

**CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI**

STATE OF MISSOURI, *ex rel.* ERIC S.
SCHMITT, ATTORNEY GENERAL;

Plaintiff,

v.

Case No. _____

POWER HOME SOLAR, LLC, d/b/a
PINK ENERGY;

Serve at:
CSC-Lawyers Incorporating
Service Company
221 Bolivar St.
Jefferson City, MO 65101

Defendant.

PETITION

Plaintiff State of Missouri, *ex rel.* Eric S. Schmitt, in his official capacity as Missouri Attorney General, brings this action under the Missouri Merchandising Practices Act, §407.010, RSMo., *et seq.* (“MMPA”), to obtain injunctive relief, restitution, civil penalties, and other equitable relief, and alleges:

SUMMARY OF THE CASE

1. The Attorney General’s Office brings this case to remedy Defendant Power Home Solar, LLC’s violations of the MMPA. Defendant has made misrepresentations to Missouri consumers about its residential solar

energy generation systems, including about the amount of energy the systems generate and that the systems will be properly installed and actually be able to function as intended. Contrary to Defendant's representations, its systems often do not work at all, much less work as well as Defendant represented. Defendant thus has left consumers on the hook for systems that cost tens of thousands of dollars but do not actually generate the electricity Defendant promised they would. Defendant also knew, but failed to disclose, that its systems contain a defective component that has the potential to cause consumers' homes to catch fire. Defendant has had ample opportunity to correct these deficiencies, but consistently has refused to do so. The Attorney General's Office now brings this case for the protection of all of Defendant's customers throughout the State of Missouri.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to Article V, §14 of the Missouri Constitution.

3. This Court has personal jurisdiction over Defendant, because Defendant conducts business in the State of Missouri.

4. This Court has authority over this action pursuant to §407.100, RSMo, which allows the Attorney General to seek injunctive relief, penalties, and other relief in circuit court against persons who violate §407.020, RSMo.

5. Venue is proper in this Court pursuant to §407.100.7, RSMo,

because the violations alleged herein occurred, among other places, in St. Louis County.

PARTIES

6. Plaintiff **State of Missouri**, *ex rel.* Eric S. Schmitt, in his official capacity as Missouri Attorney General, is authorized to bring this action and to obtain injunctive relief, consumer restitution, civil penalties, costs, and all other just and proper relief pursuant to the Missouri Merchandising Practices Act §§407.020 and 407.100, RSMo.

7. Defendant **Power Home Solar, LLC** (“PHS”) is a Delaware limited liability company with a principal place of business located at 919 N. Main Street, Mooresville, North Carolina 28115. On or about May 1, 2022, PHS began doing business as Pink Energy. Defendant has conducted business in St. Louis County, and maintains (or has maintained until very recently) a physical presence in St. Louis County.

8. At all times relevant to this Petition, Defendant has maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in §407.010(7), RSMo.

FACTS

9. Defendant is in the business of marketing, selling, and installing residential solar energy generation systems.

10. Defendant does business in numerous states throughout the

country, including Missouri.

11. Defendant's systems are expensive, and can cost tens of thousands of dollars—or more.

12. Because most consumers are unable to pay for Defendant's systems out of pocket, Defendant partners with several lenders who will provide all or most of the purchase price.

13. Under the terms of the loan, consumers are obligated to begin making monthly payments once Defendant's system is installed.

14. The economic theory behind this financing arrangement is the amount of money a consumer pays to the lender on a monthly basis will be offset by a reduction in their monthly electric bill.

15. Defendant employs a fleet of sales representatives, known as "Field Energy Consultants," or "FECs," whose job it is to sell solar energy systems to Missouri consumers.

16. Defendant's FECs go to consumers' homes and "pitch" the benefits of owning one of Defendant's solar energy systems.

17. During the pitch, FECs make representations about the amount of solar energy Defendant's system can generate, and how that energy will offset consumers' electricity bill.

18. According to reports from Missouri consumers, Defendant's FECs have represented that Defendant's system can totally, or near-totally, offset

the consumers' electricity needs. In other words, FECs have represented that consumers can get all, or nearly all, their needed electricity from Defendant's system.

19. The FECs' representations about energy generation and the resulting decrease in electricity costs in choosing to purchase a solar energy system from Defendant are material to consumers' decision to purchase Defendant's systems.

20. These representations are false. As Defendant is aware, the systems it sells consumers typically do not generate enough power to totally (or even near-totally) replace consumers' electricity needs.

21. In addition to FECs, Defendant also employs in-house a group of installers whose job it is to install Defendant's residential solar energy generation systems.

22. Defendant's FECs represent that Defendant's installers will install the solar energy system so that it actually generates energy, and thus the consumer's electricity bill will decrease.

23. This representation is material to consumers' decision to purchase Defendant's systems.

24. This representation is also false. The installers Defendant employs are often incompetent and do not know how to actually install Defendant's system.

25. Defendant's installers frequently are so incompetent that they will not only fail to install the system properly, but will sometimes cause physical damage to a consumer's home during installation.

26. The Attorney General's Office has received dozens of complaints from consumers who purchased Defendant's systems, but the systems they received generated little or no power, months after Defendant's employees "installed" them.

27. Consumers call Defendant over and over again, asking Defendant to fix the system they are obligated to pay tens of thousands of dollars for, but Defendants fail and refuse to address consumers' complaints for months.

28. As noted above, consumers are obligated to begin making loan payments once Defendant's system is "installed" at their homes.

29. Thus, lenders begin billing consumers, and consumers become obligated to start making loan payments, once Defendant's installers physically attach the systems to their homes, even if (as is often the case) the system does not function properly, or does not function at all.

30. Consumers thus are forced to "double-pay"—they have to pay their normal electricity bill, and also are forced to make loan payments, even though Defendant's FECs represented that loan payments would be offset by a corresponding decrease in their electricity bill.

31. If consumers choose not to pay their electricity bill, they are at

risk of their electrical utility shutting off service—which would leave them with no power at all, considering that Defendant’s systems are not actually installed properly.

32. If consumers choose not to make loan payments, they are at risk of the lender—which files and records a lien on their home until the loan is fully paid off—filing a lawsuit to enforce the lien that could result in consumers’ homes being sold out from under them.

33. Defendant also has marketed and sold solar energy systems despite knowing that its systems did not work properly and presented a danger of physically harming consumers and their homes.

34. Since 2020, Defendant’s systems have utilized components manufactured by a company called Generac.

35. In the summer of 2021, Defendant learned a Generac component known as a “SnapRS” was spontaneously overheating, which not only caused the system to not work properly, but actually ran the risk of causing fires at homes where Defendant’s systems were installed.

36. Despite this knowledge, Defendant continued to market and sell its systems, and continued to use Generac components.

37. The fact that Defendant’s systems were made with malfunctioning components that presented a high risk of economic and physical loss would have been material to consumers deciding whether or not

to purchase Defendant's systems.

38. Despite this, Defendant did not disclose the dangerous defect in Generac components to consumers.

39. Predictably, the systems Defendant sold consumers containing Generac components often did not generate electricity, or did not generate as much electricity as Defendant's FECs represented they would.

40. Despite this, and despite consumers' continuous complaints, Defendant has failed and refused to repair and/or properly install its non-functioning systems.

41. Consumers thus are at risk not only of making double payments (on both their loans and their electricity bill), they are at risk of Defendant's systems literally burning their houses to the ground and killing them and their families.

THE MISSOURI MERCHANDISING PRACTICES ACT

42. The Missouri Merchandising Practices Act ("MMPA"), §407.020, RSMo., states in pertinent part:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice. . . . Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after

the sale, advertisement, or solicitation.

43. “Merchandise” is defined as “any objects, wares, good, commodities, intangibles, real estate or services[.]” §407.010(4), RSMo.

44. “Person” is defined as “any natural person or his legal representative, partnership, firm, for-profit or not-for-profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.” §407.010(5), RSMo.

45. “Sale” is defined as “any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or on credit[.]” §407.010(6), RSMo.

46. “Trade” or “commerce” are defined as “the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real personal, or missed, and any other article, commodity, or thing of value wherever situated. The terms ‘trade’ and ‘commerce’ include any trade or commerce directly or indirectly affecting the people of this state[.]” §407.010(7), RSMo.

47. Defendant has advertised, marketed, and sold objects, wares, goods, and/or services (*i.e.*, its residential solar energy generation systems) in “trade” or “commerce” within the meaning of §407.010, RSMo.

48. Pursuant to §407.145, RSMo, the Attorney General has promulgated regulations explaining and defining terms in §§407.010-407.145 of the Merchandising Practices Act. The rules relevant to the Merchandising Practices Act allegations herein include the provisions of 15 CSR §60-8.010 to §60-9.110.

COUNT I – FALSE PROMISES

49. Plaintiff incorporates Paragraphs 1–48 as if fully stated herein.

50. A false promise is “any statement or representation which is false or misleading as to the maker’s intention or ability to perform a promise, or likelihood the promise will be performed.” 15 CSR §60-9.060.

51. In connection with the advertising, marketing, promotion, offering for sale, and sale of its residential solar energy generation systems, Defendant made false promises to Missouri consumers, including that:

- a. Defendant’s systems will generate a specified level of energy;
- b. Defendant’s systems will generate enough energy to completely or nearly fulfill consumers’ electricity needs; and,
- c. Defendant’s installers will install Defendant’s systems correctly and competently.

52. Defendant knew its promises were false and/or misleading as to Defendant’s intention or ability to perform such promises, or the likelihood

such promises will be performed.

53. Defendant made its promises with the intent that consumers would rely on them.

54. Consumers relied on Defendant's promises in deciding to purchase Defendant's systems.

55. Defendant's false promises caused damages to the consumers who purchased Defendant's systems.

56. Defendant's false promises thus violate §407.020(1), RSMo.

COUNT II – MISREPRESENTATION

57. Plaintiff incorporates Paragraphs 1–56 as if fully stated herein.

58. “A misrepresentation is an assertion that is not in accord with the facts.” 15 CSR §60-9.070.

59. In connection with the advertising, marketing, promotion, offering for sale, and sale of its residential solar energy generation systems, Defendant made misrepresentations to Missouri consumers, including that:

- a. Defendant's systems will generate a specified level of energy;
- b. Defendant's systems will generate enough energy to completely or nearly fulfill consumers' electricity needs; and,
- c. Defendant's installers will install Defendant's systems correctly and competently.

60. Defendant knew its misrepresentations were not in accord with the facts.

61. Defendant made its misrepresentations with the intent that consumers would rely on them.

62. Consumers relied on Defendant's representations in deciding to purchase Defendant's systems.

63. Defendant's misrepresentations caused damages to the consumers who purchased Defendant's systems.

64. These and other representations made by Defendants are not in accord with the facts and thus violate §407.020(1), RSMo.

COUNT III – CONCEALMENT, SUPPRESSION, OR OMISSION

65. Plaintiff incorporates Paragraphs 1–64 as if fully stated herein.

66. A “material fact” is “any fact which a reasonable consumer would likely consider to be important in making a purchasing decision, or which would be likely to induce a person to manifest his/her assent, or which would be likely to induce a reasonable consumer to act, respond or change his/her behavior in any substantial manner.” 15 CSR 60-9.010.

67. “Concealment of a material fact is any method, act, use or practice which operates to hide or keep material facts from consumers.” 15 CSR 60-9.110(1).

68. “Suppression of a material fact is any method, act, use or practice

which is likely to curtail or reduce the ability of consumers to take notice of material facts which are stated.” 15 CSR 60-9.110(2).

69. “Omission of a material fact is any failure by a person to disclose material facts known to him/her, or upon reasonable inquiry would be known to him/her” 15 CSR 60-9.110(3).

70. In connection with the advertising, marketing, promotion, offering for sale, and sale of its residential solar energy generation systems, Defendant concealed, suppressed, and/or omitted from Missouri consumers the material fact that the Generac SnapRS component was improperly manufactured, and caused Defendant’s system to not work properly, and in some cases, could cause fires at consumer’s homes.

71. Defendant knew this fact as of summer 2021, but still concealed, suppressed, and/or omitted it from consumers.

72. The fact that Defendant’s system used faulty components that prevented the system from working correctly and could even cause homes to catch fire was a material fact that Missouri consumers would have considered important in deciding whether to purchase Defendant’s system.

73. Defendant’s concealment, suppression, or omission of this material fact caused damages to the Missouri consumers who bought Defendant’s system without the fact being disclosed.

74. Defendants’ concealment, suppression, and omission of this

material fact violated §407.020, RSMo.

COUNT IV - DECEPTION

75. Plaintiff incorporates Paragraphs 1–74 as if fully stated herein.

76. “Deception is any method, act, use, practice, advertisement or solicitation that has the tendency or capacity to mislead, deceive or cheat, or that tends to create a false impression.” 15 CSR §60-0.020.

77. In connection with the advertising, marketing, promotion, offering for sale, and sale of its residential solar energy generation systems, Defendant used deceptive methods, acts, practices, and statements, including by telling Missouri consumers that:

- a. Defendant’s systems will generate a specified level of energy;
- b. Defendant’s systems will generate enough energy to completely or nearly fulfill consumers’ electricity needs; and,
- c. Defendant’s installers will install Defendant’s systems correctly and competently.

78. Defendant knew its statements were deceptive when they were made.

79. Defendant intended Missouri consumers to rely on its deceptive statements.

80. Missouri consumer relied on Defendant’s deceptive statements in

choosing to purchase Defendant's systems.

81. Defendant's deceptive statements caused damages to Missouri consumers who purchased Defendant's system.

82. These deceptive acts, practices, methods, and statements violated §407.020, RSMo.

COUNT V – UNFAIR PRACTICE

83. Plaintiff incorporates Paragraphs 1–82 as if fully stated herein.

84. An unfair practice is any practice which—

(A) Either –

1. Offends any public policy as it has been established by the Constitution, statutes or common law of this state, or by the Federal Trade Commission, or its interpretive decisions; or

2. Is unethical, oppressive or unscrupulous; and

(B) Presents a risk of, or causes, substantial injury to consumers.

15 CSR §60-8.020.

85. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, and sale of its residential solar energy generation systems to Missouri consumers, Defendant has:

a. Misrepresented the amount of energy its systems could generate;

- b. Falsely stated that its system would generate a specific amount of electricity;
- c. Falsely stated that its installers would correctly and competently install its system;
- d. Knew, but failed to disclose, that its systems had a faulty component that prevented the systems from operating properly, and in some cases actually caused consumers' homes to catch fire;
- e. Allowed consumers to be subject to "double payment" in that consumers were liable for making loan payments and paying for electricity usage at the same time, when consumers purchased the systems with the understanding that the systems' would generate enough electricity to offset the cost of loan payments.

86. Such practices (i) offend public policy as established by the laws of this state, (ii) are unethical, oppressive or unscrupulous, and (iii) present a risk of, or caused, substantial injury to consumers.

87. Defendants' practices thus are unfair practices that violate §407.020(1), RSMo.

COUNT VI – INJUNCTIVE RELIEF

88. Plaintiff incorporates Paragraphs 1–87 as if fully stated herein.

89. Consumers are suffering, have suffered, and will continue to suffer substantial injury as a result of Defendant's violations of the Missouri

Merchandising Practices Act. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers and harm the public interest.

90. Absent an injunction, Missouri consumers are likely to suffer irreparable harm due to Defendants' illegal acts as alleged herein.

91. Plaintiff is likely to succeed on the merits of its claims against Defendant.

92. Consumers are likely to be far more harmed if injunctive relief is not awarded than Defendant will be harmed if injunctive relief is awarded.

93. The public interest weighs in favor of an injunction.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that the Court:

A. Award such injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury and restrain the practices alleged herein that violate the Missouri Merchandising Practices Act;

B. Award monetary and other relief within the Court's power to grant, including restitution to all of Defendant's consumer victims under §407.100.4, RSMo., plus ten (10%) of any restitution awarded to be paid into the Missouri Merchandising Practices Revolving Fund under §407.140.3, RSMo., civil penalties of \$1,000.00 per violation of §407.100.6, RSMo., and the State of Missouri's costs in investigating and prosecuting this action

under § 407.130, RSMo.; and,

C. Award any additional relief as the Court may determine to be just and proper.

Dated: September 26, 2022

Respectfully Submitted,

ERIC S. SCHMITT
Attorney General

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