

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

CALVIN SMITH,)
AND)
MARCELLA SMITH,)

Plaintiff,)

vs.)

Case No.: _____

A1 SOLAR SOURCE, INC.,)
Serve:)
Deleon Tyson)
2420 E. Truman Rd., Ste 30)
Kansas City, MO 64127)
and)

RENOVATE AMERICA, INC.,)
Serve registered agent:)
CT Corporation System)
120 South Central Ave.,)
Clayton, MO 63015)

Defendants.

Petition for Damages
(Case Code: TI)

Plaintiff Calvin Smith and Marcella Smith (“Smith”) submits the following seeking damages and other relief against Defendants A1 Solar Source, Inc. and Renovate America, Inc.

Parties and Jurisdiction

1. Calvin Smith and his wife Marcella reside at 4401 Highland Ave., Kansas City, Missouri.

2. A1 Solar Source, Inc., is a corporation organized under the laws of Louisiana and registered to do business in Missouri. Its principal place of business is located at 2420 E. Truman Rd., Ste, 30, Kansas City, Missouri 64127.

3. Renovate America is a corporation organized under the laws of Delaware and in 2015 became registered to do business in Missouri under charter number F001323966.

4. Upon information and belief, Renovate America's principal place of business is at 15073 Avenue of Science, Suite 200, San Diego, California 92128.

5. Both Renovate America and A1 Solar contracted with Smith in the State of Missouri regarding the purchase, installation, and financing of the solar panels at issue in this lawsuit.

Facts Common to All Counts

6. On or around February 3, 2017, A1 Solar conducted an in-home sales meeting with Smith regarding the possible installation of solar panels on his home.

7. In that meeting, Shelia Bell, an employee of A1 Solar, told Smith that the cost of the system was approximately \$22,866.

8. Bell told Smith he would receive \$9,481 in state and federal government incentives that could be used to pay for the project.

9. Bell's written proposal told Smith that the total "cost to you" would be "\$15,456":

An easy financial decision	
System cost	\$24,937.50
	27,866.91
Total Incentives	-\$9,481.25
Cost to you	\$15,456.25

10. Smith was told that the balance owed for the panels would be paid for directly through an approximately \$1,000 annual increase on his property taxes.

11. In reality, the estimated annual increases to Smith's property tax bill are \$2,854.82 per year from 2018 through 2037.

12. All told, the cost to Smith for the solar panel array will be \$57,096.40, a increase of 270% over the cost A1 Solar promised.

13. A1 Solar led Smith to believe that rebates and incentives were part of a government program, not an ordinary consumer loan or installment loan, which typically involve long repayment plans and interest rates.

14. A1 Solar told Smith that he would see some 70% savings in his monthly electricity bills, which would pay for the system in short order.

15. But Smith has not experienced the promised savings to his electricity bills. Indeed, there has been no noticeable decrease in Smith's electricity bills.

16. Moreover, the installation of the solar panels has caused leaks in Smith's roof, which A1 Solar has refused to repair.

17. Other than a one-page form with general biographical information on it, Smith did not review or sign any documentation before the transaction was completed.

18. After the sales meeting, Laura Tyson, one of A1 Solar's owners, called Smith and informed him that he had been "approved" for solar panels.

19. Smith was never told that A1 Solar was working with Renovate America or that it was applying on Smith's behalf for a financing scheme through Renovate America in which Smith would borrow \$25,000 at an interest rate of approximately 9%.

20. Smith was never told that a tax lien could be placed on his home.

21. Smith was never told that if he could not pay the substantial increase in his annual property taxes, his home could be foreclosed upon and sold.

22. Smith was never told that the financing arrangement through Renovate America required him to pay a 200% annual increase in his property taxes through 2037.

23. Smith was not told that he would end up paying \$57,096 over twenty years.

24.A1 Solar and Renovate America created contractual documents purporting to show that Smith had agreed to enroll in what is referred to as a HERO-loan.

25. Upon information and belief, Renovate America, through its HERO-loan program, allows contractors like A1 Solar to borrow money on behalf of homeowners under Missouri's Property Assessed Clean Energy or "PACE" program.

26. Upon information and belief, the PACE financing program provides government-backed loans for homeowners to make energy efficient improvements to their homes.

27. Homeowners repay Missouri PACE loans through increases on their annual property tax assessments.

28. The homeowner's home is the only security for PACE loans.

29. Upon information and belief, Renovate America was one of the chief architects of the PACE program.

30. Before his solar panels were installed, Smith was never told about any of the material details of the HERO-PACE loan program, not by Renovate America, A1 Solar, or anyone else.

31. Upon information and belief, neither Renovate America nor any other party involved did any investigation into Smith's financial condition to determine whether he could afford the increased property tax assessment.

32. Upon information and belief, Renovate America's primary criteria for approval of the HERO loan was whether there was sufficient equity in Smith's home.

33. Upon information and belief, Renovate America trains A1 Solar (and other contractors) to sell HERO-PACE loans.

34. A1 Solar has been subject to numerous consumer protection complaints and lawsuits related to its deceptive sales practices.

35. Despite a history of deceptive business practices, Renovate America advertises A1 Solar as one of its "Registered Contractors."

36. Upon information and belief, A1 Solar sales representatives failed to disclose important details about solar panel financing with homeowners during initial sales calls and meetings, including the terms of prospective loan programs, and the identity of the lenders or servicers involved.

37. At the time the solar panels were installed, Smith was not aware of the terms and conditions of the HERO loan program or the PACE assessment process.

38. Upon information and belief, A1 Solar sales representatives failed to show paperwork to homeowners that would disclose the true nature of the financing programs to which A1 Solar was applying in names of the homeowners.

39. Upon information and belief, funding obtained through the HERO-PACE loan program was paid directly to A1 Solar by Renovate America.

40. Upon information and belief, A1 Solar installed faulty solar panels on the Smith's residence.

41. Upon information and belief, A1 Solar installed the solar panels in a faulty and non-workmanlike manner.

42. Upon information and belief, the amount A1 Solar obtained through the HERO-PACE program for the Smith's project exceeded the true costs of the panels and installation that were installed on Smith's home.

43. Neither A1 Solar nor Renovate America undertook any effort to determine whether the economic benefits for Smith would equal or exceed the costs of the system.

44. Upon information and belief, Renovate America took no steps to verify any of the following before approving the application submitted in Smith's name:

- a. That the alleged costs of the project submitted by A1 Solar were true, accurate, and reasonable;
- b. That Smith had actually consented to the application made in his name;
- c. That Smith knew and understood all the critical terms of the HERO-PACE program, including the true costs of the project and the related financing.

Claims for Relief

Count I – Missouri Merchandising Practices Act **(TI: Against A1 Solar)**

45. Smith incorporates herein all allegations from the foregoing paragraphs.

46. The Missouri Merchandising Practices Act, § 407.020 RSMo. et seq. (“MMPA”), prohibits the unfair and deceptive acts and practices in the sale of goods and services in Missouri.

47. The sale of the solar panels in this case was a “sale” of “merchandise” as defined by the MMPA, and the sale was primarily for personal, family, or household purposes.

48. Specifically, the MMPA prohibits the use of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice, and the concealment, suppression, and/or omission of any material fact in connection with the sale and/or advertisement of merchandise in trade or commerce within Missouri.

49. A1 Solar convinced Smith to purchase solar panels from A1 Solar.

50. A1 Solar installed or contracted to have installed those solar panels on Smith’s personal residence.

51. A1 Solar’s unlawful conduct was committed in connection with the sale, or purported sale, of the solar panels to Smith.

52. A1 Solar’s violations of the MMPA include but are not limited to:

- a. Representing to Smith that he would receive \$15,000 in subsidies from KCP&L and the federal government;
- b. Representing that the solar panels would create savings on Smith's monthly electricity bills;
- c. Withholding critical details about the terms of the financing program A1 Solar signed Smith up for;
- d. Forging Smith's name on contracts and other documents;
- e. Misrepresenting that Smith had consented to the terms and conditions of the HERO-PACE (or any other) loan program;
- f. Failing to disclose the basic details of the HERO-PACE loan program to Smith;
- g. Failing to install properly functioning solar panels in a workman like manner as promised.

53. Pursuant to § 407.025.1, Plaintiff is entitled to recover his actual damages, punitive damages, reasonable attorneys' fees, and any equitable relief the court deems appropriate.

54. A1 Solar's wrongful conduct has caused or contributed to cause Plaintiff actual damages in excess of \$25,000, including but not limited to a 200% increase in their annual property taxes, the creation of a contractual obligation in their name to pay \$57,096 over a period of twenty years, a lien to be placed on his home, and the installation of solar panels that have not operated as promised.

55. Defendant's conduct was intentional, willful, wanton, reckless, fraudulent, with malice, and/or conformed to a pattern and practice, thereby entitling Plaintiff to the recovery of punitive damages.

WHEREFORE, Plaintiff prays for judgment against A1 Solar in such amount as is allowable by law and to be determined at trial, for his actual damages, punitive damages, pre- and post-judgment interest at the greatest rate allowed by statute, for his costs and reasonable attorneys' fees, and for such other and further relief as may be just and proper under the circumstances.

Count II – Missouri Merchandising Practices Act
(TI: Against Renovate America)

56. Smith incorporates herein all the allegations in the forgoing paragraphs.

57. A1 Solar is "registered" and approved as one of Renovate America's "partners."

58. According to its website, Renovate America states, "Contractors in our network follow our guidelines, which includes our industry-leading consumer safeguards." See <https://www.renovateamerica.com/find-a-contractor> (Last visited July 10, 2018).

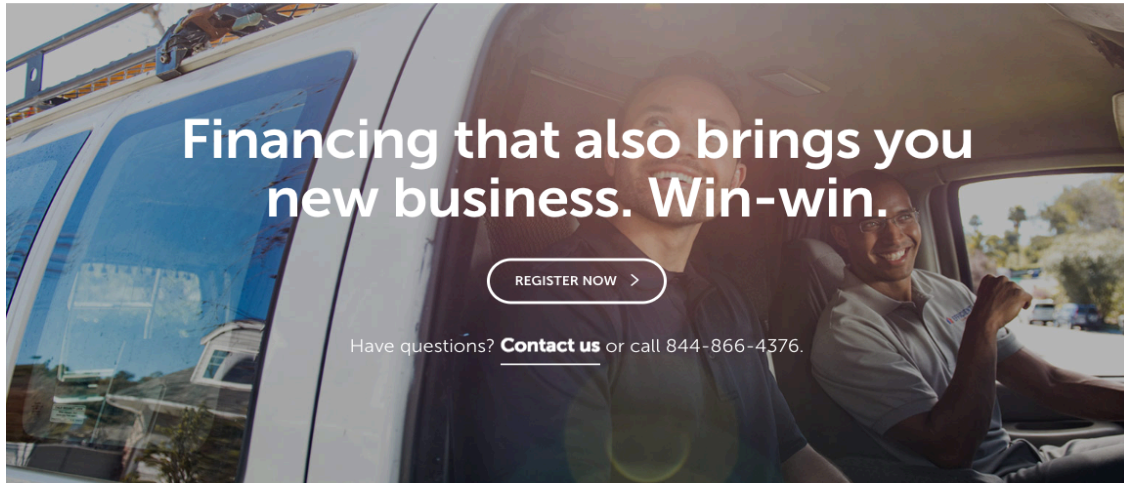
59. A1 Solar is the very first solar panel contractor listed on Renovate America's website. See <https://www.renovateamerica.com/find-a-contractor/contractor-search-results?FilterProject=Solar&ZipCode=64106> (Last visited July 10, 2016)

60. Renovate America reports that A1 Solar has a social media rating of 4.5 out of 5 stars:

The screenshot shows the Renovate America website interface. At the top, there is a navigation bar with the Renovate America logo, links for 'Get Financing', 'Find Contractors', 'Improve Your Home', and 'Get Support', a phone number '877-747-4889', and an 'Apply' button. Below the navigation bar, a message states 'We found 17 contractors in 64106'. A filter section shows 'Filtering by: Solar'. There are search and sort options: 'Search' with a 'SEARCH BY NAME' input and a magnifying glass icon, and 'Sort by' with a dropdown menu set to 'FEATURED'. A distance filter shows 'Distance of 30 MILES' and 'From 64106'. Under 'Social media rating', there are four star rating options: 5 stars (8 up), 4 stars (8 up), 3 stars (8 up), and 2 stars (8 up), each with a checkbox. The main result is for 'A1 Solar Source Inc', located at 'Office: 2420 E Truman Rd', serving ZIP code 64106, with a 4.5 star rating and 16 reviews. A description states: 'A1 Solar Source work with Kansas City & surrounding area home owners, businesses, non-profit organizations, and government organizations to create... Learn More'. Services offered include: 'Remodeling, Roofing, Windows & Doors, Heating & Cooling, Lighting & Fans, Advanced Energy Storage, Insulation, Solar'. A 'Contact' button is visible next to the services list.

Id.

61. For contractors like A1 Solar, Renovate America promises to “boost” business with fast funding and “high approval rates”:



What makes us different?



Grow your business with high approval rates.

The majority of contractors who offer HERO financing have high application approval rates.



Receive better support, tools and training.

From day one, you receive sales training and back office support from experienced account managers. We'll also help you apply and receive financing decisions in as little as two minutes.



Get seen by more qualified customers.

The Renovate America Marketplace makes it easy for more qualified homeowners to connect with you, with contractor search tools, maps, and quality ratings.

Id.

62. Upon information and belief, Renovate America trained A1 Solar and its sales representatives on how to apply for HERO financing on behalf of homeowners.

63. Upon information and belief, at Renovate America's instruction, A1 Solar completed applications for HERO-PACE loans in the names of homeowners like Smith.

64. A1 Solar was Renovate America's agent for purposes of obtaining homeowner-borrowers like Smith for its HERO-PACE program and its other financing products.

65. Renovate America had reason to know that A1 Solar was engaged in the deceptive conduct outlined in Count I and allowed such conduct to persist.

66. Renovate America had reason to know that A1 Solar had been the subject of numerous consumer complaints and lawsuits and still lists A1 Solar as a partnering contractor on its website.

67. Upon information and belief and unbeknownst to Smith, Renovate America and A1 Solar created a Missouri HERO Program Assessment Contract between Smith and the Missouri Clean Energy District, included an electronic signature of Smith's initials and name, and filed the Assessment Contract and Notice of Assessment ("Assessment") on Smith's property with the Jackson County Recorder of Deeds.

68. Upon information and belief, Renovate America and A1 Solar created documents that purport to show Smith's consent through DocuSign or other electronic signatures.

69. Upon information and belief and unbeknownst to Smith, A1 Solar and Renovate America created other contractual documents that also purport to show Smith's consent to the HERO-PACE financing program.

70. Smith was not provided a copy of the Assessment to review before it was filed.

71. Smith did not sign the Assessment or any other HERO-PACE program-related document.

72. Smith did not consent or agree to the terms in the Assessment or any other financing contract related to the solar panels A1 Solar installed on his home.

73. In addition to violating the MMPA through the acts of its agent A1 Solar, Renovate America has directly violated the MMPA by:

- a. Enrolling Smith in the HERO-PACE financing program;
- b. Failing to provide Smith with the necessary disclosures to inform him about the true nature of the HERO-PACE financing program;
- c. Failing to obtain Smith's actual consent and authorization to enter into the HERO-PACE financing program;
- d. Failing to ensure its contracting partner A1 Solar installed properly functioning solar panels at Smith's residence;
- e. Failing to ensure that the amount of the HERO-PACE loan was appropriate for Smith's project and that it was actually used by A1 Solar to complete it;
- f. Failing to ensure that the economic benefits of the system equal or exceed its costs.

74. Pursuant to § 407.025.1, Plaintiff is entitled to recover his actual damages, punitive damages, reasonable attorneys' fees, and any equitable relief the court deems appropriate.

75. Renovate America's wrongful conduct has caused or contributed to cause Plaintiff actual damages in excess of \$25,000, including but not limited to a 200% increase in their annual property taxes, the creation of a contractual obligation in their name to pay \$57,096 over a period of twenty years, a lien to be placed on his home, and the installation of solar panels that have not operated as promised.

76. Renovate America's conduct was intentional, willful, wanton, reckless, fraudulent, with malice, and/or conformed to a pattern and practice, thereby entitling Plaintiff to the recovery of punitive damages.

WHEREFORE, Plaintiff prays for judgment against Renovate America in such amount as is allowable by law and to be determined at trial, for his actual damages, punitive damages, pre- and post-judgment interest at the greatest rate allowed by statute, for his costs and reasonable attorneys' fees, and for such other and further relief as may be just and proper under the circumstances. All the forgoing paragraphs are incorporated herein.

Count III – Negligent Misrepresentation
(TI: Against A1 Solar)

77. Smith incorporates herein all the forgoing paragraphs.

78. As detailed above, A1 Solar made several misrepresentations in connection with Smith's transaction that it knew or reasonably should have

known were false and misleading. These false statements include among others: promising a total cost to Smith for the panels of \$15,456, that this cost would be offset by savings he would enjoy in his energy bills, and that his property tax bill would only increase \$1,000 per month.

79. A1 Solar's statements about the costs and financing of Smith's solar panel system were also made false by vital omissions, including, but not limited to, failing to inform Smith about the nature of the HERO-PACE loan program, the rate of interest, the details regarding the true costs of the property tax assessment, and the fact that a lien would be placed on Smith's home, which could be sold if he failed to pay the increased property tax assessment.

80. Smith reasonably relied on A1 Solar's representations in deciding to agree to purchase solar panels from A1 Solar.

81. As a direct and proximate result of A1 Solar's statements and omissions, Smith suffered pecuniary losses, including loss of value to Smith's home, costs necessary to have the assessment removed or rescinded or satisfied, and costs to have the solar panels removed.

WHEREFORE, Smith prays for judgment against A1 Solar awarding Smith damages and such sums as are fair and reasonable in excess of \$25,000, the exact amount to be proved at trial, pre- and post-judgment interest at the greatest rate allowed by statute, for his costs and, and for such other and further relief as may be just and proper under the circumstances.

Count IV – Breach of Contract
(CA: Against A1 Solar)

82. Smith incorporates herein all the forgoing paragraphs.

83. A1 Solar entered into a contract with Smith for the installation of solar panels on his residence.

84. A1 Solar promised to install the solar panels “in accordance with the terms and conditions herein set forth, in good, perfect and workman like manner”.

85. A1 Solar breached that contract, including the warranties expressed and implied therein, in the following ways:

- a. Failing to exercise reasonable care, skill, and judgment in engineering, designing, or selecting the solar panel array (including the constituent parts thereto) to be installed;
- b. Failing to exercise reasonable care, skill, and judgment to install the solar panels in a workmanlike manner;
- c. Failing to exercise reasonable care, skill, and judgment to correct defective conditions, workmanship, or materials;
- d. Failing to design, engineer, and install a solar panel system that would deliver the amount of energy necessary to produce the savings A1 Solar represented Smith would enjoy after installation.

86. As a direct and proximate result of A1 Solar’s breach of contract and its failure to remedy the defects, Smith has suffered damages in an amount in excess of \$25,000.

WHEREFORE, Smith prays for judgment against A1 Solar awarding Smith damages and such sums as are fair and reasonable in excess of \$25,000, the exact amount to be proved at trial, pre- and post-judgment interest at the greatest rate allowed by statute, for his costs and, and for such other and further relief as may be just and proper under the circumstances.

Jury Trial Demand

Smith demands a trial by jury as to all issues in the above-titled manner so triable.

Respectfully submitted,

By: /s/ Anthony Bonuchi

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