

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type: Civil Other
(Consumer Protection)

State of Minnesota, by its Attorney General,
Keith Ellison,

Court File No. _____

Plaintiff,

COMPLAINT

vs.

Brio Energy LLC d/b/a Pure Solar Energy and
Clean Energy Educators, Bello Solar Energy
f/k/a Total Solar Solutions f/k/a Brio Solar
Energy LLC, Avolta Power, Inc., Sunny Solar
Utah LLC d/b/a Sunny Renewable Energy, Jared
Fager, Michael Kaelin, Alan Whitaker, Goodleap
LLC f/k/a Loanpal LLC, Sunlight Financial,
LLC and Corning Credit Union Services
Company, LLC,

Defendants.

The State of Minnesota, by its Attorney General, Keith Ellison, for its Complaint against
the Defendants, alleges as follows:

INTRODUCTION

1. Defendants Brio Energy LLC d/b/a Pure Solar Energy and Clean Energy Educators,
Bello Solar Energy f/k/a Total Solar Solutions f/k/a Brio Solar Energy LLC, Avolta Power, Inc.,
Sunny Solar Utah LLC d/b/a Sunny Renewable Energy (hereinafter “the solar Companies” or “the
Companies), Jared Fager, Michael Kaelin, and Alan Whitaker¹ market and sell residential solar

¹ The solar Companies, Jared Fager, Michael Kaelin, and Alan Whitaker will be hereinafter
referred to as “the Solar Defendants.”

photovoltaic (PV) systems to Minnesota homeowners through online advertisements and lead generation, telemarketing and door-to-door sales. The Solar Defendants use deceptive and misleading tactics to gain consumers' trust, obtain access to their homes,² and sell them solar panels that cost far more than the average Minnesota solar PV system.

2. The Solar Defendants hire Minnesota salespeople and train them to misrepresent their relationship with Minnesota utilities and the purpose of their door-to-door meetings with homeowners. After promising to simply provide information and education, they convince homeowners to let them inside their homes, and then use misleading and high-pressure sales tactics to sell them solar PV systems, including creating a false sense of urgency to purchase panels right away; representing that consumers' homes are optimal for solar regardless of their suitability; misrepresenting the cost savings and other financial benefits associated with purchasing solar panels; tricking consumers into signing binding sales contracts and loan agreements; and failing to properly advise them of the contract's three-day right to cancel and liquidated damages provisions.

3. The Solar Defendants' systems cost anywhere from \$20,000 to over \$55,000 and most homeowners cannot afford to pay for them out-of-pocket. Accordingly, the Solar Defendants have had arrangements with several lenders, including Goodleap LLC f/k/a Loanpal LLC and Corning Credit Union Services Company, LLC (hereinafter, "the Lenders"), with loans administered by Sunlight Financial, LLC, to finance their projects. The loans carry terms of 20 to 25 years and add thousands of dollars of interest to homeowners' purchase price. Moreover, the loans' payment structure supports the Companies' false claim that homeowners will automatically

² During the COVID-19 pandemic, some of the Solar Defendants' sales meetings with prospective customers have occurred via telephone call or video conference.

receive 26% of their panels' cost back from the government as a "green energy incentive" or tax rebate, discussed in Section V(b) of this Complaint, which can then be applied to loans to re-amortize and avoid an increase in monthly loan payments.

4. After locking consumers into contracts and finance agreements, sometimes without their knowledge, the Solar Defendants fail to complete solar projects within promised timeframes, do not meet interconnection requirements and deadlines, falsely blame consumers' utilities for delays, and ignore status update requests. When homeowners try to cancel their projects, the Solar Defendants threaten them with large termination fees, collections efforts, lawsuits, and liens. The State of Minnesota, by its Attorney General, Keith Ellison, brings this enforcement action to stop these unlawful practices, enforce Minnesota law, and fully remediate the harm Defendants' actions have caused Minnesota consumers.

PARTIES

5. Keith Ellison, the Attorney General of the State of Minnesota, is authorized under Minnesota Statutes Chapter 8; the Prevention of Consumer Fraud Act, Minnesota Statutes sections 325F.68 - .694; the Uniform Deceptive Trade Practices Act, Minnesota Statutes sections 325D.43 - .48; the False Statement in Advertising Act, Minn. Stat. § 325F.67; the Personal Solicitation of Sales law, Minnesota Statutes sections 325G.12 - .14; the Home Solicitation Sales Act, Minnesota Statutes sections 325G.06 - .11; the Prohibition of Deceptive Acts Perpetrated Against Senior Citizens and Disabled Persons, Minnesota Statutes section 325F.71; the Prohibition on Unreasonably Large Liquidated Damages, Minnesota Statutes section 336.2-718(1); and has common law authority, including *parens patriae* authority, to bring this action to enforce Minnesota law, vindicate the state's sovereign and quasi-sovereign interests, and to remediate all harm arising out of—and provide full relief for—violations of Minnesota's laws.

6. Defendant Brio Energy LLC d/b/a Pure Solar Energy and Clean Energy Educators (“Brio”) is a Utah limited liability company (“LLC”) with a principal place of business of 10842 S 1255 W, South Jordan, UT 84095. From July 16, 2020, to December 31, 2021, Brio held a certificate of authority issued by the Minnesota Secretary of State to transact business in the State of Minnesota.

7. Defendant Bello Solar f/k/a Total Solar Solutions f/k/a Brio Solar Energy LLC (“Bello”) is a Utah LLC with a principal place of business of 1640 S State Street, Orem, UT, 84097. From July 16, 2020, to December 31, 2021, Bello held a certificate of authority issued by the Minnesota Secretary of State to transact business in the State of Minnesota.

8. Defendant Avolta Power, Inc. (“Avolta”) is a Delaware corporation with a principal place of business of 1640 S State Street, Orem, UT, 84097. Avolta has held a certificate of authority issued by the Minnesota Secretary of State to transact business in the State of Minnesota since March 8, 2021.

9. Defendant Sunny Solar Utah LLC d/b/a Sunny Renewable Energy (“Sunny Renewable”) is a Utah LLC with an address of 562 E Austin Rd, Vineyard, UT 84059.

10. Defendant Jared Fager (“Fager”) is an owner and founder of Brio, Bello and Avolta and serves as Avolta’s corporate director. At all times material to this Complaint, Fager controlled and directed the business and sales operations of the Companies. Fager also developed sales targets, scripts, tactics and training materials.

11. Defendant Michael Kaelin (“Kaelin”) worked as Vice President of Sales for Brio from April 2016 to November 2021 and co-founded Avolta, where he served as Vice President of Sales until November 2021 when he left to open another solar company, NovaSolar USA. During his tenure, Kaelin controlled and directed Brio and Avolta’s business and sales operations, trained

the Companies' sales staff on sales targets, tactics and scripts, and oversaw a sales incentive program called the Brio Bowl, in which the Companies' sales representatives competed for prizes that included trips, money and gift cards, laptops, iPads and Apple Watches.

12. Defendant Alan Whitaker ("Whitaker") is the owner and chief executive officer ("CEO") of Sunny Renewable. Whitaker and other Sunny Renewable sales representatives engaged in deceptive and misleading conduct while marketing and selling the Companies' solar panels to many Minnesotans. Whitaker emailed prospective Minnesota customers the Solar Defendants' marketing and promotional materials, held sales meetings in which he touted the benefits of "going solar" to Minnesotans using the Solar Defendants' deceptive and misleading sales tactics and PowerPoint presentations, and continued to serve as the Solar Defendants' agent after Minnesota consumers purchased solar panels, including negotiating termination fees on Defendants' behalf when Minnesota customers tried to cancel installation contracts.

13. Defendant Goodleap LLC f/k/a Loanpal LLC ("Loanpal") is a California LLC that is located at 8781 Sierra College Blvd, Roseville CA 95661. Loanpal is a lender regulated by the Minnesota Department of Commerce under Minnesota Statutes chapter 56. Pursuant to a business arrangement with the Solar Defendants, Loanpal financed certain Minnesota residential solar PV projects and regularly met with the Companies to discuss their customers' solar projects.

14. Defendant Corning Credit Union Services Company, LLC ("Corning") is a New York LLC located at One Credit Union Plaza, P.O. Box 1450, Corning, NY 14830. Through its business arrangement with the Solar Defendants, Corning financed certain Minnesota residential solar PV projects, which were often facilitated by Defendant Sunlight Financial, LLC ("Sunlight Financial"), a point-of-sale financing company located at 234 W 39th Street, 7th Floor, New York,

New York, 10018, regulated by the Minnesota Department of Commerce under Minnesota Statutes chapter 56.³

15. At all relevant times, the Solar Defendants did business in the State of Minnesota by marketing and selling solar panels to hundreds of Minnesota homeowners. Many of these projects were financed with a loan from one of the Lenders. Avolta and Bello further designated themselves as interconnection agents for homeowners, serving as the single point of contact for their utility or electric cooperative on their solar PV projects. They also contracted with licensed Minnesota electricians to complete Minnesota customers' solar projects since the Solar Defendants themselves did not have proper licensure to install solar panels in Minnesota.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over this action pursuant to common law authority and Minnesota Statutes sections 8.01, 8.31, 325G.06 to 325G.14, 325F.67 to 325F.69, 325F.71, 325D.43 to 325D.48, and 336.2-718(1).

17. This Court has personal jurisdiction over Defendants because they transacted business in Minnesota and have committed acts causing injury to Minnesota citizens. Additionally, this Court has personal jurisdiction over Defendants because they regularly and directly sold and financed solar PV systems in Minnesota.

18. This Court further has personal jurisdiction over Defendants Fager, Kaelin, and Whitaker because they developed and trained Minnesota salespeople on the Solar Companies' aggressive and misleading sales tactics and scripts, including training salespeople to falsely represent to Minnesota homeowners that the Solar Companies were "local" companies with affiliations or relationships with Minnesota utilities like Xcel Energy. By training Minnesota sales

³ Goodleap, Corning and Sunlight Financial will hereinafter be referred to as "the Lenders."

staff to use aggressive and misleading sales tactics and requiring that they use the Solar Defendants' deceptive sales scripts, Fager, Kaelin and Whitaker knew and intended that the salespeople would be passing on this information to prospective Minnesota customers. Fager, Kaelin and Whitaker purposefully availed themselves of the benefits of this State to carry out a scheme to defraud Minnesota homeowners and were instrumental in setting in motion the Solar Defendants' fraudulent and deceptive sales practices and keeping those schemes going, which led to the sale of hundreds of solar PV systems in Minnesota.

19. Venue in Hennepin County is proper under Minnesota Statutes section 542.09 because the cause of action arose, in part, in Hennepin County.

FACTUAL BACKGROUND

I. OVERVIEW OF THE SOLAR ENERGY INDUSTRY AND MINNESOTA'S SOLAR INTERCONNECTION PROCESS.

A. Background on the Solar Energy Industry.

20. The solar energy industry has expanded dramatically in recent years. In the last decade alone, solar has experienced an annual average growth rate of 42% across the United States. Industry growth is due to a number of factors, including strong federal policies like the solar investment tax credit, state and local incentives, declining solar PV system equipment costs, and an increasing demand for clean electricity.

21. As more consumers began to purchase or lease residential solar PV systems, federal and state agencies experienced an uptick in consumer complaints. In 2016, the Federal Trade Commission hosted a workshop on consumer protection issues arising from rooftop solar sales. Concerns included promises by solar companies of savings on utility bills that failed to materialize, confusing information about energy tax credits and incentives, and consumers' inability to sell or buy homes once solar panels had been installed. Since then, there have been a number of

investigations and enforcement actions by state and federal agencies involving companies that market and sell solar PV systems, as well as numerous warnings by law enforcement agencies, consumer watchdog organizations, and utilities across the country of deceptive and predatory practices by certain solar companies.

B. Minnesota’s Solar Energy Initiatives and Interconnection Process.

22. Consistent with the nationwide trend, the solar industry in Minnesota continues to grow. In 2013, the Minnesota Legislature passed the Solar Energy Standard which set state solar goals and policies to support growth. The law required investor-owned utilities to obtain 1.5% of their electricity sales in solar by 2020, with a goal of 10% by 2030. It also required that Xcel Energy (“Xcel”) develop a community solar program and administer a solar incentive program. Other Minnesota utilities and electric co-ops have also begun to offer solar incentives to members.

23. The process by which solar PV systems connect to an electric grid is known as “interconnection” and is governed by state law. Utilities and electric cooperatives must designate one or more Distributed Energy Resources (“DER”) interconnection coordinators to provide information on the application process and serve as a single point of contact for connecting customers. They must allow for electronic submission of applications, maintain a queue of all interconnection applications, and meet certain deadlines to keep customers’ projects moving.

24. Customers seeking interconnection may designate, on the interconnection application or in writing after the application has been submitted, an application agent to serve as the customer’s single point of contact who will coordinate with the DER coordinator on the customer’s behalf. Customers who fail to meet interconnection deadlines may face withdrawal of their queue position and the need to re-apply and pay additional application fees.

25. Consumers who install solar PV systems and successfully complete the interconnection process receive net energy metering benefits. Net metering policies allow connecting customers to return excess electricity to a utility's grid and receive a credit on their utility bill. The credit offsets the customer's electricity consumption during other times of the day and year, which reduces the amount of electricity the customer purchases from the utility.

II. BACKGROUND ON THE SOLAR DEFENDANTS AND THE LENDERS.

26. The Solar Defendants have marketed and sold residential solar PV systems throughout the country since 2015 and in Minnesota since at least 2020. Brio and Bello were founded by Fager and Adam Coomer ("Coomer") in 2015; both Fager and Coomer had prior experience in door-to-door sales. Prior to Brio and Bello, Coomer spent five years working for Vivint Solar ("Vivint"), a solar panel sales and leasing company that has since entered into civil settlements with at least three Attorneys General to resolve allegations that it engaged in systematic consumer fraud and deceptive business practices.

27. To the confusion of many customers, Brio and Bello have conducted business under various trade names including Brio, Bello, Total Solar Solutions, Clean Energy Educators, and Pure Solar. Avolta was incorporated in 2020, and similarly often communicated with consumers and Minnesota utilities and electric cooperatives under the Companies' other names. The Companies shared ownership, management, and employees. In furtherance of their joint enterprise, they used the same deceptive marketing and advertising materials, sales tactics, scripts, presentations, contracts, and loan documents and shared customer information and records.

28. During sales pitches, the Solar Defendants touted their history and experience, customer satisfaction, and stellar Better Business Bureau ("BBB") ratings, even as they amassed

dozens of BBB complaints and utilities across the country issued cease-and-desist letters and warnings about their deceptive practices.

29. The Solar Defendants' marketing and sales practices include online advertisements and lead generation, telemarketing, and door-to-door sales. The Solar Defendants look to hire salespeople⁴ who are "willing to do whatever it takes to be successful" and "win." They describe sales as "going to war," and train their sales team to use aggressive and misleading tactics to sell solar panels to consumers. "We have to be willing to beat people up a bit, you know, give them a little grief," Kaelin explains during one of the Solar Defendants' sales trainings.

30. Salespeople are required to use the sales script created by Fager and do "whatever [they] have to do to get into the house." They are told that they can earn hundreds of thousands of dollars if they follow the Solar Defendants' predatory sales tactics and are further incentivized by sales competitions with prizes ranging from clothing to iPads to international vacations.

31. According to the Clean Energy Resource Teams, a statewide partnership involving the University of Minnesota and Minnesota Department of Commerce, the average residential solar PV system costs \$3,750 per kilowatt ("kW"). The Solar Defendants charge Minnesotans anywhere from \$5,000 to \$6,000 per kW for systems that range in size from 3.8 to 12.5 kW.

32. Because most homeowners cannot afford to pay for the Solar Defendants' systems out-of-pocket, the Solar Defendants arrange for them to receive solar loans through several different lenders, including Loanpal and Sunlight Financial on behalf of Corning. The Solar Defendants obtain personal information from homeowners, sometimes even before meeting with

⁴ For purposes of this Complaint, "salespeople" refer to all individuals or entities who engage with consumers in the marketing, advertising, promotion, or sale of the Companies' products, whether or not those individuals or entities are employed by the Solar Defendants, contractors or agents of the Solar Defendants, or affiliated with the Solar Defendants through some other means.

them or disclosing that they are selling solar panels, to preapprove them for a loan. The Solar Defendants then build financing provided by the Lenders into their initial sales pitch with consumers (see example below) and use a variety of high-pressure and misleading sales tactics to convince consumers to sign “paperwork” consisting of an installation contract and loan agreement, sometimes without consumers’ knowledge or understanding of what they are signing. The Lenders disburse funds to the Solar Defendants upon panel installation, at which point consumers must begin making monthly solar loan payments to the Lenders.

Financing Options

	1 TAX CREDIT APPLIED	2 TAX CREDIT NOT APPLIED
Financing Payment	\$147	\$203
Lender	Loanpal 2.99% 20 yr	Loanpal 2.99% 20 yr
Total Incentives	\$9,960	\$9,960
Post Solar Electric Bill *	\$9	\$9
Total Financed Amount	\$26,056	\$36,016
Tenure	20 Years	20 Years

* Post solar bill may not include the meter fee.

4 **brio**

33. Consumers’ loan contracts contain a “Holder Rule” Notice subjecting the Lenders, as loan holders, to “all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof.” This contract provision subjects the Lenders to any liability that may arise based on the misconduct of the Solar Defendants.

III. TO SCHEDULE SALES MEETINGS AND GAIN CONSUMERS’ TRUST, THE SOLAR DEFENDANTS MISREPRESENT THEIR ROLE AND RELATIONSHIP WITH MINNESOTA UTILITIES.

34. To gain homeowners’ trust and schedule sales meetings with them, the Solar Defendants developed a scheme to give the false impression that their salespeople work for, or are partners with, Minnesota utilities like Xcel. Defendants Fager and Kaelin developed and

personally trained sales representative on this tactic, and Whitaker engaged in this tactic while meeting with Minnesotans for the purpose of selling them the Solar Defendants' products and services. Contrary to this deceptive practice, state utilities and electric cooperatives do not partner with or recommend particular solar panel companies to their customers or members.

35. The Solar Defendants further misrepresent the purpose of meeting with homeowners, deceptively calling their salespeople "energy consultants" whose purpose is not to sell anything, but to conduct "energy audits" and provide homeowners with information on saving money on their utility bills and determining whether solar power is a good fit for their home. "Get a free customized energy report from Brio and see just how much you can save before the window closes," states Kaelin in one advertisement. Fager instructs the Solar Defendants' sales team to present themselves as though they're not actually selling solar but providing homeowners with information so they know whether solar energy is a good fit for them. In reality, the sole purpose of the Solar Defendants' meetings with homeowners is to sell them solar panels.

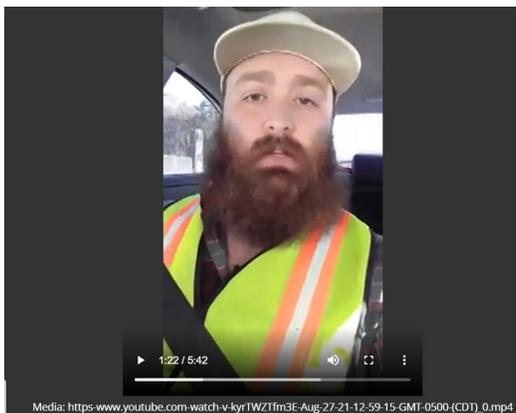
36. The Solar Defendants' scheme starts with confusing digital advertisements, online surveys, and telemarketing calls that are designed to appear as though they come from the local electric utility or a partner or agent of that utility. The Solar Defendants also communicate with homeowners using email addresses that misleadingly imply a relationship with Minnesota utilities such as xcel.totalsolarsolutions@gmail.com. Then, the Solar Defendants' doorknockers, who travel neighborhoods on foot to set up in-person sales meetings or videoconferences with homeowners, use a script that falsely implies they are affiliated with that homeowner's electric utility. "[Name] is the energy consultant [who] will be swinging by your house, his job is [simply to] answer any questions that you have and figure out if the program is a good fit for you," doorknockers deceptively tell homeowners.

37. During sales training, Kaelin and Fager demonstrate doorknockers' required script:

Kaelin: "My name's Michael, they just have us out here working on the Duke⁵ net metering program. They had the chance to chat with you guys about that yet?"

Fager: "So the reason they have us out here today is they just have us out here working on Rocky Mountain Power, you know, on the net metering program."⁶

38. In another sales training facilitated by Kaelin, one of the Solar Defendants' highest-performing salesmen appears in a utility vest (see below), explaining: "We wear these vests to try to help with image" and describes his efforts to mislead homeowners into believing that he is not there to sell them anything by talking to them as if he is "there to dig a ditch in [their] yard."



39. The Solar Defendants understand that their scripts are likely to confuse consumers. Indeed, they train their sales team to expect and respond to the following "objections" from homeowners: "I did not know this was solar," "I thought you were with the utility" and "I thought this was an energy audit." Kaelin instructs sales agents to: "[Ask a] question to distract them and move on." "Acknowledge it, ignore it and move on."

40. The Solar Defendants' fraudulent scheme is not new. Since the Solar Defendants' inception, a central part of their sales pitch has been misrepresenting their relationship with

⁵ Duke Energy is one of the largest electric power holding companies in the United States, providing electricity to 7.8 million customers in six states.

⁶ Rocky Mountain Power is a utility serving 1.2 million customers in Utah, Wyoming, and Idaho.

utilities. This practice, set in motion by Fager and Kaelin's deceptive sales tactics and scripts and continuing at their direction, has led to warnings from utilities across the country, including:

- a) In October 2016, the city-owned electric utility of Austin, Texas, sent a cease-and-desist letter to Brio warning it to stop making "fraudulent and misleading statements" to its customers, including falsely claiming to be an employee, partner, or contractor of the utility. It warned Brio that "any statements by Brio representatives claiming or implying a relationship exists between your company and Austin Energy is false, misleading, fraudulent, and potentially criminal" and ordered Brio to cease and desist mentioning the utility or the City in its marketing.
- b) In February 2018 and again in February 2020, Blue Ridge Electric, a North and South Carolina utility, advised customers that a number of members had called to verify a partnership with Brio. "We have no partnership with this or any other retail solar company! If you are bothered in person or by phone...please let us know."
- c) In August 2018, Sundance Power Systems in Weaverville, North Carolina warned residents about Brio's "predatory tactics" and "high-pressure approach to business."
- d) In March 2021, Colorado Springs Utilities sent a cease-and-desist letter to Brio, Pure Solar, and Clean Energy Educators after it received complaints that the Companies were "providing [citizens] communication that indicate and/or imply a relationship between Springs Utilities and Pure Energy regarding Clean Energy Educators." Colorado Springs Utilities demanded that the Companies add language to all physical and electronic promotional materials "stating that [the Companies are] not endorsed by Springs Utilities." In June 2021, Colorado Springs Utilities sent a similar cease-and-desist letter to Avolta.
- e) In May 2021, United Cooperative Services ("United Co-op"), a Texas utility, warned customers of Pure Energy's solar scams, which included door-to-door solar sales in which Pure Energy representatives claimed "they represent United Cooperative Services" or were installing solar "through United."

41. The Solar Defendants have knowingly deceived and misled many Minnesotans on their relationship with local utilities and their purpose in meeting with homeowners. For instance, 81-year-old **M.D.**, who worked in child protection and social work before retiring in 2000, received a call from a woman who represented that she was working with Xcel to install solar panels in M.D.'s neighborhood. After M.D. unknowingly signed a \$33,000 solar panel installation contract with Avolta, she contacted Xcel and was told that Xcel had no affiliation with the

company. “I remain troubled that Avolta used shady tactics to try and get a senior citizen to take on tens of thousands of dollars of debt,” states M.D.

42. In 2021, Duluth-based utility Minnesota Power, which provides electricity to 145,000 residential and commercial customers in northeastern Minnesota, began to receive reports of cold calls from a company that identified itself as Clean Energy Educators or Clean Energy Authority (“Clean Energy”). Based on these calls, customers understood that Clean Energy was selling solar panels on MN Power’s behalf. When several MN Power customers agreed to meet with Clean Energy, representatives identified themselves as affiliated with Avolta. MN Power’s DER Interconnection Coordinator states: “MN Power was not affiliated with Clean Energy or Avolta, was not setting up meetings to sell them solar panels and had no such affiliation or relationship with any solar panel sales companies or installers.”

43. **J.H.C.**, a high school teacher who lives in Bloomington, saw an online advertisement for solar energy that included Xcel’s logo and asked questions like, “Are you a Minnesota homeowner?” and “Do you have interest in solar energy?” Thinking that she was contacting Xcel, J.H.C. clicked on the ad for more information and provided her contact information. Shortly thereafter, Bello contacted J.H.C. and set up a meeting at her home, stating that the purpose of the meeting was to educate her about solar power. “Based on Bello’s ad and statements made during its call and in-home presentation, I understood Xcel and Bello were partners and I trusted that Xcel would only partner with reputable companies,” states J.H.C., who financed her 3.8 kW system with a \$24,000 loan from Loanpal.

44. A man knocked on **S.O.** and **E.O.**’s door and introduced himself as Ryan from Xcel. Ryan said he was meeting with homeowners to help them find ways to save money on their utility bills and set up a time to meet with S.O. and E.O. within the next several days. The

following day, Ryan showed up to their home in an unmarked pickup truck. Surprised that he was not driving an Xcel vehicle, S.O. and E.O. asked Ryan to confirm that he worked for Xcel. For the first time, Ryan told them that he did not work for Xcel but worked for Bello Solar, which was “working with Xcel to help ease the strain on Xcel’s energy grid.”

45. 28-year-old **J.P.**, a U.S. Marine Corps veteran who currently works in the Information Technology field, contracted with Brio after being told that Brio was working with Xcel on the net metering program. Brio said it had partnered with Xcel to help consumers create greener energy, save money, and ease the strain on Xcel’s energy grid. “[Because] Brio was a partner of Xcel, we figured Brio had to be a legitimate and trustworthy company.” After experiencing unreasonable delays and horrible customer service, J.P. researched Brio online and was concerned to find consumer complaints stating that it had misrepresented a partnership with consumers’ utilities when in fact it had no such relationship. J.P. took out a \$38,320 loan from Loanpal to pay for his 7.6 kw system. He will pay over \$16,500 in interest over 25 years.

46. **A.L.G.**, who lives in St. Paul with her husband, saw what looked like an Xcel ad online for solar energy which prompted her to take a survey. Shortly after, she was contacted by Sunny Renewable for a “Solar Discovery” call. “I thought [this] would be a presentation about solar education,” states A.L.G. “Instead, it was a sales pitch.”

47. Brio’s salesman “spoke as though Brio had a contract or partnership with Xcel,” explaining that “they” had him out visiting homeowners to educate them on solar. **A.G.**, a business analyst from Cottage Grove, had not planned on purchasing solar panels during the meeting but was assured by Brio’s relationship with Xcel and signed a contract that day. Concerned with a lack of progress on her project, A.G. later looked up Brio online and was dismayed to find numerous consumer complaints, including allegations that Brio had misrepresented its relationship

with local utilities, misled consumers on cost savings associated with Brio's solar panels, and failed to complete customers' projects after contracts were signed. "I also learned for the first time that Brio was not affiliated with Xcel and was not even located in Minnesota," A.G. reports.

IV. AFTER GAINING CONSUMERS' TRUST AND ACCESS TO THEIR HOMES, THE SOLAR DEFENDANTS SUBJECT THEM TO HIGH-PRESSURE SALES TACTICS.

48. After developing trust and gaining access to consumers in their homes through their misrepresentations, the Solar Defendants' sales personnel engage in a number of high-pressure and deceptive tactics to get consumers to sign a solar installation contract before they have time to determine whether their homes are suitable for solar, examine cost savings, obtain quotes from other companies, and research the Solar Defendants.

A. The Solar Defendants Create Pain, Then Offer Their Solar Panels as The Solution.

49. To even interact with consumers, the Solar Defendants' sales representatives must memorize at least three pain cycles that "establish the problem," and then offer their solar PV systems as the solution. "It's like you just punched them in the face and then you're like, here's an ice pack, right?" Kaelin describes during one of his sales trainings. Kaelin compares this sales tactic to fake news: "Everyone loves clicking on fake news 'cause they're just like, oh, that sounds juicy and they click on it...everyone loves a problem."

50. The Solar Defendants' pain cycles include horror stories of astronomical utility rate increases caused by shuttered power plants, power shortages, natural disasters, environmental cleanup costs, and greedy utilities. "So the reason they have me out here today is...the state of Utah has been mandating that here in the state we start shutting down power plants and what that's doing is that's causing, because there's less energy, that's causing an increase in our costs for energy," Fager states while demonstrating the Companies' sales script. Kaelin describes rate

increases as the “easiest way to build pain” because “if people are really terrified about their rates going up, they’re more inclined to switch.” “What’s the story that we are going to tell,” Fager asks during one sales training. “The shutting down of coal plants?...I like the ahh, specificity of it, it makes me feel like it’s actually happening.” Fager also boasts about his ability to make a utility rate increase pain cycle up on the spot: “Have you noticed the price of power in California? Ten years ago, the price of power was the same price as it is here in Utah today. The price of power has tripled, and a lot of people are expecting the same here.” Fager warns his sales team that some savvy homeowners might be aware that the Companies’ pain cycles are false. “You really need to assess the story that’s being told [and] find the best story for your market,” he states.

51. Kaelin provides specific instructions on how to use the utility rate increase pain cycle when targeting retired seniors. “Their income is not going to go up, it’s fixed, and they are a little concerned they are going to have to pay for electricity, then their electricity bill starts going up, ten, fifteen, twenty percent over the years,” Kaelin explains. “So, the easiest thing to help the customer understand is that most people in their area that are retired are on a fixed income and they want to have a fixed electricity bill and not have to worry about their electricity bill going up. So you can start seeing savings [on] day one, but in addition to that, you don’t have to worry about your electricity bill going up ever again, that way.”

52. For example, Sunny Renewable sent marketing emails to **M.M.** of Prior Lake that read: “Now’s the time, take the power back and declare your energy independence!” and “You simply pay for your system instead of the power company’s profits! STOP relying on the grid. Find out what it means to be self-reliant.” (Emphasis in original.)

53. “[The Bello Solar Energy f/k/a Total Solar salesman] presented me with a Mount Everest-looking chart showing steep increases in oil and gas prices and warned me that I’d be subject to these rate increases unless I invested in solar,” states **S.H.** of Minneapolis.

54. Bello told **S.O.** and **E.O.** that Xcel’s current energy overload was increasing the cost of electricity and within a few years, its electric grid would be maxed out unless homeowners powered their home with alternative sources of energy.

55. **M.G.** and **J.G.** of South Saint Paul were told that electricity rates were rising and Xcel was shutting down its power plant, which would further increase consumers’ electricity rates. **M.G.** and **J.G.** explained: “[Sunny Renewable] also stated that many people were investing in solar panels because it allowed them to produce cleaner energy, own their own power, save money and avoid rising utility rates.”

B. The Solar Defendants Train Their Sales Representatives to Overcome Consumers’ Objections.

56. As discussed above, the Solar Defendants train sales staff to overcome consumers’ objections to meeting with them, objections to listening to their sales pitch once homeowners realize they are being given a hard sell, and objections to quickly purchasing solar panels that day before consumers have time to think about this major investment using the AIM method: acknowledge, ignore, and move on.

57. Kaelin also trains sales staff to overcome common objections from potential customers using the sales tactic of “feel, felt, found.” His presentation includes the following PowerPoint slide:

Feel, Felt, Found

- When to use it
- Tones and speed can't change
- Can't go into "story time"
- "Moving"
- "Expensive"
- "Bad roof"
- "Maintenance"
- "Too old"

58. Both Kaelin and Fager provide training on overcoming the objection of “it’s too expensive.” “You’re going to have a lot of concerns and most of them are really fake,” Fager states. “You’re going to get all the way to the end of your pitch and they’re going to [say] it’s just too expensive, even though you’ve spent the last five minutes explaining that there’s no cost.”

59. The Solar Defendants also dedicate sections of their training to overcoming objections from the elderly, including the objection of “I’m going to die soon.” Fager demonstrates several ways to overcome this objection during sales training, including:

I completely understand how you feel a lot of people have felt the same way, you're going to be passing away...but what they've found is that it added equity to their home and so a lot of people are willing to move forward with solar knowing that.

And again, I’m not here to sell you anything, but if solar was going to add equity to your home so when it did sold [sic] and went to your kids, and whatever happens there, and they were able to get more, would that be worth the hassle to you?

60. 65-year-old **B.W.**, who runs a horse training and boarding facility on her farm in Monticello, was one such prospective customer who expressed reservation with signing a \$50,400 solar installation contract and loan during her first meeting with Bello. “I [said] that at my age, I was not sure how much longer I would own my property and was hesitant to enter into a 20-year loan,” B.W. explains. Bello assured B.W. that assigning her solar loan to a buyer would be as easy as transferring a utility bill and pressured her to sign up right away, promising that Bello would install her solar panels the following month and give her \$1,000 cash back at that time.

61. When **S.O.** and **E.O.** told Bello that they were not interested in solar panels because they planned to sell their home and build a new home the following year, Bello said that installing solar panels would add \$50,000 equity to their home, over twice what they would cost. Bello said that transferring their solar panel loan to the buyer would be as easy as transferring a utility bill.

62. Brio tried to persuade **A.G.** to move forward with installing solar panels after she decided to sell her home, stating that she could simply transfer the loan to the buyer as part of the sales process. When A.G. responded that she did not think a new homeowner would want to take on a \$40,000 loan, Brio tried to convince her to put panels on her new home instead.

C. The Solar Defendants Create a False Sense of Urgency for Consumers to Purchase Solar Panels Right Away.

63. Another of the Solar Defendants' tactics is to create a false sense of urgency on the part of prospective customers to sign a solar installation contract right away. The Companies accomplish this with several deceptive representations.

64. First, they falsely claim that government incentives may decrease or disappear without any notice. "Tax credits are starting to dwindle every year," Fager tells sales staff. "To build urgency, [talk] about the tax credits," Kaelin instructed. "Hey, you know one thing, we really gotta [sic] get this rolling because the tax credits are changing at the end of the year." Contrary to the Solar Defendants' claim, the federal solar tax credit has been 26% since 2020 and will not drop to 22% until 2023.

65. Second, the Solar Defendants misrepresent that only a certain number of net metering applications are allowed, and customers may lose out if they don't sign up right away. Minnesota has no limit on cumulative generation of net metered facilities and a public utility (not

member-owned cooperative) may request a limit only if certain factors are met and after providing notice and the opportunity for public comment.⁷

66. Finally, the Solar Defendants increase the fear of missing out by promoting one-day only deals or incentives such as 12 free months of solar loan payments or cash back incentives which turn out to be a bait and switch tactic for multiple Minnesotans. Sales representatives promise prospective customers energy efficient upgrades like LED lights and smart thermostats for “getting the surveyor to come out and get the process started.” Consumers are later told that if they don’t purchase solar panels, they will have to pay up to \$1,200 for these “free” items.

67. To create urgency, Bello told **B.W.** of Monticello that government incentives were decreasing so it was important for her to sign up right away. When B.W. said she needed time to think about such a large investment, Bello continued to pressure her, promising her that if she signed up that day, Bello would give her \$1,000 cash back at the time of installation. Bello told B.W. this was a one-day only deal, and not wanting to lose out on government incentives or the \$1,000 cash back offer, B.W. signed a contract that day. When Bello repeatedly canceled and rescheduled B.W.’s installation date, she asked when she would receive the \$1,000. For the first time, Bello told B.W. that because she was a Wright-Hennepin Cooperative Electric Association member, she did not qualify for this incentive.

68. In March 2021, Sunny Renewable told **A.L.G.** that it was important to get her solar panels done quickly because tax credits would be expiring at the end of 2021. The salesman also said that if she moved forward with an estimate, she would receive a free smart thermostat and LED lightbulbs. A.L.G. later learned the paperwork she signed to get an estimate was a binding solar installation contract for over \$28,000.

⁷ See Minn. Stat. § 216b.164, subd. 4b.

69. Bello told N.N. of Minneapolis that if he installed solar panels, it would provide him with a smart thermostat and LED lightbulbs at no cost to increase the energy efficiency of his home. Bello took over a year to provide N.N. with the promised thermostat and lightbulbs, and only after he repeatedly requested these items from the company.

V. THE SOLAR DEFENDANTS MISLEAD CONSUMERS ON THE BENEFITS AND COST SAVINGS ASSOCIATED WITH THEIR SOLAR PANELS.

70. The Solar Defendants' marketing campaign, sales training and script deceives consumers on the financial benefits and cost savings associated with purchasing solar panels from them. The Companies' owners personally encourage sales staff to lie or exaggerate the financial benefits of solar panels. For instance, Kaelin trains sales representatives to use his "trick" of inflating consumers' understanding of what they are paying for electricity. "When you come up with a number like [that], they're like, holy s***, even though we're only lowering their bill about five bucks," Kaelin explains. Fager compares lying to potential solar customers to lying to his wife: "People are like, Jared, you lied to your wife. Yeah, but like, is she happy? She's happy, I'm happy. The means justify the ends." The Solar Defendants mislead consumers on the benefits of purchasing their solar panels in several different ways.

A. The Solar Defendants Deceive Consumers into Believing That If They Purchase Solar Panels, They Will Never Receive Another Electricity Bill.

71. The Solar Defendants represent that purchasing solar panels will give homeowners independence from their utility and assure them that if they install solar panels, they will never have another electricity bill again. "Your solar panels will produce plenty of power for your family's annual energy needs," reads the Custom Proposal provided to prospective customers.

72. The Solar Defendants tout a low, fixed, monthly solar panel bill in place of homeowners' electricity bill and tell them that once their panels are paid off, they will get "free

power.” “Take the power back and declare your energy independence!” they advertise. “STOP relying on the grid!” “Homeowners get to stop renting their power with utilities and own it, they get a fixed bill, they truly get free power, they get to take advantage of local and federal rebates and incentives that all start decreasing in a few months,” Kaelin states in one the Companies’ ads. As described above, Fager trains sales staff that solar panels will come at “no cost” to consumers.

73. “My husband and I are retired seniors living on a fixed income and are always looking for ways to save money,” states 72-year-old **L.G.** of Ogema. L.G. signed a \$34,700 solar installation and Loanpal agreement after Bello Solar told her that solar panels would reduce her electric bills to a mere \$9 monthly connection fee within the year. “This is not accurate,” states Thomas Houdek, who serves as DER Coordinator for L.G.’s electric co-op, Wild Rice Electric (“WRE”). “Solar panel energy production varies depending on the amount of sunlight the panels receive and [L.G.] will likely have to pay WRE electric bills some months and receive credits [other] months.”

74. Bello Solar told **J.H.C.** that Xcel’s rates were likely to rise, giving the example of recent astronomical utility bill increases in California. Bello Solar said that J.H.C.’s solar PV system would produce enough electricity to offset her family’s usage and she would never receive another electricity bill. J.H.C., who waited nine months for Bello to complete the interconnection process, states: “My solar panels are not producing all my electricity as promised and I have continued to receive bills from Xcel. I’m stuck in a 25-year solar panel loan and fear that I will end up paying a lot more in the long run than I would have had I never contracted with Bello.”

75. “It is unclear to me whether I will save any money at all from my solar panels,” states **L.B.** One month, L.B. does not receive a bill from Xcel and the next month, she receives a bill for twice what her bill was before her solar panels began producing power. To convince her

to sign a \$26,174 contract and Loanpal agreement, the Solar Defendants' salesperson told L.B. that once her solar system was up and running, she'd never have another electricity bill again.

B. The Solar Defendants Falsely Represent That Certain Solar Financial Incentives Are Automatic.

76. The Solar Defendants also deceive consumers into believing that they will automatically qualify for certain financial incentives from the government and their electric utility.

77. First, the Solar Defendants' sales representatives tell prospective customers that federal and state governments are paying for homeowners to install solar panels and "[I'm] just here to see who qualifies for the program." "The federal government, they are going to give you a total of whatever it is, \$10,662 to go solar. They will give this money to you in your tax return. So when you file your tax return, it will be \$10,662 bigger than what it normally is...you can do whatever you want with that money." Fager trains sales staff to tell homeowners: "How it works is you are going to get 30% back of the cost, instead of paying [your utility] you are going to be paying for your solar panels...once you are done paying it, you are only going to pay a [\$8] fee."

78. The Solar Defendants' marketing materials and script, as well as the Custom Proposal that they provide to prospective customers, falsely imply that consumers will receive 26% of their purchase price back from the government as a "financial incentive" or "green energy rebate." The Defendants structure consumers' loan payments based on an assumption that homeowners will receive this lump sum payment as a tax return and apply it to the loan balance to avoid an increase in monthly solar loan payments.

79. What the Solar Defendants do not tell consumers, and what is buried in their solar installation agreements and the Lenders' loan agreements, is that the federal solar tax credit is not automatic, but rather will only be returned to the customer if his or her tax liability equals 26% or more of their solar panel purchase. Homeowners who are not able to re-amortize their loan with

a lump sum payment because they do not receive this tax credit are subject to an increase in monthly loan payments and thousands of dollars in additional interest.

80. **J.S.**, a 69-year-old retiree who lives in Minneapolis, was told that her solar panels would cost about \$21,000 but that she would receive 26% back due to a 2021 federal tax incentive. After contracting with the Companies and financing her project with a loan from Corning, administered through Sunlight Financial, J.S. learned that because of her retirement status and fixed income, she would not qualify for the solar tax credit. “A large part of why I agreed on solar energy was the tax incentive, and I cannot believe that the Company misled me into believing that this payment was automatic,” J.S. stated.

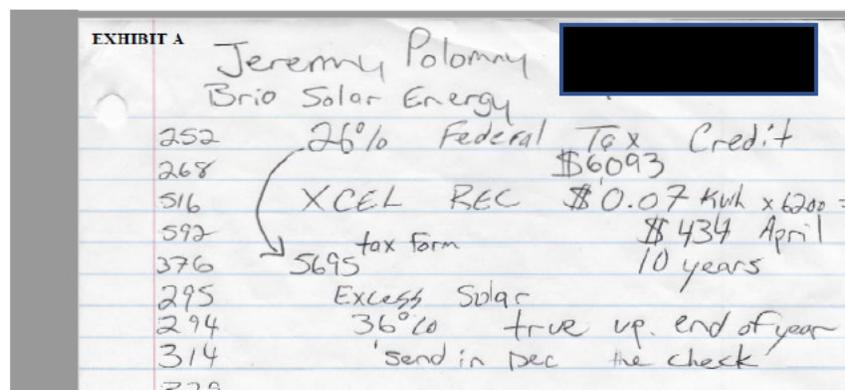
81. Brio told **D.S.** of Saint Bonifacius that while solar panels would cost her \$54,000, she would receive a \$14,000 tax return the following year. After installation, D.S. learned that the \$14,000 incentive Brio had spoken about was a credit that would bring down her tax obligations, not an automatic cash return as Brio had promised. D.S. has yet to receive any financial benefit from her solar panels and worries her loan payments will increase as she likely will not have the \$14,000 tax incentive to put toward her Goodleap loan.

82. Second, the Solar Defendants misrepresent the availability of certain incentives offered by Minnesota utilities and falsely promise that they will handle enrolling consumers in these incentive programs as part of the interconnection process.

83. For example, during a sales meeting and call with **M.M.**, Sunny Renewable assured M.M. that he would be enrolled in Xcel’s Solar*Rewards as part of the interconnection process. After his solar panels were installed, M.M. spoke with Xcel and learned that the Solar Defendants had not enrolled him in the Solar*Rewards program as promised, nor could they have enrolled him in the program at that time. When M.M. requested financial relief due to the Solar Defendants’

misrepresentations, they responded that it was M.M.'s responsibility to determine whether he qualified for incentives, referencing a disclaimer buried in his solar contract stating that financial incentives would be obtained by the Customer (unless otherwise agreed by the Company).

84. Bello told S.K. and her husband, K.K., of Maple Grove that by purchasing solar panels right away, they would "lock in" a reimbursement rate as part of a program in which Xcel would purchase excess energy their solar panels fed back into the grid at \$0.07 kWh. A copy of the material provided by Bello's salesman to S.K. and K.K. is as follows:



85. S.K. later learned that Bello had not signed her up for Xcel's Solar*Rewards program which means she will never receive the \$.07 kWh incentive promised to her by the company. "Bello came to me with promises of assistance throughout the process and that I would be selling my excess energy to offset the costs of this very expensive project," states S.K. "Instead, Bello left me high and dry, failing to perform even basic steps like obtaining [an installation] permit or submitting a [Solar*Rewards] application." S.K. and K.K.'s project was financed with a loan from Corning through Sunlight Financial.

86. Third, the Solar Defendants make several other misrepresentations about the financial and other benefits associated with their solar panels, including:

- a) That homeowners will save anywhere from \$100,000 to \$200,000 over the life of their solar panels, when certain homeowners save little to no money when they purchase solar panels from the Companies. "It is really comforting knocking on a

door knowing that hey, I could potentially be saving this family \$100,000. I could be giving, you know, three kids a college education,” states Kaelin in one of the Companies’ promotional videos. “[That] makes it a lot easier to keep pushing, to keep pushing through ‘no’s,’ pushing through objections because you know the information that you are giving them will be invaluable to the family.”

- b) That installing solar panels will increase the value of a home by up to \$50,000.
- c) That installing solar panels will make a home easier to sell if it is ever put on the market.
- d) That transferring a solar installment loan is as easy as transferring a utility bill to a new homeowner.

C. The Solar Defendants Aggressively Seek to “Close the Sale” Even When Homes Are Not Suitable for Solar Panels.

87. As described above, the Solar Defendants misrepresent their relationship with Minnesota utilities and purpose in meeting with homeowners, calling their salespeople “energy consultants” who purportedly conduct audits and determine whether solar panels are a good fit for a consumer’s home and whether the consumer herself qualifies. “Hey, so this is a government funded program so they just want to make sure that everyone qualifies for this, so they don’t waste anyone’s time,” they tell prospective customers. “We’re going to do what we can to see if this is going to be a good fit for you guys or not...my job’s really simple, right, I’m not here to, like, force a square peg into a round hole, but to really help people determine, you know, if this is a good fit or not.”

88. While solar panels work on many homes, other homes are not suitable for solar. For instance, the amount of direct sunlight PV panels receive and the energy they produce is affected by orientation, tilt, and shading of a roof. Even partial shading can dramatically reduce the energy output of a solar PV system. The Solar Defendants, however, have convinced homeowners to sign solar installation contracts for tens of thousands of dollars, even though their homes have poor or marginal suitability for solar. For instance:

89. **A.L.G.** discussed the location of her home and its suitability for solar energy with a Sunny Renewable salesman, who said solar panels would work for her and produce even more energy than needed, which she could sell back to Xcel. A.L.G. expressed concern that certain real estate websites gave her home a low “solar score,” and Sunny Renewable convinced her to sign a contract by telling her she could cancel any time before installation. A.L.G. later learned that she could not build solar panels in her front yard as planned due to her proximity to a city park and permit regulations. When she advised Sunny Renewable that she would not be moving forward with solar panels, it sent her a \$4,258.95 invoice reflecting a 15% cancellation fee.

90. Bello recommended that **J.H.C.** purchase solar panels even though she had a large tree in her front yard which made her home a poor location for solar. Bello told J.H.C. that it would include the cost of tree removal in her solar loan but failed to remove the tree as promised and then told J.H.C. her contract only included tree trimming.

91. **D.H.** was told that before installing solar panels, Bello would make sure that they were a good fit for her roof. She signed a \$36,000 contract and loan from Sunlight Financial on behalf of Corning only to learn that she needed a new roof. When she contacted Bello to ask about the process of replacing her roof after panel installation, Bello first said it would cover the cost of uninstalling and reinstalling her panels, then later said it would cost her \$5,000.

VI. THE SOLAR DEFENDANTS TRICK CONSUMERS INTO SIGNING BINDING SALES CONTRACTS AND LOAN AGREEMENTS AND FAIL TO PROPERLY ADVISE CONSUMERS OF THE CONTRACT’S THREE-DAY RIGHT TO CANCEL AND LIQUIDATED DAMAGES PROVISIONS.

92. The Solar Defendants have one goal: to get customers to sign a solar contract and loan agreement during the initial sales meeting. “Who’s going to break first, the customer or me?” Kaelin asks. “I’m not afraid of getting kicked out of the house, I’m not afraid of getting the police called.” Solar panels are a major investment—especially the solar panels sold by the Solar

Defendants, which cost far more than average—and the Solar Defendants know that homeowners need time to think about making such a big purchase. So, on top of their high-pressure sales tactics, they train their team to misrepresent binding solar installation contracts and loan agreements as “paperwork” that prospective customers must complete to receive more information about solar panels. The Solar Defendants’ script includes the following transition from aggressive sales pitch to deceptive close:

So, like I said, in the beginning here’s kinda what the next few steps are, the first step is just to get you guys qualified and make sure that you can qualify financially second step is we need to come out and make sure that your home qualifies, because again, if you have issues with your roof or tree shading or [electrical issues] we want to make sure that your home can actually qualify to be able to actually move forward with something like this, right, we want to make sure it's the right fit.

93. Kaelin tells trainees that this process must be “smooth” because “the last thing you want the customer to say is ‘are we doing this?’” “That just kills your sale more than anything,” Kaelin warns. When homeowners say they need time to think about solar, the Companies’ salespeople are trained to respond that homeowners will have plenty of time to make an informed purchase decision. “Let’s go ahead and make sure that you’re qualified for this, set up your site survey for next week, and then in the meantime, please do all the research.”

94. Homeowners e-sign this “paperwork,” which is not a request for more information but a binding sales contract which includes a three-day right to cancel and the following customer termination provisions:

- a) **For Cause.** Customer may terminate performance of this Agreement for cause under the following circumstances, and only if the Company fails to act in good faith to remedy the same within ten days after receipt of written demand by the customer: (A) the Company becomes insolvent; (B) the Company refuses or neglects to supply a sufficient number of properly skilled workmen, tools or materials within the Company’s control; or (C) the Company commits a material breach of this Agreement. Customer shall pay the Company for all work performed as of the date of such termination for

cause, including overhead and profit and profit allocable to such Work performed.

- b) **For Convenience.** Customer may terminate performance of this Agreement only prior to install for convenience, provided that Customer immediately pays the Company for all costs incurred through the date of termination, plus any demobilization costs and a fee in the amount of no more than 15% of the Contract Price for (the Company's lost profit). The total of these termination charges shall not exceed the remaining balance of the Contract Price plus any agreed changes.

The Solar Defendants do not discuss these clauses with consumers, show them to consumers, or orally advise them that these clauses exist. Some homeowners also unknowingly sign a finance agreement with one of the Lenders for terms ranging from 20-25 years. "I never say the word financing. I never say those things [so] I usually don't get the question of what's the interest rate," Kaelin advises.

95. Special circumstances exist that trigger a duty on the part of the Solar Defendants to disclose material facts to consumers about these transactions. The Solar Defendants have special knowledge that homeowners do not have at the time of sales calls and meetings—that the Companies are solar sales companies without any partnership or affiliation with homeowners' utility companies; that the purpose of meeting with homeowners is to sell them solar panels, not provide them with education or help them determine whether their homes are a good fit for solar energy; that the Companies' "paperwork" is not a way to obtain additional information or determine solar suitability, but binding sales and loan contracts; and, Minnesota law, which requires that at the time of a home solicitation sale, a seller inform the buyer orally and in writing of the right to cancel.⁸ By holding themselves out as affiliates or partners of utility companies, "energy consultants," and "energy educators," the Solar Defendants know or have reason to know

⁸ See Minn. Stat. § 325G.08, subs. 1, 2.

that potential customers will place their trust and confidence in the Companies and rely on the Companies to inform them of material facts relating to their purchase of solar PV systems.

96. Moreover, the nature and quality of the representations that the Solar Defendants make to potential customers in their sales calls and meetings about, among other things, the true identities of the Companies, the reason the Companies are contacting homeowners, and the nature and legal effect of the Companies' "paperwork," are so incomplete that by failing to disclose that the Companies are not partners or affiliates of homeowners' utility companies, do not intend to simply provide homeowners with education or energy audits, and are not obtaining customer information and signatures on binding contracts for the purpose of providing them with additional information or solar suitability, the Solar Defendants do not say enough to prevent the representations they do make to consumers from being deceptive and misleading.

97. When consumers ultimately decide not to move forward with their solar project and attempt to cancel, the Solar Defendants demand a 15% or more termination fee, threaten or refer them to collections, and claim they will put a lien on their homes so that they cannot sell them. These liquidated damages are not reasonable because in many cases, consumers do not even know they are entering into a contract when they sign the Companies' "paperwork," consumers are not advised of the three-day right to cancel as required by Minnesota law, and the liquidated damages bear no reasonable relation to the actual damage, if any, suffered by the Companies. When consumers have requested documentation of any purported damage by the Companies, such as labor or costs incurred, the Solar Defendants have refused to provide them with specific information or reported that their work included their sales pitch and contract signing.

98. 86-year-old **G.R.** provided Bello with his personal information to receive more information on solar panels. G.R. later received a contract stating he agreed to pay \$53,900 for

solar panels and agreed to finance them with a Loanpal loan. G.R. states: “I would have never agreed to pay almost \$54,000 for solar panels because I did not have any money budgeted for that expense. Moreover, when you are in your 80s, like me, you do not sign long-term contracts because you cannot expect to see the benefit.”

99. In C.S.’s case, Bello said that she had to sign paperwork to determine whether solar panels were a good fit for her home, assuring her that she could back out of the project at any time before installation. Bello said that it would send out a technician to assess C.S.’s roof and provide her with contractors’ information to see how much it would cost to remove a tree and repair her damaged roof. Based on these assurances, C.S. signed paperwork and a Bello technician assessed her roof two weeks later. Bello never provided C.S. with the contractor information and C.S. ultimately decided not to go forward with the solar installation. Bello threatened to send her to collections unless she paid a nearly \$5,000 (15%) fee, telling her she had only 72 hours to cancel her installation contract and Corning loan, which was administered by Sunlight Financial. This was the first C.S. had heard about a termination fee or the three-day right to cancel.

100. “I consider myself a fairly sophisticated consumer, but my experience with the Company has made me realize that even individuals like myself can fall prey to dishonest sales tactics,” states S.H. of Minneapolis. When a Bello salesman failed to answer S.H.’s questions about solar and tried to get her to sign a contract, S.H. told him she did not plan to make a decision that day and still needed to learn more about solar energy. The salesman agreed that there would be plenty of time to decide and asked her to electronically sign several documents on his tablet to obtain information specific to her home and to talk to Xcel and the City about interconnection. “He intentionally misrepresented the nature of the documents and at no point did he tell me that I was signing a binding contract with a three-day right to cancel,” states S.H. When Bello continued

to contact S.H., including making an unannounced visit to her home to try and persuade her to move forward with her project, she declined, only to be threatened with collections if she did not pay 15% of her project fee. Despite repeated assurances to the AGO and to S.H., the Companies continued to attempt to collect over \$5,400 from S.H. for over a year. S.H., who was diagnosed with and underwent treatment for cancer in 2021, states: “Unfounded collections efforts are the last thing I want to be dealing with, especially around the holidays.”

101. Sunny Renewable told **A.L.G.** that if she signed a form for a solar PV system cost estimate and financing information, it would give her a free smart thermostat and LED lightbulbs. 14 days later, Bello Solar sent her a copy of what she signed, which turned out to be a \$28,000 installation contract. When A.L.G. told Bello Solar she would not be moving forward with the project, Bello Solar did not respond but instead sent her a \$4,258.95 invoice.

102. When **S.S.** decided to cancel her solar project within two weeks of meeting with Brio, the company told her she’d have to pay a 15% termination fee of almost \$6,000 because more than three days had passed. S.S. told Brio that she was not aware of the three-day right to cancel, and Brio responded that it was laughable that she would sign a contract without reading it. S.S. requested documentation of work and costs to justify the \$6,000 fee and Brio responded by sending a copy of the Xcel bill that S.H. had provided to Brio and a copy of the installation contract. When the AGO requested this information on S.S.’s behalf, Brio responded that the 15% termination fee included recoupment for the cost of Brio’s sales presentation and the loan application and approval process.

VII. THE SOLAR DEFENDANTS FAIL TO COMPLETE SOLAR PROJECTS CONSISTENT WITH PROMISED PROJECT TIMELINES, LIE TO HOMEOWNERS ABOUT THE REASONS FOR THE COMPANIES’ DELAY, AND FAIL TO RESPOND TO HOMEOWNERS’ REQUESTS FOR STATUS UPDATES AND ANSWERS.

103. As discussed above, a large part of the Solar Defendants' sales meetings is to create urgency to sign up right away. They sell their company as a "local company that can get everything done quickly." "The speed of installs is a big thing," Kaelin tells the Companies' sales team.

104. The Solar Defendants tout themselves as solar experts and claim to have installed hundreds of thousands of solar panels and achieved excellent BBB ratings due to customers' satisfaction. "We are going to talk about the customer service, the customer communication, all the things that we try to do to make sure that make sense," explains Kaelin:

I even talk about the fact [that] some customers are concerned about getting double billed, right, their solar is installed, they start getting a bill for it, but the electricity company hasn't gone through their inspection process and turned it on.... that's a big sticking point for people and we will cover any bills that the customer has or their solar payment until their system is installed and up and running and turned on so that there's no way they will get double billed.

105. As described above, the Solar Defendants tout a partnership with Xcel and a local presence: "One of the things that's cool about us is that every single location that we install we have local offices with local crews." They promise to handle interconnection for homeowners and provide a single point of contact for regular status updates. "The project manager is focused on moving their job through the pipeline so if they want to call in and talk to someone about how their process or project is going, they'll talk to [that] specific person, their project manager."

106. In fact, the Companies' projects take months and, in some cases, more than a year to complete. Project updates are few and far between, and to the confusion of consumers, representatives communicate with them as employees of Companies different from the company with whom they contracted. For instance, after **D.H.** contracted with what she thought was a company called Total Solar (one of Bello's trade names), she began to receive emails from Bello and then Avolta. Employees also communicated with D.H. as representatives of Brio which she found "unsettling and unprofessional." When D.H. tried to cancel her contract, Whitaker of Sunny

Renewable negotiated her termination fee as an Avolta representative and provided D.H. with conflicting information on her financial obligations to the Companies.

107. During H.C.'s eight months of working with Brio, the company went by several other names, including Bello and Avolta. "I recently learned that the company also goes by Total Solar, which is troubling to hear because the original email I received about solar energy and thought came from Xcel was from xcel.totalsolarsolutions@gmail.com," H.C. states.

108. After S.L. signed an installation contract with a company she believe was called Pure Solar (one of Brio's trade names), to her confusion, company representatives communicated with her as employees of Bello and/or Brio. S.L. states:

Looking back through documents related to my solar project, I saw that my installation agreement states that I contracted with [Total Solar] but is signed by Phillip Mannlein of Brio Solar. My Loanpal agreement identifies the solar company as Recoil Development, Inc. d/b/a Total Solar Electrical Solutions. My solar design plan identifies the solar company as Bello Solar and Total Solar. On the interconnection application submitted to Xcel on my behalf, the Company lists itself as Total Solar Solutions with an email of central@bellosolar.com.

109. The Solar Defendants blame delays on utilities and local government, when in fact, delays are caused by the Companies' disregard for the state-mandated interconnection process and failure to submit complete and accurate information to utilities. The Companies request the same information from consumers multiple times and subcontract out many parts of the solar project, sometimes to independent contractors who know little about solar PV systems.

110. Meanwhile, consumers' solar loans become due, and they are stuck paying up to double what they were paying before contracting with the Solar Defendants for electricity and non-functioning solar panels. When consumers request status updates and answers, the Solar Defendants subject them to the runaround and poor customer service. Even when the Solar Defendants agree to reimburse them for months in which they must pay double bills, consistent

with their promise during sales presentations, the Solar Defendants fail to respond to reimbursement requests or provide proper reimbursement. When homeowners try to cancel their projects due to deceit, incompetence, and failure to complete projects within promised timeframes, the Solar Defendants threaten them with termination fees and collections actions and tell consumers the contracts contain no completion date.

111. In **L.G.**'s case, Bello falsely said that it was waiting on WRE to approve her interconnection application. L.G. contacted WRE's DER coordinator, Mr. Houdek, who told L.G. that Bello had not contacted WRE on L.G.'s behalf, nor had it submitted an application through the required portal. Mr. Houdek and L.G. tried to follow up with Bello multiple times and were put on hold or disconnected and certain messages bounced back as undeliverable. "It was as if the company did not actually exist," states L.G. When Bello finally did submit L.G.'s interconnection application, it took three attempts for it to submit an error-free application to WRE. A year after L.G. contracted with Bello, her panels have not been installed. L.G. recently tried to cancel her contract due to Bello's deception, delays, and runaround, and was told that she'd have to pay a 15% termination fee. L.G., whose 79-year-old husband recently started chemotherapy, states: "I have spent countless hours over the past year trying to get answers from the company to no avail. The project has put a lot of stress on my husband and me and is the last thing I should have to deal with given my husband's health issues and the health issues of several close family members."

112. Bello misleadingly told **M.M.** that Xcel was responsible for months of interconnection delays, which resulted in double monthly bills from Xcel and Loanpal. After Xcel denied responsibility for the delay, M.M. questioned his Bello project manager, who responded:

I will be transparent with you, [the] delays happened as a result of me having to take over for [C.W.] when he left at the end of August. I had not found out that the applications had not been submitted until mid September and began the process of

getting access to Xcel's portal...When we finally got the access, we began submitting multiple applications which flooded their [queue] and created a backlog.

113. After **L.B.** contracted with Bello doing business under the trade name Total Solar, she was surprised to receive communications from Bello and Brio related to her project. Total Solar installed L.B.'s panels but did not connect them to Xcel's grid. Total Solar blamed Xcel for the delay, but when L.B. contacted Xcel, it told her that Total Solar had not provided Xcel with what it needed to get L.B.'s panels up and running. Total Solar then stopped responding to L.B.'s requests for status updates and took a year to complete the interconnection process. During this time, L.B. was forced to pay Xcel and solar loan bills each month. The Companies said it would reimburse her for months in which she had to pay double bills but ultimately did not do so, despite L.B. sending in documentation several times. When Xcel recently came out to check L.B.'s digital meter, Xcel told her that Total Solar had not connected it properly so there was no feedback to Xcel. Xcel also advised L.B. that Total Solar had installed two boxes on the side of her home that were useless and related to a program that Xcel no longer offered. Xcel said that if the boxes were removed, they would leave a gaping hole in L.B.'s vinyl siding and her system would have to be rewired.

114. **J.K.**, a police captain and firefighter who lives in Saint Paul Park, asked Bello to revise its design after ensuring that his garage could handle the weight of solar panels. Bello sent out a "technician" who told J.K. he did not have an engineering background or solar industry experience. "He wandered aimlessly around my property and was unable to answer any of my questions nor did he have any idea how to assess my garage to see if it was safe to install panels," explains J.K. The technician did not take the correct photographs so J.K. took photographs himself to keep his project moving. When Bello failed to install J.K.'s solar panels by the end of 2020 as promised, did not provide regular status updates, changed his single point of contact, and requested

the same information from him multiple times, J.K. tried to cancel his contract and was told he'd have to pay a \$6,000 (15%) fee to cancel.

115. “My experience with the Company has been a complete debacle, from the Company’s unmet promises and misrepresentations regarding my solar installation, connection, energy and cost savings to its horrible customer service,” states N.N., who contracted with Bello Solar doing business under the trade name Total Solar in July 2020 after he was promised that his panels would be installed by Labor Day. After he signed his contract, N.N. learned he’d be working with Bello. Around August 2020, over 20 solar panels were brought to N.N.’s home and dumped on the boulevard. Bello did not install N.N.’s panels for a month and then blamed Xcel for its failure to connect the panels to Xcel’s grid. Trusting Bello, N.N. filed a complaint and Xcel responded that while N.N.’s application had been submitted by Bello, it had been withdrawn due to inactivity on Bello’s end. Concerned, N.N. contacted Bello, which admitted that it had not responded to Xcel’s requests. N.N.’s panels did not begin producing energy until July 2021, after which he learned that his panels had been installed without the proper monitoring system, his meter was not reading, and nine of his 21 solar panels were not producing power. For eight months, N.N. had to pay a \$125 electricity bill on top of his \$151 Loanpal bill which was troubling because Total Solar had promised N.N. he’d never have an electricity bill after his solar panels were installed.

116. The Solar Defendants communicated with **M.G.** and **J.G.** as Sunny Renewable, Total Solar, Brio, Bello and Avolta. They repeatedly requested the same documents from M.G. and J.G., asked M.G. to take project photographs when the Companies’ technician failed to take correct photographs, and submitted an interconnection application to Xcel that contained numerous errors. Concerned by the Companies’ incompetence and project delays, J.G. tried to

cancel the installation contract and the Solar Defendants told her she'd be responsible for \$5,000 termination fee.

117. Consumers are not the only ones who have had problems with the Solar Defendants. Thomas Houdek, DER Coordinator for WRE, expressed concern that Bello was not aware of WRE's interconnection requirements. According to DER for Connexus Energy ("Connexus"), Minnesota's largest cooperative that provides electricity and related products to over 138,000 residents and businesses in portions of Anoka, Chisago, Hennepin, Isanti, Ramsey, Sherburne, and Washington County:

Several members have told me that Bello blames Connexus for delays in their projects. I have confirmed that this information is false by reviewing our interconnection database, which shows that members' projects are waiting on work by Bello. Members' projects have also been delayed by Bello failing to submit required interconnection fees or documents, submitting blank or incomplete interconnection applications, and submitting applications that contain errors or do not meet Connexus or state interconnection requirements....

While it is not Connexus's responsibility to educate Bello on state or Connexus interconnection requirements, I regularly do so to move members' projects along. It is difficult to get a hold of anyone at Bello and my communications are often met with radio silence. I've spent a significant amount of time assisting members with their Bello projects, more so than with other solar installers. I've even developed a list of all my contacts at Bello to pass along to members who are experiencing a lack of response from the company.

118. Kristi Robinson, an electrical engineer who assists electric utilities and member owned cooperatives on the DER interconnection process, reports that Bello has submitted an abnormally high number of deficient applications throughout Minnesota. Once a Minnesota homeowner designates an application agent, utility and co-op questions about the interconnection application are directed to the installer, but in the case of Bello, Ms. Robinson has repeatedly ended up contacting Minnesota consumers to work directly with them to provide better customer service to the utility or co-op's customers because Bello has failed to respond.

119. Paul Helstrom, DER Interconnection Coordinator for MN Power, has received eight interconnection applications from Bello/Avolta over the past year, all of which had errors, were incomplete, or included information that MN Power does not need. “I’ve remained concerned with Bello/Avolta’s apparent lack of understanding of Minnesota and MN Power interconnection requirements,” states Mr. Helstrom. In one case, Bello/Avolta identified Wolf River Electric as the installer on an application and because Mr. Helstrom could not reach anyone at Bello/Avolta to discuss, he contacted Wolf River. Wolf River told Mr. Helstrom it was not installing the customer’s system and was no longer working with the company because it had too many problems with Bello/Avolta. Mr. Helstrom was concerned that Bello/Avolta had listed Wolf River as the installer on the customer’s interconnection application when according to Wolf River, it had cut ties with the company.

120. This Complaint contains examples of Defendants’ representations and interactions with Minnesota consumers to exemplify Defendants’ pattern and practice of deceptive, fraudulent, and unlawful conduct alleged herein. As these illustrative examples make clear, Defendants’ misrepresentations and deceptive conduct is widespread and has injured numerous Minnesotans. The State is pursuing relief based on Defendants’ widespread deceptive, fraudulent, and unlawful practices and its case is not limited to the illustrative examples that are included in this Complaint solely for the purpose of exemplifying the Defendants’ course of illegal conduct.

COUNT I
VIOLATIONS OF THE PERSONAL SOLICITATION OF SALES ACT
(DEFENDANTS WHITAKER, THE SOLAR COMPANIES, AND THE LENDERS)

121. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this Complaint.

122. The Personal Solicitation of Sales Act is codified at Minn. Stat. §§ 325G.12 to 325G.14. The term “personal solicitation” means:

any attempt by a seller who regularly engages in transactions of the same kind, to sell goods or services which are primarily for personal, family, or household purposes, and not for agricultural purposes, when either the seller or a person acting for the seller, contacts the buyer by telephone or in person other than at the place of business of the seller....

Minn. Stat. § 325G.12, subd. 2.

123. Minn. Stat. § 325G.13 provides, in part:

Before any personal solicitation every seller shall, at the time of initial contact or communication with the potential buyer, clearly and expressly disclose: the individual seller's name, the name of the business firm or organization the seller represents, the identity or kinds of goods or services the seller wishes to demonstrate or sell, and that the seller wishes to demonstrate or sell the identified goods or services. When the initial contact is made in person, the seller shall also show the potential buyer an identification card which clearly states the seller's name and the name of the business or organization represented. The disclosures required by this section shall be made before asking any questions or making any statements except an initial greeting.

124. The Solar Companies’ conduct described above constitutes multiple separate violations of Minn. Stat. § 325G.13 by failing to clearly and expressly disclose to consumers at the time of their initial contacts with Minnesota homeowners, the names of the Solar Companies and that the Solar Companies wished to sell consumers solar PV systems. During door-to-door visits, the Solar Companies further violated 325G.13 by failing to show homeowners an identification card which clearly stated the salesperson’s name and the name of the Company represented.

125. Whitaker's conduct described above constitutes multiple separate violations of Minn. Stat. § 325G.13 by failing to clearly and expressly disclose to consumers at the time of his initial contacts with Minnesota homeowners, the names of the Solar Companies that he represented and that he wished to sell Minnesota consumers solar PV systems.

126. Whitaker and the Solar Companies' conduct, practices, and actions described in this Complaint, which occurred as part of a joint or common enterprise, constitute multiple separate violations of Minn. Stat. § 325G.13.

127. The Lenders are also liable to Minnesota consumers for Whitaker and the Solar Companies' violations of Minn. Stat. § 325G.13 pursuant to the "Holder Rule" Notice in their loan agreements, which subjects the Lenders, as loan holders, to "all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof."

COUNT II
VIOLATIONS OF THE HOME SOLICITATION SALES ACT
(DEFENDANTS WHITAKER, THE SOLAR COMPANIES, AND THE LENDERS)

128. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this Complaint.

129. Minnesota's Home Solicitation Sales Act can be found at Minn. Stat. §§ 325G.06 to 325G.11. Minn. Stat. § 325G.08, subd. 1 provides, in part:

In a home solicitation sale, at the time the sale occurs, the seller shall: (a) inform the buyer orally of the right to cancel; (b) furnish the buyer with a fully completed receipt or copy of a contract pertaining to the sale which shows the date of the transaction, contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer...and in bold face type of a minimum of size ten points, a statement [containing a notice of the right to cancel the contract] and (c) furnish each buyer a fully completed form in duplicate, captioned, "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable"...

130. The term “home solicitation sale” within the meaning of Minn. Stat. § 325G.08, subd. 1 includes the sale of goods and services. Minn. Stat. § 325G.06, subd. 2. The solar PV systems that the Solar Defendants sold to Minnesotans constituted goods, and the Lenders’ provision of loans to their solar customers was a service.

131. Goodleap and Sunlight Financial must comply with Minn. Stat. § 325G.08, subd. 1 because they are regulated lenders organized under Minnesota Statutes Chapter 56. Minn. Stat. § 47.59, subd. 12(b) (“Financial institutions shall comply with...325G.06 to 325G.11[.]”); Minn. Stat. § 47.59, subd. 1(k) (“‘Financial institution’ means...a regulated lender organized under Chapter 56[.]”). As a credit union, Corning must also comply with Minn. Stat. § 325G.08, subd. 1. Minn. Stat. § 52.04, subd. 2a (“A person may enter into a credit sale...to a state or federal credit union doing business in the state, and a credit union may purchase and enforce the contract under the terms and conditions set forth in section 47.59, subdivisions 4 to 14); Minn. Stat. § 47.59, subd. 12(b) (“Financial institutions shall comply with...325G.06 to 325G.11[.]”).

132. Whitaker, the Solar Companies, and the Lenders have repeatedly violated Minn. Stat. § 325G.08, subd. 1 by engaging in the conduct described in the Complaint. For example, Whitaker, the Solar Companies, and the Lenders failed to orally inform buyers of the right to cancel their installation contracts and loan agreements during execution. In some cases, the Solar Companies did not even tell buyers they were signing contracts and loan agreements at the time of sale, instead misrepresenting the documents as “paperwork” needed for homeowners to obtain additional information or determine whether their homes were a good fit for solar panels.

133. Whitaker, the Solar Companies, and the Lenders’ conduct, practices, and actions described in this Complaint, which occurred as part of a joint or common enterprise, constitute multiple separate violations of Minn. Stat. § 325G.08, subd. 1.

134. The Lenders are also liable to Minnesota consumers for the Solar Defendants' violations of Minn. Stat. § 325G.08, subd. 1 pursuant to the "Holder Rule" Notice in their loan agreements, which subjects the Lenders, as loan holders, to "all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof."

COUNT III
VIOLATIONS OF THE FALSE STATEMENT IN ADVERTISING ACT
(ALL DEFENDANTS)

135. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this Complaint.

136. The False Statement in Advertising Act, Minn. Stat. § 325F.67, provides, in part:

Any person, firm, corporation, or association who, with intent to sell or in anywise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation, or association, directly or indirectly, to the public, for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, label, price tag, circular, pamphlet, program, or letter, or over any radio or television station, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, for use, consumption, purchase, or sale, which advertisement contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading, shall, whether or not pecuniary or other specific damage to any person occurs as a direct result thereof, be guilty of a misdemeanor, and any such act is declared to be a public nuisance and may be enjoined as such.

137. The Solar Defendants have repeatedly violated Minn. Stat. § 325F.67 by engaging in the deceptive and fraudulent practices described in this Complaint, including by making, publishing, disseminating, circulating, and/or placing before the public advertisements that contain materially false, deceptive and/or misleading assertions and representations to Minnesota consumers, including, but not limited to:

- a) Publishing, authorizing, and disseminating, directly or indirectly, deceptive and misleading digital advertisements and online surveys that are designed to mislead consumers into believing that they come from consumers' electric utility or cooperative;
- b) Falsely advertising that the Solar Defendants are affiliates or partners with Minnesota utilities or electric cooperatives;
- c) Falsely advertising that the purpose of the Companies' sales visits is to provide education, energy savings tips, and energy audits when in fact the sole purpose of the sales visit is to sell consumers solar panels;
- d) Falsely advertising that they will only recommend solar panels if a consumer's home is suitable for solar energy; and
- e) Misrepresenting the cost savings and other financial benefits associated with purchasing the Companies' solar panels.

138. Defendants Fager, Kaelin, and Whitaker are also liable in their individual capacity as a result of these and other actions they took constituting the multiple separate violations of Minn. Stat. § 325F.67, including, but not limited to, publishing, authorizing, and disseminating, directly or indirectly, such false and deceptive advertisements and surveys. Fager, Kaelin, and Whitaker directly participated in, directed, controlled, acquiesced, and/or should have known about and prevented the conduct constituting multiple separate violations of Minn. Stat. § 325F.67.

139. The Solar Defendants' conduct, practices, and actions described in this Complaint, which occurred as part of a joint or common enterprise, constitute multiple separate violations of Minn. Stat. § 325F.67.

140. The Lenders are also liable to Minnesota consumers for the Solar Defendants' violations of Minn. Stat. § 325F.67 pursuant to the "Holder Rule" Notice in their loan agreements, which subjects the Lenders, as loan holders, to "all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof."

COUNT IV
VIOLATIONS OF THE PREVENTION OF CONSUMER FRAUD ACT
(ALL DEFENDANTS)

141. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this Complaint.

142. The Prevention of Consumer Fraud Act is included in Minn. Stat. §§ 325F.68 to 325F.70.

143. Minn. Stat. § 325F.69, subd. 1 provides, in part:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided in section 325F.70.

144. The term “merchandise” within the meaning of Minn. Stat. § 325F.69, subd. 1 includes goods such as the Solar Defendants’ solar panels, services such as solar PV system installation, and loans such as the Lenders financing agreements. Minn. Stat. § 325F.68, subd. 2.

145. The term “person” includes “any natural person or a legal representative, partnership, corporation (domestic and foreign), company, trust, business entity, or association, and any agent, employee, salesperson, partner, officer, director, member, stockholder, associate, trustee, or cestui que trust thereof.” Minn. Stat. § 325F.68, subd. 3. The Solar Defendants are “persons” within the meaning of the statute.

146. The Solar Defendants have repeatedly violated Minn. Stat. § 325F.69, subd. 1 by engaging in fraud, false pretenses, false promises, misrepresentations, making misleading statements, and engaging in deceptive practices, as described in this Complaint, with the intent that others rely thereon. Such practices include, but are not limited to:

- a) Misrepresenting and misleading consumers to believe that the Solar Defendants are contacting consumers as representatives, partners or affiliates of their electric utilities or cooperatives;

- b) Misrepresenting and misleading consumers to believe that the Solar Defendants are only providing education, energy audits, and electricity cost savings information when their intent is to sell consumers solar panels;
- c) Misrepresenting and misleading consumers to believe that the Solar Defendants are not selling any products;
- d) Misrepresenting the cost savings and other financial benefits associated with purchasing the Companies' solar panels;
- e) Misrepresenting and misleading consumers to believe that the Companies' solar panels will cover all of consumers' electricity usage and will make them independent of their utility or electric cooperative;
- f) Misrepresenting and misleading consumers into believing that the Solar Defendants' binding solar installation contracts and Lenders' loan agreements are "paperwork" that prospective customers must complete to receive more information about solar panels or a site visit to determine solar panel suitability of consumers' homes;
- g) Misrepresenting the timeframe in which the Solar Defendants will complete consumers' solar PV projects; and
- h) Deceptively telling complaining customers that Minnesota utilities and electric cooperatives are responsible for delays in the interconnection process, when in fact, delays are the result of the Solar Defendants' failure to comply with state and utility interconnection requirements; and
- i) Failing to reimburse consumers for months in which they are forced to make both solar loan payments and utility payments due to the Solar Defendants' failure to complete the solar interconnection process as promised.

147. Further, by failing to disclose and omitting material facts that they had a duty to disclose in connection with the sale and financing of solar PV systems, the Solar Defendants have further engaged in deceptive and fraudulent practices in violation of the Consumer Fraud Act.

Those failures to disclose and omissions include, but are not limited to:

- a) After falsely representing that the solar companies had a partnership or affiliation with consumer' electric utilities, the Solar Defendants did not disclose to consumers that they were independent solar panel sales companies;

- b) After telling consumers that the purpose of meeting with them was to provide energy savings information, solar education, or an energy audit, the Solar Defendants did not disclose that they were attempting to sell them solar PV systems;
- c) After telling consumers that the purpose of meeting with them was to provide energy savings information, solar education, or an energy audit, the Solar Defendants misrepresented the cost savings and other financial benefits associated with purchasing their solar panels;
- d) After telling consumers that they would only recommend solar panels if consumers' homes were suitable for solar energy, the Solar Defendants recommended solar panels to consumers whose homes were marginal or poor locations for solar panels; and
- e) After telling consumers that to obtain additional information and a site survey, the next step was to complete "paperwork," the Solar Defendants did not disclose that the paperwork consisted of legally binding installation contracts and loan agreements and did not orally inform homeowners of the three-day right to cancel as required by Minnesota law.

148. Defendants Fager, Kaelin, and Whitaker directly participated in, directed, controlled, acquiesced to, and/or should have known about and prevented Defendants' conduct constituting multiple, separate violations of Minn. Stat. § 325F.69, subd. 1, above. Fager, Kaelin, and Whitaker also developed and trained sales staff on the Companies' high-pressure and misleading sales scripts and tactics, which included the above-described misrepresentations and omissions and are liable in their individual capacity as a result of these and other actions taken related to the Solar Defendants and their unlawful business practices.

149. Given the representations made and the circumstances described in this Complaint, the Solar Defendants had a duty to disclose all material facts to potential customers in connection with their marketing and offering of goods and services to said persons.

150. The Solar Defendants' conduct, practices, actions, and material omissions described in this Complaint, which occurred as part of a joint or common enterprise, constitute multiple separate violations of Minnesota Statutes § 325F.69, subd. 1.

151. The Lenders are also liable to Minnesota consumers for the Solar Defendants' violations of Minn. Stat. § 325F.69, subd. 1 pursuant to the "Holder Rule" Notice in their loan agreements, which subjects the Lenders, as loan holders, to "all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof."

COUNT V
VIOLATIONS OF THE UNIFORM DECEPTIVE TRADE PRACTICES ACT
(ALL DEFENDANTS)

152. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this Complaint.

153. The Uniform Deceptive Trade Practices Act is found at Minn. Stat. §§ 325D.43 to 325D.48.

154. Minn. Stat. § 325D.44, subd. 1 provides, in pertinent part:

A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:

- (1) passes off goods or services as those of another;
- (2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) uses deceptive representations or designations of geographic origin in connection with goods and services;
- (5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

...

(7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8) disparages the goods, services, or business of another by false or misleading misrepresentation of fact;

(9) advertises goods or services with intent not to sell them as advertised;

...

(13) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding.

155. The Solar Defendants have repeatedly violated Minn. Stat. § 325D.44, subds. 1(1), 1(2), 1(3), 1(4), 1(5), 1(7), 1(8), 1(9), and 1(13) by engaging in the deceptive and fraudulent conduct described in this Complaint. Such deceptive acts and practices include, but not are not limited to:

- (a) Deceiving consumers into believing that the Companies' advertisements and online surveys come from consumers' local utility or electric cooperative;
- (b) Deceiving consumers into believing that the Solar Defendants are selling solar panels on behalf of consumers' local utility or electric cooperative when they are not;
- (c) Deceiving consumers into believing that the Companies have a partnership, relationship or affiliation with consumers' local utility or electric cooperative when they do not;
- (d) Deceiving consumers into believing that the Solar Defendants are Minnesota companies or have "local" offices;
- (e) Representing that the Solar Defendants' salespeople are technicians, clean energy educators, and/or utility representatives with a purpose of providing education or energy audits;
- (f) Misrepresenting the cost savings and financial benefits associated with purchasing the Companies' solar panels;
- (g) Convincing consumers to sign binding sales contracts and loan agreements by characterizing the documents as "paperwork" needed to obtain additional information about solar energy;

- (h) Misrepresenting the timeframe in which the Solar Defendants will complete consumers' solar PV projects; and
- (i) Deceptively telling complaining customers that Minnesota utilities and electric cooperatives are responsible for delays in the interconnection process, when in fact, delays are the result of the Solar Defendants' failure to comply with state and utility interconnection requirements.

156. Further, by failing to disclose and omitting material facts that the Solar Defendants had a duty to disclose in connection with the sale and financing of solar PV systems, the Solar Defendants have further engaged in deceptive and fraudulent practices in violation of the Uniform Deceptive Trade Practices Act. Those failures to disclose and omissions include, but are not limited to:

- (a) After falsely representing that the solar Companies had a partnership or affiliation with consumer' electric utilities, the Solar Defendants did not disclose to consumers that they were independent solar panel sales companies;
- (b) After telling consumers that the purpose of meeting with them was to provide energy savings information, solar education, or an energy audit, the Solar Defendants did not disclose that they were attempting to sell them solar PV systems and that they intended to recommend solar PV systems to consumers regardless of the suitability of their homes;
- (c) After telling consumers that to obtain additional information and a site survey, the next step was to complete "paperwork," the Solar Defendants did not disclose that the paperwork consisted of legally binding installation contracts and loan agreements and did not orally inform homeowners of the three-day right to cancel as required by Minnesota law.

157. Defendants Fager, Kaelin, and Whitaker directly participated in, directed, controlled, acquiesced to, and/or should have known about and prevented the Defendants' conduct constituting multiple, separate violations of Minn. Stat. § 325D.44, subs. 1(1), 1(2), 1(3), 1(4), 1(5), 1(7), 1(8), 1(9), and 1(13). Fager, Kaelin, and Whitaker also developed and trained sales staff on the Companies' high-pressure and misleading sales scripts and tactics, which included the above-described misrepresentations and omissions and are liable in their individual capacity as a

result of these and other actions taken related to the Companies and their unlawful business practices.

158. The Solar Defendants' conduct, practices, actions, and material omissions described in this Complaint, which occurred as part of a joint or common enterprise, constitute multiple separate violations of Minn. Stat. § 325D.44, subs. 1(1), 1(2), 1(3), 1(4), 1(5), 1(7), 1(8), 1(9), and 1(13).

159. The Lenders are also liable to Minnesota consumers for the Solar Defendants' violations of Minn. Stat. § 325D.44, subs. 1(1), 1(2), 1(3), 1(4), 1(5), 1(7), 1(8), 1(9), and 1(13) pursuant to the "Holder Rule" Notice in their loan agreements, which subjects the Lenders, as loan holders, to "all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof."

**COUNT VI
VIOLATIONS OF PROHIBITION OF DECEPTIVE
ACTS PERPETRATED AGAINST SENIOR CITIZENS
(SOLAR DEFENDANTS)**

160. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this Complaint.

161. Minn. Stat. § 325F.71, subd. 2 (2020) provides, in part:

(a) In addition to any liability for a civil penalty pursuant to sections 325D.43 to 325D.48, regarding deceptive trade practices; 325F.67, regarding false advertising; and 325F.68 to 325F.70, regarding consumer fraud; a person who engages in any conduct prohibited by those statutes, and whose conduct is perpetrated against one or more senior citizens or disabled persons, is liable for an additional civil penalty not to exceed \$10,000 for each violation, if one or more of the factors in paragraph (b) are present.

(b) In determining whether to impose a civil penalty pursuant to paragraph (a), and the amount of the penalty, the court shall consider, in addition to other appropriate factors, the extent to which one or more of the following factors are present:

- (1) whether the defendant knew or should have known that the defendant's conduct was directed to one or more senior citizens or disabled persons;
- (2) whether the defendant's conduct caused senior citizens or disabled persons to suffer: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement or for personal or family care and maintenance; substantial loss of payments received under a pension or retirement plan or a government benefits program; or assets essential to the health or welfare of the senior citizen or disabled person;
- (3) whether one or more senior citizens or disabled persons are more vulnerable to the defendant's conduct than other members of the public because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered physical, emotional, or economic damage resulting from the defendant's conduct....

162. “Senior citizen” means a person who is 62 years of age or older. Minn. Stat. § 325F.71, subd. 1(a).

163. The Solar Defendants engaged in conduct prohibited by Minn. Stat. §§ 325D.44 and 325F.69.

164. The Solar Defendants’ conduct was perpetrated against one or more senior citizens, including, but not limited to: 86-year-old G.R. of Little Canada, 81-year-old M.D. of Minneapolis, 79-year-old M.G. and 72-year-old L.G. of Ogema, 65-year-old B.W. of Monticello, 69-year-old J.S. of Minneapolis and 65-year-old J.Y. of Mounds View.

165. The Solar Defendants’ conduct meets one or more of the factors listed in Minn. Stat. § 325F.71, subd. 2(b), including, but not limited to: (a) the Solar Defendants knew or should have known that its conduct was directed to one or more senior citizens and (b) one or more senior citizens are more vulnerable to the Solar Defendants’ conduct than other members of the public because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability,

and actually suffered physical, emotional, or economic damage resulting from the Solar Defendants' conduct.

166. The Solar Defendants' conduct described in this Complaint constitutes multiple, separate violations of Minn. Stat. § 325F.71. The Solar Defendants trained their sales representatives to target senior citizens by "creating pain," or concern over increasing utility rates, for retirees living on fixed income. They further trained their sales staff to overcome objections such as "I'm going to die soon" to convince senior citizens to purchase solar panels and finance them with loans lasting up to 25 years.

167. Fager, Kaelin, and Whitaker personally and directly participated in, directed, controlled, acquiesced to, and/or should have known about and prevented the conduct by the Solar Defendants constituting multiple, separate violations of Minn. Stat. § 325F.71 above, and are liable in their individual capacity as a result of these and other actions they have taken related to the solar Companies and their unlawful practices.

168. The Solar Defendants' conduct, practices, actions, and material omissions described in this Complaint, which occurred as part of a joint or common enterprise, constitute multiple separate violations of Minn. Stat. § 325F.71.

COUNT VII
VIOLATIONS OF PROHIBITION ON
UNREASONBLY LARGE LIQUIDATED DAMAGES
(DEFENDANT SOLAR COMPANIES)

169. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this Complaint.

170. Minn. Stat. § 336.2-718(1) provides:

Damages for breach by [a buyer or a seller] may be liquidated in [an] agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience

or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

171. The Solar Companies' conduct described in this Complaint constitutes multiple, separate violations of Minn. Stat. § 336.2-718(1) because the Solar Companies' termination fees, including liquidated damages, bear no reasonable relation to the amount of damage, if any, suffered by the Solar Companies when Minnesota customers terminate their contracts after the three-day cancelation period. As described above, in many cases, customers did not agree to pay liquidated damages and did not even know they were signing installation contracts due to the Solar Defendants' deception. Further, at the time of cancelation, the Solar Companies had often performed little to no work on consumers' solar projects to justify thousands of dollars of termination fees. Finally, the harm caused by customers' breach of any valid contract, would not be so difficult to estimate as to justify liquidated damages.

172. The Solar Companies' conduct, practices, actions, and material omissions described in this Complaint, which occurred as part of a joint or common enterprise, constitute multiple separate violations of Minn. Stat. § 336.2-718(1).

PRAYER FOR RELIEF

WHEREFORE, the State of Minnesota, by its Attorney General, Keith Ellison, respectfully asks this Court to award judgement against Defendants, jointly and severally, as follows:

1. Declaring that the Solar Defendants' actions, as set forth above, constitute multiple, separate violations of Minnesota Statutes sections 325G.13, 325G.08, subd. 1, 325F.67, 325F.69, subd. 1, 325D.44, subds. 1(1), 1(2), 1(3), 1(5), 1(7), 1(8), 1(9), and 1(13), § 325F.71, subd. 2, and § 336.2-718(1).

2. Declaring that the Lenders' actions, as set forth above, constitute multiple, separate violations of Minnesota Statutes section 325G.08, subd. 1.

3. Declaring that the Lenders' Holder Notice subjects the Lenders to all claims and defenses which consumers could assert against the Solar Defendants based on the Solar Defendants' violations of Minnesota law, including violations of Minnesota Statutes sections 325G.13, 325G.08, subd. 1, 325F.67, 325F.69, subd. 1, and 325D.44, subds. 1(1), 1(2), 1(3), 1(5), 1(7), 1(8), 1(9), and 1(13).

4. Enjoining the Solar Defendants and their employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parents or controlling entities, subsidiaries, and all other persons acting in concert or participation with them, from engaging in conduct in violation of Minnesota Statutes sections 325G.13, 325G.08, subd. 1, 325F.67, 325F.69, subd. 1, 325D.44, subds. 1(1), 1(2), 1(3), 1(5), 1(7), 1(8), 1(9), and 1(13), § 325F.71, subd. 2, and § 336.2-718(1).

5. Enjoining the Lenders and their employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parents or controlling entities, subsidiaries, and all other persons acting in concert or participation with them, from engaging in conduct in violation of Minnesota Statutes section 325G.08, subd. 1.

6. Ordering the Solar Companies and Lenders to provide proper Notice of Buyer's Right to Cancel to all prospective and current customers pursuant to Minn. Stat. § 325G.08 and ordering that the Solar Companies and Lenders provide all prospective and current customers the opportunity to cancel their installation contracts and loans within a reasonable period of time as ordered by the Court.⁹

⁹ Pursuant to Minn. Stat. § 325G.08, subd. 2, "Until the seller has complied with this section the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of the intention to cancel".).

7. Awarding judgment against Defendants, jointly and severally, for restitution under the *parens patriae* doctrine, the general equitable powers of this Court, Minnesota Statutes section 8.31, and any other authority, for all persons injured by the Defendants' acts and omissions described in this Complaint and pursuant to the Lenders' liability pursuant to their Holder Notices.

8. Awarding judgment against the Solar Defendants, jointly and severally, for civil penalties pursuant to Minnesota Statutes section 8.31, subdivision 3, for each separate violation of Minnesota law;

9. Awarding judgment against the Lenders for civil penalties pursuant to Minnesota Statutes section 8.31, subdivision 3, for each separate violation of Minn. Stat. 325G.08, subd. 1;

10. Awarding judgment against the Solar Defendants for additional civil penalties pursuant to Minnesota Statutes section 325F.71, subd. 2, for each separate violation of Minnesota Statutes sections 325F.69, subd. 1 and 325D.44, subs. 1(1), 1(2), 1(3), 1(5), 1(7), 1(8), 1(9), and 1(13).

11. Awarding Plaintiff its costs, including costs of investigation and attorneys' fees, as authorized by Minnesota Statutes section 8.31, subdivision 3a; and

12. Granting such further relief as provided by law and/or as the Court deems appropriate and just.

Dated: April 22, 2022

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Kirsi Poupore
KIRSI POUPORE
Assistant Attorney General
Atty. Reg. No. 0390562

JASON PLEGGENKUHLE
Assistant Attorney General
Atty. Reg. No. 0391772

NOAH LEWELLEN
Assistant Attorney General
Atty. Reg. No. 0397556

445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
Telephone: (651) 757-1299
Telephone: (651) 757-1147
Telephone: (651) 724-9945
kirsi.poupore@ag.state.mn.us
jason.pleggenkuhle@ag.state.mn.us
noah.lewellen@ag.state.mn.us

ATTORNEYS FOR STATE OF MINNESOTA

MINN. STAT. § 549.211 ACKNOWLEDGMENT

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211.

/s/ Kirsi Poupore
KIRSI POUPORE

#5214434-v1