

EXHIBIT 1

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

LORI SANBORN, BDK ALLIANCE, LLC,
IRON MAN LLC and STEPHANIE
SILVER, DAVID STEKETEE, SUSANNA
MIRKIN, BORIS MIRKIN, ELIZABETH
HEMBLING, PATRICIA KULESA,
STEWART CONNARD and STEVEN
LANDAU, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

VIRIDIAN ENERGY, INC. and VIRIDIAN
ENERGY PA LLC,

Defendants.

No. 3:14-cv-01731 (SRU)

CLASS ACTION SETTLEMENT AGREEMENT

PREAMBLE

Plaintiffs Lori Sanborn, BDK Alliance, LLC, Iron Man, LLC, and Stephanie Silver, David Steketee, Susanna Mirkin, Boris Mirkin, Elizabeth Hembling, Patricia Kulesa, Stewart Connard, and Steven Landau, acting individually and on behalf of the proposed Settlement Classes identified below (collectively, “Plaintiffs” or, individually, a “Plaintiff”), and Viridian Energy, Inc., Viridian Energy PA LLC, Viridian Energy NY, LLC, and Viridian Energy, LLC, (collectively, “Viridian”) enter into this Settlement Agreement (“Agreement”) as of the execution by all the parties hereto and the last date signed below. Plaintiffs and Viridian are collectively referred to herein as the “Parties” and each, individually, as a “Party.” Capitalized terms used herein are defined in Section II of this Agreement or indicated in parentheses elsewhere in this Agreement. Subject to the Court’s

approval, the Parties hereby stipulate and agree that, in consideration for the promises and covenants set forth in this Agreement and upon the entry by the Court of a Final Approval Order and Judgment and the occurrence of the Effective Date, this Litigation shall be settled and compromised upon the terms and conditions contained herein.

I. RECITALS

1.1 WHEREAS, Plaintiff Lori Sanborn filed a class action complaint against Viridian on November 19, 2014, styled as *Sanborn v. Viridian Energy, Inc.*, Civil Action No. 3:14-cv-01731 (the “*Sanborn Action*” or the “*Action*”), in the United States District Court for the District of Connecticut. Viridian moved to dismiss the complaint and, on April 1, 2015, the Court granted in part and denied in part the motion, and allowed Plaintiff Sanborn to amend her complaint.

1.2 WHEREAS, on May 7, 2015, Plaintiff Sanborn, as well as Plaintiffs Iron Man, LLC, Stephanie Silver, and BDK Alliance LLC filed an amended complaint; they subsequently filed a second amended complaint on June 8, 2015. Viridian moved to dismiss the second amended complaint, which the Court denied on August 18, 2015. On March 1, 2016, BDK Alliance LLC voluntarily dismissed its individual claims against Viridian, but noted that it would remain a class member and may seek its share of any recovery obtained by the class as a whole.

1.3 WHEREAS, on April 22, 2015, Plaintiff David Steketee filed a class action complaint against Viridian, styled as *Steketee v. Viridian Energy, Inc.*, Civil Action No. 3:15-cv-00585 (the “*Steketee action*”), in the United States District Court for the District of Connecticut. On August 18, 2015, the Court granted Viridian’s motion to dismiss but permitted Plaintiff Steketee leave to amend. Steketee filed an amended complaint on September 1, 2015, which Viridian moved to dismiss. The Court denied that motion on

December 2, 2015.

1.4 WHEREAS, on July 10, 2015, Plaintiffs Susanna Mirkin and Boris Mirkin filed a class action complaint against Viridian in the United States District Court for the District of Connecticut styled as *Mirkin, et al. v. Viridian Energy, Inc.*, Civil Action No. 3:15-cv-01057 (the “*Mirkin* action”). Viridian moved to dismiss the complaint on September 14, 2015, but the *Mirkin* Plaintiffs were granted leave to amend their complaint and did so on December 18, 2015. Viridian moved to dismiss the amended complaint on January 8, 2016. The Court granted in part and denied in part that motion on July 5, 2016.

1.5 WHEREAS, on August 21, 2015, Elizabeth Hembling, Patricia Kulesa, and Stewart Connard filed a class action complaint against Viridian Energy, LLC, et al., styled as *Hembling, et al. v. Viridian Energy, LLC, et al.*, Civil Action No. 3:15-cv-01258 (the “*Hembling* action”), in the United States District Court for the District of Connecticut. Viridian moved to dismiss the complaint on November 17, 2015. The *Hembling* Plaintiffs filed an amended complaint on December 22, 2015, which removed various defendants and significantly narrowed the causes of action asserted. Viridian filed an answer to the amended complaint on January 5, 2016. The *Hembling* Plaintiffs and Viridian filed a stipulation in the *Hembling* action on December 21, 2016 to stay that action pending a class certification determination in the *Sanborn*, *Steketee*, and/or *Mirkin* actions; the Court stayed the *Hembling* action on December 22, 2016.

1.6 WHEREAS, on May 16, 2016, Steven Landau filed his class action complaint against Viridian Energy PA LLC, styled as *Landau v. Viridian Energy PA LLC*, Civil Action No. 2:16-cv-02383 (the “*Landau*” action) in the United States District Court for the Eastern District of Pennsylvania. Viridian moved to dismiss the complaint on July 13, 2016; the Eastern District of Pennsylvania granted in part and denied in part Viridian’s motion on November 30, 2016.

Subsequently, Viridian moved to transfer the *Landau* action to the United States District Court for the District of Connecticut or, in the alternative, to stay the litigation pending resolution of the *Sanborn*, *Steketee*, *Mirkin*, and *Hembling* actions. On April 4, 2017, the Eastern District of Pennsylvania denied Viridian's motion to transfer the *Landau* action, but granted the motion to stay.

1.7 WHEREAS, on February 10, 2017, Plaintiffs in the *Sanborn*, *Steketee*, and *Mirkin* actions filed a Consolidated Class Action Complaint against Viridian Energy, Inc., consolidated in the action styled as *Sanborn v. Viridian Energy, Inc.*, Civil Action No. 3:14-cv-01731 (the "Consolidated Complaint").

1.8 WHEREAS, on December 7, 2017, Plaintiffs Lori Sanborn, Iron Man LLC, and Stephanie Silver, filed an Amended Consolidated Class Action Complaint ("AC") in the *Sanborn* Action for the purpose of joining in one action their claims as well as the claims of Plaintiffs David Steketee, Susanna and Boris Mirkin, Elizabeth Hembling, Patricia Kulesa, Stewart Connard, and Steven Landau.

1.9 WHEREAS, the *Sanborn* Action, *Steketee* action, *Mirkin* action, *Hembling* action and *Landau* action are referred to Collectively as the "Litigation."

1.10 WHEREAS, the AC alleges, at its core, that Viridian, directly or through Independent Viridian Associates, made various representations to Plaintiffs which caused them to enter into contracts with Viridian for electricity and/or natural gas supply services. Plaintiffs assert that those contracts permitted Viridian to charge a variable rate that fluctuated to reflect changes in the wholesale energy market. Plaintiffs further claim that that the variable rates that Viridian charged them – and other variable rate customers in each state in which Viridian does and has done business – in fact were not tied to the wholesale price for energy. Instead, they

allege that Viridian's rates increased to match spikes in the underlying market price and remained at an elevated rate despite the reduction in wholesale energy prices, resulting in rates that exceeded the relevant utilities' rates. The AC alleges that these practices violated the consumer protection acts in states throughout the country where Viridian sold variable rate plans and that Viridian breached both its contracts with Plaintiffs and other consumers, as well as the implied covenant of good faith and fair dealing. Plaintiffs also assert causes of action for unjust enrichment and declaratory relief.

1.11 WHEREAS, the Parties conducted extensive document and fact discovery through numerous separate sets of interrogatories, requests for production, depositions, and third-party discovery. Discovery included, among other things, more than 250,000 pages of documents and native files produced by Viridian; hundreds of pages of documents produced by Plaintiffs; depositions of a number of Plaintiffs, as well as depositions of Viridian's corporate representative designees; and third-party discovery taken by both Plaintiffs and Viridian.

1.12 WHEREAS, during Summer 2016, Plaintiffs Sanborn, Silver, Iron Man LLC, Steketee, Susanna and Boris Mirkin, Hembling, Connard, and Kulesa, and Viridian held three (3) all-day mediation sessions with the Hon. Shira Scheindlin, a former United States District Court judge for the Southern District of New York.¹ While the Parties reached agreement on many of the terms of a settlement during those mediation sessions, they were unable to agree on certain terms and the mediation failed to result in a settlement agreement. The Parties, therefore, resumed the litigation, which included additional conferences with the Court, additional written discovery, document production, deposition testimony, and motion practice related to the Consolidated Complaint. Following additional legal developments, including decisions in other

¹ Plaintiffs Hembling, Connard, and Kulesa took part in some but not all three (3) days of the mediations with Judge Scheindlin.

putative class actions against energy supply companies, in mid-2017, the Parties agreed to revisit the possibility of a settlement and engaged in more than three (3) months of extensive negotiations toward a comprehensive settlement of the Litigation. As part of the foregoing settlement negotiations, Viridian provided Plaintiffs with a substantial amount of data regarding its variable price customers. In early August 2017, the Parties agreed on the material terms of a comprehensive settlement, which were memorialized in a written Memorandum of Understanding (“MOU”), signed by Plaintiffs’ and Viridian’s counsel. Following execution of the MOU, Viridian provided Class Counsel with substantial additional data to confirm the basis for its calculation of the consideration for Class Members and the basis for representations by Viridian to Class Counsel prior to the execution of the MOU concerning the methodology for calculating each Class Member’s settlement consideration and Class Counsel confirmed the sufficiency of such information and reasonableness of such methodology for settlement purposes only.

1.13 WHEREAS, the Parties recognize and acknowledge the benefits of settling these cases.

1.14 WHEREAS, Plaintiffs and Class Counsel have conducted a thorough investigation of the law and facts relating to the matters, and believe that their claims have merit, that the evidence developed to date supports their claims, and that they meet the requirements for class certification.

1.15 WHEREAS, despite their belief in the strengths of their case, Plaintiffs are mindful of the problems of proof under, and possible defenses to, the claims in this matter, especially in light of, among other things, the possibility of non-uniform, oral sales representations made by Independent Viridian Associates to Class Members, the different

contracts under which Class Members enrolled and the potentially different understandings of the pricing provisions contained within those contracts that consumers may have, and the fact that Viridian maintains that all or a significant number of Class Members in both Classes suffered no injury. Plaintiffs further recognize and acknowledge the expense and length of time it would take to prosecute this matter against Viridian through trial, post-trial proceedings, and appeals. Counsel for Plaintiffs have taken into account the uncertain outcome and risks of the litigation, the risk that no class will be certified, the risk of a no-liability verdict, as well as the difficulties and delays inherent in such litigation and the likelihood of protracted appeals. Despite these risks, and following extensive arms-length negotiations, the proposed Settlement confers certain and substantial benefits upon the Plaintiffs and Settlement Classes. Counsel for Plaintiffs, therefore, have determined that the proposed Settlement set forth in this Agreement, on behalf of Plaintiffs and the Settlement Classes, is fair, reasonable, and adequate, and in the best interests of Plaintiffs and each Settlement Class.

1.16 WHEREAS, Viridian has denied and continues to deny any liability to Plaintiffs or other member of the potential Classes. Viridian has asserted and maintains that it has a number of meritorious defenses to all of the claims asserted in this Litigation and the claims are not appropriate to be litigated on class bases. Nevertheless, Viridian recognizes the risks and uncertainties inherent in litigation, the significant expense associated with defending multiple actions, the costs of any appeals, and the disruption to its business operations arising out of class action litigation. Accordingly, Viridian has concluded that resolving the claims settled under this Agreement is desirable to reduce the time, risk, and expense of defending multiple actions, and to resolve finally and completely all such claims without any admission of liability.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the parties hereto agree to a full complete settlement of the Litigation on the terms and conditions set forth herein, which are subject to the Court's approval under Fed. R. Civ. P. 23(e).

II. DEFINITIONS

As used in this Agreement and the attached exhibits (which are an integral part of the Settlement and are incorporated in their entirety by reference), the following terms shall have the meanings set forth below, unless this Agreement specifically provides otherwise. Other capitalized terms in this Agreement but not defined in this Section shall have the meanings ascribed to them elsewhere in this Agreement.

2.1 "Above Average Usage Class Members" means all persons in the United States who, during the Class Period, were enrolled (either initially or through "rolling over" from a fixed rate plan) in a Viridian variable rate electricity and/or gas plan with an average annual utilization rate of more than 25,000 kilowatt hours or more than 2,500 therms, respectively.

2.2 "Account" means a residential or commercial account for gas or electric service with the Viridian during the Class Period.

2.3 "Action" or "*Sanborn Action*" means *Sanborn, et al. v. Viridian Energy, Inc., et al.*, No. 3:14-cv-01731-SRU (D. Conn.).

2.4 "Administration Expenses" means reasonable fees and expenses incurred by the Settlement Administrator in performing or having performed the tasks given to the Settlement Administrator pursuant to this Agreement and any Court orders implementing this Settlement, including effectuating the notice and notice plan, and in the administration of the Settlement and to secure performance as forth in this Settlement.

2.5 “Agreement” means this class action settlement agreement containing all terms, conditions, and exhibits which constitute the entire agreement between the Parties.

2.6 “Attorneys’ Fees and Costs” means such funds as may be awarded by the Court based on the Settlement described herein to compensate Class Counsel as determined by the Court, as described more particularly in Section VIII of this Settlement.

2.7 “Average Usage Class Members” means all persons in the United States who, during the Class Period, were enrolled (either initially or through “rolling over” from a fixed rate plan) in a Viridian variable rate electricity and/or gas plan with an average annual utilization rate of 25,000 or less kilowatt hours or 2,500 or less therms, respectively.

2.8 “Billing Credit Option” means the credit to which current customers or former customers (who wish to re-enroll in a Viridian energy plan), as defined herein, who have a Calculated Amount above zero dollars (\$0.00), will be entitled upon submission of a valid Claim Form. More specifically, current customers or former customers may, in lieu of seeking a Cash Benefit, elect a credit of eight dollars and fifty cents (\$8.50) per month on their future Viridian energy bills for a maximum of twelve (12) months (*i.e.*, a maximum value of one hundred and two dollars (\$102.00) to be credited at the end of the Settlement Class Member’s service period (or twelve (12) months, whichever date comes first)).

2.9 “Calculated Amount” means the difference between (i) the actual payment made by each Class Member during the period in which the Class Member was enrolled in a Viridian variable rate electricity and/or gas plan during the Class Period based on Viridian’s records (or reasonable, good-faith estimates where records are incomplete or anomalous), and (ii) the amount the Class Member would have paid during that same period if the Class Member paid the relevant public utility Price to Compare (“PTC”), plus one cent (\$0.01) per kilowatt hour/therm,

plus a twenty percent (20%) margin. The one-cent (\$0.01) addition reflects an estimated average premium charged by public utilities for green energy.

2.10 “Cash Benefit” means the cash payment available to a Settlement Class Member who files a Valid Claim under this Agreement and does not choose the Billing Credit Option.

2.11 “Claim” means a request for relief pursuant to this Agreement submitted by the Settlement Class Member on a Claim Form filed with the Settlement Administrator in accordance with the terms of this Settlement.

2.12 “Claim Deadline” means the date by which a Claim Form must be received by the Settlement Administrator either via mail or submitted electronically by 11:59 p.m. Eastern Time on the last day of the Claim Period.

2.13 “Claim Form” means the form attached hereto as Exhibit A, whether in electronic or “hard copy,” that will be completed by the Settlement Class Member and submitted to the Settlement Administrator on or before the Claim Deadline in order to receive a benefit under the Settlement.

2.14 “Claim Period” means the period of time during which a Settlement Class Member must submit a Claim Form to be eligible to receive a Cash Benefit or Billing Credit Option as part of the Settlement. The Claim Period shall commence not later than thirty (30) days after the Preliminary Approval Date, as defined herein, and shall conclude not more than ninety (90) days after it commences.

2.15 “Class” or “Settlement Class” means, subject to the Court’s approval and the terms of this agreement, the Classes set forth in Section III, *infra*.

2.16 “Class Counsel” means the counsel who represent Class Representatives and are signatories to this Agreement.

2.17 “Class Member(s)” means all Persons in the United States who were residential or commercial business customers enrolled in a Viridian variable rate electricity and/or gas plan during the Class Period. Excluded from the Settlement Classes are: Viridian Energy, Inc., Viridian Energy PA LLC, Viridian Energy NY, LLC, and Viridian Energy, LLC; any of their parents, subsidiaries, or affiliates; any entity controlled by either of them; any officer, director, employee, legal representative, agent, predecessor, successor, or assignee of Viridian Energy, Inc., Viridian Energy PA LLC, Viridian Energy NY, LLC, or Viridian Energy, LLC; any person enrolled only in a Viridian Energy, Inc., Viridian Energy PA LLC, Viridian Energy NY, LLC, and/or Viridian Energy, LLC Minus-5, 3DOM, or Term Free Index plan; any person who has previously released claims that will be released by this Settlement; federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof); Independent Viridian Associates; former Viridian employees; and the Judges to whom any of the actions in the Litigation are assigned and any members of their immediate families.

2.18 “Class Notice” or “Class Notices” means the notices of pendency and proposed settlement of class action that the Parties will ask the Court to approve in connection with the Motion for Preliminary Approval of the Settlement. The Class Notices, which will be available to Class Members on the websites created and maintained by the Settlement Administrator, shall be in the forms attached to this Agreement as Exhibit B (Long Form Notice for Average Usage Class), Exhibit C (Long Form Notice for Above Average Usage Class), Exhibit D (Short Form Notice for Average Usage Class), and Exhibit E (Short Form Notice for Above Average Usage Class). Within ten (10) days of the Court’s entry of the Preliminary Approval Order, Viridian agrees to provide the Settlement

Administrator with the following information for each Class Member: (a) their full name, (b) the last known email address (if available) and postal address, (c) account number, (d) the Cash Benefit to which the Class Member is entitled pursuant to Section V, *infra*, and (e) an available service address (if different from last known postal address). At the time of providing the above information to the Settlement Administrator, Viridian shall certify that the information represents the most current and up to date information that Viridian has for Class Members.

2.19 “Class Period” means July 1, 2009 through December 31, 2016.

2.20 “Class Representatives” means Plaintiffs Lori Sanborn, Iron Man, LLC, BDK Alliance, LLC, Stephanie Silver, David Steketee, Susanna and Boris Mirkin, Elizabeth Hembling, Patricia Kulesa, Stewart Connard, and Steven Landau.

2.21 “Complaint” or “AC” means the Amended Consolidated Class Action Complaint filed in this Action on December 7, 2017.

2.22 “Court” means the United States District Court for the District of Connecticut.

2.23 “Defendant” or “Viridian” means, collectively, Viridian Energy, Inc., Viridian Energy PA LLC, Viridian Energy NY, LLC, and Viridian Energy, LLC including their officers, directors, owners, operators, parents, subsidiaries, affiliates, employees, agents, representatives, lawyers, insurers, and/or affiliates.

2.24 “Effective Date” means the fifth (5th) business date after the last of the following conditions have been satisfied: (a) all Parties and their counsel have executed this Settlement Agreement; (b) the Court has entered the Final Approval Order and Judgment certifying the Class, and approving the Settlement; (c) the *Steketee, Mirkin, Hembling, and Landau* actions have been dismissed with prejudice; and (d) the date on which the time to appeal or to seek permission to appeal from the Court’s approval of the Settlement Agreement has expired or, if

appealed, approval of the Settlement Agreement has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review, or upon the denial of a writ of certiorari to review the order and final judgment from any court making the Final Approval Order and Judgment a final, non-appealable judgment. For purposes of this paragraph, an “appeal” shall not include any appeal that concerns solely the issue of Class Counsel’s request for Attorneys’ Fees and Costs and Named Plaintiff Service Awards.

2.25 “Fairness Hearing” or “Final Approval Hearing” means the final hearing to be conducted by the Court, on notice to the Settlement Classes, to consider approval of the Settlement and Class Counsel’s motion for approval of Attorneys’ Fees and Costs. The Parties will ask the Court to schedule a Fairness Hearing approximately ninety (90) days from the entry of the Preliminary Approval Order.

2.26 “Final Approval Order and Judgment” means the Order granting final approval to the Settlement, which should not be entered earlier than ninety (90) days after the appropriate state and federal officials have been served with notice of the Settlement in accordance with the Class Action Fairness Act of 2005, as codified at 28 U.S.C. § 1715(b).

2.27 “Individual Settlement Amount” means the monetary amount calculated as of the end date of the Class Period that is allocated by the Settlement Administrator to each Settlement Class Member. The Settlement Administrator will be charged with determining the applicable Individual Settlement Amount for each Class Member in accordance with data provided by Viridian and the terms of this Agreement.

2.28 “Independent Viridian Associates” or “IVAs” means the multi-level marketing sales representatives involved in the solicitation of potential Viridian customers.

2.29 “Lead Class Counsel” means Izard Kindall & Raabe LLP and Wittels Law, P.C.

2.30 “Litigation” means the *Sanborn* Action, *Steketee* action, *Mirkin* action, *Hembling* action, and *Landau* action, collectively.

2.31 “Long Form Notice” means the two forms of Class Notice addressed to Average Usage Class Members and Above Average Usage Class Members, respectively, attached hereto as Exhibits B and C, which contain, *inter alia*, all material terms of the Settlement, the benefits to Settlement Class Members, all details relevant to opting out of a Class, and the Final Approval Hearing.

2.32 “Named Plaintiff Service Awards” means the monetary amounts awarded by the Court in recognition of the assistance provided by Plaintiffs in the prosecution of the Litigation, the amount of which is as set forth in Section VIII. Any and all Named Plaintiff Service Awards will be paid from any Attorneys’ Fees and Costs.

2.33 “Objection” means an objection filed with the Court by a member of the Settlement Classes, objecting to any aspect of the Settlement.

2.34 “Objection Deadline” means the last date on which a Class Member may object to the Settlement or any aspect thereof, the request of Class Counsel for Attorneys’ Fees and Costs related to prosecuting the Litigation, and/or Class Counsel’s application for Named Plaintiff Service Awards. The Objection Deadline will be specified in the Preliminary Approval Order and Notice.

2.35 “Opt-Out” means a request by a Class Member to be excluded from the applicable Settlement Class by following the procedures set forth in the Preliminary Approval Order and the Long Form Notice available on the applicable Settlement Website or by request to the Settlement Administrator.

2.36 “Opt-Out Deadline” means the last date on which a Class Member may request to be excluded from the applicable Settlement Class and thereafter not be bound by the Settlement or any aspect thereof, but also not be entitled to share in any benefit provided for Settlement Class Members pursuant to the Settlement. The Opt-Out Deadline will be specified in the Preliminary Approval Order and Class Notices.

2.37 “Person” means any natural person, corporation, partnership, business organization or association, or other type of legal entity.

2.38 “Preliminary Approval Date” means the date on which the Court enters the Preliminary Approval Order.

2.39 “Preliminary Approval Order” means the Order preliminarily approving the Settlement, certifying the Settlement Classes for the purposes set forth in this Agreement, and approving the form of notice to potential Class Members.

2.40 “Price to Compare” or “PTC” means for each Account, a good faith estimate of the price that the relevant public utility would have charged for the supply portion of the energy service, based on reasonably available information. The PTC will be based on a weighted average price per therm or kilowatt hour (kWh) charged by the relevant public utility for the duration of the period in which the Class Member was enrolled in a Viridian variable rate electricity and/or natural gas plan during the Class Period.

2.41 “Released Claims” means and includes any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary, or multiplied damages, expenses, costs, attorneys’ fees and/or obligations (including “Unknown Claims” as defined below), whether in law or in equity,

accrued or unaccrued, direct, individual, or representative, of every nature and description whatsoever, based on any federal, state, local, statutory or common law, or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against the Released Persons, or any of them, that arose during the Class Period, or arise in any manner whatsoever from facts that occurred during the Class Period, out of the same factual predicate as the claims asserted in the litigations described in paragraphs 1.1-1.16 above, including but not limited to any and all claims related to or arising out of the conduct alleged in the Complaint or similar conduct (including but not limited to alleged advertising or marketing violations, or any variable rates Viridian charged for the supply of electricity or natural gas under any agreement, understanding, or program), and wherever the alleged conduct or similar conduct may have occurred and/or that is or are based on any act, omission, inadequacy, misstatement, representation, harm, matter, cause, or event by the Released Persons. The Released Claims specifically exclude claims for (i) personal injury, (ii) damage to property, and (iii) claims that accrue based on facts that occur after the Preliminary Approval Order.

2.42 “Released Persons” means Viridian, Viridian Energy PA LLC, Viridian Energy NY, LLC, and Viridian Energy, LLC, and their parents, subsidiaries, affiliates, predecessors, successors, and assigns, as well as their respective current and former officers, directors, members, stakeholders, owners, employees, agents, attorneys and insurers, and sales representatives, including but not limited to any and all Independent Viridian Associates and any of their current and former directors, officers, employees and/or agents, and Plaintiffs, Class Counsel, and any Person who assisted Class Counsel in the Litigation in any way whatsoever.

2.43 “Releasing Parties” means Plaintiffs, all Settlement Class Members, Class

Counsel, and any Person claiming by or through him, her, or it, including any Person claiming to be his, her, or its spouse, parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, executor, devisee, predecessor, successor, assignee, representative of any kind, shareholder, partner, director, employee, or affiliate, Viridian, Viridian Energy PA LLC, Viridian Energy NY, LLC, and Viridian Energy, LLC, and their parents, subsidiaries, affiliates, predecessors, successors, and assigns, as well as their respective current and former officers, directors, members, stakeholders, owners, employees, agents, attorneys and insurers. However, for clarity, notwithstanding any other provision of this Agreement, Viridian is not releasing any Class Members from any existing contractual obligations pursuant to energy rate plans with Viridian, including any outstanding balances.

2.44 “Settlement” means all of the terms, conditions, and requirements embodied in and exhibits attached to this Agreement.

2.45 “Settlement Administrator” means the person or entity mutually agreed upon by Viridian and Class Counsel, who will be charged with the administrative responsibilities of the Settlement on behalf of Viridian and all related tasks set forth in Section VII, *infra*, including, among other things, determining the applicable Individual Settlement Amount for each Settlement Class Member in accordance with data provided by Viridian. The Settlement Administrator will be mutually agreed to by the Parties from among Heffler Claims Group, KCC LLC, and JND Legal Administrator, subject to the approval by the Court.

2.46 “Settlement Amount” means Viridian’s total and maximum monetary liability under this Settlement, which is not to exceed Eighteen Million Five Hundred Thousand and No/100 Dollars (\$18,500,000). The Settlement Amount shall be paid out in the following manner: (a) Administration Expenses; (b) Valid Claims for Cash Benefits; and (c) any award of

Attorneys' Fees and Costs. In the event that the total of (a) through (c) above exceed \$18,500,000, then the amounts paid for Valid Claims for Cash Benefits shall be reduced, pro rata. The monetary value of Billing Credit Options elected by Settlement Class Members does not count against the Settlement Amount.

2.47 "Settlement Classes" or "Settlement Class Members" means all Class Members of both Classes that do not Opt-Out, inclusive of Average Usage Class Members and Above Average Usage Class Members.

2.48 "Settlement Websites" means the Internet websites created and maintained by the Settlement Administrator for each Settlement Class, which shall include information about the Litigation and the Settlement terms applicable to each Settlement Class, relevant documents, and electronic and printable forms relating to the Settlement. The Settlement Websites shall be activated no later than thirty (30) days after the Court enters the Preliminary Approval Order. The URLs of the Settlement Websites shall be provided in the Class Notice.

2.49 "Short Form Notice" means the two forms of postcard Class Notice addressed to each Settlement Class, respectively, *i.e.*, Average Usage Class Members and Above Average Usage Class Members, attached hereto as Exhibits D and E.

2.50 "Unknown Claims" means Released Claims that any Releasing Party does not know or suspect to exist, which, if known by him, her, or it, might affect his, her, or its agreement to release the Released Persons for the Released Claims or might affect his, her, or its decision to agree, object, or not to object to the Settlement.

2.51 "Valid Claim" means a Claim Form submitted by a Settlement Class Member that is: (a) submitted in accordance with the directions accompanying the Claim Form and the provisions of the Settlement; (b) accurately, fully, and truthfully completed with all of the

information requested in the Claim Form; (c) signed physically by the Settlement Class Member personally or by a Person with legal authority to sign for and bind a member of the Settlement Classes under penalty of perjury; (d) returned by the Claim Deadline; and (e) determined to be valid by the Settlement Administrator.

III. CERTIFICATION OF THE CLASS FOR SETTLEMENT PURPOSES ONLY

3.1 The Parties agree that this Action may be certified as a class action under Fed. R. Civ. P. 23(a) and (b)(3) for settlement purposes only in accordance with the terms of this Agreement and without prejudice to Viridian's right to contest class certification in the event that this Agreement fails to reach the Effective Date, or is not fully implemented in accordance with its terms.

The Classes to be certified for settlement purposes only are defined as:

Average Usage Class: All persons in the United States who, during the Class Period, were enrolled (either initially or through "rolling over" from a fixed rate plan) in a Viridian variable rate electricity and/or gas plan with an average annual utilization rate of 25,000 or less kilowatt hours or 2,500 or less therms.

Above Average Usage Class: All persons in the United States who, during the Class Period, were enrolled (either initially or through "rolling over" from a fixed rate plan) in a Viridian variable rate electricity and/or gas plan with an average annual utilization rate of more than 25,000 kilowatt hours or more than 2,500 therms, respectively.

Excluded from the Settlement Classes are: Viridian Energy, Inc., Viridian Energy PA LLC, Viridian Energy NY, LLC, and Viridian Energy, LLC; any of their parents, subsidiaries, or affiliates; any entity controlled by any of them; any officer, director, employee, legal representative, agent, predecessor, successor, or assignee of Viridian Energy, Inc., Viridian Energy PA LLC, Viridian Energy NY, LLC, and/or Viridian Energy, LLC; any person enrolled in a Viridian Energy, Inc., Viridian Energy PA LLC, Viridian Energy NY, LLC, or Viridian Energy, LLC Minus-5, 3DOM, or Term Free Index plan; any person who has previously released claims that will be released by this Settlement; federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof); Independent Viridian Associates and former Viridian employees; and the Judges to whom any of the actions in the Litigation are assigned and any members of their immediate families.

If the Settlement is not approved or this Agreement fails to be fully implemented or the Effective Date is not reached, the Parties and status of the Litigation will return to the *status quo ante* existing before the third amendment to the complaint in this Action and the execution of the Settlement. Viridian reserves all rights to object to any subsequent motion to certify a class in this Action, any action in this Litigation or any other lawsuit, and no representation or concession made in connection with the Settlement or this Agreement shall be considered law of the case or an admission by Plaintiffs or Viridian, or to have any kind of preclusive effect or to give rise to any form of estoppel or waiver in this Action, any action in this Litigation or any other lawsuit or proceeding.

3.2 Viridian expressly denies any and all liability and/or wrongdoing with respect to any and all of the claims alleged in this Action, any action in this Litigation and any similar lawsuits, and enters into this Settlement solely to compromise and resolve disputed claims. Accordingly, any references to the alleged business practices of Viridian in this Settlement, this Agreement, or the related Court hearings and processes shall raise no inference respecting the propriety of those business practices or any other business practices of Viridian.

IV. REQUIRED EVENTS

As soon as practicable after the execution of this Agreement, Plaintiffs shall file in this Action this Agreement and a motion seeking entry of the Preliminary Approval Order, substantially in the form of the attached Exhibit F, which order by its terms shall accomplish all of the following:

4.1 Preliminarily approve the Settlement;

4.2 Certify both Settlement Classes for settlement purposes only, pursuant to Fed. R. Civ. P. 23(a)(1)-(4) and (b)(3);

4.3 Appoint Plaintiffs Sanborn, Silver, Steketee, Iron Man, LLC, Susanna and Boris Mirkin, Hembling, Connard, Kulesa, and Landau as Class Representatives for the Average Usage Class, and BDK Alliance LLC as Class Representative for the Above Average Usage Class;

4.4 Appoint the counsel who represent Class Representatives and who are signatories to this Agreement as Class Counsel for the Settlement Classes;

4.5 Designate IZARD KINDALL & RAABE LLP and WITTELS LAW, P.C. as Lead Class Counsel.

4.6 Approve the form, contents, and methods of notice to be given to the Settlement Classes as set forth in Section VII of this Agreement, and direct the Settlement Administrator to provide, and cause to be provided, such notice and to file with the Court a declaration of compliance with those notice requirements, as set forth in paragraph 7.5 of this Agreement;

4.7 Approve the Settlement Administrator and instruct the Settlement Administrator to perform the following functions in accordance with the terms of this Agreement, the Preliminary Approval Order, and the Final Approval Order and Judgment:

- a. process requests for Opt-Outs from the Settlement in accordance with Sections VII and IX of this Agreement;
- b. process Claim Forms in accordance with Section VII of this Agreement;
- c. disseminate the Class Notices according to the approved notice plan; and
- d. establish the Settlement Websites, which Class Members can visit to read and obtain additional information regarding the Settlement, including submission of Claim Forms. The Settlement Website shall be reviewed

and approved by Viridian (which approval shall not unreasonably be withheld).

4.8 To the extent necessary, stay any other proceedings affecting the certified class pending in this Court or any other court.

4.9 Set the date, time, and location of the Fairness Hearing, upon notice to the Settlement Classes, to consider:

- a. whether the Settlement should be finally approved as fair, reasonable, and adequate, and whether the Released Claims of the Settlement Classes against the Released Persons should be dismissed with prejudice by entry of the Final Approval Order and Judgment, substantially in the form attached as Exhibit G;
- b. Class Counsel's motion for an award of Attorneys' Fees and Costs; and
- c. the Named Plaintiff Service Awards.

Lead Class Counsel will file motions on the topics outlined in Section VIII at least twenty-one (21) days prior to the deadline for members of the Classes to file any objections to the Settlement or motion for an award of Attorneys' Fees and Costs.

4.10 Within ten (10) days of the filing of Plaintiffs' Motion for Preliminary Approval, counsel for Viridian will provide notice of the Settlement to the appropriate officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, with the costs of such notice to be paid by Viridian.

V. SETTLEMENT CONSIDERATION AND PROCEDURES FOR PROVIDING BENEFITS TO SETTLEMENT CLASS MEMBERS

5.1 Settlement Benefits Available to Settlement Class Members

In order to qualify for a benefit under this Settlement, Settlement Class Members must timely submit a completed Claim Form attached as Exhibit A. This can be done on the

applicable Settlement Website or by mail by the Claim Deadline. In consideration of the Settlement and Release given herein, Viridian will make one (1) of the following benefits available to each Settlement Class Member who submits a Valid Claim for each gas and/or electric Account:

Cash Benefit Option:

- a. Average Usage Class Members shall be entitled to a cash payment equal to the greater of Five Dollars (\$5.00) or 65% of the Calculated Amount (“Average Usage Benefit”). Under no circumstances can the Average Usage Benefit exceed Four Hundred Twenty-Five Dollars (\$425.00) per Valid Claim.
- b. Above Average Usage Class Members Accounts shall be entitled to a Benefit equal to the greater of Ten Dollars (\$10.00) or 65% of the Calculated Amount (“Above Average Usage Benefit”). Under no circumstances can the Above Average Usage Benefit exceed Five Hundred Dollars (\$500.00) per Valid Claim.

Billing Credit Option:

Class Members who are current customers at the time a Claim is made or former customer Class Members (who wish to re-enroll with Viridian) who have a Calculated Amount above zero dollars (\$0.00), shall be entitled in lieu of seeking a Cash Benefit, to a benefit of a credit of eight dollars and fifty cents (\$8.50) per month on their future Viridian energy bills for a maximum of twelve (12) months (*i.e.*, a maximum value of one hundred and two dollars (\$102.00)) to be credited at the end of the Settlement Class Member’s service period (or twelve (12) months, whichever comes first). Former customers who elect this option must re-enroll within one-hundred-eighty (180) days from the end of the Claim Period. Class Members who elect the Billing Credit Option, but whose Calculated Amount

is zero dollars (\$0.00) or less, will be provided the Cash Benefit Option described above.

5.2 Limitations

Upon the Effective Date, Viridian will be obligated to pay all Valid Claims for Cash Benefits, Administration Expenses, and Attorneys' Fees and Costs up to the Settlement Amount, and provide all Billing Credit Options validly elected by Settlement Class Members in lieu of cash payments pursuant to the terms, conditions and procedures set forth in this Agreement. In the event all Valid Claims for Cash Benefits, Administration Expenses, and Attorneys' Fees and Costs exceed the Settlement Amount, then the Cash Benefits payable to Settlement Class Members shall be reduced pro rata. Additionally, the benefits described in this Section will be available on a "claims made" basis and Viridian will pay, or cause to be paid, Valid Claims. This Agreement does not create any vested property interest or unclaimed property rights for Settlement Class Members who do not file Valid Claims.

All Settlement Class Members who submit a Claim elect a specific benefit, the Settlement Class Member must comply with all terms and conditions of the Settlement, as the election of benefits is irrevocable.

Settlement Class Members who are paid by check shall have one hundred twenty (120) days within which to cash those checks. Upon the expiration of that one hundred twenty (120) day time period, any check not cashed within the time period allotted will become void. The voiding of any such check by the passage of time as described in this paragraph shall not serve to invalidate the Release given in Section XII hereof by any Settlement Class Member who failed timely to negotiate his, her, or its check, or the Final Approval Order and Judgment.

VI. CLASS-WIDE EQUITABLE RELIEF

Within thirty (30) days following the Effective Date of this Settlement, Viridian shall provide its current IVAs with a one-time written notice of the IVAs' contractual requirements to abide by Viridian's policies regarding advertising and marketing claims including, but not limited to, refraining from making unsubstantiated claims regarding cost savings or how Viridian's variable rates are determined, and advising IVAs that Viridian will penalize IVAs for any failure to comply with Viridian's policies, including, where appropriate, by terminating the IVA's relationship with Viridian.

VII. PROCEDURES FOR PROVIDING NOTICE

7.1 The Parties shall jointly ask the Court to approve a Settlement Administrator agreed to by the Parties. In the event the Parties are unable to agree on a Settlement Administrator, they shall ask the Court to select one from among the entities listed in Section 2.45. The Settlement Administrator shall, subject to the supervision of the Court, administer the relief provided by this Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all records as are required by applicable law in accordance with its normal business practices and such records (other than personal identifying information), will be made available to Class Counsel and Viridian's counsel, as required, and shall make records available promptly upon request.

7.2 The Settlement Administrator shall be responsible for, among other things, providing the Class Notices, processing Claim Forms, and administering the Settlement Websites, Objection process, Opt-Out process, and Settlement claims process described herein.

The Settlement Administrator will use adequate and customary procedures and standards to prevent the payment of fraudulent claims including but not limited to: validating Claims against Viridian's records, determining the Calculated Benefit based solely upon Viridian's business records and reports, using a unique Class Member identifier that the Class Member will use to access the Claim Form via the Website and that will be matched to the Class Member identifier on the notice list, and screening for multiple or fraudulent claims. Any individual that lost their Class Member identifier, may obtain a copy from the Settlement Administrator by providing appropriate proof that they are a Class Member. The Settlement Administrator shall have the right to audit claims, and the Settlement Administrator may request additional information from Class Members submitting claims. If any fraud is detected or reasonably suspected, the Settlement Administrator may request further information from the Settlement Class Member and deny such claims, subject to the ultimate oversight by the Court. The Settlement Administrator shall approve or deny all claims, and its decision, in conjunction with Class Counsel, shall be final and binding.

7.3 No later than thirty (30) days after the Court grants Preliminary Approval, the Settlement Administrator shall disseminate the appropriate preprinted postcard format with a unique Class Member identifier by either (1) email to the last known email address of Class Members if the Class Members provided an email address to Viridian, or (2) mail to the last known postal address of those Class Members who did not provide an email address or where an email sent pursuant to clause (1) above results in an undeliverable message.

Prior to mailing any Short Form Notices the Settlement Administrator shall compare the information provided by Viridian for each Class Member with a national change of address database and update Class Member addresses as required.

7.4 Except as noted herein, and in order to ensure consistent and accurate communications regarding the terms of the Settlement, the Notice shall constitute the only communication with Class Members (other than the Class Representatives) regarding the Settlement prior to Final Fairness Hearing. Notwithstanding, Class Counsel can answer any inquiries initiated by Class Members and post reasonable information concerning the Settlement consistent with the terms of this Agreement on their law firm websites.

7.5 No later than twenty-one (21) days prior to the Final Approval Hearing, the Settlement Administrator shall certify to the Court compliance with the notice provisions of this Section.

7.6 The Settlement Administrator will create and maintain a website applicable to each Settlement Class to provide, among other things, copies of the applicable Long-Form Notices discussed in the preceding Section hereof, this Settlement Agreement, the Settlement Administrator's and Class Counsel's contact information, certain selected pleadings and Court orders from this Action, a method for the electronic submission of Claim Forms at the appropriate time, a method for requesting the Claim Form(s) by mail, and a list of frequently asked questions likely to be made by Settlement Class Members and answers thereto. This shall be accomplished on or before the date the Settlement Administrator begins to disseminate the Notice.

7.7 Also prior to the Settlement Administrator's dissemination of the Notice, the Settlement Administrator shall set up and operate a case-specific toll-free number with an automated system providing information about the Settlement with the ability to request copies of the Notice, the Settlement Agreement, and Claim Form and the ability to communicate orally with a Settlement Administrator employee.

7.8 In advance of the Settlement Administrator's issuance of any Notice, counsel for the Parties shall negotiate in good faith (1) the content of the email which shall attach the Notice, (2) a list of frequently asked questions and answers ("FAQs") to be posted to the settlement websites and used by the Settlement Administrator in responding to inquiries from Class Members, and (3) and the Settlement Administrator's recorded message to callers.

7.9 For Short Form Notices returned as undeliverable by the post office, the Settlement Administrator shall complete a standard skip trace in an effort to ascertain the current address of the particular Class Member in question and, if such address is ascertained, the Claims Administrator will re-mail the appropriate Short Form Notice. If no such address is ascertained, the Settlement Administrator shall mail the Short Form notice to the available service address supplied by Viridian. . Where an email Short Form Notice to a Class Member results in an undeliverable message, the Settlement Administrator shall promptly mail a Short Form Notice by United States mail to that Class Member at the last known postal address and follow the related procedures in the event of a return.

7.10 In the event that a Short Form Notice is returned to the Settlement Administrator with a forwarding address for the recipient, the Settlement Administrator shall re-mail the appropriate Short Form Notice to that address, and the forwarding address will be deemed the address for that Class Member.

7.11 Viridian's counsel and Class Counsel have the right to make reasonable inquiries and receive information from the Settlement Administrator related to the claims administration process. Class Counsel and counsel for Defendants shall have the ability to communicate with the Settlement Administrator without the need to include each other in each of those communications. Disputes, if any, shall be resolved by the Court. This includes without

limitation any disputes over whether a particular Class Member has submitted a valid Claim Form.

VIII. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND COSTS, AND NAMED PLAINTIFF SERVICE AWARDS

8.1 The Parties agree, subject to Court approval, the counsel representing Class Representatives who are signatories to this Agreement shall be appointed Class Counsel, without prejudice to Viridian's right to contest the appointment in the event that this Agreement is not fully implemented in accordance with its terms. If the Settlement is not approved or this Agreement fails to be implemented fully, Viridian reserves all rights to object to any subsequent motion to appoint class counsel in this or any other actions.

8.2 Lead Class Counsel, on behalf of all Class Counsel, will submit to the Court an application seeking an award of Attorneys' Fees and Costs in an amount not to exceed Four Million, Five Hundred Thousand Dollars (\$4,500,000.00). Lead Class Counsel also will submit to the Court an application seeking leave to pay a Named Plaintiff Service Award to each Class Representative of up to five thousand dollars (\$5,000.00) as compensation for his, her, or its efforts in bringing their actions and achieving the benefits of the Settlement on behalf of the Settlement Classes. Sums paid for Named Plaintiff Service Awards will be paid out of the total Attorneys' Fees and Costs awarded. Court approval of the Attorneys' Fees and Costs award and/or the Named Plaintiff Service Awards will not be a condition of the effectiveness of the Settlement. If the Court denies, in whole or part, Lead Class Counsel's application for an award of Attorneys' Fees and Costs or the Named Plaintiff Service Awards, the remainder of the terms of this Agreement shall remain in effect. In addition, no interest will accrue on such amounts at any time. Neither Class Counsel nor Plaintiffs will request nor will they accept any award inconsistent with these terms.

8.3 Viridian agrees that it will not object to the amount of Lead Class Counsel's application for its Attorneys' Fees and Costs and Named Plaintiff Service Awards up to the amounts set forth in the preceding paragraph, and agrees that it will pay the amounts approved by the Court up to the amounts set forth in the preceding paragraph no more than fifteen (15) business days after the Effective Date, which payments are counted as part of and against the Settlement Amount. Viridian shall wire Attorneys' Fees and Costs and Named Plaintiff Service Awards to an account designated by Izard Kindall & Raabe LLP and Wittels Law, PC in writing.

8.4 Class Counsel shall provide Viridian with all necessary accounting and tax information, including W-9 forms, with reasonable advance notice to allow Viridian to make the Attorneys' Fees and Costs and Named Plaintiff Service Award payments as set forth above.

8.5 Notwithstanding anything contained in this Agreement that might be construed to the contrary, it is understood by the Parties and Class Counsel that Attorneys' Fees and Costs and Named Plaintiff Service Award payments, in the amounts awarded by the Court up to the amounts set forth in paragraph 8.2 above, are the only such fees, costs, and expenses that Viridian will pay in connection with this Settlement. With the exception of its own attorneys' fees, costs, and expenses, Viridian shall not be liable for any other attorneys' fees, costs, or expenses except as previously provided in this Agreement.

IX. OPT-OUTS AND OBJECTIONS

Subject to an Order of the Court so providing, the Parties agree that:

9.1 Opt-Out

Any Class Member, other than any Class Representative, may elect to be excluded from the Settlement and their respective Settlement Class by opting out. Any Class Member who desires to be excluded from the Settlement Class must give written notice of the

election to opt out on or before the date specified in the Preliminary Approval Order mailed to the Settlement Administrator. Opt-Out requests must: (i) be signed by the Class Member who is requesting exclusion; (ii) include the full name, address, and phone number(s) of the Class Member requesting exclusion; and (iii) include the following statement: “I/We request to be excluded from the Settlement Class and Settlement in the **Viridian Action**.” No Opt-Out request will be valid unless all of the information described above is included. No Class Member, or any person acting on behalf of or in concert or participation with that Class Member, may exclude any other Class Member from a Settlement Class, and no Class Member shall be deemed opted-out of a Settlement Class through any purported “mass” or “class” opt-outs. So-called “mass” or “class” opt-outs shall not be allowed and shall be deemed invalid.

The last date for Class Members to opt out of a Settlement Class and the Settlement will, subject to Court approval, be on the Opt-Out Deadline contained in the Preliminary Approval Order. Class Members who timely opt out of a Settlement Class and Settlement will not be bound by the terms of this Agreement, including any releases contained herein, nor will they be entitled to receive any benefits from the Settlement.

In the event that ten percent (10%) or more of the members of both Settlement Classes in the aggregate opt out of the Settlement, Viridian shall have the option to elect to terminate this entire Agreement, in which circumstance the Settlement will become null and void and the Parties and status of the Action and the other actions in the Litigation will return to the *status quo ante* as described in Section 16.12 of this Agreement.

The Class Representatives affirmatively support this Settlement and agree not to Opt-Out of this Settlement. None of the Class Representatives, Class Counsel, or Viridian or its

counsel shall in any way encourage any Class Member to opt out or discourage any Class Member from participating in this Settlement.

9.2 Objections

Any Class Member, on his, her, or its own, or through an attorney hired at his, her, or its own expense, may object to the terms of the Settlement, Class Counsel's Motion for an Award of Attorneys' Fees and Costs, and/or the Named Plaintiff Service Awards. Any such Objection must be filed with the Court and served on Class Counsel, Viridian's counsel, and the Settlement Administrator. To be effective, any such Objection must be in writing and include the contents described below, and must be filed with the Clerk of the Court and served by the Objection Deadline. Any Objections not raised properly and timely will be waived. To be effective, any Objection must contain all the following information:

- a. a reference at the beginning to *Sanborn, et al. v. Viridian Energy, Inc.*, No. 3:14-cv-01731-SRU (D. Conn.),
- b. the objector's full name, address, and telephone number;
- c. a written statement of all grounds for the objection, accompanied by any legal support for such objection;
- d. copies of any papers, briefs, or other documents upon which the Objection is based;
- e. a list of all persons who will be called to testify in support of the objection, if any;
- f. a statement of whether the objector intends to appear at the Final Approval Hearing. If the objector intends to appear at the Final Approval Hearing through counsel, the Objection must also state the identity of all attorneys representing the objector who will appear at the Final Approval Hearing;

g. a statement of his, her, or its membership in the Settlement Class, including all information required by the Claim Form; and

h. a detailed list of any other Objections submitted by the Settlement Class Member, or his, her, or its counsel, to any class actions submitted in any court, whether state or federal, in the United States in the previous five (5) years. If the Settlement Class Member or his, her, or its counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he, she, or it shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement.

Any Class Member who fails to timely file and serve a written Objection containing all of the information listed above in the previous paragraphs, including notice of his, her, or its intent to appear at the Final Approval Hearing, shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by any means, including but not limited to an appeal. Further, any Class Member who submits a timely written Objection shall consent to deposition by Class Counsel and/or Viridian's counsel prior to the Final Approval Hearing.

X. COSTS OF NOTICE AND ADMINISTRATION

The Parties shall select as a Settlement Administrator one of the entities identified in Section 2.45 after a review and comparison of estimates made available by such entities. Viridian agrees to pay the fees and costs of the Settlement Administrator in an amount not to exceed the \$380,000.00 estimate for such fees and costs received from one of the entities identified in Section 2.45. If the fees and costs of the administrator that is chosen exceed \$380,000 for the services that were the basis of the \$380,000 estimate, Class Counsel will agree to pay the additional amount, and such amount shall be deducted from any award of Class

Counsel fees and costs.

XI. PROCEDURES FOR SETTLEMENT APPROVAL

This Agreement and the Settlement embodied herein are subject to Final Approval by the Court, substantially in the form of the proposed Final Approval Order and Judgment attached hereto as Exhibit G. If the Settlement is approved, the Court will enter a judgment dismissing the claims against Viridian with prejudice. The Parties waive any right to appeal or collaterally attack a Final Approval Order and Judgment entered by the Court.

If this Agreement or any part of it is materially modified by the Court or is materially modified upon appeal or remand, any of the Parties may terminate this Agreement pursuant to paragraph 16.1. If no Party timely elects to terminate, then the Parties shall remain bound to the Settlement as so modified. For purposes of this paragraph, a “material modification” is one that significantly affects the rights or obligations of one or more of the Parties. Without limiting the foregoing and by way of illustration only, material modifications include but are not limited to: (1) any change to the scope of the Released Claims set forth in this Settlement Agreement; (2) any material change to the Final Approval Order and Judgment, which limits or reduces any of the protections afforded to Viridian, (3) any increase in the cost of the settlement to be borne by Viridian to be determined at the sole discretion of Viridian; (4) any material change to the benefits; and/or (5) any material change to the forms of the Class Notice, notice plan, claim process, or Claim Form available to Settlement Class Members. No order or action of the Court pertaining to attorneys’ fees or expenses shall be considered to constitute a material modification so long as such order, action, or modification does not increase the cost of settlement to be borne by Viridian, and does not require that Viridian do anything not specifically set forth herein, or is one that significantly

affects the rights or obligations of one or more of the Parties. Similarly, no order, action, or modification of the Court pertaining to the Named Plaintiff Service Awards shall be considered to constitute a material modification so long as such order, action, or modification does not increase the cost of Settlement to be borne by Viridian, and does not require that Viridian do anything not specifically set forth herein. Any dispute as to the materiality of any modification or proposed modification of this Agreement, other than those specific items listed in (1) through (5) above, shall be resolved by the Court.

XII. RELEASES

Upon the Effective Date and without any further action by the Court or by any Party to this Agreement, the Releasing Parties, for good and sufficient consideration, the receipt and adequacy of which is acknowledged, shall be deemed to, and shall, in fact, have remised, released, and forever discharged, waived, and relinquished any and all Released Claims against any of the Released Persons. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims that may have.

The Releasing Parties hereby fully release and forever discharge the Released Persons from any and all Released Claims.

Without limiting the foregoing, the release specifically extends to claims that the Releasing Parties do not know or suspect to exist in their favor at the time that the Settlement, and the release contained herein, becomes effective. This paragraph constitutes a waiver of, without limitation as to any other applicable law, Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Releasing Parties understand and acknowledge the significance of these waivers of California Civil Code Section 1542 and any other applicable federal or state statute, case law, rule, or regulation relating to limitations on releases. In connection with such waivers and relinquishment, the Releasing Parties expressly acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally, and forever all Released Claims with respect to the Released Persons, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

The Releasing Parties hereby expressly further agree that they shall not now or hereinafter institute, maintain, assert, join, or participate in, either directly or indirectly, on their own behalf, on behalf of a class, or on behalf of any other person or entity, any action or proceeding of any kind against the Released Persons asserting any Released Claims.

XIII. FINAL JUDGMENT AND SETTLEMENT APPROVAL

This Agreement is subject to and conditioned upon (i) the issuance by this Court of the Final Approval Order and Judgment that finally certifies the Settlement Classes for the purposes of this Agreement, grants final approval of the Settlement, dismisses with prejudice the actions in the Litigation that are filed in this Court, and provides the relief specified herein, which relief shall be subject to the terms and conditions of this Agreement and the Parties' performance of

their continuing rights and obligations hereunder, and (ii) the dismissal with prejudice of the *Landau* action by the United States District Court for the Eastern District of Pennsylvania.

XIV. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to, and agrees with, the other Party as follows:

14.1 Each Party has had the opportunity to receive, and has received, independent legal advice from his, her, or its attorneys regarding the advisability of making the Settlement, the advisability of executing this Agreement, and the legal and income tax consequences of this Agreement, and fully understands and accepts the terms of this Agreement.

14.2 Viridian represents and warrants that: (a) it has the requisite corporate power and authority to execute, deliver, and perform this Agreement, and to consummate the transactions contemplated hereby; (b) the execution, delivery, and performance of this Agreement, and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of Viridian; and (c) this Agreement has been duly and validly executed and delivered by Viridian and constitutes its legal, valid, and binding obligation.

14.3 Class Counsel represent and warrant that they are authorized to take all appropriate actions required or permitted to be taken by or on behalf of the Plaintiffs and, subsequent to an appropriate Court Order, the Settlement Class in order to effectuate the terms of this Agreement, and also are authorized to enter into appropriate modifications or amendments to this Agreement on behalf of the Plaintiffs and, subsequent to an appropriate Court Order, the Class Members.

14.4 Class Representatives represent and warrant that they are entering into this Agreement on behalf of themselves individually and as proposed representatives of the putative Settlement Class Members, of their own free will and without the receipt of any consideration

other than what is provided in the Agreement or disclosed to, and authorized by, the Court. Each Class Representative represents and warrants that he, she, or it has reviewed the terms of this Agreement in consultation with Class Counsel and believes them to be fair and reasonable, and covenants that he, she, or it will not file an Opt-Out request from the Settlement Class or object to this Agreement.

14.5 Plaintiffs represent and warrant that no portion of any claim, right, demand, action, or cause of action against any of the Released Persons that Plaintiffs have, may have arising out of this Litigation, or could have asserted in this Litigation, and no portion of any recovery or settlement to which Plaintiffs may be entitled, has been assigned, transferred, or conveyed by or for Plaintiffs in any manner; and no Person other than Plaintiffs has any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Agreement as those of Plaintiffs themselves.

14.6 No Party relies or has relied on any statement, representation, omission, inducement, or promise of another Party (or any officer, agent, employee, representative, or attorney for any other party) in executing this Agreement, or entering the Settlement provided for herein, except as expressly stated in this Agreement.

XV. NO ADMISSIONS OF FAULT

This Agreement and every term contained in it is conditioned upon final approval of the Court and is made for settlement purposes only. Whether or not consummated, this Agreement shall not be construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession, or an admission by Plaintiffs, Viridian, or any Class Member or Released Party, of the truth of any fact alleged or the validity of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or the

deficiency of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, wrongdoing, or otherwise of such Party.

XVI. MISCELLANEOUS PROVISIONS

16.1 Termination of Agreement

This Agreement may be terminated at the election of either Party, by written notice: (a) if the Court fails to issue either a Preliminary Approval Order or a Final Approval Order and Judgment; (b) in the event any Court-proposed modification of this Agreement as a condition to approval of the Settlement is a material modification of this Agreement; (c) prior to final approval of this Agreement by the Court, upon the mutual written agreement of the Parties by and through their respective counsel; or (d) by Viridian, at its sole option, in the event that ten percent (10%) or more of the members of both Settlement Classes in the aggregate timely elect to opt out of the Settlement.

The Settlement Administrator shall provide the Parties with a written report identifying the number and identity of Class Members who have elected to opt out from their respective Settlement Class within ten (10) days after the Opt-Out Deadline. Viridian, then, shall have ten (10) days from that date to notify Plaintiffs if it elects to terminate this Agreement pursuant to clause (d) of this paragraph.

16.2 Entire Agreement

This Agreement, together with the Exhibits hereto, constitutes the entire agreement between the Parties with respect to the subject matter of the Settlement and supersedes all prior negotiations, communications, memoranda, and agreements between the Parties. Neither Plaintiffs nor Viridian are entering into this Agreement in reliance upon any representations, warranties, or inducements other than those contained in this Agreement.

16.3 Change of Time Periods

The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Class Counsel and Viridian's counsel, without notice to Class Members except that the Settlement Administrator shall ensure that such dates are posted on the Settlement Website.

16.4 Extension of Time

The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement without formally amending this Agreement.

16.5 Counterparts

This Agreement may be executed in one or more counterparts, all of which together shall be deemed to be one and the same instrument. The Parties agree that a copy of the executed counterparts may be filed with the Court in connection with the motion to preliminarily approve the Settlement, either in portable document format or some other suitable electronic form, as an exhibit to Plaintiffs' Motion for Preliminary Approval without the need to collate and file a copy with original signatures.

16.6 Cooperation

The Parties shall cooperate with the Settlement Administrator to the extent reasonably necessary to assist and facilitate the Settlement Administrator in carrying out its duties and responsibilities.

16.7 Construing the Agreement

This Agreement shall not be construed more strictly against one Party than another

merely by virtue of the fact that it may have been initially drafted by counsel for only one of the Parties. It is recognized that this Agreement is the result of arms-length negotiations between the Parties and it is acknowledged that all Parties have contributed substantially to the preparation of this Agreement, accordingly, the doctrine of *contra proferentum* shall not apply in construing this Agreement, nor shall any other such similar doctrine apply.

16.8 Choice of Law

This Agreement shall be governed by and interpreted in accordance with the substantive common law of the State of Connecticut, exclusive of choice of law principles.

16.9 Jurisdiction

The Parties submit to the exclusive jurisdiction of the United States District Court for the District of Connecticut which shall retain jurisdiction over the Action, the Settlement Administrator, the Preliminary Settlement Agreement, the Final Order and Judgment, the Class Members, the Plaintiffs and Viridian for the purpose of enforcing this Agreement or implementing any part of the Settlement embodied in this Agreement.

16.10 Headings

The captions and headings employed in this Agreement are for convenience only, are not a part of this Agreement, and shall not be used in construing or interpreting this Agreement.

16.11 Evidentiary Preclusion

The Parties agree that, to the fullest extent permitted by law, neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim or of any wrongdoing or

liability of the Released Persons; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any Released Party or the appropriateness of class certification in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. In addition, any failure of the Court to approve the Settlement and/or any objections or interventions may not be used as evidence in the Litigation or any other proceeding for any purpose whatsoever. However, the Released Persons may file this Agreement and/or the Final Approval Order and Judgment in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion, or similar defense or counterclaim.

16.12 Effect of Non-Approval

In the event that this Agreement is not approved by the Court in substantially its present form or the Settlement does not become final for any reason including Termination pursuant to paragraph 16.1 above, the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties or the Class Members or Plaintiffs, and shall not be used in this Litigation or in any other action or proceeding for any purpose, and any order or judgment entered by the Court in accordance with the terms of this Agreement, including Class certification, shall be vacated and shall be treated as vacated, *nunc pro tunc*. In such event, this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection with this Agreement shall be without prejudice to any Party or Class Member; shall not be admissible or offered into evidence in any action or proceeding; shall not be deemed, asserted or construed to be an admission or

confession by any Party or any other Person or entity of any fact, matter, or proposition of law; and shall not be used or asserted in any other manner or for any purpose, and all Parties and Settlement Class Members shall stand in the same positions as if this Agreement and Settlement had not been negotiated, made, or submitted to the Court and any related orders had not been entered, preserving all of their respective claims and defenses.

16.13 Stay Pending Court Approval

Class Counsel and Viridian's counsel agree to stay all proceedings in the Litigation, other than those proceedings necessary to carry out or enforce the terms and conditions of the Settlement, until the Effective Date of the Settlement has occurred. If, despite the Parties' best efforts, this Agreement should fail to become effective, the Parties will return to their prior positions in the Litigation, in accordance with Section 16.12 of this Agreement.

The Parties also agree to use their best efforts to seek the stay and dismissal of, and to oppose entry of any interim or final relief in favor of any Class Member in, any other proceedings against any of the Released Persons, which challenges the Settlement or otherwise asserts or involves, directly or indirectly, a Released Claim.

16.14 Notices

Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided in writing by first class United States Mail and email to:

- a. If to Plaintiffs or Class Counsel:

Robert Izard, Esq.
IZARD, KINDALL & RAABE, LLP

29 South Main Street, Suite 305
West Hartford, CT 06107
Email: rizard@ikrlaw.com

- b. If to Viridian or Viridian's counsel:

Maura Barry Grinalds, Esq.
Richard T. Bernardo, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
4 Times Square
New York, NY 10036
Emails: MauraBarry.Grinalds@skadden.com
Richard.Bernardo@skadden.com

16.15 Good Faith

The Parties agree that they will act in good faith and will not engage in any conduct that will or may frustrate the purpose of this Agreement. To that end, the Parties further agree to implement the terms of this Agreement in good faith and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Settlement. The Parties further agree, subject to Court approval as needed, to reasonable extensions of time to carry out any of the provisions of this Agreement.

16.16 Protective Orders

All orders, settlement agreements and designations regarding the confidentiality of documents and information ("Protective Orders") remain in effect, and all Parties and counsel remain bound to comply with the Protective Orders, including the provisions to certify the destruction of "Confidential" documents.

16.17 Arms-Length Negotiations

The determination of the terms and conditions contained herein and the drafting of the provisions of this Agreement has been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto and their counsel. This Agreement

shall not be construed against any Party on the basis that the Party was the drafter or participated in the drafting. Any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the implementation of this Agreement and the Parties agree that the drafting of this Agreement has been a mutual undertaking.

16.18 Waiver

The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

16.19 Exhibits

All Exhibits to this Agreement are material and integral parts hereof, and are incorporated by reference as if fully rewritten herein.

16.20 Support From The Parties

After a full investigation, discovery and arms-length negotiations, the Parties and their counsel agree that they: (a) have independently determined that this Settlement is in the best interest of the Settlement Classes; (b) shall support motions for entry of the Preliminary Approval Order and Final Approval Order and Judgment; and (c) will not encourage any Persons to Opt-Out or file an Objection to the Settlement or this Agreement.

16.21 Costs

Except as otherwise provided in this Agreement, each Party shall bear its own costs and expenses.

16.22 Variance

In the event of any variance between the terms of this Agreement and any of the Exhibits hereto, the terms of this Agreement shall control and supersede the Exhibits.

16.23 Taxes

No opinion concerning the tax consequences of this Agreement to any Settlement Class Member is given or will be given by Released Persons or Class Counsel; nor is any Party or their counsel providing any representation or guarantee respecting the tax consequences of this Agreement as to any Settlement Class Member. Each Settlement Class Member is responsible for his, her, or its tax reporting and other obligations respecting this Agreement, if any.

16.24 Time Periods

All time periods set forth herein shall be computed in calendar days, unless otherwise noted. In computing any period of time prescribed or allowed by this Agreement or by order of the Court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in Court, a day in which weather or other conditions have made the Office of the Clerk or the Court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days.

16.25 Effectiveness, Amendments, and Binding Nature

This Agreement may be amended only in writing signed by the Parties. Except as otherwise stated above, each Party, including Plaintiffs on behalf of themselves and the Settlement Classes, expressly accepts and assumes the risk that, if facts or laws pertinent to matters covered by this Agreement are hereafter found to be other than as now believed or assumed by that party to be true or applicable, this Agreement shall nevertheless remain effective.

This Agreement is binding on, and shall inure to the benefit of, Plaintiffs, Settlement

Class Members, and Viridian, and each of their respective agents, employees, representatives, officers, directors, parents, subsidiaries, assigns, executors, administrators, heirs, insurers, and successors in interest in accordance with its terms. All Released Persons other than Viridian, which is a Party, are intended to be third-party beneficiaries of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives, as of the date and year last written below.

IZARD, KINDALL & RAABE LLP, on behalf of Plaintiff Lori Sanborn, Iron Man LLC, BDK Alliance LLC, Stephanie Silver, David Steketee, and the Proposed Settlement Classes

Dated: 12/29/17

By: 

Robert A. IZARD, Esq.
Craig A. Raabe
Seth R. Klein
Izard Kindall & Raabe LLP
Lead Class Counsel

WITTELS LAW P.C., on behalf of Plaintiff Susanna Mirkin, Boris Mirkin, and the Proposed Settlement Classes

Dated: _____

By: _____

Steven L. Wittels, Esq.
J. Burkett McInturff, Esq.
Wittels Law, P.C.
Lead Class Counsel

Class Members, and Viridian, and each of their respective agents, employees, representatives, officers, directors, parents, subsidiaries, assigns, executors, administrators, heirs, insurers, and successors in interest in accordance with its terms. All Released Persons other than Viridian, which is a Party, are intended to be third-party beneficiaries of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives, as of the date and year last written below.

IZARD, KINDALL & RAABE LLP, on behalf of Plaintiff Lori Sanborn, Iron Man LLC, BDK Alliance LLC, Stephanie Silver, David Steketee, and the Proposed Settlement Classes

Dated: _____

By: _____

Robert A. IZard, Esq.
Craig A. Raabe
Seth R. Klein
Izard Kindall & Raabe LLP
Lead Class Counsel

WITTELS LAW P.C., on behalf of Plaintiff Susanna Mirkin, Boris Mirkin, and the Proposed Settlement Classes

Dated: 12/29/2017


By: /s/ STEVEN WITTELS

Steven L. Wittels, Esq.
J. Burkett McInturff, Esq.
Wittels Law, P.C.
Lead Class Counsel

By JBM with permission

**HYMOWITZ LAW GROUP, PLLC, on behalf of
Plaintiffs Susanna Mirkin, Boris Mirkin, and
the Proposed Settlement Classes**

Dated: 12/29/2017

By: 
Daniel Hymowitz, Esq.
Hymowitz Law Group, LLC
Class Counsel

**KOHN, SWIFT & GRAF PC, on behalf of
Plaintiff Steven Landau and the Proposed
Settlement Classes**

Dated: _____

By: _____
Jonathan Shub, Esq.
Kohn, Swift & Graf PC
Class Counsel

**MARCUS & MACK, P.C., on behalf of Plaintiff
Steven Landau and the Proposed Settlement
Classes**

Dated: _____

By: _____
Troy Frederick, Esq.
Marcus & Mack, P.C.
Class Counsel

**HYMOWITZ LAW GROUP, PLLC, on behalf of
Plaintiffs Susanna Mirkin, Boris Mirkin, and
the Proposed Settlement Classes**

Dated: _____

By: _____

Daniel Hymowitz, Esq.
Hymowitz Law Group, LLC
Class Counsel

**KOHN, SWIFT & GRAF PC, on behalf of
Plaintiff Steven Landau and the Proposed
Settlement Classes**

Dated: 12/29/17

By: Jonathan Shub 

Jonathan Shub, Esq.
Kohn, Swift & Graf PC
Class Counsel

**MARCUS & MACK, P.C., on behalf of Plaintiff
Steven Landau and the Proposed Settlement
Classes**

Dated: 12/29/17

By: Troy Frederick 

Troy Frederick, Esq.
Marcus & Mack, P.C.
Class Counsel

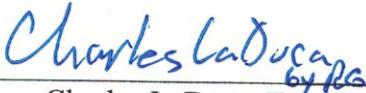
GREENFIELD & GOODMAN LLC, on behalf of Plaintiffs Elizabeth Hembling, Patricia Kulesa, Stewart Connard, and the Proposed Settlement Classes

Dated: 2/5/18

By: 
Richard Greenfield
Greenfield & Goodman LLC
Class Counsel

CUNEO, GILBERT & LADUCA, LLP, on behalf of Plaintiffs Elizabeth Hembling, Patricia Kulesa, Stewart Connard, and the Proposed Settlement Classes

Dated: 2/5/18

By:  by RG
Charles LaDuca, Esq.
Cuneo, Gilbert & LaDuca, LLP
Class Counsel

VIRIDIAN ENERGY, INC. on behalf of Viridian Energy, Inc., Viridian Energy PA LLC, Viridian Energy NY, LLC, and Viridian Energy, LLC

Dated: _____

By: _____
Maura Barry Grinalds, Esq.
Richard T. Bernardo, Esq.
Skadden, Arps, Slate,
Meagher & Flom LLP
Counsel for Viridian

GREENFIELD & GOODMAN LLC, on behalf of Plaintiffs Elizabeth Hembling, Patricia Kulesa, Stewart Connard, and the Proposed Settlement Classes

Dated: _____

By: _____
Richard Greenfield
Greenfield & Goodman LLC
Class Counsel


CUNEO, GILBERT & LADUCA, LLP, on behalf of Plaintiffs Elizabeth Hembling, Patricia Kulesa, Stewart Connard, and the Proposed Settlement Classes

Dated: _____

By: _____
Charles LaDuca, Esq.
Cuneo, Gilbert & LaDuca, LLP
Class Counsel

VIRIDIAN ENERGY, INC. on behalf of Viridian Energy, Inc., Viridian Energy PA LLC, Viridian Energy NY, LLC, and Viridian Energy, LLC

Dated: 12/29/17

By: 
Maura Barry Grinalds, Esq.
Richard T. Bernardo, Esq.
Skadden, Arps, Slate,
Meagher & Flom LLP
Counsel for Viridian

LIST OF EXHIBITS

- | | |
|-----------|---|
| Exhibit A | Proof of Claim Form |
| Exhibit B | Long Form Notice of Proposed Class Certification, Proposed Settlement of Class Action, Opportunity for Exclusion from Class, Deadline for Filing Claims for the Average Usage Class |
| Exhibit C | Long Form Notice of Proposed Class Certification, Proposed Settlement of Class Action, Opportunity for Exclusion from Class, Deadline for Filing Claims for the Above Average Usage Class |
| Exhibit D | Short Form Notice to Class Members of the Average Usage Class |
| Exhibit E | Short Form Notice to Class Members of the Above Average Usage Class |
| Exhibit F | Proposed Preliminary Approval and Class Certification Order |
| Exhibit G | Proposed Form of Final Order and Judgment |

EXHIBIT A

**Exhibit A – Proof of Claim Form
IMPORTANT LEGAL MATERIALS**

**Submit the Claim Form on the Next Page to Be Eligible to
Receive a Cash or Credit Payment from the Class Action
Settlement Related to Your Viridian Electricity or Gas Bill**

GENERAL INSTRUCTIONS

TO BE ELIGIBLE TO RECEIVE A PAYMENT, YOU MUST RETURN THE CLAIM FORM SO THAT IT IS SUBMITTED ONLINE OR RECEIVED BY THE SETTLEMENT ADMINISTRATOR NO LATER THAN [DATE].

NOTE: IF YOU'VE HAD MORE THAN ONE VIRIDIAN ENERGY VARIABLE RATE ACCOUNT, YOU MUST SUBMIT A SEPARATE CLAIM FORM FOR EACH. YOU SHOULD HAVE RECEIVED A SEPARATE NOTICE FOR EACH ACCOUNT. IF YOU HAVE QUESTIONS PLEASE CALL [888-000-0000]

1. **Fill it out Online at www.XXXXXX.com**

OR

2. **Mail it to:**

VIRIDIAN ENERGY LITIGATION

c/o XXXX XXXXXXXXX, Settlement Administrator

PO Box XXXX

City, ST XXXXX-XXXX

VIRIDIAN ENERGY CLAIM FORM

You Must Fill Out This Form Online at www.xxxxxx.com, or Mail This Form to the Settlement Administrator to Receive a Benefit

Claimant Name (First Name, MI, Last Name or Business Name): _____

Current Address: _____

City, State, and Zip: _____

Daytime Phone Number: _____ Evening Phone Number: _____

Class Member identifier: _____

(If you received a postcard notice in the mail, your Class Member Identifier is located on the front of the postcard. If you received an email notice, your Class Member Identifier is in the subject line of the email. If you cannot find your Class Member identifier contact the Claims Administrator at (XXX) XXX-XXXX.)

I choose the following benefit (pick one): cash benefit option billing credit option

Please note that, if you select, but do not qualify for the billing credit option, you will be deemed to have selected the cash benefit option.

I hereby certify under penalty of perjury that the information I am submitting with this Claim Form is true and correct to the best of my knowledge.

Signature: _____ Dated: ____ / ____ / ____

EXHIBIT B

**If you purchased electric or gas service from
 Viridian Energy, you could get a payment
 from a class action settlement**

A federal court authorized this Notice of Class Action Settlement.

It is not a solicitation from a lawyer.

Contact the Claims Administrator or the Lawyers for the Class listed below if you have any questions after reading this Notice. Do not contact the Court with questions.

Read this Notice carefully, as your legal rights may be affected whether or not you respond.

YOUR RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	This is the only way you get a payment. <u>The Claim Form must be submitted by [DATE].</u> Submit an online Claim Form at www.xxxx.com . You can also download a Claim Form to submit by mail at www.xxxx.com or receive one by calling 1-888-XXX-XXXX. If you cannot find the postcard mailed to you call 1-888-XXX-XXXX.
EXCLUDE YOURSELF	Get no payment. If you ask to be excluded you will not receive any benefits from this settlement. But you keep any rights to sue Viridian separately about the same legal claims in this lawsuit.
OBJECT	Notify the Court if you have any objections to the settlement.
DO NOTHING	Get no payment. Give up rights.

- These rights and options – and the deadlines to exercise them – are explained in this Notice.
- Payments will be made if the Court approves the settlement and it becomes final. Please be patient.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION X

1. WHAT IS THIS NOTICE?X

2. WHAT IS THIS LAWSUIT ABOUT?X

3. WHY IS THIS BROUGHT AS A CLASS ACTION?.....X

4. WHY IS THERE A SETTLEMENT?X

WHO IS IN THE SETTLEMENT? X

5. HOW DO I KNOW IF I AM PART OF THE SETTLEMENT?.....X

THE SETTLEMENT BENEFITS – WHAT YOU GET..... X

6. WHAT DOES THE SETTLEMENT PROVIDE?X

HOW TO GET A PAYMENT – SUBMIT A CLAIM FORM..... X

7. HOW CAN I GET A PAYMENT?.....X

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EXCLUDING YOURSELF FROM THE SETTLEMENT X

9. WHAT DOES EXCLUDING MYSELF FROM THE SETTLEMENT MEAN?X

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11. WHO IS CLASS COUNSEL?.....X

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13. HOW DO I GET MORE INFORMATION ABOUT THE SETTLEMENT?.....X

BASIC INFORMATION

1. What is this Notice?

This Notice describes the benefits available from a proposed settlement of a class action lawsuit, and your options. The company's records show that sometime between July 1, 2009 and December 31, 2016 you may have purchased your electricity or gas from Viridian Energy, Inc. or one of its related companies, Viridian Energy PA LLC, Viridian Energy NY, LLC, and Viridian Energy, LLC (referred to collectively in this Notice as "Viridian" or "Defendants").

If the Court approves the settlement and it becomes final, an administrator appointed by the Court will make the payments that the settlement provides.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

2. What is this lawsuit about?

The class action lawsuit was brought on behalf of Viridian's energy customers and alleges that the company charged an excessive variable rate for gas and electricity regardless of fluctuations in the underlying wholesale market price. Separate class action lawsuits were filed both in Connecticut and Pennsylvania and allege that Viridian breached its contracts with customers and its duty of good faith and fair dealing, and also violated various consumer protection laws. Viridian denies any wrongdoing, and contends that its variable rates were adequately disclosed, consistent with its representations, and properly calculated based on the relevant market factors for electric and gas service.

3. Why is this brought as a class action?

In a class action, one or more people called "Class Representatives" sue for all people who have similar claims. Together, these people are called a "Settlement Class" or "Class Members." One court resolves the legal issues for all Class Members, except for those who exclude themselves from the Settlement Class.

4. Why is there a settlement?

After several years of litigation and more than a year of negotiations, the parties have agreed to a settlement in order to make monetary or other benefits available to Viridian's current and former energy customers. A settlement avoids the uncertainty, risks, and delay of litigation. Both the Class Representatives and their attorneys believe that the settlement is fair and in the best interests of the Class.

WHO IS IN THE SETTLEMENT?

5. How do I know if I am part of the settlement?

Class Members entitled to receive a monetary payment or credit benefit under the settlement include all current and former Viridian customers enrolled in a variable rate plan between July 1, 2009 and December 31, 2016.

THE SETTLEMENT BENEFITS – WHAT YOU GET**6. What does the settlement provide?**

This section describes the benefits available to each Class Member who submits a valid claim form for each gas and/or electric account with Viridian. Eligible claimants fall in one of two classes: “Average Usage Class Members” (customers with an average annual utilization rate of 25,000 or less kilowatt hours or 2,500 or less therms) and “Above-Average Usage Class Members” (customers with an average annual utilization rate of more than 25,000 kilowatt hours or more than 2,500 therms). Viridian’s records show that you were enrolled in a variable rate plan and are an Average Usage Class Member. If you timely submit a valid claim form or forms, your payment under the settlement depends on whether you are a gas or electric customer (or both), the amount of your energy usage, how long you were a Viridian customer, and whether you elect to receive a cash payment by check, or a credit on your future bills if you are a current Viridian customer or sign up again for energy service from Viridian.

The total aggregate value of the settlement from which cash settlement payments will be made is \$18,500,000. This amount will be used to pay Class Members’ “Cash Benefit Option” (described below), administration costs of the class action settlement, and attorneys’ fees and expenses. Should the total Calculated Loss of the valid claims filed by Average Usage Class Members and Above-Average Usage Class Members exceed the \$18.5 million settlement fund minus Court-approved fees and expenses, each claimant’s award will be reduced *pro rata*.

The Settlement Amounts You Can Claim***Cash Benefit Option***

If you choose to receive a check (as opposed to a credit on your future bills), your cash benefit payment will be the following for each gas and/or electric account for which you submit a valid Claim Form:

A cash payment of the greater of \$5.00 or 65% of the “Calculated Amount” up to \$425.00 based upon a formula that compares the variable rate that you were charged by Viridian per kilowatt hour (for electricity) or therm (for gas) based on Viridian’s records, against a weighted average of the relevant utility’s Price to Compare during that same period of time, adjusting for, among other things, the cost for green energy and Viridian’s costs and margin (the “cash option”).

The “Calculated Amount” is the difference between the (i) actual payment made by each Class Member during the period in which the Class Member was enrolled in a Viridian variable rate electricity and/or gas plan during the Class Period based on Viridian’s records (or reasonable, good-faith estimates where records are incomplete or inconsistent), and (ii) amount the Class Member would have paid during that same period if the Class Member paid the Price to Compare (“PTC”), plus one cent (\$0.01) per kilowatt hour/therm, plus a 20% margin. The PTC is a good faith estimate of the price that the customer’s relevant public utility would

have charged for the supply portion of the electric or gas service, based on reasonably available information. The PTC will be based on a weighted average price per therm or kilowatt hour charged by the relevant public utility for the duration of the period in which the Class Member was enrolled in a Viridian variable rate electricity and/or natural gas plan during the Class Period. The one-cent addition reflects an estimated average premium charged by public utilities for green energy.

Billing Credit Option

Class Members who are current customers at the time a Claim is made or former customers (who wish to re-enroll with Viridian) who have a Calculated Amount above zero dollars (\$0.00), shall be entitled in lieu of seeking a Cash Benefit, to a benefit of a credit of eight dollars and fifty cents (\$8.50) per month on their future Viridian energy bills for a maximum of twelve (12) months (*i.e.*, a maximum value of one hundred and two dollars (\$102.00)), to be credited at the end of the Settlement Class Member's service period (or twelve (12) months, whichever comes first). Former Customers who elect this option must re-enroll within one-hundred-eighty (180) days from the end of the Claim Period. If you choose this option, but your Calculated Amount is zero dollars (\$0.00) or less, you will be provided the cash benefit option described above.

To find out more about both options, please visit www.xxxxxxxxxx.com or call (XXX) XXX-XXXX.

HOW TO GET A PAYMENT – SUBMIT A CLAIM FORM

7. How can I get a payment?

To qualify for payment, you must timely submit the Claim Form using the Class Member Identifier contained on the front of the post card you received. You can mail the Claim Form. You can also submit an online Claim Form at www.xxxx.com. If you want to download a claim form and mail it, you can download the Claim Form at www.xxxx.com or receive one by calling 1-888-XXX-XXXX. If you cannot find the postcard mailed to you call 1-888-XXX-XXXX.

You must submit your Claim Form online or by mail before [INSERT END OF NOTICE PERIOD].

Incomplete or untimely Claim Forms will render you ineligible to receive any payment under the settlement. Payments will only be made if the Court approves the settlement and it becomes final.

By submitting a Claim Form, you are agreeing to release all Defendants from any potential claims you might have regarding your energy purchases from these companies.

8. What happens if I don't send in a Claim Form?

If you don't send in a Claim Form and don't exclude yourself from the settlement as described in the next section below, you will still be bound by all the terms of the settlement, including

releasing any applicable federal and state law claims, and will not receive any payment from the settlement fund.

EXCLUDING YOURSELF FROM THE SETTLEMENT

9. What does excluding myself from the settlement mean?

If you don't want a payment or credits from the settlement, then you may exclude yourself (i.e. opt-out) from the settlement. To exclude yourself from the settlement, you must submit a statement to the Claims Administrator with your name, address, and phone number stating "I/We request to be excluded from the Settlement Class and Settlement in the **Viridian Action**." To be considered valid, your opt-out statement must be returned to the Claims Administrator at the above address so that it is postmarked or received on or before [INSERT END OF NOTICE PERIOD].

If you choose to opt out of the settlement: (1) you will not get any settlement payment; and (2) you cannot object to the settlement. By opting out, you will not be legally bound by the settlement, and may still pursue your own claims against Viridian at your own expense if they are still timely under the applicable statute of limitations.

OBJECTING TO THE SETTLEMENT

10. How can an objection be made?

If you fall within the definition of a Class Member set forth above, you may object to the settlement. You may not object to the Settlement if you exclude yourself from the lawsuit by opting out. To object, you must file a written objection with the Clerk of the Court, the Settlement Administrator, and must also serve your written objection on the lawyers representing the Class and Viridian at the addresses below.

Your objection must include (a) the name of the case, *Sanborn, et al. v. Viridian Energy, Inc.*, Civil Action No. 3:14-cv-01731; (b) your name, address, email, telephone number, and signature; (c) a statement of the nature of the objection, and the reasons and grounds for the objection; (d) copies of any papers you intend to present to the Court in support of the objection at the Fairness Hearing; (e) a statement of whether the objector intends to appear at the Final Approval Hearing, and, if the objector intends to appear at the Final Approval Hearing through hired counsel, then the identity of all attorneys representing the objector who will appear at the Final Approval Hearing; (f) a list of all persons who will be called to testify in support of the objection, if any; (g) a statement of the objector's membership in the Settlement Class, including all the information required by the Claim Form; and (h) a detailed list of any other objections that the objector or his, her, or its counsel have submitted in any state or federal court during the previous five (5) years. If the objector or his, her, or its counsel have not objected to any other class action during the previous five (5) years, then the objector shall affirmatively state so in his, her, or its objection.

Your objection must be filed with the Court and mailed so that it is received no later than [INSERT END OF NOTICE PERIOD]. You have the right to retain a lawyer at your own expense to file your objection. If your lawyer intends to appear at the Fairness Hearing, your lawyer must file and serve a notice of appearance with the Clerk of the Court.

Members of the Settlement Class who do not timely make their objections in this manner will be deemed to have waived all objections and shall not be entitled to be heard at the Final Fairness Hearing.

COURT AND SETTLEMENT ADMINISTRATOR	CLASS COUNSEL	VIRIDIAN'S COUNSEL
Clerk of the United States District Court for the District of Connecticut 915 Lafayette Blvd, Bridgeport, Connecticut 06604 Settlement Administrator XXXX XXXX	Seth R. Klein, Esq. IZARD, KINDALL & RAABE, LLP 29 South Main Street, Suite 305 West Hartford, CT 06107 Steven L. Wittels, Esq. WITTELS LAW, P.C. 18 Half Mile Road Armonk, New York 10504	Maura Barry Grinalds, Esq. Richard Bernardo, Esq. SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP 4 Times Square New York, NY 10036 Daniel S. Blynn, Esq. VENABLE LLP 600 Massachusetts Avenue, NW Washington, DC 20001

THE LAWYERS REPRESENTING YOU

11. Who is Class Counsel?

The Court has appointed the following lawyers as Class Counsel to represent you and the class of customers:

- Lead Class Counsel: Robert IZARD, Craig Raabe, and Seth Klein of IZARD, Kindall & Raabe, 29 South Main Street, Suite 305, West Hartford, CT 06107
 - o (800) 979-5499
- Lead Class Counsel: Steven L. Wittels, J. Burkett McInturff, and Tiasha Palikovic of Wittels Law, P.C.
 - o (914) 319-9945
- Class Counsel: Jonathan Shub of Kohn, Swift & Graf, P.C.
 - o (215) 238-1700
- Class Counsel: Daniel Hymowitz and Andre Belenky of Hymowitz Law Group, PLLC.
 - o (718) 807-9900
- Class Counsel: Richard Greenfield of Greenfield & Goodman LLC and Cuneo,

Gilbert & LaDuca, LLP, P.C.
o (917) 495-4446

Class Counsel have worked for more than three years without pay or any guarantee of obtaining a recovery for Viridian’s current and former customers as described in this settlement notice. In a class action, it is customary for the attorneys representing the class to request a legal fee and reimbursement of expenses. Thus, Class Counsel will ask the Court for reimbursement of reasonable litigation costs and service awards for the class representatives in an amount up to \$4,500,000. Class Counsel will ask the Court to authorize service awards of \$5,000 to each of the named Class Representatives for their significant contributions in bringing this action and providing important information used to achieve the settlement. The service awards are also in recognition of the risks these individuals took in coming forward publicly. The service awards will be paid from any award of Class Counsels’ attorneys’ fees and expenses.

THE FAIRNESS HEARING

12. What is a Fairness Hearing?

The Court will hold a final Fairness Hearing on the fairness and adequacy of the proposed settlement and its terms, on _____, 2018 at ____:____ [a.m./p.m.] before the Honorable Stefan R. Underhill of the United States District Court for the District of Connecticut, 915 Lafayette Boulevard, Bridgeport, Connecticut 06604. *You do not have to appear at this Fairness Hearing.*

GETTING MORE INFORMATION

13. How do I get more information about the settlement?

You can contact the Settlement Administrator at (800)-xxx-xxxx; or you may visit the website at www. _____ where you will find the Claim Form, important pleadings (such as the complaint), the full Settlement Agreement, and answers to frequently asked questions about the settlement.

You may also contact Lead Class Counsel listed above with any questions. You can also review the full court file for *Sanborn, et al. v. Viridian Energy, Inc.*, Civil Action No. 3:14-cv-01731, during regular business hours in the Clerk’s Office at 915 Lafayette Boulevard, Bridgeport, Connecticut 06604.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR VIRIDIAN ENERGY WITH INQUIRES ABOUT THE SETTLEMENT

EXHIBIT C

**If you purchased electric or gas service from
 Viridian Energy, you could get a payment
 from a class action settlement**

A federal court authorized this Notice of Class Action Settlement.

It is not a solicitation from a lawyer.

Contact the Claims Administrator or the Lawyers for the Class listed below if you have any questions after reading this Notice. Do not contact the Court with questions.

Read this Notice carefully, as your legal rights may be affected whether or not you respond.

YOUR RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	This is the only way you get a payment. <u>The Claim Form must be submitted by [DATE].</u> Submit an online Claim Form at www.xxxx.com . You can also download a Claim Form to submit by mail at www.xxxx.com or receive one by calling 1-888-XXX-XXXX. If you cannot find the postcard mailed to you call 1-888-XXX-XXXX.
EXCLUDE YOURSELF	Get no payment. If you ask to be excluded you will not receive any benefits from this settlement. But you keep any rights to sue Viridian separately about the same legal claims in this lawsuit.
OBJECT	Notify the Court if you have any objections to the settlement.
DO NOTHING	Get no payment. Give up rights.

- These rights and options – and the deadlines to exercise them – are explained in this Notice.
- Payments will be made if the Court approves the settlement and it becomes final. Please be patient.

WHAT THIS NOTICE CONTAINS

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BASIC INFORMATION

1. What is this Notice?

This Notice describes the benefits available from a proposed settlement of a class action lawsuit, and your options. The company's records show that sometime between July 1, 2009 and December 31, 2016 you may have purchased your electricity or gas from Viridian Energy, Inc. or one of its related companies, Viridian Energy PA LLC, Viridian Energy NY, LLC, and Viridian Energy, LLC (referred to collectively in this Notice as "Viridian" or "Defendants").

If the Court approves the settlement and it becomes final, an administrator appointed by the Court will make the payments that the settlement provides.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

2. What is this lawsuit about?

The class action lawsuit was brought on behalf of Viridian's energy customers and alleges that the company charged an excessive variable rate for gas and electricity regardless of fluctuations in the underlying wholesale market price. Separate class action lawsuits were filed both in Connecticut and Pennsylvania and allege that Viridian breached its contracts with customers and its duty of good faith and fair dealing, and also violated various consumer protection laws. Viridian denies any wrongdoing, and contends that its variable rates were adequately disclosed, consistent with its representations, and properly calculated based on the relevant market factors for electric and gas service.

3. Why is this brought as a class action?

In a class action, one or more people called "Class Representatives" sue for all people who have similar claims. Together, these people are called a "Settlement Class" or "Class Members." One court resolves the legal issues for all Class Members, except for those who exclude themselves from the Settlement Class.

4. Why is there a settlement?

After several years of litigation and more than a year of negotiations, the parties have agreed to a settlement in order to make monetary or other benefits available to Viridian's current and former energy customers. A settlement avoids the uncertainty, risks, and delay of litigation. Both the Class Representatives and their attorneys believe that the settlement is fair and in the best interests of the Class.

WHO IS IN THE SETTLEMENT?

5. How do I know if I am part of the settlement?

Class Members entitled to receive a monetary payment or credit benefit under the settlement include all current and former Viridian customers enrolled in a variable rate plan between July 1, 2009 and December 31, 2016.

THE SETTLEMENT BENEFITS – WHAT YOU GET**6. What does the settlement provide?**

This section describes the benefits available to each Class Member who submits a valid claim form for each gas and/or electric account with Viridian. Eligible claimants fall in one of two classes: “Average Usage Class Members” (customers with an average annual utilization rate of 25,000 or less kilowatt hours or 2,500 or less therms) and “Above-Average Usage Class Members” (customers with an average annual utilization rate of more than 25,000 kilowatt hours or more than 2,500 therms). Viridian’s records show that you were enrolled in a variable rate plan and are an Above Average Usage Class Member. If you timely submit a valid claim form or forms, your payment under the settlement depends on whether you are a gas or electric customer (or both), the amount of your energy usage, how long you were a Viridian customer, and whether you elect to receive a cash payment by check, or a credit on your future bills if you are a current Viridian customer or sign up again for energy service from Viridian.

The total aggregate value of the settlement from which cash settlement payments will be made is \$18,500,000. This amount will be used to pay Class Members’ “Cash Benefit Option” (described below), administration costs of the class action settlement, and attorneys’ fees and expenses. Should the total Calculated Loss of the valid claims filed by Average Usage Class Members and Above-Average Usage Class Members exceed the \$18.5 million settlement fund minus Court-approved fees and expenses, each claimant’s award will be reduced *pro rata*.

The Settlement Amounts You Can Claim***Cash Benefit Option***

If you choose to receive a check (as opposed to a credit on your future bills), your cash benefit payment will be the following for each gas and/or electric account for which you submit a valid Claim Form:

A cash payment of the greater of \$10.00 or 65% of the “Calculated Amount” up to \$500.00 based upon a formula that compares the variable rate that you were charged by Viridian per kilowatt hour (for electricity) or therm (for gas) based on Viridian’s records, against a weighted average of the relevant utility’s Price to Compare during that same period of time, adjusting for, among other things, the cost for green energy and Viridian’s costs and margin (the “cash option”).

The “Calculated Amount” is the difference between the (i) actual payment made by each Class Member during the period in which the Class Member was enrolled in a Viridian variable rate electricity and/or gas plan during the Class Period based on Viridian’s records (or reasonable, good-faith estimates where records are incomplete or inconsistent), and (ii) amount the Class Member would have paid during that same period if the Class Member paid the Price to Compare (“PTC”), plus one cent (\$0.01) per kilowatt hour/therm, plus a 20% margin. The PTC is a good faith estimate of the price that the customer’s relevant public utility would

Exhibit C – Viridian Settlement Agreement
Long Form Notice for Above Average Usage Class

have charged for the supply portion of the electric or gas service, based on reasonably available information. The PTC will be based on a weighted average price per therm or kilowatt hour charged by the relevant public utility for the duration of the period in which the Class Member was enrolled in a Viridian variable rate electricity and/or natural gas plan during the Class Period. The one-cent addition reflects an estimated average premium charged by public utilities for green energy.

Billing Credit Option

Class Members who are current customers at the time a Claim is made or former customers (who wish to re-enroll with Viridian) who have a Calculated Amount above zero dollars (\$0.00), shall be entitled in lieu of seeking a Cash Benefit, to a benefit of a credit of eight dollars and fifty cents (\$8.50) per month on their future Viridian energy bills for a maximum of twelve (12) months (*i.e.*, a maximum value of one hundred and two dollars (\$102.00)), to be credited at the end of the Settlement Class Member's service period (or twelve (12) months, whichever comes first). Former Customers who elect this option must re-enroll within one-hundred-eighty (180) days from the end of the Claim Period. If you choose this option, but your Calculated Amount is zero dollars (\$0.00) or less, you will be provided the cash benefit option described above.

To find out more about both options, please visit www.xxxxxxxxxx.com or call (XXX) XXX-XXXX.

HOW TO GET A PAYMENT – SUBMIT A CLAIM FORM**7. How can I get a payment?**

To qualify for payment, you must timely submit the Claim Form using the Class Member Identifier contained on the front of the post card you received. You can mail the Claim Form. You can also submit an online Claim Form at www.xxxx.com. If you want to download a claim form and mail it, you can download the Claim Form at www.xxxx.com or receive one by calling 1-888-XXX-XXXX. If you cannot find the postcard mailed to you call 1-888-XXX-XXXX.

You must submit your Claim Form online or by mail before [INSERT END OF NOTICE PERIOD].

Incomplete or untimely Claim Forms will render you ineligible to receive any payment under the settlement. Payments will only be made if the Court approves the settlement and it becomes final.

By submitting a Claim Form, you are agreeing to release all Defendants from any potential claims you might have regarding your energy purchases from these companies.

8. What happens if I don't send in a Claim Form?

If you don't send in a Claim Form and don't exclude yourself from the settlement as described in the next section below, you will still be bound by all the terms of the settlement, including

releasing any applicable federal and state law claims, and will not receive any payment from the settlement fund.

EXCLUDING YOURSELF FROM THE SETTLEMENT

9. What does excluding myself from the settlement mean?

If you don't want a payment or credits from the settlement, then you may exclude yourself (i.e. opt-out) from the settlement. To exclude yourself from the settlement, you must submit a statement to the Claims Administrator with your name, address, and phone number stating "I/We request to be excluded from the Settlement Class and Settlement in the **Viridian Action**." To be considered valid, your opt-out statement must be returned to the Claims Administrator at the above address so that it is postmarked or received on or before [INSERT END OF NOTICE PERIOD].

If you choose to opt out of the settlement: (1) you will not get any settlement payment; and (2) you cannot object to the settlement. By opting out, you will not be legally bound by the settlement, and may still pursue your own claims against Viridian at your own expense if they are still timely under the applicable statute of limitations.

OBJECTING TO THE SETTLEMENT

10. How can an objection be made?

If you fall within the definition of a Class Member set forth above, you may object to the settlement. You may not object to the Settlement if you exclude yourself from the lawsuit by opting out. To object, you must file a written objection with the Clerk of the Court, the Settlement Administrator, and must also serve your written objection on the lawyers representing the Class and Viridian at the addresses below.

Your objection must include (a) the name of the case, *Sanborn, et al. v. Viridian Energy, Inc.*, Civil Action No. 3:14-cv-01731; (b) your name, address, email, telephone number, and signature; (c) a statement of the nature of the objection, and the reasons and grounds for the objection; (d) copies of any papers you intend to present to the Court in support of the objection at the Fairness Hearing; (e) a statement of whether the objector intends to appear at the Final Approval Hearing, and, if the objector intends to appear at the Final Approval Hearing through hired counsel, then the identity of all attorneys representing the objector who will appear at the Final Approval Hearing; (f) a list of all persons who will be called to testify in support of the objection, if any; (g) a statement of the objector's membership in the Settlement Class, including all the information required by the Claim Form; and (h) a detailed list of any other objections that the objector or his, her, or its counsel have submitted in any state or federal court during the previous five (5) years. If the objector or his, her, or its counsel have not objected to any other class action during the previous five (5) years, then the objector shall affirmatively state so in his, her, or its objection.

Your objection must be filed with the Court and mailed so that it is received no later than [INSERT END OF NOTICE PERIOD]. You have the right to retain a lawyer at your own expense to file your objection. If your lawyer intends to appear at the Fairness Hearing, your lawyer must file and serve a notice of appearance with the Clerk of the Court.

Exhibit C – Viridian Settlement Agreement
Long Form Notice for Above Average Usage Class

Members of the Settlement Class who do not timely make their objections in this manner will be deemed to have waived all objections and shall not be entitled to be heard at the Final Fairness Hearing.

COURT AND SETTLEMENT ADMINISTRATOR	CLASS COUNSEL	VIRIDIAN'S COUNSEL
Clerk of the United States District Court for the District of Connecticut 915 Lafayette Blvd, Bridgeport, Connecticut 06604 Settlement Administrator XXXX XXXX	Seth R. Klein, Esq. IZARD, KINDALL & RAABE, LLP 29 South Main Street, Suite 305 West Hartford, CT 06107 Steven L. Wittels, Esq. WITTELS LAW, P.C. 18 Half Mile Road Armonk, New York 10504	Maura Barry Grinalds, Esq. Richard Bernardo, Esq. SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP 4 Times Square New York, NY 10036 Daniel S. Blynn, Esq. VENABLE LLP 600 Massachusetts Avenue, NW Washington, DC 20001

THE LAWYERS REPRESENTING YOU

11. Who is Class Counsel?

The Court has appointed the following lawyers as Class Counsel to represent you and the class of customers:

- Lead Class Counsel: Robert IZARD, Craig Raabe, and Seth Klein of IZARD, KINDALL & RAABE, 29 South Main Street, Suite 305, West Hartford, CT 06107
 - o (800) 979-5499
- Lead Class Counsel: Steven L. Wittels, J. Burkett McInturff, and Tiasha Palikovic of Wittels Law, P.C.
 - o (914) 319-9945
- Class Counsel: Jonathan Shub of Kohn, Swift & Graf, P.C.
 - o (215) 238-1700
- Class Counsel: Daniel Hymowitz and Andre Belenky of Hymowitz Law Group, PLLC.
 - o (718) 807-9900
- Class Counsel: Richard Greenfield of Greenfield & Goodman LLC and Cuneo,

Gilbert & LaDuca, LLP, P.C.
o (917) 495-4446

Class Counsel have worked for more than three years without pay or any guarantee of obtaining a recovery for Viridian’s current and former customers as described in this settlement notice. In a class action, it is customary for the attorneys representing the class to request a legal fee and reimbursement of expenses. Thus, Class Counsel will ask the Court for reimbursement of reasonable litigation costs and service awards for the class representatives in an amount up to \$4,500,000. Class Counsel will ask the Court to authorize service awards of \$5,000 to each of the named Class Representatives for their significant contributions in bringing this action and providing important information used to achieve the settlement. The service awards are also in recognition of the risks these individuals took in coming forward publicly. The service awards will be paid from any award of Class Counsels’ attorneys’ fees and expenses.

THE FAIRNESS HEARING

12. What is a Fairness Hearing?

The Court will hold a final Fairness Hearing on the fairness and adequacy of the proposed settlement and its terms, on _____, 2018 at ____:____ [a.m./p.m.] before the Honorable Stefan R. Underhill of the United States District Court for the District of Connecticut, 915 Lafayette Boulevard, Bridgeport, Connecticut 06604. *You do not have to appear at this Fairness Hearing.*

GETTING MORE INFORMATION

13. How do I get more information about the settlement?

You can contact the Settlement Administrator at (800)-xxx-xxxx; or you may visit the website at www. _____ where you will find the Claim Form, important pleadings (such as the complaint), the full Settlement Agreement, and answers to frequently asked questions about the settlement.

You may also contact Lead Class Counsel listed above with any questions. You can also review the full court file for *Sanborn, et al. v. Viridian Energy, Inc.*, Civil Action No. 3:14-cv-01731, during regular business hours in the Clerk’s Office at 915 Lafayette Boulevard, Bridgeport, Connecticut 06604.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR VIRIDIAN ENERGY WITH INQUIRES ABOUT THE SETTLEMENT

EXHIBIT D

**NOTICE OF PROPOSED CLASS
ACTION SETTLEMENT**

*THE COURT AUTHORIZED THIS NOTICE. THIS IS NOT
A SOLICITATION FROM A LAWYER.*



PRESORTED
FIRST-CLASS
MAIL
POSTAGE PAID
PERMIT 3780

**If you submit a Claim
Form you can get cash
or an invoice credit from
a class action settlement
with Viridian Energy.**

**VIRIDIAN ENERGY
CLAIMS ADMINISTRATOR
c/o XXXXXXXX
PO BOX XXXXXXX
ARMONK, NY 10504**

CLASS MEMBER IDENTIFIER
[CLASS MEMBER ID IN DIGITS]

877-xxx-xxxx
WWW.**XXXXXXX**.com

[FIRST1] [LAST1]

[BUSINESSNAME]
[ADDR1] [ADDR2]

**The Deadline to Submit a Claim
Form is [DATE]**

You may receive cash or an invoice credit from this settlement valued at up to \$18.5 million.

What is this About? A proposed settlement has been reached in a lawsuit concerning Viridian Energy, Inc. (“Viridian”) variable rate energy plans.

Who’s Included? All Viridian customers who were enrolled (initially or through “rolling over” from a fixed rate plan) in a Viridian variable rate electricity and/or gas plan at any time through Dec. 31, 2016.

What are the Benefits? You are a member of the Average Usage Class. If you submit a Claim Form, you can receive a cash payment calculated based on various factors, including the rates you paid and charged by your local utility and the energy you purchased. If the total value of all claims submitted, plus fees and expenses, exceed \$18.5 million, then your cash payment will be reduced. Alternatively, you can choose to receive a credit on future Viridian energy bills (for up to 12-months). See the Settlement Website, www.XXX.com for details.

How can I get a Benefit? Use the Class Member Identifier on the front of this postcard to complete and submit a Claim Form either online or by mail to [\[SETTLEMENT NAME\]](#), c/o [\[Administrator\]](#). Claim Forms are available at the Settlement Website, by calling [\[TELEPHONE NUMBER\]](#), or by writing to the Settlement Administrator.

Claims Deadline: Claim Forms must be received by [\[DATE\]](#).

Your other options. You will be bound by the terms of the settlement and unable to sue on your own unless you exclude yourself in writing by [\[DATE\]](#). If you want to stay in the settlement, you may object by [\[DATE\]](#). The Court will hold a hearing on [\[DATE\]](#) to consider whether to approve the settlement and to award attorneys’ fees and expenses, and Service Awards for the Class Representatives. You may attend this hearing, but you do not have to. Complete information is available in the full notice on the Settlement Website.

Who Represents Me? The Court appointed Class Counsel who you do not have to pay. If you want your own lawyer, you may hire one at your expense.

EXHIBIT E

**NOTICE OF PROPOSED CLASS
ACTION SETTLEMENT**

*THE COURT AUTHORIZED THIS NOTICE. THIS IS NOT
A SOLICITATION FROM A LAWYER.*



PRESORTED
FIRST-CLASS
MAIL
POSTAGE PAID
PERMIT 3780

**If you submit a Claim
Form you can get cash
or an invoice credit from
a class action settlement
with Viridian Energy.**

**VIRIDIAN ENERGY
CLAIMS ADMINISTRATOR
c/o XXXXXXXX
PO BOX XXXXXXX
ARMONK, NY 10504**

CLASS MEMBER IDENTIFIER
[CLASS MEMBER ID IN DIGITS]

877-xxx-xxxx
WWW.**XXXXXXX**.com

**The Deadline to Submit a Claim
Form is [DATE]**

[FIRST1] [LAST1]

[BUSINESSNAME]
[ADDR1] [ADDR2]

You may receive cash or an invoice credit from this settlement valued at up to \$18.5 million.

What is this About? A proposed settlement has been reached in a lawsuit concerning Viridian Energy, Inc. (“Viridian”) variable rate energy plans.

Who’s Included? All Viridian customers who were enrolled (initially or through “rolling over” from a fixed rate plan) in a Viridian variable rate electricity and/or gas plan at any time through Dec. 31, 2016.

What are the Benefits? You are a member of the Above Average Usage Class. If you submit a Claim Form, you can receive a cash payment calculated based on various factors, including the rates you paid and charged by your local utility and the energy you purchased. If the total value of all claims submitted, plus fees and expenses, exceed \$18.5 million, then your cash payment will be reduced. Alternatively, you can choose to receive a credit on future Viridian energy bills (for up to 12-months). See the Settlement Website, www.XXX.com for details.

How can I get a Benefit? Use the Class Member Identifier on the front of this postcard to complete and submit a Claim Form either online or by mail to [SETTLEMENT NAME], c/o [Administrator]. Claim Forms are available at the Settlement Website, by calling [TELEPHONE NUMBER], or by writing to the Settlement Administrator.

Claims Deadline: Claim Forms must be received by [DATE].

Your other options. You will be bound by the terms of the settlement and unable to sue on your own unless you exclude yourself in writing by [DATE]. If you want to stay in the settlement, you may object by [DATE]. The Court will hold a hearing on [DATE] to consider whether to approve the settlement and to award attorneys’ fees and expenses, and Service Awards for the Class Representatives. You may attend this hearing, but you do not have to. Complete information is available in the full notice on the Settlement Website.

Who Represents Me? The Court appointed Class Counsel who you do not have to pay. If you want your own lawyer, you may hire one at your expense.

EXHIBIT F

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

LORI SANBORN, BDK ALLIANCE LLC,
IRON MAN LLC and STEPHANIE
SILVER, DAVID STEKETEE, SUSANNA
MIRKIN, BORIS MIRKIN, ELIZABETH
HEMBLING, PATRICIA KULESA,
STEWART CONNARD and STEVEN
LANDAU on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

VIRIDIAN ENERGY, INC. and VIRIDIAN
ENERGY PA LLC.,

Defendants.

No. 3:14-cv-01731 (SRU)

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT, CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY
AND APPROVAL OF NOTICE TO CLASS AND RELATED MATTERS**

On December ____, 2017, Plaintiffs Lori Sanborn, BDK Alliance LLC, Iron Man, LLC, Stephanie Silver, David Steketee, Susanna and Boris Mirkin, Elizabeth Hembling, Stewart Connard, Patricia Kulesa, and Steven Landau, acting individually and on behalf of the proposed Settlement Classes, as defined below (collectively, “Plaintiffs” or, individually, a “Plaintiff”) and Defendants Viridian Energy, Inc. and Viridian Energy PA LLC, as well as Viridian Energy NY, LLC, and Viridian Energy, LLC, (collectively, “Viridian”) entered into a Class Action Settlement Agreement (“Agreement”). Pursuant to

the Agreement, Plaintiffs have moved for entry of an order certifying the classes pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) for settlement purposes only, granting preliminary approval to the settlement set forth in the Agreement (“Settlement”), and approving Notice to the Class and other related matters. All defined terms in this Order (i.e., all capitalized words or phrases) shall have the same definitions and meanings as those set forth in the Agreement.

Having reviewed the Agreement and considered the Plaintiffs’ submissions in support of class certification for settlement purposes and preliminary approval of the Agreement, the Court now **FINDS, CONCLUDES, AND ORDERS** as follows:

I. CERTIFICATION OF THE SETTLEMENT CLASSES

The Agreement provides for a nationwide class settlement of the Released Claims, as defined below, of two proposed classes concerning certain practices with respect to Viridian variable rate electricity and/or gas plans. Viridian has at all times disputed, and continues to dispute, Plaintiffs’ allegations in the Litigation, denies any liability for any of the claims that have or could have been alleged by Plaintiffs or other members of the Settlement Classes, and denies any wrongdoing. However, as a part of the Agreement, Viridian is not objecting to the certification of the two settlement classes defined below for settlement purposes only. The Agreement settles all Released Claims that have been or could have been brought in the proposed class-action Litigation.

A. The Court has considered (1) allegations, information, arguments, and authorities provided by the parties in connection with pleadings and motions previously filed by each of them in this case; (2) information, arguments, and authorities provided in the memoranda

submitted in support of Plaintiffs' preliminary approval motion; (3) Viridian's decision to not object to certification of the settlement classes specified in the Agreement; (4) the terms of the Agreement including, but not limited to, the definition of the settlement classes and the benefits to be provided to each settlement class, respectively; and (5) the Agreement's elimination of any potential manageability issues, ascertainability issues, and individualized issues of fact and law that could have had a bearing on the certification of these nationwide classes for trial. Based on those considerations, the Court reviewed the required factors for class certification under Fed. R. Civ. P. 23(a) and 23(b)(3) and makes the following findings.

1. Each Settlement Class is ascertainable. Each Settlement Class is defined solely with reference to objective criteria. It is administratively feasible to determine class membership in each Settlement Class during the Class Period from July 1, 2009 through December 31, 2016.

2. From July 1, 2009 through December 31, 2016, thousands of customers entered into variable rate contracts with Viridian for electricity and/or natural gas supply services. These numbers readily satisfy the numerosity requirement of Rule 23(a).

3. There are questions of law and fact common to all members of each Settlement Class, respectively, based on Viridian's sale of the variable rate plans within and among each respective Settlement Class. Such questions include, but are not limited to, the following:

a. Whether Viridian made misrepresentations about the variable rate plans being related to wholesale gas or electricity rates; and

b. Whether the variable rate plans were based on wholesale market rates.

4. The claims of the Class Representatives for each Settlement Class are typical of their respective Settlement Class. The Class Representatives of each Settlement Class are members of their respective Settlement Class and allege that they have been damaged by the same conduct of Viridian that they allege has damaged other members of their respective Settlement Class. Class Representatives' claims are not in conflict with or antagonistic to the claims of the Settlement Class as a whole. The claims of Class Representatives and other members of that respective Settlement Class are based upon corresponding theories.

5. Class Representatives can fairly, fully, and adequately protect the interests of the Settlement Class. Lead Class Counsel are experienced in prosecuting complex class-action litigation, and Class Representatives and Class Counsel have no interest that conflicts with, or is adverse to, the interests of either or both of the Settlement Classes.

6. Questions of law and fact common to all members of each of the Settlement Classes, which predominate over any questions affecting only individual members of that respective Settlement Class for settlement purposes.

7. A nationwide class action for settlement purposes is superior to other available methods for the fair and efficient adjudication of this controversy.

B. Thus, the Court certifies the following two Settlement Classes pursuant to Fed. R.

Civ. P. 23(a) and 23(b)(3) for settlement purposes only:

Average Usage Class: All persons in the United States who, during the Class Period, were enrolled (either initially or through "rolling over" from a fixed rate

Exhibit F to Viridian Settlement Agreement
Proposed Preliminary Approval Order

plan) in a Viridian variable rate electricity and/or gas plan with an average annual utilization rate of 25,000 or less kilowatt hours or 2,500 or less therms.

Above Average Usage Class: All persons in the United States who, during the Class Period, were enrolled (either initially or through “rolling over” from a fixed rate plan) in a Viridian variable rate electricity and/or gas plan with an average annual utilization rate of more than 25,000 kilowatt hours or more than 2,500 therms, respectively.

The Average Usage Class and the Above Average Usage Class are collectively referred to as the “Settlement Classes” herein.

Excluded from the Settlement Classes are: Viridian Energy, Inc., Viridian Energy PA LLC, Viridian Energy NY, LLC, and Viridian Energy, LLC; any of their parents, subsidiaries, or affiliates; any entity controlled by any of them; any officer, director, employee, legal representative, agent, predecessor, successor, or assignee of Viridian Energy, Inc., Viridian Energy PA LLC, Viridian Energy NY, LLC, and/or Viridian Energy, LLC; any person enrolled in a Viridian Energy, Inc., Viridian Energy PA LLC, Viridian Energy NY, LLC, or Viridian Energy, LLC Minus-5, 3DOM, or Term Free Index plan; any person who has previously released claims that will be released by this Settlement; federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof); Independent Viridian Associates and former Viridian employees; and the Judges to whom any of the actions in the Litigation are assigned and any members of their immediate families.

The Class Period means July 1, 2009 through December 31, 2016.

C. The Court appoints Plaintiffs Lori Sanborn, Iron Man, LLC, Stephanie Silver, David Steketee, Susanna and Boris Mirkin, Elizabeth Hembling, Stewart Connard, Patricia Kulesa, and Steven Landau as the Class Representatives of the Average Usage Class.

D. The Court appoints Plaintiff BDK Alliance LLC as the Class Representative of the Above Average Usage Class.

E. The Court appoints IZARD, KINDALL & RAABE, LLP; WITTELS LAW, P.C.; HYMOWITZ LAW GROUP, PLLC; KOHN SWIFT & GARF PC; MARCUS & MACK, P.C.; GREENFIELD

& GOODMAN LLC; CUNEO, GILBERT & LADUCA, LLP as Class Counsel for the Settlement Classes.

F. The Court also appoints IZARD, KINDALL & RAABE, LLP AND WITTELS LAW, P.C. LEAD CLASS COUNSEL for the Settlement Classes.

G. If for any reason the Settlement Agreement ultimately does not become effective, Viridian's conditional decision to not object to the certification of the Settlement Classes shall be null and void in its entirety; this Order certifying a nationwide class shall be vacated; and Viridian and Plaintiffs shall return to their respective positions in the Litigation as those positions existed immediately before the execution of the Settlement Agreement without prejudice.

II. PRELIMINARY APPROVAL OF THE TERMS OF THE SETTLEMENT

A. . The Settlement requires Viridian to pay (i) Administration and notice expenses, (ii) valid claims for cash benefits to members of the Settlement Classes, and (iii) an award to Class Counsel for attorneys' fees and costs and service awards to Class Representatives, with the aggregate amounts of (i), (ii), and (iii) limited to a maximum of Eighteen Million Five Hundred Thousand Dollars (\$18,500,000.00) ("Settlement Amount") as more particularly described in the Settlement Agreement.

B. Average Usage Class Members have a cash benefit option of the greater of \$5.00 or 65% of the Calculated Amount, which takes into account the difference between what the Average Usage Class Member paid pursuant to a Viridian variable rate electricity or gas plan during the Claim Period versus what the Average Usage Class Member would have paid the local public utility during the same period. The Average Usage cash benefit cannot exceed \$425.00 per valid claim. For Average Usage Class Members who: (i) are current customers of

Exhibit F to Viridian Settlement Agreement
Proposed Preliminary Approval Order

Viridian at the time a claim under this Settlement is made or (ii) former customer Average Usage Class Members who wish to re-enroll with Viridian and who have a Calculated Amount above zero dollars (\$0.00), there also is a billing credit option, in lieu of a cash benefit, that is worth \$102.00 over twelve months to be credited at the end of the Settlement Class Member's service period (or twelve (12) months, whichever date comes first).

C. Above Average Usage Class Members have a cash benefit option of the greater of \$10.00 or 65% of the Calculated Amount, which takes into account the difference between what the Above Average Usage Class Member paid pursuant to a Viridian variable rate electricity or gas plan during the Claim Period versus what the Above Average Usage Class Member would have paid the local public utility during the same period. The Above Average Usage cash benefit cannot exceed \$500.00 per valid claim. For Above Average Usage Class Members who: (i) are current customers of Viridian at the time a claim under this Settlement is made or (ii) former customer Above Average Usage Class Members who wish to re-enroll with Viridian, and who have a Calculated Amount above zero dollars (\$0.00), there also is the billing credit option, in lieu of a cash benefit, that is worth \$102.00 over twelve months, net of any early termination fees, to be credited at the end of the Settlement Class Member's service period (or twelve (12) months, whichever date comes first).

D. The monetary value of Billing Credit Options elected by Settlement Class Members will not count against the Settlement Amount.

E. Further, Viridian shall provide its current Independent Viridian Associates ("IVAs") who are involved in the solicitation of potential Viridian customers with written notice of the IVAs' contractual requirement to abide by Viridian's policies regarding advertising and

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marketing claims including, but not limited to, refraining from making unsubstantiated claims regarding cost savings or how Viridian's variable rates are determined, and advising IVAs that Viridian will penalize IVAs for any failure to comply with Viridian's policies, including, where appropriate, by terminating the IVA's relationship with Viridian.

F. On a preliminary basis, therefore, taking into account (1) the defenses asserted by Viridian, (2) the risks to the members of the Settlement Classes that Viridian would successfully defend against claims arising out of the facts and legal theories pled and asserted in the Litigation, whether litigated by members of the Settlement Classes themselves or on their behalf as a class action, and (3) the length of time that would be required for members of the Settlement Classes, or any group of members of the Settlement Class, to obtain a final judgment through one or more additional trials and appeals, the Court finds that the proposed settlement, which includes the benefits described above in exchange for, *inter alia*, dismissal of the Litigation with prejudice and the release of certain claims filed or that could have been filed against Defendants by Plaintiffs and Class Members, as set forth in the Settlement Agreement, is within the range of approvable settlements. Moreover, the Parties have reached the Settlement after extensive litigation, discovery, and engaging in arms-length settlement negotiations over the course of over a year. *See Menkes v. Stolt-Nielsen S.A.*, 270 F.R.D. 80, 101 (D. Conn. 2010) ("Preliminary approval of a class action settlement, in contrast to final approval, is at most a determination that there is what might be termed 'probable cause' to submit the proposal to class members and hold a full-scale hearing as to its fairness As such, it is appropriate where it is the result of serious, informed, and non-collusive negotiations, where there are no grounds to doubt its fairness and no other obvious deficiencies, and where the settlement appears to fall within the

range of possible approval.”) (internal citation and quotation omitted). For all these reasons, the Settlement before the Court falls within the appropriate range of possible approval and does not appear in any way to be the product of collusion.

G. Accordingly, it is ORDERED and ADJUDGED that the Settlement Agreement is preliminarily approved and the Settlement Class should be provided notice of it.

III. APPROVAL OF THE FORM OF THE NOTICES TO THE CLASSES AND CLAIM FORM, THE PLANS FOR DISSEMINATION OF THE NOTICES, AND APPOINTMENT OF SETTLEMENT ADMINISTRATOR

A. As provided for in the Settlement Agreement, the Parties have submitted the following proposed notices: (i) a Long Form Notice for the Average Usage Class (Exhibit B to the Settlement Agreement), (ii) a Long Form Notice for the Above Average Usage Class (Exhibit C to the Settlement Agreement), (iii) a Short Form Notice to the Average Usage Class (Exhibit D to Settlement Agreement), and (iv) a proposed Short Form Notice for the Above Average Usage Class (Exhibit E to the Settlement Agreement). A proposed Claim Form also has been submitted to the Court, which is attached as Exhibit A to the Settlement Agreement.

B. The notice plan provides that no later than thirty (30) days after the Court grants Preliminary Approval, the Settlement Administrator shall disseminate the Short Form Notices with a unique Class Member identifier by either (1) email to the email address of Class Members if an e-mail address was provided by the Class Member, or (2) mail to the last known postal address to those Class Members who did not provide an email address. The Settlement Agreement sets forth adequate provisions for the handling of any returned mail or emails.

C. Prior to mailing any Short Form Notices the Settlement Administrator shall compare the information provided by Viridian for each Class Member with a national change of address database and update Class Member addresses as required.

D. Not later than thirty (30) days after entry of this Order, the Settlement Administrator will create and maintain a website applicable to each Settlement Class to provide, among other things, copies of the applicable Long-Form Notices, the Settlement Agreement, the Settlement Administrator's and Class Counsel's contact information, certain selected pleadings and Court orders from this Action, a method for the electronic submission of Claim Forms, a method for requesting the Claim Form(s) by mail, and a list of frequently asked questions likely to be made by Settlement Class Members and answers thereto.

E. Not later than (30) days after the entry of this Order, the Settlement Administrator shall set up and operate a case-specific toll-free number with an automated system providing information about the Settlement with the ability to request copies of the Notice, the Settlement Agreement, and Claim Form and the ability to communicate orally with a Settlement Administrator employee.

F. The standard for the adequacy of a settlement notice in a class action is measured by reasonableness. See Fed. R. Civ. P. 23(e). In this Circuit, Rule 23 requires that a "settlement notice must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 114 (2d Cir. 2005) (quotation marks omitted). See also *McReynolds v. Richards-Cantave*, 588 F.3d 790, 797 (2d Cir. 2009) (finding notice sufficient where it is the "the best notice practicable.")

G. As required, the Class Notices and Settlement Websites will fairly, accurately, and reasonably inform members of each respective Settlement Class of (1) appropriate information about the nature of this litigation and the essential terms of the Settlement Agreement; (2) appropriate information about how to obtain additional information regarding this matter and the Settlement Agreement; (3) appropriate information about, and means for obtaining, a Claim Form; (4) appropriate information about, and means for submitting, a Claim Form for compensation under the Settlement; and (5) appropriate information about how to challenge, or exclude themselves from, the Settlement, if they wish to do so. The Class Notices and Settlement Websites also will fairly and adequately inform members of the Settlement Classes that failure to complete and submit a Claim Form in the manner and time specified in the Class Notices, Settlement Website, and Claim Form shall constitute a waiver of any right to obtain any compensation or benefit under the Settlement. The Class Notices and Settlement Websites also will fairly and adequately inform members of each Settlement Class that if they do not comply with the specified procedures and the deadline for objections, they will lose any opportunity to have any objection considered at the Fairness Hearing or otherwise to contest certification of the Settlement Class or approval of the Settlement or to appeal from any order or judgment entered by the Court in connection with the Settlement. Thus, the proposed Notices satisfy the notice requirements of Fed. R. Civ. P. 23(e) and all applicable federal law.

H. The proposed plan for distributing the Class Notices by mail or email directly to members of the proposed Settlement Classes and establishing the Settlement Websites appear reasonably likely to notify members of the Settlement Classes of the Settlement. Thus, the

proposed notice plan satisfies the notice requirements of due process, Fed. R. Civ. P. 23(e) and all applicable federal law.

I. The Court will appoint the Settlement Administrator by separate order. The Settlement Administrator shall, subject to the supervision of the Court, administer the relief provided by the Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under the Agreement. The Settlement Administrator shall maintain all records as are required by applicable law in accordance with its normal business practices, and such records will be made available to Class Counsel, Viridian's counsel, the Parties, and their representatives promptly upon request.

J. The Settlement Administrator shall be responsible for, among other things, providing the Class Notices, processing Claim Forms, and administering the Settlement Websites, Objection process, Opt-Out process, and Settlement claims process described herein. The Settlement Administrator will use adequate and customary procedures and standards to prevent the payment of fraudulent claims including but not limited to: validating Claims against Viridian's records, determining the Calculated Benefit based solely upon Viridian's business records and reports, requiring manual entry of a unique Class Member identifier to access the Claim Form via the Settlement Website, matching the Class Member identifier on the Claim Form to the notice list, and screening for multiple or fraudulent claims. Any individual that lost their Class Member identifier, may obtain a copy from the Settlement Administrator by providing appropriate proof that they are a Class Member. The Settlement Administrator shall have the right to audit claims, and the Settlement Administrator may request additional

information from Class Members submitting claims. If any fraud is detected or reasonably suspected, the Settlement Administrator may request further information from the Settlement Class Member and deny such claims, subject to the ultimate oversight by the Court. The Settlement Administrator shall approve or deny all claims, and its decision, in conjunction with Class Counsel, shall be final and binding.

K. The Court, having reviewed the proposed Class Notices, the proposed Claim Form, and the proposed plan for distributing and disseminating each of them, finds and concludes that the proposed plan for distributing and disseminating each of them will provide the best notice practicable under the circumstances and satisfies all requirements of federal and state laws and due process. Accordingly, the Court ORDERS as follows:

1. The form and content of the proposed Class Notices and Claim Form are approved.
2. Promptly following the entry of this Order, the Parties and Settlement Administrator shall prepare final versions of the Class Notices and Claim Form, incorporating into each of them the Fairness Hearing date and other deadlines set forth in this Order.
3. The Notice Commencement Date shall be the date that the Short Form Notices are first mailed to the last known postal addresses. The Parties shall determine in advance the date the mailing will occur and shall calculate and set forth in the Notices the applicable Opt-Out Deadline and the Objection Deadline, which shall be sixty (60) days from the Notice Commencement Date.

4. No later than twenty-one (21) days prior to the Final Approval Hearing, the Settlement Administrator shall certify to the Court compliance with the notice provisions of this Order.

IV. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT

A. Fairness Hearing

The Court will hold a Final Approval Hearing (also known as a “Fairness Hearing”) at ___ a.m./p.m. on _____ in Courtroom _____ of the United States District Court for the District of Connecticut, 915 Lafayette Boulevard, Bridgeport, Connecticut 06604. At the Final Approval Hearing, the Court will consider the certification of each of the Settlement Classes, the appointments of the Class Representatives of each Settlement Class, the appointment of Class Counsel, the Settlement Agreement, and whether the Settlement should receive final approval. At that time, the Court also will consider any request that may be made by Class Counsel for an award of attorney fees and costs to Class Counsel and for service awards to each Plaintiff to be paid out of the total attorney’s fees and costs that may be awarded by the Court, all in accordance with the terms of the Agreement. The Parties shall file their motions for final approval of the Settlement, attorneys’ fees, costs and expenses, and service awards to the named Plaintiffs and any briefs in support of such motions on or before _____. These motions and supporting papers will be posted on the Settlement Websites within one day of their being filed. Objections to these motions must be made in accordance with the Long Form Notice and this Order on or before the Objection Deadline.

B. Deadline for Members of the Settlement Classes to Request Exclusion from their Respective Settlement Class and Settlement

Members of the Settlement Classes who wish to be excluded from their respective Settlement Class must mail their written and signed requests for exclusion to the Settlement Administrator in the form required in the Long Form Notice by first-class or priority United States Mail, postmarked by the United States Postal Service, no later than sixty (60) days after the Notice Commencement Date (“Opt-Out Deadline”).

C. Deadline for Filing Objections to Matters to Be Heard at the Fairness Hearing and for Filing Requests to Appear and Present Argument or Evidence

All objections by Class Members to the final approval of the Settlement or any provision of the Settlement Agreement shall be made in writing in accordance with the terms of the Settlement Agreement and Long Form Notice, no later than sixty (60) days after the Notice Commencement Date (“Objection Deadline”), filed with or mailed to Clerk of the Court, United States District Court, District of Connecticut, Bridgeport Division, 915 Lafayette Boulevard, Bridgeport, Connecticut 06604 with copies served contemporaneously on Class Counsel, Viridian’s counsel, and the Settlement Administrator. Any papers not submitted in the manner and time set forth in the Settlement Agreement and Long Form Notices will not be considered at the Fairness Hearing, and all objections not made in the prescribed manner and time shall be deemed waived. Responses to objections shall be filed five (5) days before the Fairness Hearing, unless otherwise permitted by the Court.

All persons wishing to appear at the Fairness Hearing, either in person or by counsel, for the purpose of objecting to any aspect of the matters to be addressed at the Fairness Hearing, must include a written notice of their intention to appear at the Fairness Hearing, including

identifying any counsel who will appear on their behalf, with their objections filed with or mailed to Clerk of the Court, United States District Court, District of Connecticut, Bridgeport Division, 915 Lafayette Boulevard, Bridgeport, Connecticut 06604 with copies served contemporaneously on Class Counsel, Viridian's counsel, and the Settlement Administrator, on or before the Objection Deadline, in accordance with the terms of the Settlement Agreement and Long Form.

D. Deadline for Submitting Claim Forms

Class members will have 90 days from the Notice Commencement Date to submit a Claim Form for any of the benefits available under the Settlement.

V. ABSENCE OF ANY ADMISSION; DENIAL OF ANY WRONGFUL ACT OR OMISSION AND OF ANY LIABILITY

The Parties entered into the Settlement Agreement solely for the purpose of compromising and settling disputed claims. Viridian has at all times denied, and continues to deny, any wrongful act or omission alleged by Plaintiffs in the Litigation and any liability of any sort to Plaintiffs or any member of the Settlement Classes. Nothing contained in the Settlement Agreement, in the documents relating to the Settlement Agreement, or in this Order shall be construed, deemed, or offered as an admission or waiver by any of the Parties, or by any member of the Settlement Class, for any purpose in any judicial or administrative action or proceeding, whether in law or in equity.

IT IS SO ORDERED.

DATED: Bridgeport, Connecticut
This _____, day of _____, 2018

Stefan R. Underhill
Judge, United States District Court

EXHIBIT G

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

LORI SANBORN, BDK ALLIANCE LLC,
IRON MAN LLC and STEPHANIE
SILVER, DAVID STEKETEE, SUSANNA
MIRKIN, BORIS MIRKIN, ELIZABETH
HEMBLING, PATRICIA KULESA,
STEWART CONNARD and STEVEN
LANDAU on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

VIRIDIAN ENERGY, INC. and
VIRIDIAN ENERGY PA LLC.,

Defendants.

No. 3:14-cv-01731 (SRU)

CLASS ACTION

**[PROPOSED] FINAL ORDER AND JUDGMENT CERTIFYING THE CLASS
APPROVING THE CLASS ACTION SETTLEMENT, AND
DISMISSING THE ACTION WITH PREJUDICE**

Upon considering the Unopposed Motion for Final Approval of Class Settlement and Related Relief (the “Unopposed Motion”), filed by plaintiffs on behalf of the Class and defendant Viridian Energy, Inc. (“Viridian”), seeking approval of the Proposed Settlement Agreement (or the “Proposed Settlement,” on file with the Court as Exhibit A to the Declaration of Robert Izard in support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Settlement, Certification of the Settlement Classes, Class Notice and Related Matters, dated December __, 2017), and Memorandum in Support Thereof, and on considering the record of these proceedings, the representations,

argument, and recommendation of counsel for the moving parties, and the requirements of law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Court has jurisdiction over the subject matter and parties to this proceeding pursuant to 28 U.S.C. § 1332.
2. Venue is proper in this district.
3. The Court finds for settlement purposes only, that the Federal Rule of Civil Procedure Rule 23 factors are present and that certification of the two proposed Classes, as defined and set forth below, which were preliminarily certified previously, is appropriate under Fed. R. Civ. P. Rule 23(a) and Rule 23(b)(3), in particular:

Average Usage Class: All persons in the United States who, during the Class Period, were enrolled (either initially or through “rolling over” from a fixed rate plan) in a Viridian variable rate electricity and/or gas plan with an average annual utilization rate of 25,000 or less kilowatt hours or 2,500 or less therms.

Above Average Usage Class: All persons in the United States who, during the Class Period, were enrolled (either initially or through “rolling over” from a fixed rate plan) in a Viridian variable rate electricity and/or gas plan with an average annual utilization rate of more than 25,000 kilowatt hours or more than 2,500 therms, respectively.

Excluded from the Settlement Classes are: Viridian Energy, Inc., Viridian Energy PA LLC, Viridian Energy NY, LLC, and Viridian Energy, LLC; any of their parents, subsidiaries, or affiliates; any entity controlled by any of them; any officer, director, employee, legal representative, agent, predecessor, successor, or assignee of Viridian Energy, Inc., Viridian Energy PA LLC, Viridian Energy NY, LLC, and/or Viridian Energy, LLC; any person enrolled in a Viridian Energy, Inc., Viridian Energy PA LLC, Viridian Energy NY, LLC, or Viridian Energy, LLC Minus-5, 3DOM, or Term Free Index plan; any person who has previously

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released claims that will be released by this Settlement; federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof); Independent Viridian Associates and former Viridian employees; and the Judges to whom any of the actions in the Litigation are assigned and any members of their immediate families.

“Class Period” means July 1, 2009 through December 31, 2016.

4. Specifically, the Court finds for settlement purposes only that each of the Classes described above satisfies the following factors of Fed. R. Civ. P. 23(a) and 23(b)(3):

- (a) Numerosity: In this case, each Class consists of thousands of individuals or entities that had accounts with Viridian at some point during the period from July 1, 2009 through December 31, 2016. Thus, the Rule 23(a)(1) numerosity requirement has been met with respect to each Class.
- (b) Commonality: Plaintiffs’ claims in each Class are common in that they allege a common course of conduct affecting each Class Member.
- (c) Typicality: The class representatives’ claims arise from the same course of conduct and share the substantially same legal theory, as do the claims of the members of each respective Class. Furthermore, the Class representative(s) in each Class will advance the interests of all Class Members of that Class. The individual class representatives in each Class plead various causes of action stemming from a common course of conduct. The class representatives’ claims are typical of those of each of the respective Classes and each Class satisfies Rule 23(a)(3).
- (d) Adequacy: The proposed class representative(s) for each Class assert claims representative of the claims of each respective Class in its entirety. As such, even though the claims may not be identical in amount to every claim of every Class Member in each of the two Classes, the class representatives of each Class can adequately represent the entire Class that they are representing.

The adequacy factor also considers Lead Class Counsel. In this case, Lead Class Counsel regularly engage in complex litigation similar to the present case and have dedicated substantial resources to the prosecution of this matter. The adequacy requirement is satisfied for both Classes.

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- (e) Predominance: There is predominance in each of the two Classes. Common issues include: (a) whether Viridian's variable rate policies and practices constitute unfair or deceptive trade practices, (b) whether Viridian breached its contracts with the Classes, and (c) whether Viridian breached its covenant of good faith and fair dealing with the Classes. The resolution of these questions is relevant to essential elements of every Class Member's claims in both Classes.
 - (f) Superiority: A settlement class that will determine the issues common to all Class Members and fix compensation for alleged economic injury is superior to thousands of trials that would risk disparate results for similarly situated individuals and entities. This superiority is present with respect to both Classes.
5. In the interest of clarity, the Court reiterates that it makes the above findings set forth in paragraphs 3 and 4 regarding certification of the two Classes are only for the purposes of settlement only.
 6. The Court reconfirms the appointment of the Class representatives of each Class as follows: BDK Alliance LLC for the Above Average Usage Class and Lori Sanborn, Iron Man, LLC, Stephanie Silver, David Steketee, Susanna Mirkin, Boris Mirkin, Elizabeth Hembling, Stewart Connard, Patricia Kulesa, and Steven Landau for the Average Usage Class.
 7. The Court approves the Proposed Settlement dated December __, 2017, together with all of its Exhibits, on file with the Court as Exhibit A to the the Declaration of Robert Izard in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement, Certification of the Settlement Classes, Class Notice and Related Matters, dated December __, 2017, as being fair, adequate, and reasonable and in the best interests of both of the respective Classes,

satisfying Fed. R. Civ. P. 23(e) and the fairness and adequacy factors of this Circuit.

8. Rule 23(e)(2) provides that a court may approve a class action settlement only if it is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). “The court must review the negotiating process leading up to the settlement for procedural fairness, to ensure that the settlement resulted from an arm’s-length, good faith negotiation between experienced and skilled litigators.” *Charron v. Wiener*, 731 F.3d 241, 247 (2d Cir. 2013). The Settlement Agreement was entered into by experienced counsel after extensive, arm’s length negotiations. The Settlement is not the result of collusion and was entered into in good faith. Lead Class Counsel and the Plaintiffs have fairly and adequately represented each of the Settlement Classes for purposes of entering into and implementing the Settlement

9. Further, in reaching the decision to approve the Settlement individually and independently for each of the respective Classes, the Court has considered factors that include: the nine *Grinnell* factors used in this Circuit to evaluate class action settlements: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a

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possible recovery in light of all the attendant risks of litigation. *Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir.1974) (citations omitted), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000); *see also Charron v. Wiener*, 731 F.3d 241, 247 (2d Cir. 2013).

10. The Court holds that the Notice and notice plan as carried out satisfy the requirements of Fed. R. Civ. P. 23(e) and due process. This Court has previously held the Notice and notice plan to be reasonable and the best practicable under the circumstances in its Preliminary Approval Order dated _____. The Court further finds that the direct-notice strategy as implemented has successfully and adequately reached each Class, thus constituting the best practicable notice and satisfying due process.
11. The Court holds that the notice provisions set forth under the Class Action Fairness Act, 28 U.S.C. § 1715, were complied with in this case for both Classes.
12. The Court reconfirms the appointment of IZARD, KINDALL & RAABE, LLP and WITTELS LAW P.C. as Co-Lead Class Counsel for both of the Settlement Classes and also re-affirms the appointment of the other firms as Class Counsel as set forth in the Court's Preliminary Approval Order.
13. The Court reconfirms the appointment of the Settlement Administrator.
14. The "Released Claims" (as defined below) of any and all Class Members in both Classes and others (the "Releasing Persons" as defined below) are HEREBY

RELEASED AND DISMISSED WITH PREJUDICE against all “Released Persons” (as defined below):

“Released Claims” means and includes any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary, or multiplied damages, expenses, costs, attorneys’ fees and/or obligations (including “Unknown Claims” as defined below), whether in law or in equity, accrued or unaccrued, direct, individual, or representative, of every nature and description whatsoever, based on any federal, state, local, statutory or common law, or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against the Released Persons, or any of them, that arose during the Class Period, or arise in any manner whatsoever from facts that occurred during the Class Period, out of the same factual predicate as the claims asserted in the litigations described in paragraphs 1.1 thru 1.16 of the Settlement Agreement, including but not limited to any and all claims related to or arising out of the conduct alleged in the Amended Consolidated Class Action Complaint or similar conduct (including but not limited to alleged advertising or marketing violations, or any variable rates Viridian charged for the supply of electricity or natural gas under any agreement, understanding, or program), and wherever the alleged conduct or similar conduct may have occurred and/or that is or are based on any act, omission, inadequacy, misstatement, representation, harm, matter, cause, or event by the Released Persons.

The Released Claims specifically exclude claims for (i) personal injury, (ii) damage to property, and (iii) claims that accrue based on facts that occur after the Preliminary Approval Order.

“Released Persons” means Viridian Energy, Inc., Viridian Energy PA LLC, Viridian Energy NY, LLC, and Viridian Energy, LLC, and each of their respective parents, subsidiaries, affiliates, predecessors, successors, and assigns, as well as each of their respective current and former officers, directors, members, stakeholders, shareholders, owners, employees, agents, attorneys and insurers, and sales representatives, including but not limited to any and all Independent Viridian Associates and any of their current and former directors, officers, employees and/or agents, and Plaintiffs, Class Counsel, and any Person who assisted Class Counsel in the Litigation in any way whatsoever.

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“Releasing Parties” means Plaintiffs, all Settlement Class Members, Class Counsel, and any Person claiming by or through him, her, or it, including any Person claiming to be his, her, or its spouse, parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, executor, devisee, predecessor, successor, assignee, representative of any kind, shareholder, partner, director, employee, or affiliate, Viridian, Viridian Energy PA LLC, Viridian Energy NY, LLC, and Viridian Energy, LLC, and their parents, subsidiaries, affiliates, predecessors, successors, and assigns, as well as their respective current and former officers, directors, members, stakeholders, owners, employees, agents, attorneys and insurers. However, for clarity, notwithstanding any other provision of this Final Order and Judgment or the Settlement Agreement, Viridian is not releasing any Class Members from any existing contractual obligations pursuant to energy rate plans with Viridian, including any outstanding balances.

“Unknown Claims” means Released Claims that any Releasing Party does not know or suspect to exist, which, if known by him, her, or it, might affect his, her, or its agreement to release the Released Persons for the Released Claims or might affect his, her, or its decision to agree, object, or not to object to the Settlement.

“Class Period” means July 1, 2009 through December 31, 2016.

15. By entry of this Final Order and Judgment, each Class Member of both the Average Usage Class and the Above Average Usage Class, and all other persons and entities claiming by, through, or on behalf of, a Class Member of either or both Classes, are hereby forever barred and enjoined from commencing, filing, initiating, instituting, prosecuting, maintaining, or consenting to any action against the Released Persons with respect to the Released Claims and forever discharge and hold harmless the Released Persons of and from any and all Released Claims which the Class Member has or may hereafter have.
16. The Court directs that the following related underlying cases pending in this Court against Viridian relating to Released Claims be dismissed with prejudice: (1) the

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Steketee action, Civil Action No. 3:15-cv-00585; (2) the *Mirkin* action, Civil Action No. 3:15-cv-01057; and the *Hembling* action, Civil Action No. 3:15-cv-01258.

17. The Court also directs that Class Counsel inform the Court before which the related action of *Landau v. Viridian Energy PA LLC*, Civil Action No. 2:16-cv-02383 (E.D. Pa.) is pending of the entry of this Final Order and Judgment.
18. This Final Order and Judgment notwithstanding, this Court retains continuing jurisdiction over the case, the Settlement, this Final Order and Judgment, the Class Members of both Classes, the Settlement Administrator, the Plaintiffs, Lead Class Counsel and other Class Counsel, and Viridian for the purpose of administering, supervising, construing and enforcing this Settlement and the Final Order and Judgment, supervising the disbursement of funds under the Settlement, and, by separate order, addressing the applications for an award of attorneys' fees and expenses.
19. Pursuant to the All Writs Act, 28 U.S.C. §1651, this Court shall retain the authority to issue any order necessary to protect its jurisdiction from any action, whether in state or federal court, that threatens to undermine the Settlement in this case and this Final Order and Judgment.
20. FINAL JUDGMENT is hereby ENTERED dismissing with prejudice all Released Claims of both Classes against all Released Persons as herein described.

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21. Pursuant to Fed. R. Civ. P. 54(b), the Court determines that there is no just cause for delay and expressly DIRECTS the ENTRY OF JUDGMENT on all issues contained in this Order.

DATED: Bridgeport, Connecticut
This _____, day of _____, 2018

Stefan R. Underhill
Judge, United States District Court