

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

LYDIA GRUBER AND LOUISE	:	CIVIL ACTION NO. 3:14-CV-01828
FERDINAND, on behalf of themselves and	:	
all others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
STARION ENERGY, INC.	:	
	:	
Defendant.	:	

**DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES TO SECOND AMENDED
COMPLAINT**

Defendant Starion Energy, Inc. (“Starion”), by and through its undersigned counsel, by and through their undersigned counsel, Eckert Seamans Cherin & Mellott, LLC, hereby answer and assert affirmative defenses to the Second Amended Complaint, as follows:

1. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

2. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

3. Admitted in part; denied in part. It is admitted that, as part of some of its contracts with customers in some states, some Starion contracts provide for a fixed rate for a specific period of time followed by a variable rate. It is specifically denied, however, that customers were charged “exorbitant rates.” The remaining allegations contained in this paragraph are denied.

4. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied. The terms of each Starion plan are set forth in the Terms of Service (“TOS”) applicable to that plan at that time and in compliance with the regulations of the jurisdiction to which those specific TOS apply.

5. Denied. By way of further response, Starion’s variable rate plans are not indexed to any specific factor and are, as the name implies, variable based on many factors in the residential electricity supply market and within Starion’s business plans and goals.

6. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

7. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied. The remaining allegations contained in this paragraph are denied.

8. Denied. After reasonable investigation, Starion lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph; and, therefore, the allegations contained in this paragraph are denied.

9. Denied. After reasonable investigation, Starion lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph; and, therefore, the allegations contained in this paragraph are denied. Admitted upon information and belief.

10. Admitted.

11. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required.

12. Admitted in part; denied in part. It is admitted that Starion is headquartered in Connecticut. The remaining allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

13. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required.

14. Denied. After reasonable investigation, Starion lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph; and, therefore, the allegations contained in this paragraph are denied.

15. Denied. After reasonable investigation, Starion lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph; and, therefore, the allegations contained in this paragraph are denied.

16. Denied. After reasonable investigation, Starion lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph; and, therefore, the allegations contained in this paragraph are denied.

17. Denied. After reasonable investigation, Starion lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph; and, therefore, the allegations contained in this paragraph are denied.

18. Admitted in part, denied in part. It is admitted only that Starion does not deliver electricity to consumers. After reasonable investigation, Starion lacks knowledge or information

sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph; and, therefore, the allegations contained in this paragraph are denied.

19. Admitted in part; denied in part. It is admitted that Starion is an electric supplier. The characterization that Starion buys and resells “Power Pool System” power purchased from the New England regional electricity market, not from specific power generation plants, is denied. The remaining allegations contained in this paragraph reference a written document that speaks for itself, and Plaintiffs’ characterizations thereof are denied.

20. Denied. It is admitted only that Starion’s prices are not approved by states’ regulatory authorities such as Connecticut’s Public Utility Regulatory Authority (“PURA”) or the Massachusetts Department of Public Utilities. The remaining allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

21. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied. By way of further response, Starion’s contracts with its customers vary by jurisdiction, contract type, terms, date on which the contract was entered and a variety of other factors. Those contracts (Starion’s TOS) as to each customer are written documents that speak for themselves.

22. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied. By way of further response, Starion’s contracts with its customers vary by jurisdiction, contract type, terms, date on which the contract was entered and a

variety of other factors. Those contracts (Starion's TOS) as to each customer are written documents that speak for themselves.

23. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied. By way of further response, Starion's contracts with its customers vary by jurisdiction, contract type, terms, date on which the contract was entered and a variety of other factors. Those contracts (Starion's TOS) as to each customer are written documents that speak for themselves.

24. Denied.

25. Denied. The allegations contained in this paragraph reference a written document that speaks for itself, and Plaintiffs' characterizations thereof are denied.

26. Denied. The allegations contained in this paragraph reference a written document that speaks for itself, and Plaintiffs' characterizations thereof are denied.

27. Denied. The allegations contained in this paragraph reference a written document that speaks for itself, and Plaintiffs' characterizations thereof are denied.

28. Denied. The allegations contained in this paragraph reference a written document that speaks for itself, and Plaintiffs' characterizations thereof are denied.

29. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied. By way of further response, none of Starion's variable rate plans are indexed to any one factor. The terms of each Starion plan are set forth in the TOS applicable to that plan at that time and in compliance with the regulations of the jurisdiction to which those specific TOS apply.

30. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied. By way of further response, none of Starion's variable rate plans are indexed to any one factor. The terms of each Starion plan are set forth in the TOS applicable to that plan at that time and in compliance with the regulations of the jurisdiction to which those specific TOS apply.

31. Denied. The allegations contained in this paragraph reference written documents that speak for themselves, and Plaintiffs' characterizations thereof are denied. To the extent that a further response is required, after reasonable investigation, Starion lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph; and, therefore, the allegations contained in this paragraph are denied. By way of further response, none of Starion's variable rate plans are indexed to any one factor; let alone any alleged "wholesale cost of power." The terms of each Starion plan are set forth in the TOS applicable to that plan at that time and in compliance with the regulations of the jurisdiction to which those specific TOS apply. The remaining allegations contained in this paragraph are denied.

32. Denied. The allegations contained in this paragraph reference written documents that speak for themselves, and Plaintiffs' characterizations thereof are denied. To the extent that a further response is required, after reasonable investigation, Starion lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph; and, therefore, the allegations contained in this paragraph are denied. By way of further response, none of Starion's variable rate plans are indexed to any one factor; let alone any alleged "wholesale cost of power." The terms of each Starion plan are set forth in the TOS applicable to that plan at

that time and in compliance with the regulations of the jurisdiction to which those specific TOS apply. The remaining allegations contained in this paragraph are denied.

33. Denied.

34. Admitted in part; denied in part. It is admitted only that Starion does not produce or transport electricity and that it has no role in running or maintaining power plants or power lines; it does no hookups or emergency response. It is specifically denied, however, that Starion does not “add[] any value to the consumer whatsoever,” and that it “charges several multiples of the amount the Generation Companies received for making electricity and the Distribution Companies receive for transmitting power, maintaining power lines, and handling emergency services and customer bills.” The remaining allegations contained in this paragraph are denied.

35. Denied. After reasonable investigation, Starion lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph; and, therefore, the allegations contained in this paragraph are denied.

36. Denied. The allegations contained in this paragraph reference written documents that speak for themselves, and Plaintiffs’ characterizations thereof are denied. The remaining allegations contained in this paragraph are denied.

37. Admitted in part; denied in part. It is admitted that Plaintiff Gruber’s initial rate was \$0.0737 per kWh. Plaintiffs’ remaining mischaracterizations and allegations are denied. It is specifically denied that “all of the power sold to consumers was bought and sold in the same market and subject to the same market conditions.” The remaining allegations contained in this paragraph are denied.

38. Denied. After reasonable investigation, Starion lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph; and, therefore, the allegations contained in this paragraph are denied.

39. Denied

40. Denied. After reasonable investigation, Starion lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph; and, therefore, the allegations contained in this paragraph are denied. It is specifically denied that the TOS for Plaintiffs provide that rates are to be related to any one factor, let alone any alleged “wholesale cost of power.”

41. Denied.

42. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

43. Denied. Ferdinand had a single contract with Starion from November 20, 2014 to April 23, 2015, that contained both fixed and variable rate terms.

44. Admitted in part; denied in part. It is admitted that Starion charged Ferdinand a rate of \$0.0759 per kWh from November 19, 2014, to December 18, 2014. After reasonable investigation, Starion lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph; and, therefore, the remaining allegations contained in this paragraph are denied.

45. Denied. After reasonable investigation, Starion lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph; and,

therefore, the allegations contained in this paragraph are denied. The remaining allegations contained in this paragraph are denied.

46. Denied. After reasonable investigation, Starion lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph; and, therefore, the allegations contained in this paragraph are denied.

47. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

48. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

49. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

50. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

51. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

52. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

53. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

54. Denied. After reasonable investigation, Starion lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph; and, therefore, the allegations contained in this paragraph are denied. The remaining allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the remaining allegations contained in this paragraph are denied.

55. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

56. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

57. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

COUNT I
VIOLATION OF STATE UNFAIR TRADE PRACTICES ACT

58. Starion incorporates herein by reference its responses to Paragraphs 1 through 57 of the Second Amended Complaint.

59. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

60. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

61. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied. The remaining allegations contained in this paragraph are denied.

62. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied. The remaining allegations contained in this paragraph are denied.

63. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied. The remaining allegations contained in this paragraph are denied.

64. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

65. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

COUNT II
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

66. Starion incorporates herein by reference its responses to Paragraphs 1 through 65 of the Second Amended Complaint.

67. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

68. Denied. The allegations contained in this paragraph reference a written document that speaks for itself, and Plaintiffs' characterizations thereof are denied.

69. Denied.

70. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied. The remaining allegations contained in this paragraph are denied.

71. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied. The remaining allegations contained in this paragraph are denied.

72. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

73. Denied. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, the allegations contained in this paragraph are denied.

PRAYER FOR RELIEF

No response is required to the allegations asserted in the Prayer for Relief. To the extent any response is required, Starion denies that Plaintiffs are entitled to any damages, attorneys' fees or costs, declaratory, equitable and or injunctive relief, or that Plaintiffs are otherwise entitled to any relief from Starion or that a class can or should be certified.

JURY DEMAND

No response is required to the allegations asserted in the Jury Demand. To the extent a response is required, Starion admits that Plaintiffs request a trial by jury on the causes of action set forth in the Second Amended Complaint. Starion denies that a trial by jury should be granted, as Plaintiffs fail to state a claim upon which a jury trial may be granted and certain of Plaintiffs' claims preclude a jury trial. To the extent that a trial by jury is granted, Starion demands a trial by a jury of twelve.

AFFIRMATIVE DEFENSES

Pursuant to Federal Rule of Civil Procedure 8(c), Starion asserts the following affirmative defenses to the Second Amended Complaint:

FIRST AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, because they fail to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, by the applicable statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, by the doctrine of laches. Starion has been prejudiced by Plaintiff's unreasonable delay in asserting the purported causes of action in the Complaint.

FOURTH AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, on the ground that some or all of the Plaintiffs lack standing to sue

FIFTH AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, because Plaintiffs and/or the purported class members fail to assert an ascertainable loss.

SIXTH AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, because Starion's electricity supply rates conformed with its terms of service and met the consumer's reasonable expectations.

SEVENTH AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, by the doctrine of exhaustion.

EIGHTH AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, because Starion's conduct as alleged was not in bad faith, immoral, unethical, oppressive or unscrupulous.

NINTH AFFIRMATIVE DEFENSE

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because their proposed classes are not certifiable under Rule 23.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs and/or the purported class members are equitably estopped from bringing their claims.

ELEVENTH AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, by Starion's Terms of Service with its customers.

TWELFTH AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, by the economic loss doctrine.

THIRTEENTH AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, because the alleged injuries and damages were proximately caused solely by the acts or omissions of other persons, and no injuries or damages were proximately caused or contributed to in any way by any act or omission of Starion.

FOURTEENTH AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, because Starion did not at any time ratify, condone or sustain any alleged conduct that may have been undertaken by any third party.

FIFTEENTH AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, by the doctrine of contribution. To the extent that Plaintiffs have suffered the damages alleged in any of the causes of action asserted in the Second Amended Complaint, Plaintiff's own negligence and/or willful misconduct, or those of third parties, directly and proximately caused or contributed to some or all of the damages claimed.

SIXTEENTH AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, by the doctrine of mitigation. With respect to each purported cause of action in the Second Amended Complaint, Plaintiffs and/or the purported class members have failed to exercise reasonable diligence to mitigate their alleged damages and/or injuries. To that extent, Plaintiffs may not recover damages.

SEVENTEENTH AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, because Starion has not committed any unlawful, unfair, deceptive or fraudulent business acts or practices.

EIGHTEENTH AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, because Plaintiffs and/or the purported class members failed to provide reasonable notice of their claims, and therefore the claims are barred.

NINETEENTH AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, by the unclean hands doctrine.

TWENTIETH AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, by the doctrine of waiver.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, by the absence of any legally cognizable damages or injury.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, by express and/or implied release of those claims.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, by the doctrine of law of the case, and/or the doctrines of res judicata, collateral estoppel, and claim preclusion. The claims of Plaintiffs and/or purported class members were adjudicated and/or arbitrated and/or settled.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, by the doctrines of payment, compromise and/or settlement.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, by the fact that Plaintiffs and/or purported class members and the members of the general public have an adequate remedy at law.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, because any damages allegedly sustained were the direct and proximate result of intervening and superseding actions, and not caused by Starion.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, because the operative terms of service were submitted to, and approved by, the Connecticut Public Utilities Regulatory Authority or the Massachusetts Department of Public Utilities.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, the doctrine of unjust enrichment.

TWENTY-NINTH AFFIRMATIVE DEFENSE

The claims of Plaintiffs and/or the purported class members are barred, in whole or in part, because Plaintiffs did not rely upon the operative terms of service, third party verification or online disclosure statement before enrolling with Starion.

RESERVATION

Starion hereby reserves its right to assert any other affirmative defenses that discovery reveals to be applicable so as to avoid waiver of the same.

WHEREFORE, Defendant, Starion Energy, Inc., respectfully requests that this Court enter judgment against Plaintiffs Lydia Gruber and Louise Ferdinand, and in favor of Starion and award such other and further relief as this Court deems just.

Respectfully submitted,

ECKERT SEAMANS CHERIN & MELLOTT, LLC

By: /s/ Keith E. Smith

(Admitted *Pro Hac Vice*)

Charles A. Zdebski, Esquire

(Admitted *Pro Hac Vice*)

Two Liberty Place

50 South 16th Street, 22nd Floor

Philadelphia, PA 19102

Attorneys for Defendant,

Starion Energy, Inc.

Dated: September 3, 2015.

CERTIFICATE OF SERVICE

I hereby certify that, on September 3, 2015, I electronically filed the foregoing document using the CM/ECF system, and that I served the same by electronic filing via ECF, pursuant to the administrative procedures of the United States District Court for the District of Connecticut governing the filing and service by electronic means, upon the following:

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Attorneys for Plaintiffs Lydia Gruber and Louise Ferdinand

/s/ Keith E. Smith