

# C A M P A I G N F O R

# ACCOUNTABILITY

July 16, 2020

## By First-Class Mail

The Honorable Joseph Simons  
Chairman  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

### **Re: Investigation of the Rooftop Solar Industry**

Dear Chairman Simons:

Campaign for Accountability (“CfA”), respectfully requests the Federal Trade Commission (“FTC”) open an investigation into rooftop solar companies as well as lead generators the companies use to find customers to lease and sell rooftop solar panels across the United States. In July 2017, CfA first wrote to the FTC regarding the extensive number of consumer complaints filed both with your agency and with state attorneys general regarding rooftop solar companies’ false and deceptive marketing practices.<sup>1</sup> These practices continue unabated. Now, in addition, with large swaths of the public, particularly seniors, restricted to their homes as the Covid-19 pandemic continues, rooftop solar companies, through lead generators, are using deceptive online marketing practices to lure consumers into purchasing or leasing the panels. This issue is all the more urgent in light of the recent announcement that Sunrun Inc. is acquiring Vivint Solar, and both companies have a track records of deceptive marketing.<sup>2</sup>

### **Background**

As CfA wrote in 2017, the FTC has long been aware of the issues with the rooftop solar industry. In 2016, the FTC hosted a one-day public workshop entitled *Something New Under the Sun: Competition & Consumer Protection Issues in Solar Energy*, which explored consumer protection issues stemming from the installation of rooftop solar panels on residential properties.<sup>3</sup> Then-FTC Chairwoman Edith Ramirez stated in her opening remarks that she hoped the public workshop would “help policymakers assess how best to protect consumers in

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<sup>1</sup> Letter from CfA Executive Director Daniel E. Stevens to Thomas B. Pahl, Acting Director, Bureau of Consumer Protection, FTC, July 19, 2017, available at <https://campaignforaccountability.org/wp-content/uploads/2017/07/FTC-Solar-Complaint-July-19-2017.pdf>.

<sup>2</sup> Katherine Blount, Home-Solar Companies Merge as Coronavirus Dims Growth, *Wall Street Journal*, July 7, 2020, available at <https://www.wsj.com/articles/u-s-solar-energy-company-sunrun-to-buy-rival-vivint-in-all-stock-deal-11594110606>.

<sup>3</sup> *Something New Under the Sun: Competition & Consumer Protection Issues in Solar Energy*, Federal Trade Commission, June 21, 2016, available at <https://www.ftc.gov/news-events/events-calendar/2016/06/something-new-under-sun-competition-consumer-protection-issues>.

connection with their purchase, installation, and use of rooftop solar.”<sup>4</sup> Unfortunately, problems appear to have escalated in the intervening years.

The residential solar panels industry has shown phenomenal growth. At the FTC conference, Thomas Kimbis, then the interim president of the Solar Energy Industries Association (SEIA) announced, “it took 40 years to celebrate the one millionth solar panel in the United States, which we proudly did [in 2016], and yet, it's only going to take 24 months to hit that second million.”<sup>5</sup> In fact, by 2019, the number of solar installations in the U.S. passed the two million mark and analysts expect that number to increase to three million in 2021 and four million in 2023.<sup>6</sup>

Other enforcement agencies have taken note of the problems in the industry, particularly in relation to Vivint Solar. In March 2018, New Mexico Attorney General Hector Balderas filed a civil lawsuit against Vivint for using high pressure sales techniques and misleading consumers into unfavorable contracts.<sup>7</sup> Similarly, this past January, Vivint agreed to a \$1.95 million settlement with the New York attorney general following an investigation into the company’s deceptive sales practices, and the company also entered into a settlement agreement with the New Jersey attorney general’s office.<sup>8</sup> By October 2019, the Better Business Bureau reported Vivint had more than 774 complaints over the previous three years.<sup>9</sup> There also have been numerous private lawsuits against the company, including one Vivint settled with Southern California Edison after Vivint sales representatives allegedly claimed they were “from Edison” or working “in partnership” with the company.<sup>10</sup>

Despite state enforcement actions and civil litigation, last November it was revealed that a video Vivint used to train door-to-door salespeople and maintained on the company’s official Vimeo account actively encouraged salespeople to engage in deceptive tactics. Specifically, the Vivint trainer featured in the video teaches new employees to pitch the solar panels as a “no cost program” with a “flat rate that’s fixed and it’ll never go up again.”<sup>11</sup> The salesperson explains the goal is to deter customers from reading the fine print or asking questions and even provides

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<sup>4</sup> Workshop Transcript, *Something New Under the Sun: Competition & Consumer Protection Issues in Solar Energy*, Federal Trade Commission, at 4, June 21, 2016, available at [https://www.ftc.gov/system/files/documents/public\\_events/943943/solar\\_workshop\\_transcript.pdf](https://www.ftc.gov/system/files/documents/public_events/943943/solar_workshop_transcript.pdf).

<sup>5</sup> *Id.* at 161.

<sup>6</sup> Emma Foehringer Merchant, *US Surpasses 2 Million Solar Installations as Industry Looks to ‘Dominate’ the 2020s*, *GreenTech Media*, May 9, 2019, available at <https://www.greentechmedia.com/articles/read/u-s-solar-installations-top-2-million>.

<sup>7</sup> Art Raymond, *New Mexico A.G. Files Fraud, Racketeering Suit Against Vivint Solar*, *Deseret News*, Mar. 9, 2018, available at <https://www.deseret.com/2018/3/9/20641469/new-mexico-a-g-files-fraud-racketeering-suit-against-vivint-solar>.

<sup>8</sup> Eli Wolfe, *A Major Player in Solar Energy Leaves Some Customers Seething*, *Fair Warning*, April 30, 2020, available at <https://www.fairwarning.org/2020/04/major-player-in-solar-energy/>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> The Capitol Forum, *Vivint Solar Internal Training Video Promotes Practices Alleged as Deceptive*, *The American Prospect*, Nov. 28, 2019, available at <https://prospect.org/power/vivint-solar-internal-training-video-promotes-practices-alleged/>; Vivint video available at <https://www.youtube.com/watch?v=IQ128CHpgWo&feature=youtu.be>.

tips to distract customers from thoroughly reviewing loan documents before signing them.<sup>12</sup> Notably, in another video – an ethics training -- Vivint acknowledges that making such claims can be deceptive and misleading.<sup>13</sup> Further, in a November 6, 2019 earnings report, Vivint wrote “our sales professionals . . . may . . . engage in conduct that is prohibited under our standard practices . . . and applicable laws. . .”<sup>14</sup>

Vivint is not, however, the only company with misleading sales practices. Recently, after CfA challenged claims made by Sunrun Inc., the Better Business Bureau’s National Advertising Division (“NAD”) recommended Sunrun stop advertising that consumers can “save up to 20%” on their energy bill by switching to rooftop solar.<sup>15</sup> NAD found the record demonstrated that electricity rates may be highly variable and that neither “all or almost all customers would save 20% or more.” NAD also recommended Sunrun discontinue making the claim during in home visits with prospective customers.<sup>16</sup>

Now, in the wake of the coronavirus pandemic, rooftop solar companies are moving to digital sales, frequently through lead generators posting on Facebook. The lead generators draw in prospective customers, gathering and selling their personal information to the rooftop solar companies. Significantly, much of the information presented by the lead generators is misleading. *Business Insider* recently conducted an investigation and found solar ads referring to a solar “stimulus” program that does not exist.<sup>17</sup> One Facebook ad, for example, read “NEW \$1,000 solar stimulus package just announced!!” Clicking on the ad led to the receipt of an email from Vivint.<sup>18</sup> Facebook took the ad down in response to *Business Insider*’s inquiries. Another ad, by the New York Energy Savings Program, stated “Federal and state programs pay you to go solar.” Clicking on the ad brought users to a page to schedule a consultation with Sigora Solar.<sup>19</sup> Another ad, published by an alleged newspaper, the *El Paso County News*, falsely claimed “Colorado Springs Utility is now paying El Paso County homeowners for switching to solar through the Renewable Energy Buyback Program.” The page actually belonged to Skyline Solar, and again, Facebook removed the ad.<sup>20</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*; Video available at <https://www.youtube.com/watch?v=VnXumUrFOp4&feature=youtu.be>.

<sup>14</sup> The Capitol Forum, *The American Prospect*, Nov. 28, 2019.

<sup>15</sup> Better Business Bureau News Release, “BBB National Programs National Advertising Division Recommends Discontinuation of Sunrun’s National “Save Up to 20%” on Your Electric Bill Over the Terms of the Contract; Find’s Sunrun’s General Savings Claims About its Solar Service Are Supported,” January 29, 2020, available at <https://bbbprograms.org/programs/all-programs/nad/nad-press-releases/nad-recommends-discontinuation-of-sunrun-s-national-save-up-to-20-on-your-electric-bill-over-the-term-of-the-contract-claim-finds-sunruns-general-savings-claims-about-its-solar-service-are-supported>.

<sup>16</sup> *Id.*

<sup>17</sup> Benji Jones, ‘Predatory and Harmful’: Misleading Solar Ads Touting 100% Free Panels and Fake Stimulus Programs Spread on Facebook as the Coronavirus Upends Door-to-Door Sales, *Business Insider*, May 26, 2020, available at <https://www.businessinsider.com/misleading-solar-ads-spread-coronavirus-upends-door-to-door-sales-2020-5>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

Notably, just last week, concerned about the “onslaught of fraud” consumers are facing, Senator Richard Blumenthal (D-CT) and Rep. Jan Schakowsky (D-IL) urged the FTC to step up enforcement “to deter violations of our consumer protection laws during this pandemic.”<sup>21</sup>

### **Potential Violations of Law**

As you know, Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45, prohibits unfair or deceptive acts or practices in or affecting commerce. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the Act. The evidence shows that in numerous instances, solar companies have deceived, failed to disclose, or failed to disclose adequately to consumers, material terms and conditions of the offers made to them, likely in violation of 15 U.S.C. 45(a).

Moreover, as CfA explained in its initial letter, the harsh reality is that many rooftop solar companies take advantage of particularly vulnerable populations, such as the elderly, veterans, and people for whom English is not their native language. As a result, the impacts of these apparently fraudulent practices are all the more devastating, leaving low-income customers or those living on fixed incomes with even higher monthly utility costs and loans that often exceed what they can afford to pay, and plunging them into a cycle of debt. In a speech last year, FTC Commissioner Rebecca Kelly Slaughter noted that serving as a “source of protection and empowerment” for vulnerable populations is an “agency mission.”<sup>22</sup>

### **Conclusion**

Amid increasing concern about climate change, increasing numbers of consumers are contemplating installing solar panels on their homes. According to a Pew Research Center survey, while just 6 percent of U.S. homeowners already have installed solar panels, another 46 percent have given it serious thought within the last year.<sup>23</sup> Further, as discussed above, the number of homeowners following through and actually installing panels has been increasing exponentially.

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<sup>21</sup> Letter from Senator Richard Blumenthal and Rep. Jan Schakowsky to FTC Chairman Joseph Simons, June 15, 2020, available at <https://www.blumenthal.senate.gov/imo/media/doc/2020.06%20-%20FTC%20-%20230%20EO%20-%20FINAL%20.pdf>.

<sup>22</sup> FTC Comm. Rebecca Kelly Slaughter, “The Near Future of U.S. Privacy Law,” Sept. 16, 2019, available at [https://www.ftc.gov/system/files/documents/public\\_statements/1543396/slaughter\\_silicon\\_flatirons\\_remarks\\_9-6-19.pdf](https://www.ftc.gov/system/files/documents/public_statements/1543396/slaughter_silicon_flatirons_remarks_9-6-19.pdf).

<sup>23</sup> Brian Kennedy and Cary Lynne Thigpen, *More U.S. Homeowners Say They Are Considering Home Solar Panels*, *Fact Tank*, Dec. 17, 2019, available at <https://www.pewresearch.org/fact-tank/2019/12/17/more-u-s-homeowners-say-they-are-considering-home-solar-panels/>.

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Given the strong interest of consumers in rooftop solar and the industry's track record of deceptive marketing tactics, it is clear many more consumers stand to be victimized by rooftop solar company's unfair sales tactics. It is imperative that the FTC take action to ensure consumers are protected from unscrupulous rooftop solar companies and lead generators that tarnish the entire industry.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan E Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens  
Executive Director

cc: Andrew Smith  
Director, Bureau of Consumer Protection