

CONSTANCE JURICH, on behalf of
herself and all others similarly situated,

Plaintiffs,

v.

VERDE ENERGY USA, INC.,

Defendant.

SUPERIOR COURT

COMPLEX LITIGATION DOCKET
AT HARTFORD

December 18, 2018

FOURTH AMENDED CLASS ACTION COMPLAINT

1. Plaintiff Constance Jurich (“Plaintiff”), on behalf of herself and all persons similarly situated, by and through her attorneys, allege as follows.

INTRODUCTION

2. Plaintiff brings this action on behalf of herself and a class of all similarly situated customers against Defendant Verde Energy USA, Inc. (“Verde”) in Connecticut, arising out of Verde’s unfair, deceptive, unconscionable and bad faith billing for “supplying” electricity to residential consumers.

3. Verde entices residential customers to sign up for its service by offering low initial rates for electricity. When the “teaser rate” period expires, however, customers are rolled over into a month-to-month variable rate plan with exorbitant rates.

4. Verde represents in its contracts that it offers a “variable rate” electricity plan to residential consumers that is tied to the market rate in the wholesale power market. However, contrary to Verde’s representations and obligations, Verde consistently and improperly charges an extraordinarily high premium rate for electricity *regardless* of fluctuations in the underlying market price. Indeed, as set forth below, Verde routinely charges its consumers up to almost *six*

times the underlying market rate, notwithstanding Verde's representations that its variable rates reflect monthly wholesale electric prices.

5. Specifically, Verde's rates go *up* to match spikes in the underlying market price. However, when the market price goes *down*, Verde's rate remains at an inflated level several times higher than the market rate.

6. This unfair and deceptive scheme of charging inflated electric prices that match *increases* in the underlying market price while failing to pass-along *decreases* is intentionally designed to maximize revenue for Verde.

7. Plaintiff and other Verde customers have been injured by Verde's unlawful practices. Accordingly, Plaintiff, on behalf of herself and the class, seek damages, restitution and injunctive relief for Verde's violation of the Connecticut Unfair Trade Practices Act (Count I); breach of the implied covenant of good faith and fair dealing (Count II); and, in the alternative to Count II, unjust enrichment and/or quantum meruit (Count III).

PARTIES

8. Plaintiff Constance Jurich is a resident of Vernon, Connecticut.

9. Defendant Verde Energy USA, Inc. is a corporation organized under the laws of the State of Delaware whose principal place of business is located at 101 Merit Seven Corporate Park, Norwalk, CT 06851.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

A. Energy Deregulation and the Role of Electric Suppliers

10. In the late 90s and early 2000s, many states moved to deregulate at least part of the electricity supply services then performed by large public utilities. Delivery of electricity to a consumer requires both the creation of electricity and the transmission of that electricity from the power plant to the consumer. The typical pattern was to require the public utilities to divest

their power generation assets such as coal, gas and nuclear power plants. But, the regulated utilities continued distributing power from these power plants to consumers through transmission lines.

11. When deregulation occurred, the business of power *supply* was opened to competition and consumers were allowed to select the companies from whom they would purchase their power. However, states generally set a “standard offer” or “default rate,” available to all customers in each public utility’s service area. In some states, such as Connecticut, the standard offer is a single, flat rate which is fixed for a period of months.

12. As a result of the deregulation of power supply, several different parties are now involved in the supply of electric power to residential consumers. Certain companies, such as Dominion, produce electric power (“Generation Companies”). Other companies, such as Connecticut Light & Power (“CL&P”), distribute electricity from Generation Companies to the end user (“Distribution Companies”). Although some Generation Companies have sold power directly to consumers, including residential customers, most sell the power on the wholesale market to companies that market to retail customers (“Electric Suppliers”).

13. The market for wholesale power in the New England States is under the administration of an independent, not-for-profit corporation formed in accordance with the recommendations of the Federal Energy Regulatory Commission, called ISO New England (for “Independent System Operator”). ISO New England coordinates and directs the generation and flow of electricity throughout the region, ensuring that electric supply exactly meets demand throughout the network. The wholesale market managed by ISO New England determines whether and when electricity will be made by Generation Companies and the wholesale prices that will be paid for that electricity through competitive bids. “More than 500 companies

participate in these markets, buying and selling between \$6-\$14 billion of electric power and related products annually.” <http://www.iso-ne.com/about/what-we-do/three-roles/administering-markets>. The bid process determines the Generation Company that will make each unit of electricity and the wholesale price each Energy Supplier will pay to each Generator for each unit of energy delivered to specific locations throughout the region.

14. Electric Suppliers play a middleman role: they purchase power directly or indirectly from Generation Companies and sell that electricity to end-user consumers. However, Electric Suppliers do not *deliver* that electricity to consumers. Rather, Generation Companies deliver the electricity to Distribution Companies, which in turn deliver the electricity to the ultimate consumer. Electric Suppliers merely buy electricity at the wholesale rate and then sell that power to end-users with a mark-up. Thus, Electric Suppliers are essentially brokers and traders: they neither make nor deliver electricity, but merely buy electricity from the Generation Companies and re-sell it to end users.

15. Like other Electric Suppliers, Verde purchases power on the wholesale market and sells it to consumers. The New England power grid receives power from a variety of power plants and transmits that power throughout New England as needed. Verde buys and resells power purchased from the New England regional electricity market, not from specific power generation plants.

16. Verde’s prices are not approved by states’ regulatory authorities such as Connecticut’s Public Utility Regulatory Authority (“PURA”). Rather, Verde and other Electric Suppliers are free to set their own rates for supplying electricity to consumers. And Verde, like all other suppliers, relies upon the Distribution Companies to deliver the electricity it purchases

on the wholesale market to its customers. The Distribution Companies charge separately for their services, using rates that are reviewed and approved by the states' regulatory agencies.

17. Electric Suppliers may contract with consumers to supply electricity on either a "Fixed" or "Variable" rate basis. Under a Fixed contract, the Supplier agrees to supply electricity at a set rate for a certain number of months.

18. Under a Variable rate contract, the Supplier may vary the rate it charges on a periodic basis (often monthly).

B. Verde's Excessive Rates

19. Verde has offered various Fixed and Variable rate plans, including contracts that charge a low promotional "teaser" rate which is fixed for a set number of months before automatically rolling into a Variable rate plan.

20. Verde's "Terms of Service" make this express link between the Variable rate charged by the company and the underlying wholesale market rate set by ISO-New England and charged by Generation Companies, stating that the "monthly variable generation rate" may "change monthly with market conditions."

21. Accordingly, a reasonable consumer would understand that Verde's Variable rates fluctuate in a manner correlated with the underlying wholesale market rate, and that, although prices would go up when wholesale prices rose, they would also go down when wholesale prices decreased, enabling consumers to take advantage of market lows.

22. Instead, and contrary to reasonable consumer expectation, Verde used its Variable rates as a pure profit center, increasing the rates charged to class members when wholesale prices rose, but staying at a level almost *four times* the wholesale market rates when the wholesale prices fell.

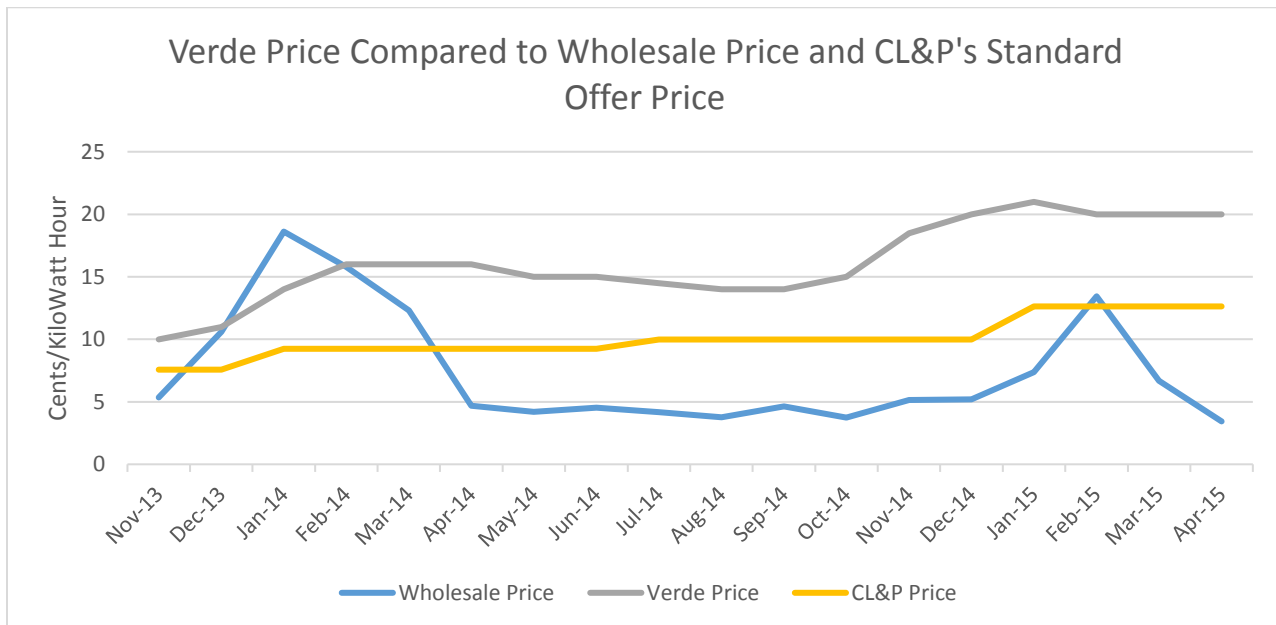
23. For example, the chart below sets forth (1) the average wholesale price (in dollars per kilowatt hour) of electricity delivered to Connecticut for each month during the period from November 2013 through April 2015, as reported by ISO-New England;¹ (2) the highest non-promotional variable rates Verde charged to consumers in Connecticut for those same months as reported either on its website or in filings Verde made to PURA; (3) the resulting spread between Verde’s rates and the average wholesale price; and (4) the Verde price compared to the average wholesale price, expressed as a percentage.

Month	Total Wholesale Rate for Connecticut (cents/kilowatt hour)	Verde Price (cents/kilowatt hour)	Verde’s Spread (cents/kilowatt hour)	Verde’s Price as Percentage of Wholesale Rate
November 2013	5.344	9.99	4.646	187%
December 2014	10.588	10.99	0.402	104%
January 2014	18.615	13.99	-4.625	75%
February 2014	15.803	15.99	0.187	101%
March 2014	12.312	15.99	3.678	130%
April 2014	4.689	15.99	11.301	341%
May 2014	4.192	14.99	10.798	358%
June 2014	4.538	14.99	10.452	330%
July 2014	4.182	14.49	10.308	346%
August 2014	3.755	13.99	10.235	373%
September 2014	4.632	13.99	9.358	302%
October 2014	3.748	14.99	11.242	400%
November 2014	5.140	18.49	13.35	360%
December 2014	5.199	19.99	14.791	384%

¹ This is the “Total Wholesale Rate” paid by Suppliers, including not only the wholesale price of power but also all of ISO-New England’s charges, such as its charges for capacity, Net Commitment Period Compensation (NCPC), Ancillary Markets, and Wholesale Market Services, as reported in ISO New England’s monthly Wholesale Load Cost Reports.

January 2015	7.382	20.99	13.608	284%
February 2015	13.443	19.99	6.547	149%
March 2015	6.669	19.99	13.321	300%
April 2015	3.431	19.99	16.559	583%

24. There was, accordingly, a huge disparity between the wholesale rates Verde paid for power and the variable rates that it charged its customers. This is graphically shown by the following chart, which shows the wholesale price paid by Verde and the retail price it charged its Connecticut customers during the period from November 2013 through April of 2015 (with CL&P's Standard Service Rate during the same period added for comparison):



25. Accordingly, Verde routinely charges class members a Variable electric rate that is as much as six times higher than the underlying market rate. Additionally, upon information and belief, none of Verde's non-promotional variable rates have matched, much less beat, the standard offer fixed rates in over two years.

26. Notably, Verde charges these exorbitant premiums without adding any value to the consumer whatsoever. As detailed above, Verde does not either produce or transport electricity. It has no role in running or maintaining power plants or power lines; it does no hook-ups or emergency response. Indeed, Verde does not even handle customer billing; that, too, is handled by the Distribution Company. Essentially, all that Verde does is act as a trader in the transaction. Yet it charges multiples of the amount the Generation Companies receive for making electricity and the Distribution Companies receive for transmitting power, maintaining power lines, and handling emergency services and customer billing and calls.²

27. Moreover, Verde's costs, other than its wholesale cost of power, were relatively fixed and could not have justified the massive increases alleged above. For example, charges as ancillary and capacity charges and other regulatory costs did not fluctuate to any material extent and, in particular, did not fluctuate to a material extent in relation to wholesale power prices (these additional costs are included in the "total wholesale rate" in the charts shown in paragraphs 24 and 25 above). Verde's other material costs were for operations, and included costs, for example, relating to rent, equipment, overhead, employees, etc. were also relatively fixed and could not justify the price variations alleged above.

28. Verde's essential representation to consumers concerning its Variable pricing plan – that the Variable rate is "market-based" – is patently false. Although Verde *increases* its Variable rate in response to *rising* wholesale prices (as illustrated in the period from November 2013 through January 2014 above), Verde fails to *decrease* its prices in response to a *falling*

² For example, in April of 2015 CL&P charged 6.7 cents per kilowatt hour plus a flat charge of \$19.25 for distribution services, while Verde's price for its services was 19.99 cents per kilowatt hour. According to the U.S. Energy Information Administration, the average household in Connecticut uses 731 kilowatt hours per month. <http://www.eia.gov/tools/faqs/faq.cfm?id=97&t=3> Such an average household would have paid CL&P about \$68 for distribution services, while paying Verde \$146 – more than twice as much.

wholesale market price. For example, the average wholesale price dropped every month from January to April of 2014, ending the period at a price that was 75 percent lower than the January high, while Verde's price actually rose over 14 percent. This year, similarly, wholesale prices declined 74 percent in the three months from February to April, ending at 3.431 cents per kilowatt hour, while Verde's price remained unchanged at an incredible **19.99** cents per kilowatt hour – nearly **six times** the “all-in” wholesale price. Even when the prices move in the same direction, moreover, Verde generally increases its prices far more dramatically. For example, between September of 2014 and the end of the year, wholesale prices rose 12 percent, from 4.632 cents per kilowatt hour to 5.199 cents, while Verde's price increased **43 percent**, from 13.99 cents to 19.99 cents.

C. Plaintiff Suffered Injury Due To Verde's Improper Business Practices

29. Plaintiff Constance Jurich had been on Verde's Variable rate plan since at least November of 2014 when her variable rate was 18.99 cents per kwh, which was three and a half times the “all-in” wholesale rate. Her rate jumped to 20.99 cents per kwh in December of 2014 and stayed at 19.99 cents per kwh in January 2015. Thus, Jurich's December 2014 rate was over **four times** the wholesale price, and her January 2015 rate was almost triple the wholesale price.

30. Plaintiff paid Verde's exorbitant variable electricity rates and thereby suffered an ascertainable loss. Defendant's conduct as alleged above was a substantial factor in causing Plaintiff's losses, which were a reasonably foreseeable result of that conduct.

CLASS ACTION ALLEGATIONS

31. Plaintiff brings this class action pursuant to Sections 9-7 and 9-8 of the Practice Book on behalf of herself and the following class of similarly situated persons:

All individual residential and small business consumers enrolled (either initially or through “rolling over” from a fixed rate plan) in a Verde

Energy USA, Inc. variable rate electricity plan in connection with a property located within Connecticut at any time within the applicable statute of limitations preceding the filing of this action through and including the date of class certification, excluding persons whose *only* contract with Verde contained a “Governing Law and Arbitration” clause (as first introduced in or about October 2015).

32. Plaintiff reserves the right to modify or amend the definition of the proposed Class or to propose sub-classes as might be necessary or appropriate.

33. Excluded from the Class are Defendant, including any parent, subsidiary, affiliate or person controlled by Defendant; Defendant’s officers, directors, agents or employees; the judicial officers assigned to this litigation; and members of their staffs and immediate families.

34. The proposed Class and meets all requirements for class certification. The Class satisfies the numerosity standard. The Class is believed to number in the tens of thousands of persons, as Verde reported having more than 40,000 customers in Connecticut in response to interrogatories by the Office of Consumer Counsel. As a result, joinder of all class members in a single action is impracticable. On information and belief, class members can be identified by Verde and Distribution Company records.

35. There are questions of fact and law common to the Class which predominate over any questions affecting only individual members. The questions of law and fact common to the Class arising from Verde’s actions include, without limitation, whether Verde:

- a. committed unfair or deceptive trade practices by its Variable electric rate policies and practices;
- b. breached its covenant of good faith and fair dealing with regard to its Variable electric rate contracts; and
- c. continues to commit wrongdoing through its Variable electric rate policies and practices.

36. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity to other available methods for the fair and efficient adjudication of this controversy.

37. Plaintiff is an adequate representative of the Class because she is a member of the Class and her interests do not conflict with the interests of the members of the class she seeks to represent. The interests of the members of the Class will be fairly and adequately protected by Plaintiff and her undersigned counsel, who have extensive experience prosecuting complex class action litigation.

38. Plaintiff's claims are typical of the claims of the Class because they arise out of the same conduct, policies, and practices of Verde with respect to its Variable electric rate policies and practices. Plaintiff has suffered the harm alleged and have no interests antagonistic to the interests of any other putative class member.

39. Maintenance of this action as a class action is a fair and efficient method for the adjudication of this controversy. It would be impracticable and undesirable for each class member who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

40. Notice can be provided to Class members by using techniques and forms of notice similar to those customarily used in other class actions.

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF CONNECTICUT UNFAIR TRADE PRACTICES ACT

41. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set forth herein.

42. Plaintiff brings this count individually and on behalf of the Class.

43. Verde is engaged in “trade” and “commerce” as it offers electricity for sale to consumers.

44. Verde’s conduct as alleged above constitutes unfair practices:

- a. Verde’s contracts do not accurately describe the rates the customer will be paying or the circumstances under which the rates may change.³
- b. Verde’s acts and practices with regard to its exorbitant Variable electric rates as alleged above are immoral, unethical, oppressive and unscrupulous.
- c. Verde’s conduct is substantially injurious to consumers. Such conduct has caused, and continues to cause, substantial injury to consumers because consumers would not have paid such a high price for electricity but for Verde’s immoral, unethical, oppressive and unscrupulous practices and procedures. Consumers have thus overpaid for their electricity and such injury is not outweighed by any countervailing benefits to consumers or

³ Conn. Gen. Stat. §16-245o(f)(2) expressly provides that “[e]ach contract for electric generation services shall contain all material terms of the agreement” including “a clear and conspicuous statement explaining the rates that such consumer will be paying” and “*the circumstances under which the rates may change*” (emphasis added). Failure to do so constitutes a *per se* violation of CUTPA. Conn. Gen. Stat. § 16-245o(j).

competition. No benefit to consumers or competition results from Verde's conduct, nor could consumers reasonably have avoided the injury.

45. Verde's conduct as alleged above also constitutes a deceptive act or practice. Verde's Variable electric rate representations as set forth above would mislead a reasonable consumer to believe that Verde's Variable rates track the underlying wholesale power rates (when in fact they do not). Verde's representations concerning its price would be material to a reasonable consumer and would affect a reasonable consumer's decisions and conduct, including purchases of power from Verde pursuant to Variable rate contracts.

46. The foregoing unfair and deceptive practices directly, foreseeably and proximately caused Plaintiffs and the Class to suffer an ascertainable loss and substantial injury when they paid an exorbitant premium for electricity over wholesale market rates.

47. The foregoing actions constitute unfair and deceptive practices in violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a *et seq.*

48. Plaintiff and the Class are entitled to recover damages and other appropriate relief, as alleged below.

COUNT II

BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

49. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set forth herein.

50. All contracts contain an implied covenant of good faith and fair dealing, including Plaintiffs' and Class members' contracts with Verde.

51. Verde's Terms of Service with customers gives Verde discretion concerning the monthly rates charged under Variable rate contracts and any increases or decreases to the rate to reflect the changes in the wholesale power market.

52. As alleged herein, Verde has used its discretion to bill exorbitant rates that are not tied to the wholesale market and to *increase* the monthly Variable rate when wholesale markets rise, but not to commensurately *decrease* the monthly Variable rate when wholesale markets fall. As a result, consumers are billed exorbitant electric rates several multiples of the wholesale market rate.

53. Verde's performance of its discretionary functions under the Terms of Service as alleged herein to maximize its revenue from Variable electric rates impedes the right of Plaintiffs and other Class Members to receive benefits that they reasonably expected to receive under the contract.

54. On information and belief, Verde's actions as alleged herein were performed in bad faith, in that the purpose behind the practices and policies alleged herein was to maximize Verde's revenue at the expense of its customers and in contravention of their reasonable expectations as customers of Verde.

55. Verde has breached the covenant of good faith and fair dealing in the Terms of Service through its Variable electric rate policies and practices as alleged herein.

56. Plaintiff and members of the putative Class have sustained damages as a result of Verde's breaches as alleged herein.

COUNT III

BREACH OF IMPLIED CONTRACT (UNJUST ENRICHMENT / QUANTUM MERUIT)

57. This Count is pled in the alternative to Count II above.

58. Plaintiff repeats and realleges the preceding paragraphs as though set forth herein.

59. If Verde's contract is deemed unenforceable, then Verde is entitled to the reasonable value of the services provided despite the unenforceable contract under the doctrine of quantum meruit.

60. However, the doctrine of quantum meruit entitles Verde *only* to *reasonable* value for the electricity it provided – not whatever price Verde chose to charge.

61. Verde has received excessive benefits under the void contract as alleged herein to the detriment of Plaintiff and the Class.

62. In the alternative, if the Court concludes that there is no quasi-contractual relationship between Verde and Plaintiff and the Class, then Verde has been, and continues to be, unjustly enriched as a result of its wrongful conduct alleged herein to the detriment of Plaintiff and the Class.

63. Verde has been enriched by a benefit in the form of receipt of exorbitant Variable electric rates.

64. Verde's enrichment was at the expense of Plaintiff and the Class.

65. It would be unjust to allow Verde to retain the benefit.

66. Under either an unjust enrichment or quantum meruit implied contract theory, Plaintiff and the Class are entitled to disgorgement and restitution of all wrongfully-obtained gains received by Verde as a result of its wrongful conduct alleged herein.

67. Plaintiff and members of the Class have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the putative Class, request that this Court enter judgment against Defendant and in favor of Plaintiffs and award the following relief:

- (a) Certification of the proposed Class;
- (b) Injunctive relief enjoining Verde from charging exorbitant Variable electric rates under their current policies and from engaging in the wrongful, deceptive, unfair, and unconscionable practices alleged herein;
- (c) Damages in an amount to be determined at trial, including actual and punitive damages;
- (d) Disgorgement and restitution of all exorbitant rates paid to Verde by Plaintiffs and the putative Class as a result of the wrongs alleged herein;
- (f) Pre- and post- judgment interest at the maximum rate permitted by applicable law;
- (g) Attorneys' fees, costs, and expenses as available under the law.
- (h) Such other and additional relief as the Court may find just and equitable.

JURY DEMAND

Plaintiffs demand a trial by jury on all causes of action so triable.

DATED December 18, 2018

PLAINTIFF

/s/ Robert A. IZARD _____
By: Robert A. IZARD
Seth R. Klein
IZARD KINDALL & RAABE LLP (Juris No. 410725)
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DOCKET NUMBER X07-HHDCV15-6060160-S

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STATEMENT OF AMOUNT IN DEMAND

The amount, legal interest or property in demand is in excess of FIFTEEN THOUSAND
DOLLARD (\$15,000) exclusive of interest and costs.

PLAINTIFFS

/s/ Robert A. Izard

By: Robert A. Izard

Seth R. Klein

IZARD KINDALL & RAABE LLP (Juris No. 410725)

29 South Main Street, Suite 305

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JURY TRIAL DEMAND

Plaintiffs hereby demands trial by jury.

PLAINTIFFS

/s/ Robert A. Izard

By: Robert A. Izard

Seth R. Klein

IZARD KINDALL & RAABE LLP (Juris No. 410725)

29 South Main Street, Suite 305

West Hartford, CT 06107

(860) 493-6292

CERTIFICATION

Pursuant to Practice Book §10-14, I hereby certify that a copy of the above was electronically delivered December 18, 2018, to all counsel and pro se parties of record:

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 /s\ Robert A. Izard
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