

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

SHOSHANA SMITH, individually and
behalf of all others similarly situated,

Plaintiff,

v.

LUMIO HX, INC. and
ATLANTIC KEY ENERGY, LLC,

Defendants.

CLASS ACTION COMPLAINT
AND JURY DEMAND

CLASS ACTION COMPLAINT

Plaintiff Shoshana Smith (“Plaintiff”), individually and on behalf of the other members of the Nationwide Class or Statewide Class defined below (“the Class”) bring this Class Action Complaint (“the Complaint”) against Defendants Lumio HX Inc. (“Lumio”) and Atlantic Key Energy, LLC, (“AKE”) arising from Defendants’ practice of systemically, repeatedly, and continually 1) failing to install solar energy systems that are operable and produce energy; and/or 2) failing to honor warranties for roof damage and water infiltration caused by the installation of solar energy systems.

As a result of Defendants’ wrongful conduct, Plaintiff and the Class have uniformly suffered quantifiable financial harm in the amount 1) paid to their electric utility companies for energy that their solar energy systems would have produced if

the systems had been operable and produced energy; and/or 2) paid to repair their roofs and remove and/or re-install their solar energy systems incidental to roof repairs.

NATURE OF THE ACTION

The solar energy industry is fraught with egregious wrongful conduct resulting in harmed consumers with no recourse.

1. A year-long investigation into the solar industry by consumer watchdog group Campaign for Accountability (“CfA”) revealed:

Unscrupulous actors have exploited vulnerable populations, preying on the elderly and those on fixed-incomes. Companies have misled consumers about the true costs of installing solar panels, provided shoddy craftsmanship, and left homeowners with higher utility costs, all while forcing them to sign unconscionable contracts that leave little possibility of recourse.¹

2. The CfA report further found:

American consumers identified numerous companies that provided poor or inadequate service, falsely represented the savings the customers would realize from solar power, lured them in with low price quotes that later proved to be false, required them to sign confusing contracts, and/or performed shoddy installation of the solar panels.²

3. In a Federal Trade Commission workshop focused on the solar energy industry, the Consumers Union reported that consumers are facing challenges that include “dealing with bad actors, and those are things like fraud,

¹ *What Consumer Complaints Reveal about the Solar Industry*, Campaign for Accountability, <https://campaignforaccountability.org/work/what-consumer-complaints-reveal-about-the-solar-industry/> (Last visited September 25, 2023).

² *Id.*

misrepresentation...”³

4. On June 14, 2023, USA Today reported on a national solar energy company defrauding thousands by failing to obtain the proper permits before installing panels, resulting in homeowners paying for solar energy systems that are not connected to the power grid.⁴

5. On March 6, 2023, WFTV 9 Orlando reported on a Chuluota homeowner who had spent \$100,000 on a solar energy system that had not been turned on or connected to the power grid 8 months after the installation was completed because the system failed inspection.⁵

6. The WFTV 9 Orlando story also covered a Winter Garden homeowner who had spent \$66,000 on a solar energy system that had not been turned on or connected to the power grid because the system failed inspection.⁶

7. On January 31, 2023, WPEC CBS12 News West Palm Beach reported on a Deerfield Beach solar company “starting solar projects, then walking away without connecting the panels to the grid, or securing the proper permits”.⁷

³ *Something New Under the Sun: Competition & Consumer Protection Issues in Solar Energy*, Federal Trade Commission Solar Energy Workshop, p. 4, https://www.ftc.gov/system/files/documents/videos/something-new-under-sun-competition-consumer-protection-issues-solar-energy-workshop-part-4/ftc_solar_energy_workshop_-_transcript_segment_4.pdf (Last visited September 25, 2023).

⁴ *New Jersey solar company allegedly pressured vulnerable populations into contracts for ‘a shoddy product’* <https://www.usatoday.com/story/money/2023/04/10/vision-solar-panel-lawsuit/11600307002/> (Last visited September 25, 2023).

⁵ *“It’s not right”*: Homeowners feel abandoned after spending a fortune on solar systems they can’t use, <https://www.wftv.com/news/action9/its-not-right-homeowners-feel-abandoned-after-spending-fortune-solar-systems-they-cant-use/DN5JSXHAC5DCXJLU3K6WBPG4/> (Last visited September 25, 2023).

⁶ *Id.*

⁷ *I-Team: Customers stuck paying for non-working, unpermitted solar panel*, <https://cbs12.com/news/local/i-team-vision-solar-panels-permits-south-florida-deerfield-beach-scam-1-31-2023> (Last visited September 25, 2023).

8. The WPEC CBS12 News story further reported that a Deerfield Beach homeowner had a solar energy system installed in August 2021, but the system had never been turned on or connected to the power grid because the solar company had not obtained the proper permits.⁸

9. The WPEC CBS12 News story also reported that a Boca Raton homeowner had spent \$40,000 on a solar energy system that had not been turned on a year and a half after installation because the solar company had failed to obtain the proper permits, “making her installation illegal.”⁹

10. Palm Beach Building Official Doug Wise commented on the story: “It’s competitive advantage...They can sell the job and walk away. The problem is the homeowner ends up holding the bag particularly when there aren't permits.”¹⁰

11. On June 3, 2021, Fox 4 Now in Cape Coral reported that the Cape Coral Police Department issued a warning that persons claiming to be Defendant AKE had been soliciting homeowners door-to-door, claiming that Lee County Electric Cooperative (“LCEC”) will replace power meters with solar panels.¹¹ The Cape Coral Police Department warned that such representations were false.

12. On June 10, 2021, NBC 2 News in Fort Myers reported that Cape Coral

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Atlantic Key Energy scam in Cape Coral*, Fox 4 Now, <https://www.youtube.com/watch?v=0KxU-Lfah0I> (Last visited September 25, 2023).

homeowners complained that Defendant AKE had sent door-to-door representatives to their home, representing that their solar energy systems “wouldn’t cost us a thing” and used the word “free.”¹² These representations were false.

13. On October 12, 2021, WFTV 9 in Orlando reported that an Ocoee homeowner complained that Defendant AKE had sent door-to-door sales representatives to her home who claimed that they were “working for the government to help people go green” and offered “free solar”.¹³ These representations were false.

14. The aforementioned consumer watchdog reports, government agency forum, and news media coverage reveal an epidemic across Florida and the U.S. involving solar energy companies—including Defendants—making false representations, breaching contracts, and otherwise defrauding consumers.

In the present action, Defendants’ wrongful conduct has caused quantifiable financial harm to Plaintiff.

15. On September 25, 2021, Plaintiff Shoshana Smith’s then husband, Gary Smith, contracted with Defendants to install a 16.32 kW solar energy system

¹² *Solar panel company claims they’re legitimate after CCPD scam alert*, NBC 2 News, <https://nbc-2.com/news/crime/2021/06/09/cape-coral-police-warn-of-scammer-offering-to-replace-lcec-power-meters/> (Last visited September 25, 2023).

¹³ *I have been totally taken advantage of: The high cost of ‘free solar’*, WFTV 9, <https://www.wftv.com/news/action9/i-have-been-totally-taken-advantage-high-cost-free-solar/W56B4URTZFDC3LUOAZVF6HHIO4/> (Last visited September 25, 2023).

consisting of 48 solar panels on their single-family home in Lehigh Acres, Florida as set forth in the Atlantic Key Energy Sales Agreement (“the Agreement”).¹⁴

16. The purchase and installation cost of the solar energy system was \$68,912.

17. On November 10, 2022, Plaintiff Shoshana Smith assumed the loan on the system.¹⁵

18. In the Agreement, Defendants represented that the solar energy system or photovoltaic system (“PV system”) would provide a proposed solar offset of 100%; in other words, the system was designed to provide 100% of the Plaintiff’s home energy needs.¹⁶

19. 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”:¹⁷

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.

¹⁴ See generally *Atlantic Key Energy Sales Agreement*.

¹⁵ See generally *Goodleap Assumption DocuSign Packet*.

¹⁶ *Atlantic Key Energy Sales Agreement*, p. 1.

¹⁷ *Atlantic Key Energy Sales Agreement*, p. 2.

20. 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”:¹⁸

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.

21. Defendants represented that “AKE will install the components according to state and manufacturer specifications”:¹⁹

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.

¹⁸ *Id.* at p. 3.

¹⁹ *Id.* at p. 5.

22. 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 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 PV systems that were operable and produced energy.

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

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

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

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

27. 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.

28. The bi-directional meter should have been installed shortly after the PV system passed final inspection to allow Plaintiff the benefits of net-metering.

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

30. On March 8, 2023, approximately seven (7) months later, the Plaintiff's PV system stopped producing energy.

31. On or around April 17, 2023, Plaintiff informed Defendants that the PV system was not functioning and scheduled a service call.

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

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

34. The PV 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 Plaintiff's roof, presumably due to weather damage.

35. The prior year, in or around April 2022, Plaintiff had filed an insurance claim arising from what she believed to be weather damage to her roof resulting in water spots and leaking.

36. A roofing contractor inspected her roof and found damage caused by the weather, but also damaged caused by the PV system installation.

37. The roofing contractor prepared a proposal to specifically address the damage caused by the PV system installation, considering that Plaintiff’s homeowners insurance would not cover damage caused by the PV system installation, and was limited to covering damage caused by the weather.

38. The proposal stated that the plywood decking was rotted and water stained due to lack of a water-tight seal around the solar panel anchors and that “a low quality type of caulk was used in order to seal all penetrations from the solar”:²⁰

SCOPE OF WORK
Installation of solar panels mounted on the shingle roof .
After all shingles and underlayment has been removed from the roof area there is
multiple spots in the plywood decking rotted / and or water stained due to the lack
Of effort in making a water tight seal from the solar panel anchors. It appears that
a low quality type of caulk was used in order to seal all penetrations from the solar.
New plywood had to be installed almost everywhere a solar anchor was used.
Hopefully when reinstalling solar panels to the NEW roof a different method is used

39. As a result of the roof damage specifically caused by the PV system installation, Plaintiff had to pay an additional \$1,365 for the replacement of damaged building materials because Plaintiff’s homeowners insurance covered only the damage caused by the weather.

²⁰ *VPM Roofing proposal*, August 21, 2023.

40. Following the repair of Plaintiff's roof, Defendants charged Plaintiff \$9,600 to re-install the PV system. Plaintiff paid the amount in full.

41. On September 28, 2023, the PV system became operable again.

42. In summary, Plaintiff's PV 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, Plaintiff's PV system produced energy for only two hundred and thirty-four (234) days, or approximately 44.3% of the time.

43. Plaintiff paid her electric utility provider for energy on the days that her PV system was inoperable and not producing energy.

44. During the installation process Defendants damaged Plaintiff's roof, requiring Plaintiff to pay an additional \$10,965 for repairs, building materials, and the re-installation of the PV system which were directly attributed to Defendants' faulty PV installation.

45. Defendants have breached the material terms of the Agreement with Plaintiff by 1) failing to install a solar energy system that was operable and produced energy; and 2) failing to honor the warranty for roof damage and water infiltration.

46. Plaintiff has suffered quantifiable damages by 1) paying thousands of dollars to her electric utility provider for energy that her PV system should have produced if the PV system had been operable and producing energy; and 2) paying \$10,965 in out-of-pocket costs for repairs, building materials, and the re-installation

of her PV system, which costs are directly attributed to Defendants' faulty PV system installation.

PARTIES

Plaintiff

47. Plaintiff Shoshana Smith ("Plaintiff") is a citizen of Florida and resident of Lehigh Acres, Lee County, Florida.

48. As set forth above, on September 5, 2021 Plaintiff Shoshana Smith's then husband, Gary Smith, contracted with Defendants to install a PV system on their single-family home in Lehigh Acres, Lee County, Florida.

49. On November 10, 2022, Plaintiff Shoshana Smith assumed the loan on the system.

Defendant

50. Defendant Atlantic Key Energy, LLC ("AKE") is a Utah corporation with its principal place of business located at 1550 W. Digital Dr., Suite 500, Lehi, Utah 84043.

51. Defendant AKE has offices located at 7006 Stapoint Ct., Suite B, Winter Park, Florida 32792.

52. 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.”²¹

53. On or around June 21, 2021, Defendant AKE, along with four other energy companies, merged to form Lumio HX, Inc.²²

54. 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.

55. Defendant AKE continues, to this day, to maintain its own website: <https://atlantickeyenergy.com/>, its logo and name appear on the Agreement entered into with Plaintiff, it maintains offices in Florida, and it has an active incorporation filing with the Florida Secretary of State.

56. Defendant Lumio answers calls from consumers and responds via email to consumers who purchased PV systems from Defendant AKE.

57. Defendant Lumio has corresponded with Plaintiff on multiple dates regarding her inoperable PV system, damage to her roof, the charge for the removal and re-installation of the PV system, and other issues which form the basis of this Complaint.

²¹ *Atlantic Key Energy website*, Home webpage, <https://atlantickeyenergy.com/> (Last visited September 19, 2023).

²² *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).

JURISDICTION AND VENUE

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

59. 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. Last, Defendant AKE has offices located in the State.

60. 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 Plaintiff's claims occurred within this District. Defendants have marketed, advertised, and sold solar energy systems and otherwise conducted extensive business within this District.

61. Plaintiff Shoshana Smith, as well as many other Class Members, purchased their solar energy systems from Defendants' agents and offices located in this District.

FACTS COMMON TO ALL COUNTS

Plaintiff and the Class contracted with Defendants for solar energy systems and Defendants breached contractual agreements with Plaintiff and the Class.

62. Plaintiff and the Class uniformly contracted with Defendants for residential solar energy systems or PV systems.

63. Defendants represented to Plaintiff and the Class that Defendants would install PV systems that would be free from defects in workmanship and be operable and produce energy.

64. Defendants represented to Plaintiff and the Class that Defendants would warrant Plaintiff's and the Class's roofs against damage and water infiltration at each roofing penetration made by Defendants in connection with the installation of their PV systems.

65. Plaintiff and the Class relied on Defendants' representations that Defendants would install solar energy systems that were operable and produced energy in deciding to contract with Defendants for the installation of their PV systems.

66. Plaintiff and the Class relied on Defendants' representations that Defendants would warrant Plaintiff's and the Class's roofs against damage and water

infiltration at each roofing penetration made by Defendants in connection with the installation of their PV systems in deciding to contract with Defendants for the installation of their PV systems.

67. Defendants breached their contractual agreements by systemically, repeatedly, and continually 1) failing to install solar energy systems that are operable and produce energy; and/or 2) failing to honor warranties for roof damage and water infiltration caused by the installation of solar energy systems.

Plaintiff and the Class have suffered quantifiable financial harm as a result of Defendants' wrongful conduct.

68. Plaintiff and Class Members have suffered quantifiable harm because Plaintiff and Class Members were deprived of the use of their PV systems.

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

70. Plaintiff 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.

71. Plaintiff and Class Members have suffered quantifiable harm because Plaintiff and Class Members had to pay roofing contractors for the repair of their roofs and/or Defendants to remove and re-install their PV systems after roof repairs.

72. 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 incidental to roof repairs.

Defendants’ wrongful conduct has been uniformly directed toward a Nationwide Class or State Class.

73. Defendants’ wrongful conduct is systemic, continuous and repetitive, and Defendants have uniformly directed their wrongful conduct toward a Nationwide Class or State Class.

74. Defendant AKE represents on its website that it serves customers in Arkansas and Florida.²³

75. Defendant AKE represents that it has reached “100,000 customers.”²⁴

76. Defendant AKE represents itself as having “highly skilled installation experts” that can have consumers’ homes “solar-ready in as little as a few weeks.”²⁵

It has never been easier, simpler, or more affordable to switch to a clean energy source than it is now. Also, our highly skilled installation experts can have your home solar-ready in as little as a few weeks.

²³ *Atlantic Key Energy website*, Cities We Serve webpage, <https://atlantickeyenergy.com/cities-we-serve/> (Last visited September 19, 2023).

²⁴ *Atlantic Key Energy website*, The Power of 100000 Atlantic Energy Customers webpage, <https://atlantickeyenergy.com/the-power-of-100000-atlantic-energy-customers/> (Last visited September 19, 2023).

²⁵ *Atlantic Key Energy website*, Solar webpage, <https://atlantickeyenergy.com/solar/> (Last visited September, 19 2023).

77. Defendant AKE represents on its website that consumers can expect “[t]he best solar experience” and “[h]assle-free solar energy”:²⁶

What You Can Expect from Us

The Best Solar Experience



Hassle-free solar energy is what you can expect when working with us! Don't just take our word for it, listen to what our Solar Homeowners are saying!

78. On the Better Business Bureau website, numerous putative Class Members have posted reviews that evidence Defendants' wrongful conduct, complaining of the same factual allegations that support the causes of action in this Complaint:

79. Putative Class Member Ryan H complained that “it took almost a full year to have the panels up and working...The purpose of this purchase was to replace Duke [electric utility provider], but now I'm paying Duke and for the panels...\$400-600 a month. How do we protect ourselves from scams like this?”:

²⁶ *Atlantic Key Energy website*, Home webpage <https://atlantickeyenergy.com/> (Last visited September 19, 2023).



Ryan H



03/21/2023

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?

80. Putative Class Member Yamary F complained that Defendants “ruined my roof, they have come to fix it three times and my roof is still destroyed”. Notably, this putative Class Member paid “almost 10,000 dollars” to have the PV system removed and re-installed:



Yamary F



08/07/2023

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, my home insurance does not want to accept me until my roof is not fixed, my roof gets wet every time it rains, the water drips on my dining table and I think that at some point it will fall on my child's head, I decided to completely replace my roof and it turns out that despite I have been completely affected that I have had my roof destroyed for almost three years now, 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, the warranty only covers the patch the company puts when you call them to fix it but the leak stays the same and it doesnt resolve anything ,the roof is weak where i have the leak and has mold and every time they come the problem is still the same, i is been like this for three years, and now I have 6 spot with leak and the company just said to complain through the system and thats all they have done in order to fix my problem, 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

81. Putative Class Member Virginia C, age 76, complained that Defendants’ agent came to her door four (4) times and she finally agreed to contract

with Defendants for the installation of solar panels. Defendants then installed the system without acquiring a permit, the system had not passed inspection, and at that time, was inoperable. When she contacted Defendants, she “got the run around”:



Virginia C



07/12/2022

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 supid can I be.

82. Putative Class Member Mary H posted online that she is an “elderly woman who lives on social security” who contracted with Defendants to install a solar energy system and was still paying 60% of her electric utility bill and for the system. Notably, she stated, “I need for someone to inform me if there is a[n] advocate for the state of Florida that handles scammers.”:



Mary H



08/18/2022

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 runng . 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

83. Putative Class Member Brittany S complained that she contracted

with Defendants to install a solar energy system, the system failed inspection, over a month had passed, and Defendants were unresponsive:



Brittany S



07/18/2022

It's been nearly a month since our failed inspection and I've had no one reach out to me to resolve the issue for a re-inspection. It's been a week since I contacted my rep and haven't had any response. Tried contacting them again through the portal today. This is unacceptable. For how much this system costs, customer support should be immediate! This does not put my mind at ease and I am doubting my decision to get involved in what I was convinced would be an excellent investment.

84. Putative Class Member Trevor C complained that he contracted with Defendants in October 2021 to install a solar energy system, the Defendants claimed that the system failed inspection, the homeowner found out the system had never been inspected and to date the system was inoperable, requiring the homeowner to pay the monthly loan payment on the PV system **and** the electric utility bill:



Trevor C



12/21/2021

This company will straight 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. Called this company to find out what's going on. They said that the inspection failed 2 weeks ago. And that was a lie the inspection was not even put in for them to do at that time. I have 5 cameras in the front of my house. When I asked what deland inspector failed my house the person could not give me that name. So as of now I will be paying for these panels and paying duke energy at the same time since I am now not switched over to solar. And there is no date when this will happen. Will definitely be getting In touch with a lawyer. This company is not recommended at all. 11/29/21 putting this date here so that the sales people can not say this has been resolved. Will update this review when they fix it. So if my review is not updated do not believe them when they say this has been resolved and I have not changed my review. As of Dec 11 now have set up the meter switching out with **** with no help from this company and still have not received 100.00 gift card promised to me by Jake. We shall see if the promise that Colby made is up held. I will continue to update you all. Once things that have been promised to me are given to me I will put it in here. Update the hot water heater has not been installed. This should have been done once the house was inspected. Well going with how this Company works.. I had to reach out to a few people to get the ball rolling. They got back to me saying the just put in for the permit. Dec 10th. This is now 3 weeks after the inspection was done. 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. Will continue to keep you updated. 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. Do your self a favor document everything so when you need to contact better business burrow. They have all they need. As of 12/21/2021 my hot water tank was installed. My solar panels have not been switched as of yet. Gift card has not been given to me and will keep you all updated as promised. Do not let them fool you by saying these matters have been fixed.

85. Putative Class Member Shandra S complained that she contracted with Defendants to install a solar energy system in July 2021 and the system failed inspection three (3) times, and was still inoperable:



Shandra S



12/13/2021

FOR THOSE DOING RESEARCH- DO NOT USE THIS COMPANY! I am not one to write a review about anything really but I could not be more frustrated. I started this process back in early July with Atlantic Key Energy. I have been wanting solar for forever and I had a great conversation with the salesman. However he was the only person at this company that seemed to care about me and my property. The project failed inspection 3 times! 3! and the company never seemed to care if it was moving forward or not. There was never any communication with the company unless I called and demanded it. I am usually a difficult person but I felt like I had to be to get them to take me seriously or to even call me back. Then the panels were finally ready to turn on, all I got was an email saying congrats your system is ready to use. The email instructed that I needed to turn the system on. Which I have to say is a little ridiculous, I am paying how much money for you to not even call me and walk me though how to turn on a system? After I got it on it said nothing was working so I called and they told me it would take 24 hours to be fully operational. Well here we are 3 days later and the system still shows 9 panels erroring out. Yet I cannot get a hold of anyone to assist me with this. I am literally on the verge of tears. Something that I have been so excited about has truly become a nightmare. I don't know how I am going to deal with this company now that I am stuck with them. They are supposed to be maintaining everything with a 25 year warranty but day one of errors and I am getting no where. I guess this is what I get for being so excited about something. I would like to warn everyone else looking at this company to find their solar needs elsewhere.

86. Putative Class Member Jordan L complained that he contracted with Defendants in May 2021 to install a solar energy system, the system was not installed until August 2021, the system failed inspection, was inspected again in January 2022, and finally turned on five (5) months later:



Jordan L



02/04/2022

We signed our contract for solar installation with AKE on 5/15/2021. Installation was supposed to take place on 8/4/2021 and 8/5/2021, for which I took time off work to be at home as instructed by AKE. No one showed up either day or called to tell us that there had been a delay. Installation was rescheduled for 8/9/2021-8/11/2021. These were another 3 days I was expected to take off from work and stay at home. Also, during this time we had a palatte of solar panels blocking half of our driveway. We were not contacted by AKE following installation. When we asked for an update on the process from our representative, Justin, we were roughly told we were no longer his problem and to direct all questions to ***** (a completely different solar company). We were finally able to schedule our inspection with the county in December, at which time we failed inspection because the installer (AKE) had not properly managed wires. Since the holidays were around the corner, we were unable to schedule reinspection until early January. After the system was finally turned on, 5 months later, we noticed one of the panels was broken and not producing. AKE did send a technician within a few days, but he came at 9:30pm to replace the panel. AKE then has refused to speak with ***** regarding the microchip number on the panel which is necessary for monitoring the system. This has further delayed the panel producing energy. At every turn, AKE has been difficult to work with and has refused to get back to their customer or the company they pawned us off on. I would steer anyone looking to install solar away from AKE or any of their associates.

87. Putative Class Member Susan J complained that it had been nine (9) months since she had contracted with Defendants to install a solar energy system, her system was “still not up and running”, and Defendants were unresponsive:



Susan J



08/29/2021

Never hear back when you call. Very poor customer service. It's been 9 months and we are still not up and running. Worse company to try and work with. we had to resign our contract in the 7 the month. They didn't do what they promised with the roof. They did give us \$ 2500. back for that.

88. Putative Class Member Barry C complained that Defendants installed a solar energy system on his roof that caught fire and melted two breakers, Defendants took two (2) months to repair the system, the system failed inspection

two times, and remained inoperable:



Barry C



06/12/2021

The initial project installation was quick and professional. Worked fine for a couple of months and then the system went down. Took 4-5 days for a service tech to come out and found that the installation had arced and caused a fire melting the breakers (thankfully no more damage). Took several additional visits by service over the next 2 months to replace the components. Service techs would install equipment, find out they didn't have the right equipment, leave, come back a day or two later. At least 2 failed inspections because the installation did not comply with the fire code. System still not fixed, now 9 panels are not working. Very frustrating service experience. I will say that Melinda is very responsive, but the service of existing systems is poor.

89. Putative Class Members have posted complaints in other online forums including SolarReviews that support the allegations of this Complaint:²⁷

90. A putative Class Member complained that he contracted with Defendants in mid 2020 to install a solar energy system, the system is inoperable, and Defendants are unresponsive:



Joseph | West Columbia, South Carolina | 01/09/2023

Worst Decision of my life ...

AKE Energy had a representative come out to my home in Mid 2020 to sell me a Solar System. After meeting with the representative, I agreed and bought they service thru them. They in turn, sold the service to someone else who fulfilled it. That company has since GONE OUT OF BUSINESS and my system is not working. AKE refuses to accept any responsibility and fix the matter. They said I am not able to be helped and that I need to find someone to service my issues as the 25 year warranty does not apply thru them as they outsourced my system. I am furious, feel cheated, lied to and taken advantage of. I want the system gone and the outstanding loan (they they again signed me up thru their lender) removed. This company needs to be held accountable for their actions.

91. A putative Class Member in Lake Worth, Florida complained that he contracted with Defendants in July 2022 to install a solar energy system, to date

²⁷ *SolarReviews*, <https://www.solarreviews.com/installers/atlantic-key-energy-reviews>

Defendants had not installed the system, and the homeowner was paying the monthly payment on the loan for the system and his electric utility bill:



Jose | Lake Worth, Florida | 05/07/2023

Awful experience with AKE solar!!!!!!Signed a contract 07/2022 for reroof and solar system;today May 06 2023 They have not started to reroof even though AKE SOLAR pocketed \$45,000 from mosaic (partners financial bank). I'm paying monthly without any service.How the bank paid \$45,000 to AKE SOLAR without checking the work was done.These 2 companies needs to be fully investigated.

92. A putative Class Member in Lehigh Acres, Florida complained that he/she contracted with Defendants to install a solar energy system and Defendants installed the system without obtaining a permit and the system had not passed inspection:



Upset homeowner | Lehigh Acres, Florida | 06/09/2022

Project not done

Don't use this company. We contracted to get panels installed, the installers did a great job which is the only star. They never obtained or posted a building permit and after over 3 weeks there is still no permit, no inspection and no possibility of having the system turned on to even see if it works. My roof was already collecting enough dust without useless solar panels on it.

93. A putative Class Member in Port Richey, Florida complained that after three (3) months, his solar energy system was not producing energy, the status was unknown, and Defendants were completely unresponsive:



DH | New Port Richey, Florida | 05/25/2022

Absolutely The WORST Solar Company World - Wide

Atlantic is quick to design, sell and install the system and panels. After that communication is non-existent, sales Rep Max Jones is of no after sales help and will not return calls or respond to Emails. All equipment has been sitting idle for almost 3 months not generating an ounce of electricity. When Atlantic is contacted NO ONE has a clue as to the status of our system and if and when it will receive final approval. The "COMMON" answer if you get one is " waiting on final inspection and approval to operate". Okay, and that is when??? Crickets and no response from anyone regardless of attempts and messages left. Highly suggest looking else where for solar and to not use this company. Terrible customer care, but reading the web-sight that's the most important quality for using Atlantic Key Energy. Damn, I'd hate to see how other companies are treating customers if this is the number 1 priority.

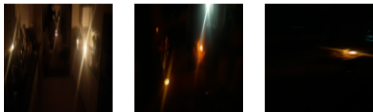
94. A putative Class Member in Lehigh Acres, Florida complained that eight (8) months after contracting with Defendants for a solar energy system, the system was inoperable and she was paying the monthly loan payment on the system **and** her electric utility bill:



Esperanza Neat | Lehigh Acres, Florida | 05/04/2022

Stay Away from this company

Horrible experience 8 months since contract was started we have not gone solar yet , paying for solar panel loan and Still paying my electric bill every month. During the transcourse we were left without power for close to two days. Spoiled food in refrigerator and melted ice all over floors. Have your wallets ready when dealing with this company.



95. A putative Class Member in Lakeland, Florida complained that after seven (7) months after Defendants installed her system, the system remained inoperable, Defendants were unresponsive, and she was paying the monthly loan payment on the system **and** the electric utility bill:



VeAnn Shea | Lakeland, Florida | 04/27/2022

OMG worst company ever

So this has been a very stressful time for me. This company is awful. They do not know what they are doing and I wish I had researched them out better than I did. I have had one issue after another since October. They keep blaming it on my city and I do think they have some blame as well but not nearly as much as AKE or their new name Lumino. Either way same company same issues same stress. Honestly it has been like a dog and pony show. The money this has cost me to go solar and they dismiss me for being upset. Other issue they are taking my payments for the last three months and told me they were sending me a gift card for a thousand dollars for all the inconvenience, now they are saying that is to give me back the money for the payments being taken out of my bank account. So unhappy with this company. I honestly do not think it will be resolved anytime soon. So take my advice go to another company they are really awful.

96. Putative Class Members have posted complaints in other online

forums including Yelp that support the allegations of this Complaint:

97. A putative Class Member in South Carolina complained that he/she had contracted with Defendants to install a solar energy system in mid 2022, the system is inoperable, and Defendants are unresponsive:



The Party Squid E.

SC, SC

@ 418 ☆ 30 📁 1

★☆☆☆☆ 1/9/2023

AKE Energy had a representative come out to my home in Mid 2020 to sell me a Solar System. After meeting with the representative, I agreed and bought they service thru them. They in turn, sold the service to someone else who fulfilled it. That company has since GONE OUT OF BUSINESS and my system is not working. AKE refuses to accept any responsibility and fix the matter. They said I am not able to be helped and that I need to find someone to service my issues as the 25 year warranty does not apply thru them as they outsourced my system. I am furious, feel cheated, lied to and taken advantage of.

This company needs to be held accountable for their actions.

98. A putative Class Member in Saint Petersburg, Florida complained that she contracted with Defendants to install a solar energy system in December 2020, and over a year later, Defendants had not finished the installation and the

system was inoperable. Notably, this homeowner stated she is looking for legal representation:



Sue J.
Saint Petersburg, FL
📍 14 🌟 8

★ ★ ★ ★ ★ 11/3/2021 · 🔄 Updated review

It will be a yr in Dec since we've been trying to get them to finish installation and approval so we can get hooked up.
They have been paid and yet they haven't paid their sub contractors so the roofers have put a lien on our home.
Bad, bad bad company.
We are trying to get 8onyourside to look into this and are going to an attorney to sue them.
Susan Julien
Shawn Butzbach

99. The above complaints from only three online forums are a small fraction of the hundreds of online complaints against Defendants. In summary, numerous putative Class Members have posted online complaints evidencing that:

- a. Defendants failed to install solar energy systems that were operable and produced energy; and/or
- b. Defendants failed to honor warranties for roof damage and water infiltration.

TOLLING OF THE STATUTE OF LIMITATIONS

Discovery Rule Tolling

100. Plaintiff and Class Members could not have discovered through reasonable diligence that Defendants failed to install solar energy systems that are

operable and produce energy.

101. Plaintiff and Class Members could not have discovered through reasonable diligence that Defendants failed to honor warranties for damage and water infiltration caused by PV system installations.

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

Fraudulent Concealment Tolling

103. Throughout the time period relevant to this action, Defendants concealed and failed to disclose to Plaintiff and Class Members vital information about Defendants 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.

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

105. 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 Plaintiff and the Class.

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

107. Plaintiff and Class Members justifiably relied on Defendants to disclose that Defendants 1) failed to install solar energy systems that are operable and produce energy; and/or 2) failed to honor warranties for roof damage and water infiltration caused by PV system installations.

108. Defendants' misrepresentations and omissions were not discoverable through reasonable efforts by Plaintiff and Class Members.

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

Estoppel

110. Defendants were under a continuous duty to disclose to Plaintiff and Class Members that Defendants 1) failed to install solar energy systems that are operable and produce energy; and/or 2) failed to honor warranties for roof damage and water infiltration caused by PV system installations.

111. Defendants actively concealed these material facts from Plaintiff and Class Members.

112. Plaintiff and Class Members reasonably relied upon Defendants knowing and actively concealing these material facts.

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

CLASS ACTION ALLEGATIONS

114. Pursuant to Fed. R. Civ. P. 23, Plaintiff brings this action on behalf of herself and on behalf of a Nationwide Class, defined as:

Nationwide Class

All persons and entities within the United States (including their Territories and the District of Columbia) who contracted with Defendants for the installation of solar energy systems and where Defendants 1) failed to install solar energy systems that are operable and produce energy; and/or 2) failed to honor warranties for roof damage and water infiltration caused by PV system installations.

115. In the alternative to the Nationwide Class, and pursuant to Fed. R. Civ. P. 23(c)(5), Plaintiff seeks to represent the following State Class as well as any subclasses or issue classes as Plaintiff 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 for the installation of solar energy systems and where Defendants 1) failed to install solar energy systems that are operable and produce energy; and/or 2) failed to honor warranties for roof damage and water infiltration caused by PV system installations.

116. 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.

117. Plaintiff reserves the right to modify and/or add to the Nationwide and/or State Class prior to class certification.

Fed. R. Civ. P. 23(a) Prerequisites

118. **Numerosity.** Both the Nationwide Class and State Class are so numerous that joinder of all members is impracticable. Although the precise number of Class Members is unknown and is within the exclusive control of Defendants, upon information and belief, Defendants' wrongful conduct as set forth above was directed at thousands of Class Members in the United States, including hundreds in the State of Florida.

119. **Commonality.** The claims of Plaintiff and the Nationwide Class and State Class involve common questions of fact and law that will predominate over any individual issues. These common questions include, but are not limited to:

- a. Whether Defendants knew or should have known that their

representations that they would install solar energy systems that were operable and produce energy were false and deceptive;

b. Whether Defendants knew or should have known that their representations that they would honor warranties for roof damage and water infiltration caused by PV system installations were false and deceptive;

c. Whether reasonable consumers would have refused to contract with Defendants if they had known that Defendants would engage in the fraudulent, unfair, and deceptive practice of failing to install solar energy systems that were operable and produce energy;

d. Whether reasonable consumers would have refused to contract with Defendants if they had known that Defendants would engage in the fraudulent, unfair, and deceptive practice of failing to honor warranties for roof damage and water infiltration caused by PV system installations;

e. Whether Defendants' practice of misrepresenting that Defendants would install solar energy systems that were operable and produced energy was to deceive Plaintiff and the Class resulting in additional profits for Defendants;

f. Whether Defendants' practice of misrepresenting that Defendants would honor warranties for roof damage and water infiltration caused by PV system installations was to deceive Plaintiff and the Class

resulting in additional profits for Defendants;

g. Whether Defendants had a duty to disclose that their practice of misrepresenting that Defendants would install solar energy systems that were operable and produce energy was false and deceptive;

h. Whether Defendants had a duty to disclose that their practice of misrepresenting that Defendants would honor warranties for roof damage and water infiltration caused by PV system installations was false and deceptive;

i. Whether Defendants omitted, actively concealed, and/or failed to disclose material facts about their failure to install solar energy systems that were operable and produced energy;

j. Whether Defendants omitted, actively concealed, and/or failed to disclose material facts about their failure to honor warranties for roof damage and water infiltration caused by PV system installations;

k. Whether this concealment of material facts would have induced reasonable consumers to act to their detriment by willingly contracting with Defendants for the installation of solar energy systems;

l. Whether Defendants' conduct constitutes a breach of contract with Plaintiff and the Class;

m. Whether Plaintiff and the other Class Members are entitled to equitable relief, including, but not limited to, restitution and injunctive relief;

and

n. Whether Plaintiff and the other Class Members are entitled to damages and other monetary relief and, if so, in what amount.

120. **Typicality.** Plaintiff's claims are typical of a Nationwide Class and a State Class Member's claims. As described herein, Defendants 1) failed to install solar energy systems that were operable and produced energy; and 2) failed to honor warranties for roof damage and water infiltration caused by PV system installations.

121. Plaintiff and Class Members have been damaged by Defendants' wrongful conduct. Plaintiff and Class Members have incurred similar or identical losses related to Defendants' wrongful conduct as set forth above. Furthermore, the factual basis of Defendants' wrongful conduct is common to all Class Members and represents a common thread of misconduct resulting in injury to all Class Members.

122. **Adequacy.** Plaintiff will fully and adequately represent and protect the interests of the Nationwide Class or State Class because she shares common interests with Class Members as a result of Defendants' wrongful conduct.

123. Plaintiff has retained counsel with experience in complex, commercial, multiparty, mass tort, consumer, and class action litigation. Plaintiff's counsel have prosecuted complex actions, including those involving consumer fraud and unfair and deceptive business acts and practices, in state and federal courts across the country.

124. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources to do so. Neither Plaintiff nor her counsel have interests adverse to those of the Class.

Fed. R. Civ. P. 23(b) Prerequisites

125. Defendants have acted or refused to act on grounds generally applicable to all the members of the Class, thereby making final injunctive relief or declaratory relief concerning the Class as a whole appropriate.

126. **Predominance.** Questions of law and fact common to the Nationwide Class and State Class, including those listed above, predominate over questions affecting individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. Individual damages on the matter can be readily calculated. Thus, the question of individual damages will not predominate over legal and factual questions common to the Nationwide Class and State Class.

127. **Superiority.** Defendants' wrongful conduct was directed at consumers uniformly as a Class. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiff and Class Members have all suffered and will continue to suffer financial harm and damage as a result of Defendants' wrongful conduct, which was directed toward Class Members as a whole, rather than specifically or uniquely against any individual Class Members.

Absent a class action, most Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual Class Members' claims, it is likely that only a few Class Members could afford to seek legal redress for Defendants' misconduct. Absent a class action, Class Members will continue to incur damages, and Defendants' misconduct will continue without effective remedy.

128. **Declaratory and Injunctive Relief.** Class wide declaratory, equitable, and injunctive relief is appropriate under Rule 23(b)(2) because Defendants have acted on grounds that apply generally to the Class. Class wide relief and Court supervision under Rule 23 assures fair, consistent, and equitable treatment and protection of all Class Members, and uniformity and consistency in Defendants' discharge of their duties to perform corrective action regarding Defendants 1) failing to install solar energy systems that are operable and produce energy; and/or 2) failing to honor warranties for roof damage and water infiltration caused by PV system installations.

CAUSES OF ACTION

COUNT I

(Breach of Contract on behalf of the Nationwide Class or State Class)

129. Plaintiff incorporates by reference all material facts in this Complaint as fully set forth herein.

130. Plaintiff brings this Count on behalf of herself and the Nationwide Class or State Class.

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

132. The Agreement is a valid contract between Plaintiff, the Class, and Defendants.

133. 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”:²⁸

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.

134. 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

²⁸ *Atlantic Key Energy Sales Agreement*, p. 2.

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”:²⁹

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.

135. Defendants represented that “AKE will install the components according to state and manufacturer specifications.”:³⁰

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.

136. 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 PV systems would be installed “in a manner consistent with that level of

²⁹ *Id.* at p. 3.

³⁰ *Id.* at p. 5.

case and skill ordinarily exercised by members of the profession” required that Defendants install PV systems that were operable and produced energy.

137. Defendants’ representations and warranties against roof damage and water infiltration at each roofing penetration required that Defendants repair or replace roofs damaged during PV system installations.

138. 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.

139. Plaintiff 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.

140. Plaintiff 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.

141. Plaintiff 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.

142. Plaintiff 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.

143. 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.

144. Plaintiff 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.

COUNT II

(Unjust Enrichment on behalf of the Nationwide Class or State Class)

145. Plaintiff incorporates by reference all material facts in this Complaint as fully set forth herein.

146. Plaintiff brings this Count on behalf of herself and the Nationwide Class or State Class.

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

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

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

150. Defendants knowingly accepted the unjust benefits of their misconduct.

151. It is inequitable and unconscionable for Defendants to retain those unjust benefits without paying value to Plaintiff and Class Members.

152. As a result of Defendants' misconduct, the amount of their their enrichment should be disgorged and returned to Plaintiff and Class Members in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this case be certified and maintained as a class action pursuant to one or more of the 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 Plaintiff as the representative of the Class and her counsel as Class counsel;
- C. Award damages, including compensatory damages, to Plaintiff and all other Class Members;
- D. Award Plaintiff and Class Members actual damages sustained;

E. Award Plaintiff and Class Members such additional damages, over and above the amount of their actual damages, which are authorized and warranted by law;

F. Grant restitution to Plaintiff and Class Members and require Defendants to disgorge inequitable gains;

G. Award Plaintiff and Class Members their reasonable attorneys fees and reimbursement of all costs for the prosecution of this action; and

H. 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: October 6, 2023

By: /s/ Louis A. Gonzalez, Esq.
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St. Louis, MO 63141
phone: 314-677-7613

Counsel for Plaintiff and the Class

CERTIFICATE OF SERVICE

I, the undersigned hereby, certify that on October 6, 2023 I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service.

By: /s/ Louis A. Gonzalez, Esq.
Louis A. Gonzalez, Esq.
Fla. Bar No.: 27463
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Atlantic Key Energy, Lumio HX Installed Faulty Solar Panels, Failed to Honor Roof Damage Warranties](#)
