE in Counts I-IV above and are entitled to a return of the money they have paid to Dividend, along with their attorneys' fees and costs, pursuant to the Holder Rule.

320. Plaintiff Graybush and the Florida Dividend Subclass have valid derivative claims against Dividend for the causes of action asserted against Lumio and AKE in Counts V-VII above, and are entitled to a return of the money they have paid to Dividend, along with their attorneys' fees and costs, pursuant to the Holder Rule.

321. Additionally, because the contracts with the sellers (in this case Lumio and its co-conspirator solar companies) were procured under fraud, Plaintiff Graybush, the National Dividend Subclass, and the Florida Dividend Subclass are also entitled to rescission of their solar energy contracts and should no longer be required to make further payments to Dividend. They seek all available monetary, declaratory, and injunctive relief to which they are entitled, including the relief identified in the Prayer for Relief below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this case be certified and maintained as a class action pursuant to one or more of the proposed Classes, as they may be modified or amended, and respectfully requests that this Court:

- A. Determine that the claims alleged herein may be maintained as a class action under Fed. R. Civ. P. 23, and issue an order certifying the Class as defined above;
- B. Appoint Plaintiffs as the representatives of the Classes and their counsel as Class counsel;
- C. Award damages, including compensatory damages, to Plaintiffs and all other Class Members;
- D. Award Plaintiffs and Class Members actual damages sustained;
- E. Award Plaintiffs and Class Members such additional damages, over and above the amount of their actual damages, which are authorized and warranted by law, including punitive and exemplary damages;

- F. Grant restitution to Plaintiffs and Class Members and require Defendants to disgorge inequitable gains;
- G. Provide all declaratory and equitable relief available, including rescission of contracts entered into between Plaintiffs, the Class Members, and Defendants;
- H. Award Plaintiffs and Class Members their reasonable attorneys fees and reimbursement of all costs for the prosecution of this action; and
- I. Award such other relief as this Court deems just and appropriate.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: May 23, 2024,

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on May 23, 2024 I electronically filed the foregoing with the electronic filing system, which in turn will provide copies to all counsel of record.

/s/ Amy Judkins
Amy L. Judkins, ESQUIRE