

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

KATHERINE VEILLEUX, JENNIFER CHON,
ROCKY COAST FAMILY ACUPUNCTURE
PC, and JAMES TILTON, individually and on
behalf of all others similarly situated,

Plaintiffs

v.

ELECTRICITY MAINE, LLC, PROVIDER
POWER, LLC, SPARK HOLDCO, LLC,
KEVIN DEAN and EMILE CLAVET

Defendants

CASE NO: 1:16-cv-571-LEW

**MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
WITH INCORPORATED MEMORANDUM OF LAW**

Pursuant to Fed. R. Civ. P. 23(e), Plaintiffs Katherine Veilleux, Jennifer Chon, Rocky Coast Acupuncture PC, and James Tilton (“Plaintiffs”) hereby move this Court to preliminarily approve the Settlement agreed to by the Parties in this Action.¹

I. INTRODUCTION

Plaintiffs commenced this Action against Defendants Electricity Maine, LLC, Provider Power, LLC, Spark HoldCo, LLC, Kevin Dean, and Emile Clavet in 2016. In their operative Third Amended Complaint, Plaintiffs assert claims under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1962(c) and 1964(d), the Maine Unfair Trade Practices Act (“MUTPA”), 5 M.R.S. § 207, and also assert claims of unjust enrichment and civil conspiracy. In a nutshell, Plaintiffs contend that Defendants engaged in deceptive conduct that caused

¹ Capitalized terms used in this motion are defined in the Settlement Agreement.

Plaintiffs to purchase electricity supply contracts from Electricity Maine and to pay more than they otherwise would have for that electric supply.

After three years of intensive litigation, and extended judicially facilitated negotiations, the Parties have reached a Settlement to resolve all claims brought by Plaintiffs on behalf of themselves and all class members similarly situated, and now present that Settlement to the Court for preliminary approval.

The terms of the Settlement are set forth in the Parties' Settlement Agreement, a copy of which is attached hereto as Exhibit 1. As Plaintiffs explain in detail below, the terms of the proposed Settlement are fair, adequate, and reasonable, and the proposed Notice Program provides the best practicable notice under the circumstances and comports with Fed. R. Civ. P. 23(c)(2). This motion is the first step in the settlement approval process. During this phase, the Parties request that the Court enter the proposed Preliminary Approval Order attached hereto as Exhibit 1-D, and make the following findings and decrees:

- A. that it is likely to approve the terms of the Settlement under Fed. R. Civ. P. 23(e)(2);
- B. that it will likely be able to certify the Settlement Class as defined herein for settlement purposes only;
- C. that, for settlement purposes only, the Settlement Class is so numerous that joinder of all members is impracticable, there are questions of fact and law common to the Settlement Class and that those questions predominate over questions affecting only individual Settlement Class Members, Plaintiffs' claims are typical of the claims of the Settlement Class, and Plaintiffs will fairly and adequately protect the interests of the Settlement Class, and class treatment for purposes of settlement is superior to negotiation of separate individual settlements by Settlement Class Members.
- D. appointing the four Named Plaintiffs as representatives of the Settlement Class;
- E. appointing Thomas Hallett and Benjamin Donahue of Hallett, Whipple, Weyrens P.A. and Robert Cummins of The Cummins Law Firm, P.C. as Class Counsel;
- F. approving the Notice Program set forth herein and approving the form and content of the Notices;

- G. approving the procedures and schedule for the Notice;
- H. approving Heffler Claims Group as the Settlement Administrator, with the responsibilities set forth in the Settlement Agreement;
- I. approving the procedure for Settlement Class Members to opt-out, thereby excluding themselves from the Settlement Class;
- J. approving the procedure for Settlement Class Members to object to the Settlement;
- K. scheduling a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, and Defendants' Counsel to determine whether to approve the Settlement and Class Counsel's application for attorneys' fees and costs and motion for the Named Plaintiffs' Enhancement Awards; and
- L. staying this Action, except such proceedings as may be necessary to complete and implement the Settlement, until the Effective Date of the Settlement has occurred.

Defendants have reviewed this motion and do not oppose the relief requested herein.

II. FACTUAL AND PROCEDURAL BACKGROUND

Electricity Maine is a competitive electricity provider ("CEP") created and operated pursuant to Maine law deregulating the retail sale of electric supply, which offers to consumers electricity supply contracts at a guaranteed price for a fixed term as an alternative to the "standard offer" price set annually by the Maine Public Utilities Commission ("MPUC") and available from the local transmission and delivery utility.

Electricity Maine was founded by Defendants Kevin Dean and Emile Clavet, owners of Defendant Provider Power, LLC, and began operating in 2011. Provider Power sold Electricity Maine to Defendant Spark HoldCo in August 2016. Plaintiffs allege in this suit that Defendants engaged in deceptive marketing practices that caused Plaintiffs to purchase electricity supply contracts from Electricity Maine and to pay more than they otherwise would have for that electric supply. Defendants deny these allegations.

Plaintiffs filed their original complaint on November 18, 2016. Since that time, Plaintiffs have amended their complaint three times. The operative complaint is the Third Amended Complaint (ECF No. 135), which asserts claims for alleged violations of RICO, 18 U.S.C. §§ 1962(c) and 1964(d); MUTPA, 5 M.R.S. § 207; unjust enrichment; and civil conspiracy.

The Parties conducted extensive discovery in this case. Over approximately fifteen months of discovery, the Parties took seventeen depositions and collectively produced approximately forty-five thousand documents. The Parties' experts submitted multiple reports, and all Parties propounded and responded to numerous sets of written discovery.

After the close of discovery in the class certification phase of the case, Plaintiffs filed their motion for class certification on March 25, 2019 (ECF No. 163), seeking to certify three subclasses consisting of hundreds of thousands of members with respect to Plaintiffs' RICO and MUTPA claims.² Defendants filed oppositions on May 10, 2019 (ECF Nos. 184 and 185), and also filed a motion to exclude Plaintiffs' expert evidence under Fed. R. Evid. 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) (ECF No. 183), which Plaintiffs opposed (ECF No. 205). Those motions are currently pending before the Court.

On July 1 and 2, 2019, the Parties attended a judicial settlement conference with Magistrate Judge Nivison, at the conclusion of which they agreed to a proposed settlement, subject to the satisfaction of certain conditions, including negotiation of a definitive settlement agreement and approval of the Settlement by the Court. On December 3, 2019, after further negotiations, the Parties executed a Term Sheet setting forth material terms for the Settlement of this Action. On March 19, 2020, the Parties executed a Settlement Agreement, which supersedes all prior

² Although their operative Third Amended Complaint contains four causes of action, Plaintiffs have only sought to certify under Fed. R. Civ. P. 23 their claims under RICO and MUTPA. The RICO and MUTPA claims are both asserted against Spark, Provider Power, Dean, and Clavet, but only the MUTPA claim is asserted against Electricity Maine.

agreements between them. The Settlement Agreement, if finally approved by the Court, resolves all remaining issues and settles this Action in its entirety. The Parties intend the Settlement Agreement, subject to the Court's approval, to bind Plaintiffs, Defendants, and all Settlement Class Members who do not timely request to be excluded from the Settlement.

III. SUMMARY OF THE SETTLEMENT TERMS

A. The Settlement Class and Settlement Amount.

For settlement purposes only, Plaintiffs seek to certify a Settlement Class defined as:

All residential and small business consumers who purchased electric supply from Electricity Maine during the Class Period from January 1, 2011 through and including November 30, 2019.

The Settlement Agreement excludes from the Settlement Class: (a) the Defendants; (b) officers, directors, shareholders, and employees of Defendants; (c) parents, subsidiaries, and affiliates of any Defendant; (d) any entity in which a Defendant has a controlling interest; (e) any attorneys representing Defendants in this Action, and their employees; (f) any Judge to whom the Action is currently assigned or was previously assigned, and their staff; (g) Plaintiffs' counsel and their employees, who have waived any claims they may have against Defendants as members of the Settlement Class; and (h) any heirs, immediate family members, successors, and assigns of all such persons.

In consideration of the Settlement and Release given, each Claimant shall be entitled to a payment based on the total amount of electricity purchased by that Claimant from Electricity Maine during the Class Period, in an amount equal to \$0.0023565 per kilowatt hour purchased (the "Calculated Payment"). The total amount paid to all Claimants, including the Named Plaintiffs' Enhancement Awards, in the aggregate, shall not exceed the Maximum Claimant Settlement Amount of \$14,000,000. In the event the aggregate total dollar value of all Claims submitted by

the Claimants, including the Named Plaintiffs' Enhancement Awards, exceeds the Maximum Claimant Settlement Amount, each Claimant's Calculated Payment shall be reduced and the Claimant shall receive, as a Calculated Payment, a pro rata share of that Claimant's share of the Maximum Claimant Settlement Amount. Only one Calculated Payment is payable per eligible Electricity Maine account.

Electricity Maine also will waive payments of amounts owed to it by Settlement Class Members for electricity purchased during the Class Period that were more than one hundred twenty (120) days overdue as of November 30, 2019.

B. The Notice and Claims Program.

The Settlement Administrator shall administer the Settlement, provide Notice, and process Claim Forms pursuant to requirements set forth in the Settlement Agreement. Notice shall be made to the Settlement Class by Notice Packet sent via U.S. Mail containing a Long-Form Notice summarizing the terms of the Settlement, a Claim Form, and a return envelope addressed to the Settlement Administrator; by Email Notice; and by posting the Long-Form Notice and Email Notice on a website to be set up and maintained by the Settlement Administrator. The Notices shall inform the Settlement Class Members of (a) the background of the Action and the essential terms of the Settlement; (b) the appropriate means for obtaining additional information regarding the Settlement and the Action; (c) the appropriate means to timely submit a Claim Form; (d) the appropriate information concerning the procedure for Opting-Out from the Settlement and filing an Objection to the Settlement, if they should wish to do so; and (e) that any relief to Settlement Class Members is contingent on the Court's final approval of the Settlement.

The Settlement Administrator and Parties shall have the right to contest the validity of Claims, and the Settlement Administrator may request additional information from Settlement

Class Members submitting Claims. If any fraud is detected or reasonably suspected, the Settlement Administrator may request further information from the Settlement Class Member or deny the Claim, subject to the supervision of the Parties and ultimate oversight by the Court. The Settlement Administrator shall approve or deny all Claims, and its decision shall be final and binding, except that Class Counsel and Defendants' Counsel may challenge the Settlement Administrator's decision by motion to the Court.

Not later than thirty (30) days after entry of the Preliminary Approval Order, the Settlement Administrator shall disseminate the Notice Packet and Email Notice. In order to qualify for a Calculated Payment, Settlement Class Members must timely deliver a properly completed Claim Form to the Settlement Administrator or submit a claim online through the Claims Portal during the Claim Period, which shall conclude ninety (90) days after the Notice Packet and Email Notice are sent.

C. Opt-Outs and Objections.

Any Settlement Class Member, other than the Named Plaintiffs, may elect to be excluded from this Settlement by delivering written notice of the election to Opt-Out to the Settlement Administrator on or before the Opt-Out Deadline. Opt-Out requests must: (i) be signed by the Settlement Class Member who is requesting exclusion; (ii) include the full name, address, and phone number(s) of the Settlement Class Member; and (iii) expressly request to Opt-Out from the Settlement in the "Electricity Maine Class Action." No Opt-Out request will be valid unless all of the information described above is included and timely received by the Settlement Administrator by the Opt-Out Deadline.

Any Settlement Class Member who wishes to object to the Settlement must file a written Objection and notice of intention to appear before the Court at the Fairness Hearing and serve

copies on the Settlement Administrator, Class Counsel, and Defendants' Counsel. To be heard at the Fairness Hearing, Settlement Class Members must make an Objection in writing and file it with the Clerk of the Court by the Objection Deadline. Any Objection must (1) attach documents establishing, or provide information sufficient to allow the Parties to confirm, that the objector is a Settlement Class Member; (2) state whether it applies only to the objector, to a specific subset of the class, or to the entire class; (3) include a statement of such Settlement Class Member's specific Objection(s); (4) state the grounds for the Objection(s); (5) identify any documents such objector desires the Court to consider; and (6) provide all information requested on the Claim Form. Upon the filing of an Objection, Class Counsel and Defendants' Counsel may take the deposition of the objecting Settlement Class Member at an agreed-upon time and location, to obtain any evidence relevant to the Objection.

D. Payment of Attorneys' Fees, Expenses, and Named Plaintiffs' Enhancement Award.

The Settlement Agreement requires Plaintiffs to file an application for the award of Attorneys' Fees and Costs, and a motion seeking approval of the Named Plaintiffs' Enhancement Award, within sixty (60) days after Notice is sent out. The Settlement Administrator shall cause any such application and motion to be posted on the Settlement Website. Plaintiffs may seek an award of Attorneys' Fees and Costs in an amount that shall not, in the aggregate, exceed twenty-eight percent (28%) of the \$14 million Maximum Claimant Settlement Amount, or \$3,920,000. Any award of Attorneys' Fees and Expenses shall be in addition to, and not part of or subject to, the amount paid to Class Members or the Maximum Claimant Settlement Amount. Defendants reserve all rights to oppose any application for fees and costs by Plaintiffs. Class Counsel will also submit to the Court a motion seeking approval of the payment of the Named Plaintiffs' Enhancement Award, in an amount which shall not to exceed Five Thousand Dollars (\$5,000) per

Named Plaintiff, as compensation for Plaintiffs' efforts in bringing the Action and achieving the benefits of the Settlement on behalf of the Settlement Class. Defendants have agreed not to oppose Plaintiffs' request for an Enhancement Award.

IV. ARGUMENT

A. The Court should Preliminarily Approve the Settlement Agreement.

"Compromises of disputed claims are favored by the courts." *William v. First Nat'l Bank*, 216 U.S. 582, 595 (1910); *see also Durett v. Housing Auth. Of Providence*, 896 F.2d 600, 604 (1st Cir. 1990). Settlement spares the litigants the uncertainty, delay, and expense of a trial, while simultaneously reducing the burden on judicial resources. In a class action, the "court plays the important role of protector of the [absent members'] interest, in a sort of fiduciary capacity." *In re Gen. Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995). The ultimate determination whether a proposed class action settlement warrants approval resides in the Court's discretion. *See Protective Comm. For Indep. S'holders of TM Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-24 (1968).

1. Procedure for Court Approval of Proposed Class Settlement.

Court approval of a class settlement typically proceeds in two stages. *Michaud v. Monro Muffler Brake, Inc.*, No. 2:12-CV-00353-NT, 2015 WL 1206490, at *8 (D. Me. Mar. 17, 2015) (citing Manual for Complex Litigation (Fourth) § 21.632 (2011)).

First, the court reviews the proposed settlement and makes a preliminary determination on its fairness, reasonableness, and adequacy and directs notice to class members of the proposed settlement and date of the final fairness hearing. *Id.* "At this initial stage, the court's role is limited to deciding 'whether the proposed settlement appears to fall within the range of possible final approval.'" *Michaud*, 2015 WL 1206490, at *8 (quoting *Trombley v. Bank of Am. Corp.*, No. 08-

cv-456-JD, 2011 WL 3740488, at *4 (D.R.I. Aug. 24, 2011)). “Generally, courts have recognized a presumption of fairness for settlements that are deemed to be the result of arm’s-length negotiations following meaningful or sufficient discovery.” *Sylvester v. CIGNA Corp.*, 369 F. Supp. 2d 34, 44-45 (D. Me. 2005) (internal quotation marks omitted).

In the second stage, the court holds a fairness hearing where the parties must demonstrate that the proposed settlement is fair, reasonable, and adequate. *Michaud*, 2015 WL 1206490, at *8 (citing Manual for Complex Litigation § 21.634); *see also* Fed. R. Civ. P. 23(e)(2), *O’Connor v. Oakhurst Dairy*, No. 2:14-00192-NT, 2018 WL 3041388 (D. Me. June 19, 2018); *Scovil v. FedEx Ground Package Sys., Inc.*, No. 1:10-CV-515-DBH, 2014 WL 1057079 (D. Me. Mar. 14, 2014). In this District, there are a number of relevant factors courts consider for determining the fairness, reasonableness, and adequacy of a proposed class action settlement, including: (1) comparison of the proposed settlement with the likely result of litigation; (2) stage of the litigation and the amount of discovery completed; (3) reaction of the class to the settlement; (4) quality of counsel; (5) conduct of the negotiations; and (6) prospects of the case, including risk, complexity, expense and duration. *Scovil*, 2014 WL 1057079, at *2; *see also O’Connor*, 2018 WL 3041388, at *2 (applying *Scovil* factors).³

2. Application of the *Scovil* Factors Here Demonstrates that the Proposed Settlement Likely “Fall[s] within the Range of Possible Final Approval.”

Although consideration of the *Scovil* factors is not necessary until the final approval stage, their application to the terms of the proposed Settlement in this case demonstrates that it “fall[s] within the range of possible final approval.” *Michaud*, 2015 WL 1206490, at *8.

³ The *Scovil* factors encompass the “core concerns” set forth for the Court’s consideration in Fed. R. Civ. P. 23(e)(2); *see id.* advisory committee’s notes to 2018 amendment.

First, with respect to a comparison of the proposed Settlement with the likely result of litigation, Plaintiffs believe they would have prevailed on the merits of their claims had the Action been litigated to trial. They recognize, however, that Defendants have a number of potentially valid defenses to those claims and would have mounted a strong and vigorous defense. Further, even if the Court had granted the Plaintiffs' motion for class certification, Defendants would undoubtedly have requested the First Circuit to review that ruling under Fed. R. Civ. P. 23(f), or, failing that, sought to decertify the class at a later stage of the Action. The proposed Settlement provides Settlement Class Members with a benefit without incurring the risks of the Court not certifying a class in this case or of Plaintiffs not prevailing on the merits of their claims.

Second, with respect to the stage of the litigation and the amount of discovery completed, this case has been pending for well over three years and all Parties conducted significant discovery over a fifteen-month period. The Parties conducted seventeen depositions, produced tens of thousands of pages of documents, retained multiple expert witnesses to make complex statistical arguments on relevant causation and damages issues, employed private investigators, and took discovery of third parties, as well. Plaintiffs' motion for class certification was pending at the time the Parties entered into the Settlement Agreement. Thus, Plaintiffs' Counsel conducted a thorough investigation of Plaintiffs' claims, as well as the recoverable damages available to the class if Plaintiffs were to prevail, to assess the fairness of the Settlement.

Third, the Court will only be able to evaluate the reaction of the class to the Settlement after completion of the Notice program and Claims Process. Accordingly, this factor is neutral.

Fourth, Plaintiffs seek to appoint Thomas Hallett and Benjamin Donahue of Hallett, Whipple & Weyrens, P.A., and Robert Cummins of The Cummins Law Firm, P.C. as Class Counsel. For over three years, Plaintiffs' counsel has zealously investigated and litigated this case.

To date, counsel have committed significant resources to pursuing Plaintiffs' claims; retaining multiple expert witnesses; conducting extensive discovery; and litigating multiple challenges to the legal sufficiency of Plaintiffs' claims, the scope of discovery, the admissibility of Plaintiffs' expert testimony, and their Motion for Class Certification. (ECF No. 163-14; Donahue Dec. ¶¶ 3-4). Collectively, Plaintiffs' counsel has extensive trial experience in this District and others, including experience serving as class counsel in numerous consumer class actions. (ECF No. 163-15, Hallett Dec. ¶¶ 3-6; ECF No. 163-16, Cummins Dec. ¶¶ 11-12).

Fifth, the Settlement was reached as a result of good-faith negotiations and in the absence of collusion. As noted above, the Parties attended a judicial settlement conference with Magistrate Judge Nivison for two full days, where counsel with the assistance of the Court vigorously negotiated the terms of the Settlement. *City P'ship Co. v. Atl. Acquisition Ltd. P'ship*, 100 F.3d 1041, 1043 (1st Cir. 1996) (when "the parties have bargained at arms'-length, there is a presumption in favor of the settlement"). To date, the Parties have no agreement regarding attorney fees and costs other than Class Counsel's agreement not to seek a fee exceeding twenty-eight percent of the \$14,000,000 maximum settlement amount.

Sixth, with respect to prospects of the case, including risk, complexity, expense, and duration, further prosecution of this case would be difficult, lengthy, and expensive for all Parties involved. This case involves a number of complex factual and legal issues, many of which are addressed in detail in the Parties' briefing on Plaintiffs' motion for class certification. If the Settlement is not approved, the Parties would face protracted litigation, including motions for summary judgment, trial, potential appeals – all of which could take many months and result in substantial legal fees, expenses, and judicial resources.

For the foregoing reasons, Plaintiffs respectfully submit that the standards for preliminary approval of the Settlement are satisfied for purposes of Fed. R. Civ. P. 23(e).

B. Rule 23’s Requirements for Certification of a Settlement Class are Satisfied.

It is well established that a class may be certified solely for purposes of settlement if a settlement is reached before a litigated determination of the class certification issue. *See, e.g., O’Connor*, 2018 WL 3041388, at *7 (certifying a class for the purposes of settlement). In deciding whether it will likely be able to certify a settlement class, the Court must consider the same factors that it would consider in connection with a proposed litigation class – *i.e.*, all Rule 23(a) factors and at least one subsection of Rule 23(b) must be satisfied – except the Court need not consider manageability of a potential trial, since the settlement, if approved, would obviate the need for a trial. *See id.* at *5 & n.4; *see also Amchem Products, Inc.*, 521 U.S. at 620. Applied here, Plaintiffs submit that all the requirements for certification under Federal Rule 23 are satisfied.

1. Numerosity

In this case, the proposed Settlement Class consists of hundreds of thousands of members. Their joinder is impracticable. Thus, the Rule 23(a)(1) requirement is met. *See O’Connor*, 2018 WL 3041388, at *5.

2. Commonality

The commonality element requires that class members’ claims “must depend upon a common contention” and one “that is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Michaud*, 2015 WL 1206490, at *2 (quoting *Wal-Mart v. Dukes*, 564 U.S. 338 (2011)). Here, commonality is satisfied because there are multiple questions of law and

fact that center on Electricity Maine's alleged classwide practices relating to the advertising and marketing of its electric supply contracts.

3. Typicality

Named Plaintiffs, like other class members, claim to have been injured by enrolling with Electricity Maine for their electric supply based on its deceptive marketing and paying more for electricity than they otherwise would have as a result. The interests of the Named Plaintiffs align with the members of the Settlement Class they seek to represent. Accordingly, the typicality requirement is satisfied. *Michaud*, 2015 WL 1206490, at *3.

4. Adequacy

There are three factors to consider when determining whether Rule 23(a)(4) has been met. "First, plaintiffs' attorney must be qualified, experienced, and generally able to conduct the proposed litigation. Second, the representative plaintiff cannot have interests antagonistic to the class. Third, the representative party and the representative attorney must be expected to prosecute the action vigorously." *O'Connor*, 2018 WL 3041388, at *6. Rule 23(a)(4) is satisfied here because there are no conflicts of interest between Named Plaintiffs and the Settlement Class, and Plaintiffs have retained competent counsel to represent them and the Settlement Class. Plaintiffs' Counsel have dedicated substantial resources to the prosecution of this Action and have vigorously and competently represented the interest of Settlement Class Members in the Action.

5. Predominance and Superiority

Rule 23(b)(3) is satisfied, for settlement purposes only, because the common legal and alleged factual issues relevant to the Settlement Class, as opposed to the three litigation subclasses proposed, predominate over individualized issues, and resolution of the common issues for thousands of Settlement Class Members in a single, coordinated settlement proceeding is superior

to thousands of individual lawsuits addressing the same legal and factual issues. With respect to predominance, Rule 23(b)(3) requires that “a sufficient constellation of common issues bind[] class members together.” *Waste Mgmt. Holdings, Inc. v. Mowbray*, 208 F.3d 288, 296 (1st Cir. 2000). The predominance and superiority requirements in this case are satisfied for settlement purposes because the Settlement is structured in a manner that permits the identification of Settlement Class Members and the calculation of settlement payments without the need to negotiate and resolve individualized issues.

C. Appointment of Class Counsel.

Thomas Hallett and Benjamin Donahue of Hallett, Whipple, Weyrens P.A., and Robert Cummins of The Cummins Law Firm, P.C. should be appointed as Class Counsel in this case. Rule 23(g) identifies four criteria the Court must consider in evaluating the adequacy of proposed counsel: (1) “the work counsel has done in identifying or investigating potential claims in the action”; (2) “counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action”; (3) “counsel’s knowledge of the applicable law”; and (4) “the resources that counsel will commit to representing the class.” Fed. R. Civ. P. 23(g)(1)(A). The Court may also consider any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class. Fed. R. Civ. P. 23(g)(1)(B). The Advisory Committee has noted that “[n]o single factor should necessarily be determinative in a given case.” Fed. R. Civ. P. 23(g) advisory committee’s note to 2003 amendment.

Plaintiffs’ Counsel meet these criteria. Plaintiffs’ Counsel have performed substantial work in prosecuting this case and negotiating the Settlement of Named Plaintiffs’ and Settlement Class Members’ claims. (ECF No. 163-14, Donahue Dec. ¶¶ 3-4). Further, Plaintiffs’ Counsel have substantial experience prosecuting and settling class actions and other complex litigation, and

the attorneys involved in this matter are well qualified to represent the interests of the Settlement Class. (See ECF No. 163-15, Hallett Dec. ¶¶ 3-6; ECF No. 163-16, Cummins Dec. ¶¶ 11-12).

D. Appointment of Named Plaintiffs as Class Representatives.

In this case, all four class representatives have expressed a commitment to litigating this case and fairly representing the best interests of Settlement Class Members. None have conflicts with the Settlement Class or each other. During the course of this proceeding, they have appeared for depositions, responded to discovery, and understand that, as class representatives, they must act in the best interests of the class and participate in this case for the right reasons.⁴ (ECF No. 164-4, Veilleux Dep. 14:11-12; ECF No. 163-5, Chon Dep. 13:20-15:13; ECF No. 163-9, Stein Dep. 12:16-17-2; ECF No. 163-13, Tilton Dec. ¶¶ 9-12).

E. The Proposed Class Notice and Claim Forms are Appropriate.

The Notices and Claim Form fully comply with due process and Fed. R. Civ. P. 23. Rule 23(c)(2)(B) requires that a notice must provide:

The best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:

- (i) the nature of the action;
- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an attorney if the member so desires;
- (v) that the court will exclude from the class any member who requests exclusion;
- (vi) the time and manner for requesting exclusion; and
- (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

⁴ Rocky Coast is a corporate entity controlled entirely by Jason Stein. Stein enrolled his business and household accounts with Electricity Maine at the same time. (ECF No. 163-9, Stein Dep. 60:14-22).

Here, the Long-Form Notice, Email Notice, and Claim Form contain all of the above-referenced information for Settlement Class Members. (Exhibits 1-A, 1-B, and 1-C). They are written in plain English and are organized and formatted to be as clear as possible. Moreover, the Claims Program is comprehensive, and “reasonably calculated to reach absent class members.” *Reppert v. Marvin Lumber & Cedar Co.*, 359 F.3d 53, 56 (1st Cir. 2004). Prior to sending any Notice by U.S. Mail, the Settlement Administrator shall utilize the USPS National Change of Address Database and address tracing through Lexis Nexis to ensure that all Notices are sent to Settlement Class Members’ current addresses. If a Notice Packet is returned as undeliverable, the Settlement Administrator shall attempt to contact that Settlement Class Member by telephone and provide an additional Notice.

F. The Court should Schedule a Final Approval Hearing.

The Court should schedule a Final Approval Hearing to determine whether final approval of the Settlement is proper.

V. CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the Court find that it is likely to approve the terms of the Settlement under Fed. R. Civ. P. 23(e)(2) and enter the proposed order attached hereto as Exhibit 1-D. Plaintiffs further request that the Court stay all further proceedings in the Action, except such proceedings as may be necessary to complete and implement the Settlement, until the Effective Date of the Settlement has occurred.

Dated this 19th day of March, 2020

/s/ Thomas F Hallett

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Defendants

CASE NO: 1:16-cv-571-LEW

SETTLEMENT AGREEMENT

As of the final date of execution hereof, Plaintiffs Katherine Veilleux, Jennifer Chon, Rocky Coast Family Acupuncture PC, and James Tilton (collectively “Plaintiffs”), acting individually and on behalf of the Settlement Class, and Electricity Maine, LLC, Provider Power, LLC, Spark HoldCo, LLC, Kevin Dean, and Emile Clavet (collectively “Defendants”) (Plaintiffs and Defendants collectively referred to herein as the “Parties” and each individually as a “Party”), enter into this Settlement Agreement (“Settlement” or “Agreement”). Subject to the Court’s approval, the Parties agree that, in consideration for the promises and covenants set forth herein and upon the entry by the Court of a Final Approval Order and the occurrence of the Effective Date, the Action and all the Released Claims shall be fully, completely and forever compromised, settled, released, and discharged upon and subject to the terms and conditions set forth below:

I. RECITALS

1.1 WHEREAS, all terms with initial capitalization shall have the meanings ascribed to them in this Agreement;

1.2 WHEREAS, on November 18, 2016, Plaintiffs Katherine Veilleux and Jennifer Chon filed a class action complaint against Defendants in the Action, individually and on behalf of all others similarly situated, for alleged violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO") – 18 U.S.C. §§ 1962(c) and 1964(d), the Maine Unfair Trade Practices Act ("MUTPA") – 5 M.R.S. § 207, and for breach of contract, negligence, negligent misrepresentation, fraudulent misrepresentation, and unjust enrichment. Subsequently, Plaintiffs filed a First Amended Complaint for alleged violations of RICO, 18 U.S.C. §§ 1962(c) and 1964(d), MUTPA, 5 M.R.S. § 207, breach of contract, negligence, negligent misrepresentation, fraudulent misrepresentation, and unjust enrichment. On November 16, 2017, Plaintiffs Veilleux and Chon filed a Second Amended Complaint adding Rocky Coast Family Acupuncture, PC as a Named Plaintiff. Plaintiffs filed a Third Amended Complaint ("Complaint") on December 26, 2018, for alleged violations of RICO, 18 U.S.C. §§ 1962(c) and 1964(d), MUTPA, 5 M.R.S. § 207, unjust enrichment, and civil conspiracy, adding James Tilton as a Named Plaintiff;

1.3 WHEREAS, Defendants deny any and all liability with respect to the claims alleged in the Complaint;

1.4 WHEREAS, prior to and throughout the Action, Class Counsel has conducted a thorough examination and investigation of the facts and law relating to the matters in the Action, including, but not limited to, examining documents and data produced by Defendants, conducting depositions of Defendants and related witnesses, retaining expert witnesses to examine

Defendants' data and render opinions, and conducting an extensive investigation outside the formal discovery process;

1.5 WHEREAS, the Parties aggressively litigated this Action for over two years. Significant litigation events include numerous challenges to the legal sufficiency of Plaintiffs' claims, frequent disputes over the scope of discovery, challenges to Plaintiffs' proposed expert testimony, and Plaintiffs' Motion for Class Certification;

1.6 WHEREAS, the Parties attended a judicial settlement conference in this Action on July 1 and 2, 2019, with Magistrate Judge John Nivison;

1.7 WHEREAS, at the conclusion of the two-day judicial settlement conference on July 2, 2019, the Parties, with the assistance and advice of Magistrate Judge Nivison, agreed to certain proposed settlement terms, subject to the satisfaction of certain conditions, including the negotiation of a full and formal settlement agreement and approval of the Settlement by the Court;

1.8 WHEREAS, effective December 3, 2019, the Parties executed a Settlement Term Sheet, which set forth material terms for the Settlement of the Action;

1.9 WHEREAS, prior to agreeing to the Settlement, Class Counsel analyzed and evaluated the merits of the Parties' respective contentions and the Settlement as it impacts all Parties, including the Settlement Class Members. Plaintiffs and Class Counsel, after taking into account the risks and costs of further litigation, are satisfied that the terms and conditions of the Settlement are fair, reasonable, and adequate, and that the Settlement is in the best interest of the Settlement Class Members;

1.10 WHEREAS, Defendants, while continuing to deny all allegations of wrongdoing and disclaiming any liability with respect to the claims, consider it desirable to resolve the Action

on the terms stated herein, in order to avoid further expense, inconvenience, and interference with ongoing business operations; and

1.11 WHEREAS, the Settlement reflects a compromise between the Parties and shall in no event be construed as or be deemed an admission or concession by any of the Parties of the truth of any allegation or the validity of any purported claim or defense asserted in any of the pleadings in the Action, or of any fault or liability on the part of Defendants.

II. DEFINITIONS

As used in this Agreement and the attached exhibits (which are an integral part of the Settlement and are incorporated herein in their entirety by reference), the following terms shall have the meanings set forth below. Other capitalized terms in this Agreement, but not defined in this section, shall have the meanings ascribed to them elsewhere in this Agreement. As used herein, the plural of any defined term includes the singular thereof and the singular of any defined term includes the plural thereof, as the case may be.

2.1 “Action” means the case entitled *Katherine Veilleux, Jennifer Chon, Rocky Coast Family Acupuncture PC, and James Tilton, individually and on behalf of others similarly situated v. Electricity Maine, LLC, Provider Power, LLC, Spark HoldCo, LLC, Kevin Dean, and Emile Clavet*, Case Number: 1:16-cv-571-LEW, pending in the United States District Court, District of Maine.

2.2 “Administration Expenses” means the costs, fees, and expenses incurred by the Settlement Administrator for all tasks the Settlement Administrator performs in furtherance of the Notice and Claims Program, and administration of the Settlement.

2.3 “Agreement” means this Settlement Agreement, including all terms, conditions, and exhibits, containing the entire agreement between the Parties.

2.4 “Attorneys’ Fees and Costs” means all reasonable attorneys’ fees and out-of-pocket litigation costs and expenses incurred by Class Counsel, including but not limited to expert witness fees for the Action, which Class Counsel will seek to be awarded by the Court as described more particularly in Section VIII of this Agreement. Class Counsel agree that the amount of Attorneys’ Fees and Costs requested by them shall not exceed 28% of the Maximum Claimant Settlement Amount (\$14,000,000), or \$3,920,000 in the aggregate. Defendants reserve all rights to object to and contest the amount of Attorneys’ Fees and Costs requested by Class Counsel, absent a further agreement between the Parties in writing as to the amount of Attorneys’ Fees and Costs to be submitted to the Court for approval.

2.5 “Calculated Payment” means the payment available to a Claimant who submits a Valid Claim under this Agreement. The Calculated Payment is based on the total amount of electricity purchased by that Claimant from Electricity Maine during the Class Period, and shall consist of an amount equal to **\$0.0023565** per kilowatt hour purchased. In no event shall the Calculated Payment paid to any Claimant be less than \$2.50. The specific Calculated Payment is subject to review and validation by the Settlement Administrator based upon the terms and conditions of this Agreement.

2.6 “Claim” means a request for payment submitted by a Settlement Class Member on a Claim Form.

2.7 “Claim Deadline” means the date by which a Claim Form must be received by the Settlement Administrator to be considered timely. The Claim Deadline will be at 11:59 p.m. Eastern Time on the last day of the Claim Period.

2.8 “Claim Form” means the form attached hereto as Exhibit A, whether in electronic or hard copy. The Claim Form will be sent to Settlement Class Members in the

Notice Packets. The Claim Form will also be available to Settlement Class Members with proper authentication on the Settlement Website or by calling the Settlement Administrator.

2.9 “Claim Period” means the period of time in which a Settlement Class Member must deliver a Claim Form to the Settlement Administrator, which shall begin on the date upon which the Notice Packet is mailed to the Settlement Class Members (the “Notice Date”) and shall conclude ninety (90) days following the Notice Date. The end date of the Claim Period shall be set forth in the Notice.

2.10 “Claims Portal” means an interactive feature of the Settlement Website where Settlement Class Members can submit a Claim by providing their full name, current mailing address, email address, Unique Identification Code as provided by the Claims Administrator, the named account holder for the household, and a certification under oath that the Settlement Class Member (1) has read the Settlement Agreement and agrees to its terms, including the release; (2) is or was a named account holder with Electricity Maine, LLC during the Class Period; (3) has not already received a payment from Electricity Maine, LLC resolving a claim asserted in the Action; (4) did not have, and is not seeking to have, the account balance discharged due to bankruptcy or receivership; (5) has not filed to Opt-Out or otherwise sought to be excluded from the Settlement, but instead, hereby waives the right to Opt-Out and agrees to be bound by the Settlement; (6) has the legal authority to submit the claim; (7) has provided information through the Claims Portal that is accurate and complete to the best of their knowledge, information, and belief; (8) has not been excluded from the Settlement Class under Section 3.1 of the Agreement; (9) will timely provide any additional information requested by the Settlement Administrator to validate a Claim; (10) understands that by submitting a Claim through the Claims Portal, the Settlement Class Member is deemed to

have given a complete Release of all Released Claims; and (11) understands that Claims will be audited for veracity, accuracy, and fraud. Prior to the Settlement Class Members' certification under oath, the Claims Portal shall provide an opportunity to review the Settlement Agreement. To submit a Claim through the Claims Portal, a Settlement Class Member shall not be required to upload any document. The Claims Portal, as part of the Settlement Website, shall be optimized for mobile devices.

2.11 "Claims Program" means the program set forth in Section VI.

2.12 "Claimant" means a Settlement Class Member (including Plaintiffs) who does not Opt-Out, but who instead submits a Valid Claim to the Settlement Administrator in accordance with the requirements set forth in the Agreement and established by the Court.

2.13 "Class Counsel" means Thomas Hallett and Benjamin Donahue of Hallett, Whipple, Weyrens P.A., and Robert Cummins of The Cummins Law Firm.

2.14 "Class Period" means January 1, 2011 through and including November 30, 2019.

2.15 "Complaint" means the Third Amended Class Action Complaint filed on behalf of Plaintiffs on or about December 26, 2018.

2.16 "Court" means the United States District Court for the District of Maine.

2.17 "Day" or "Days" unless otherwise noted, means a calendar day.

2.18 "Electricity Maine, LLC" or "Electricity Maine" means Electricity Maine, LLC, including its officers, directors, owners, shareholders, operators, parents, subsidiaries, employees, agents, representatives, lawyers, insurers, affiliates, successors, and assigns.

2.19 "Provider Power, LLC" or "Provider Power" means Provider Power, LLC, including its officers, directors, owners, shareholders, operators, parents, subsidiaries, employees, agents, representatives, lawyers, insurers, affiliates, successors, and assigns.

2.20 “Spark HoldCo, LLC” or “Spark” means Spark HoldCo, LLC, including its officers, directors, owners, shareholders, operators, parents, subsidiaries, employees, agents, representatives, lawyers, insurers, affiliates, successors, and assigns, including, but not limited to, Spark Energy LLC.

2.21 “Kevin Dean” means Kevin Dean, including his agents, representatives, lawyers, insurers, affiliates, successors, and assigns.

2.22 “Emile Clavet” means Emile Clavet, including his agents, representatives, lawyers, insurers, affiliates, successors, and assigns.

2.23 “Defendants’ Counsel” means Pierce Atwood LLP for Defendants Electricity Maine, LLC and Spark HoldCo, LLC, and Drummond Woodsum for Defendants Provider Power, LLC, Kevin Dean, and Emile Clavet.

2.24 “Effective Date” means ten (10) business days after the expiration of the time for filing a notice of appeal from the Final Approval Order if no appeal is filed, or, if an appeal is filed, the latest of: (a) the date of final affirmance of the Final Approval Order; (b) the expiration of the time for a petition for *writ of certiorari* to review the Final Approval Order if affirmed or, if *certiorari* is granted, the date of final affirmance of the Final Approval Order following review pursuant to that grant; or (c) the date of final dismissal of any appeal from the Final Approval Order or the final dismissal of any proceeding on *certiorari* to review the Final Approval Order that has the effect of confirming the Final Approval Order.

2.25 “Email Notice” means the electronic notice of the proposed settlement of the Action to be sent by email that the Parties will ask the Court to approve in connection with the Motion for Preliminary Approval. The Email Notice will be optimized for review on a mobile device and contain hyperlinks to the Settlement Website, and specifically to the Claims

Portal. The Email Notice shall bear the subject line “Notice of Electricity Maine Settlement” and include each Class Members’ Unique Identification Code. The Settlement Administrator shall use industry best practices to avoid spam filters and blockers. All Email Notices shall be sent without attachments. The Email Notice shall be in the form of Exhibit B to this Agreement. The Settlement Administrator shall send the Email Notice to each Settlement Class Member for whom it has a valid email address within thirty (30) days after entry of the Preliminary Approval Order.

2.26 “Fairness Hearing” or “Final Approval Hearing” means the final hearing to be conducted by the Court, on notice to the Settlement Class, to consider final approval of the Settlement and Class Counsel’s application for Attorneys’ Fees and Costs. The Parties will ask the Court to schedule a Fairness Hearing within one hundred fifty (150) days from the entry of the Preliminary Approval Order.

2.27 “Final Approval Order” means the Court’s Order granting final approval of the Settlement, in the form of Exhibit E to this Agreement or any substantial equivalent acceptable to the Parties.

2.28 “Long-Form Notice” means the paper notice of the proposed settlement of the Action to be sent by first class mail and posted on the Settlement Website that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement. The Long-Form Notice shall be in the form of Exhibit C to this Agreement.

2.29 “Maximum Claimant Settlement Amount” means up to the total amount of Fourteen Million Dollars (\$14,000,000), which will be paid only on a “claims made basis” and in accordance with the terms of this Agreement. In no event shall Defendants’ liability

to the Settlement Class, including the Named Plaintiffs' Enhancement Awards, exceed the Maximum Claimant Settlement Amount.

2.30 "Named Plaintiffs" means Plaintiffs Katherine Veilleux, Jennifer Chon, Rocky Coast Family Acupuncture PC, and James Tilton.

2.31 "Named Plaintiffs' Enhancement Award" means the monetary amount, if any, awarded by the Court in recognition of the assistance provided by the four Named Plaintiffs in the prosecution of the Action, which amount shall not exceed Five Thousand Dollars (\$5,000) each. Defendants will not oppose Plaintiffs' request for an Enhancement Award.

2.32 "Notice" means the notice of the proposed settlement of the Action that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement. The Notice shall be in the form of Exhibit B and Exhibit C to this Agreement.

2.33 "Notice Packet" means the paper form of Notice mailed to all Class Members within thirty (30) days of the Preliminary Approval Order. The Notice Packet will include the Long-Form Notice (Exhibit C), the Claims Form (Exhibit A), and a return envelope pre-addressed to the Settlement Administrator.

2.34 "Objection" means a written objection to the Settlement timely and properly filed with the Court by a Settlement Class Member.

2.35 "Objection Deadline" means the last date on which a Settlement Class Member may object to the Settlement, which shall be ninety (90) days following the Notice Packet Date. The Objection Deadline will be specified in the Preliminary Approval Order and the Notice.

2.36 “Opt-Out” or “Opting-Out” means a timely written request by a Settlement Class Member to be excluded from the Settlement by following the procedures set forth in the Preliminary Approval Order and the Notice.

2.37 “Opt-Out Deadline” means the last date on which a Settlement Class Member may request to Opt-Out, which shall be ninety (90) days following the Notice Packet Date. The Opt-Out Deadline will be specified in the Preliminary Approval Order and Notice.

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

2.39 “Preliminary Approval Order” means the Order preliminarily approving the Settlement, finding it likely that the Court will certify the Settlement Class for the purposes set forth in this Agreement, and approving the form of notice to potential Settlement Class Members, which Order shall be in the form of Exhibit D to this Agreement.

2.40 “Released Claims” means any and all rights and remedies of any kind, of the Settlement Class Members and also of Plaintiffs individually, including but not limited to claims; liens; demands; actions; causes of action; obligations; compensatory, punitive, liquidated, treble, and other damages however described; penalties; rescission, disgorgement, recoupment, and all other equitable, declaratory, or injunctive relief however described; liabilities; interest and costs, including attorneys’ fees; of any kind or nature whatsoever, that arose or arise at any time through the date of the Final Approval Order, whether legal, equitable, or otherwise, whether known or unknown, suspected or unsuspected, existing now or arising in the future, that actually were, or could have been, asserted in the Action, including, but not limited to, claims for violations of RICO – 18 U.S.C. §§ 1962(c) and 1964(d), MUTPA – 5 M.R.S. § 207, and for breach of contract, negligence, negligent misrepresentation,

fraudulent misrepresentation, unjust enrichment, and civil conspiracy, and any and all claims related to or arising from any conduct alleged in the Complaint, as amended, or related conduct including but not limited to acts or omissions relating to any rates Electricity Maine charged for the supply of electricity under any agreements, understandings, or programs in Maine, and whether the alleged conduct or related conduct may have occurred or is based, or could be based, on any act, omission, inadequacy, misstatement, representation, harm, matter, cause, or event by any of the Released Persons.

2.41 “Released Persons” means Defendants Electricity Maine, LLC, Spark HoldCo, LLC, and Provider Power, LLC, and all of their past and present parents, subsidiaries, divisions, affiliates, and persons and entities directly or indirectly under their control; their predecessors, successors, and assigns; Defendants Kevin Dean and Emile Clavet and all of their predecessors, successors, and assigns; and the past or present partners, members, directors, officers, managers, employees, shareholders, agents, licensees, agencies, attorneys, insurers, accountants, representatives, heirs, and estates of any and all of the foregoing.

2.42 “Releasers” means each Settlement Class Member who does not submit a timely and valid written request for exclusion (Opt-Out), and any person claiming by or through him, her, or it, including any persons claiming to be his, her, or its spouse, parent, child, heir, estate, guardian, associate, co-owner, attorney, agent, administrator, executor, predecessor, successor, assignee, representative of any kind, shareholder, partner, director, officer, employee, or affiliate.

2.43 “Settlement” means this Agreement and the terms and conditions herein.

2.44 “Settlement Administrator” means, subject to Court approval, the Heffler Claims Group, which shall administer the Claims Program as set forth herein.

2.45 “Settlement Class” means all residential and small commercial consumers who purchased electric supply from Electricity Maine during the Class Period. Excluded from the Settlement Class are: (a) the Defendants; (b) officers, directors, shareholders, and employees of Defendants; (c) parents, subsidiaries, and affiliates of any Defendant; (d) any entity in which a Defendant has a controlling interest; (e) any attorneys representing Defendants in this Action, and their employees; (f) any judge to whom the Action is currently assigned or was previously assigned, and their staff; (g) Plaintiffs’ Counsel and their employees; and (h) any heirs, immediate family members, successors, and assigns of all such persons.

2.46 “Settlement Class Member” means a member of the Settlement Class.

2.47 “Settlement Website” means an internet website created and maintained by the Settlement Administrator for the Settlement that is interactive, mobile-device friendly, and fully functioning prior to the Settlement Administrator sending any form of Notice. The Settlement Website shall display the Long-Form and Email Notices and related Court filings. The Settlement Website shall prominently display on its homepage a link to the Claims Portal and the toll-free numbers for the Settlement Administrator and Class Counsel. The URL of the Settlement Website shall be provided on all forms of Notice disseminated to Settlement Class Members.

2.48 “Unique Identification Code” means a unique number assigned to each Settlement Class Member by the Settlement Administrator, included on each Claims Form mailed as part of the Notice Packet and in each Email Notice, and retrievable through the Claims Portal by Settlement Class Members who provide their full name, current mailing address, service address for the household or business that purchased electric supply from Electricity Maine during the Class Period, and the named account holder for the household or business that purchased electric supply from Electricity Maine during the Class Period.

2.49 “Valid Claim” means a Claim Form timely submitted by a Settlement Class Member that (a) is submitted in accordance with the directions accompanying the Claim Form or the Claims Portal and the provisions of the Settlement; (b) is, on the initial submission, accurately, fully, and truthfully completed, and executed by a Settlement Class Member, with all of the information requested in the Claim Form or the Claims Portal; (c) is signed physically or by e-signature of a Settlement Class Member personally, subject to the penalty of perjury; (d) is received by the Settlement Administrator by the Claim Deadline; and (e) is determined to be valid by the Settlement Administrator.

III. CERTIFICATION OF THE SETTLEMENT CLASS

3.1 For settlement purposes only, the Named Plaintiffs agree to ask the Court to certify the following “Settlement Class” under Rule 23(b)(3) of the Federal Rules of Civil Procedure: All residential and small commercial consumers who purchased electric supply from Electricity Maine during the Class Period.

Excluded from the Settlement Class are: (a) the Defendants; (b) officers, directors, shareholders, and employees of Defendants; (c) parents, subsidiaries, and affiliates of any Defendant; (d) any entity in which a Defendant has a controlling interest; (e) any attorneys representing Defendants in this Action, and their employees; (f) any judge to whom the Action is currently assigned or was previously assigned, and their staff; (g) Plaintiffs’ Counsel and their employees; and (h) any heirs, immediate family members, successors, and assigns of all such persons. Plaintiffs’ Counsel and each of their employees shall execute a waiver in the form attached hereto as Exhibit G stating that they agree to waive, fully and finally with prejudice, any and all claims related to or arising from or related to any conduct alleged in the Complaint, as amended, including but not limited to acts or omissions relating to any rates Electricity

Maine charged for the supply of electricity under any agreements, understandings, or programs in Maine, and whether the alleged or related conduct may have occurred or is based, or could be based, on any act, omission, inadequacy, misstatement, representation, harm, matter, cause, or event by any of the Released Persons.

3.2 Defendants agree not to oppose Named Plaintiffs' request for certification of the Settlement Class. In doing so, Defendants do not waive, and instead expressly reserve, their rights to challenge the propriety of class certification for any purposes as if this Agreement had not been entered into by the Parties in the event that the Court does not approve the Settlement or the Effective Date does not occur. The Parties and Class Counsel agree that, if approved, certification of the Settlement Class is in no way an admission by Defendants that class certification is proper in this Action for any purpose other than for settlement, including in any other litigation against Defendants. The Parties and Class Counsel further agree that, other than to effectuate the Settlement of this Action, the certification of the Settlement Class for settlement purposes and all documents related thereto, including this Agreement and all accompanying exhibits and all orders entered by the Court in connection with this Agreement, shall not be admissible against any Released Party in any judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, including without limitation any litigation.

IV. SETTLEMENT CONSIDERATION

4.1 Under no circumstances shall Defendants' liability to make payments to the Settlement Class Members, including the Named Plaintiffs' Enhancement Awards, exceed the Maximum Claimant Settlement Amount of \$14,000,000.

4.2 In consideration of the Settlement including the Release given herein, each Claimant shall be entitled to a Calculated Payment as described in this Agreement. The total amount paid to all Claimants, including the Named Plaintiffs' Enhancement Awards, in the aggregate, shall not exceed the Maximum Claimant Settlement Amount. In the event the aggregate total dollar value of all Claims submitted by the Claimants and the Named Plaintiffs' Enhancement Awards paid to the Named Plaintiffs exceeds the Maximum Claimant Settlement Amount, each Claimant's Calculated Payment shall be reduced and the Claimant shall receive, as a Calculated Payment, a pro rata share of the Maximum Claimant Settlement Amount. Only one Calculated Payment is payable per eligible Electricity Maine account; however, Claimants who maintained multiple accounts with Electricity Maine are not prohibited from submitting multiple Claims.

4.3 The payments to Claimants described herein will only be available on a claims made basis through submission of a Valid Claim, with no residue, and Electricity Maine will only be required to pay Valid Claims.

4.4 This Agreement does not create any property interest or unclaimed property or *cy pres* rights for Settlement Class Members who do not submit Valid Claims, or who do not present, deposit, cash, or otherwise negotiate a settlement payment, or if the Settlement is terminated.

4.5 All Settlement Class Members, Claimants, Named Plaintiffs, and Class Counsel shall be responsible for their own individual tax reporting obligations respecting the Settlement

and any payments thereunder. Defendants' Counsel and the Released Parties shall not have any liability or responsibility for any taxes or tax expenses resulting from the Settlement.

4.6 Claimants will have the opportunity to select an electronic payment option for payment of the Claimant's Calculated Payment on the Claims Form or through the Claims Portal. The Claims Form and the Claims Portal will provide available cost-effective electronic payment options, including direct deposit and various digital payment methods. Each Claimant opting to receive their Calculated Payment electronically shall select one of the identified payment options and provide the information required to make the payment (*i.e.*, routing and account numbers for a direct deposit or email address or phone number for a digital payment). Claimants who have submitted a Valid Claim but who do not select an electronic payment option, will receive their Calculated Payment by check sent via U.S. Mail. To the extent the Claims Administrator is unable to process an electronic payment to a Claimant who selected an electronic form of payment, the Settlement Administrator shall issue a check sent via U.S. Mail.

4.7 All settlement payments issued to the Claimants will only be valid and negotiable for, and must be presented for payment or deposit within, a period of one hundred eighty (180) days. Upon the expiration of such period, any payment not presented, deposited, cashed, or otherwise negotiated shall expire and be void. The voiding of any payment by such passage of time shall not invalidate the Release given in Section X of this Agreement.

4.8 Electricity Maine shall waive payments of amounts owed to it by Settlement Class Members for electricity purchased during the Class Period that were more than one hundred twenty (120) days overdue as of November 30, 2019.

V. SETTLEMENT APPROVAL

5.1 As soon as practicable after the full execution of this Agreement, Plaintiffs shall file with the Court a motion seeking entry of the Preliminary Approval Order, in the form attached hereto as Exhibit D. Defendants agree not to oppose this motion.

5.2 The Preliminary Approval Order shall accomplish the following for purposes of the Settlement only:

- a. Preliminarily approve the Settlement and this Agreement as fair, reasonable, and adequate to the Settlement Class;
- b. Find that the Settlement Class is likely to be certified for the purpose of effecting the Settlement;
- c. Designate Plaintiffs as the representatives of the Settlement Class;
- d. Designate Plaintiffs' Counsel as Class Counsel for the Settlement Class;
- e. Approve the Settlement Administrator and instruct the Settlement Administrator to perform the following functions in accordance with the terms of this Agreement and the Preliminary Approval Order:
 1. Before disseminating Class Notice, establish the Settlement Website, which Settlement Class Members can utilize to obtain additional information regarding the Settlement and submit claims through the Claims Portal;
 2. Process Claim Forms in accordance with Section VI of this Agreement;
 3. Process requests for Opt-Outs in accordance with Section VII of this Agreement; and

4. Process Objections to the Settlement in accordance with Section VII of this Agreement.
5. Establish a toll-free number that Settlement Class Members can call for information regarding the Settlement or to receive a Claims Form.
- f. Approve the form, content, and method of notice to be given to the Settlement Class as set forth in Section VI of this Agreement; and
- g. Stay all proceedings in the Action, except such proceedings as may be necessary to complete and implement the Settlement, until the Effective Date of the Settlement has occurred.

5.3 Based on Defendants' data and information shared with Plaintiffs, Settlement Class Members are associated with approximately 213,810 utility accounts. Settlement Class Members cumulatively purchased from Electricity Maine approximately 5,935,505,254 kilowatt hours of electricity during the Class Period. Within ten (10) business days after the Preliminary Approval Order, Electricity Maine will, pursuant to order of the Court, provide the Settlement Administrator with necessary data for administration of the Settlement, including, for the Settlement Class Members, their names, phone numbers, last known addresses and email addresses, and kilowatt hours of electricity usage during the class period by specific Settlement Class Members. Class Counsel will simultaneously receive a copy of all Settlement Class Member information provided to the Settlement Administrator, but with all personal identifying information redacted, including the redaction of Settlement Class Member names, utility account numbers, physical and email addresses, and telephone numbers.

VI. RESPONSIBILITIES OF SETTLEMENT ADMINISTRATOR AND PROCEDURES FOR PROVIDING NOTICE TO, AND SUBMITTING CLAIM FORMS BY, SETTLEMENT CLASS MEMBERS

6.1 The Settlement Administrator shall, subject to the supervision of the Court, administer the Settlement, provide Notice, and process Claim Forms, in a responsive and timely manner and pursuant to the requirements of this Agreement. The Settlement Administrator shall maintain all records required by this Agreement and applicable law, and make such records available to Class Counsel and Defendants' Counsel promptly upon request.

The Parties agree that the Notices shall be in the form of Exhibits B and C to this Agreement, and shall set forth and inform the Settlement Class Members of: (a) the background of the Action and the essential terms of the Settlement; (b) the appropriate means for obtaining additional information regarding the Settlement and the Action; (c) the appropriate means to timely submit a Claim Form; (d) the appropriate information concerning the procedure for Opting-Out from the Settlement and filing an Objection to the Settlement, if they should wish to do so; and (e) that any relief to Settlement Class Members is contingent on the Court's final approval of the Settlement.

6.2 The Settlement Administrator shall provide all usual and customary claims administration services, including, among other things, providing Notice as set forth in this Agreement by printing, emailing, mailing or otherwise arranging to disseminate Notice to Settlement Class Members; processing, administering, and validating Claim Forms and Claims Portal submissions; establishing and administering the Settlement Website; establishing a toll-free number to answer Settlement Class Members questions and responding to requests to Claims Forms; and administering the Opt-Out process described herein, including receiving and

maintaining on behalf of the Court and the Parties any Settlement Class Members' correspondence regarding Opt-Out requests from the Settlement Class.

6.3 The Settlement Administrator shall use adequate and customary procedures and standards to prevent the payment of fraudulent Claims, including but not limited to: validating Claims against the Defendants' records; using Settlement Class Member's Unique Identification Code that will be matched to the Notice list; and screening for multiple or fraudulent Claims. The Settlement Administrator and Parties shall have the right to audit Claims, and the Settlement Administrator may request additional information from Settlement Class Members submitting Claims. If any fraud is detected or reasonably suspected, the Settlement Administrator may request further information from the Settlement Class Member or deny the Claim, subject to the supervision of the Parties and ultimate oversight by the Court. The Settlement Administrator shall approve or deny all Claims, and its decision shall be final and binding, except that, as provided below, Class Counsel and Defendants' Counsel may challenge the Settlement Administrator's decision by motion to the Court. To deny a claim, the Settlement Administrator shall notify the Claimant whose Claim has been denied with a notice and statement of reasons indicating the grounds for the denial. The Settlement Administrator shall provide Class Counsel and Defendants' counsel with a report identifying any denied claims. Class Counsel and Defendants' Counsel shall have fifteen (15) days to respond to the denial of the disputed claim after receiving the report from the Settlement Administrator. If the Parties or a claimant cannot agree on the resolution of a disputed claim, the claim shall be presented to the Court or a court-appointed referee for summary and non-appealable resolution.

6.4 The Settlement Administrator, on behalf of Defendants, will be responsible for serving the Class Action Fairness Act (“CAFA”) notice required by 28 U.S.C. § 1715 within ten (10) days of the filing of the motion for preliminary approval.

6.5 The Parties agree that the Settlement Administrator shall disseminate Notice in accordance with the following schedule:

- a. Not later than thirty (30) days after entry of the Preliminary Approval Order, the Settlement Administrator shall provide the Notice Packet, which shall contain a Unique Identification Code for each Settlement Class Member, to the Settlement Class Members by First Class Mail, postage prepaid. The Notice Packet shall be sent to each Settlement Class Member on a single occasion, except if a Notice Packet is returned to the Settlement Administrator as undeliverable; and
- b. Not later than thirty (30) days after entry of the Preliminary Approval Order, the Settlement Administrator shall send the Email Notice to each Settlement Class Member for whom it has a valid email address.

6.6 The Long-Form Notice shall be available on the Settlement Website.

6.7 Prior to sending any Notice by U.S. Mail, the Settlement Administrator shall utilize the USPS National Change of Address Database and address tracing through Lexis Nexis to ensure that all Notices are sent to Settlement Class Members’ current addresses. If a Notice Packet is returned as undeliverable, the Settlement Administrator shall attempt to contact that Settlement Class Member by telephone and provide an additional Notice.

6.8 In order to ensure consistent and accurate communication regarding the terms of the Settlement, any communications with Settlement Class Members by the Parties or their counsel shall be limited to directing Settlement Class Members to the Settlement Website, providing

information on contacting the Settlement Administrator to make a Claim, or responding to any inquiries initiated by Settlement Class Members.

6.9 The Parties agree that the notice provisions of this Agreement are a material part of the Settlement.

6.10 In order to qualify for a Calculated Payment, Settlement Class Members must either timely deliver a properly completed Claim Form, substantially in the form of Exhibit A, or submit a Claim through the Claims Portal to the Settlement Administrator during the Claim Period using their Settlement Class Member Unique Identification Code provided in the Notice Packet, Email Notice, or retrieved through the Claims Portal. Claim Forms and Claims Portal submissions by Settlement Class Members must be received by the Settlement Administrator on or before the Claim Deadline.

6.11 All Settlement Class Members who submit a Claim Form must sign, or in the case of Claims made online on the Settlement Website through the Claims Portal electronically confirm, as part of the Claim Form, a certification under oath that the Settlement Class Member (1) has read the Settlement Agreement and agrees to its terms, including the release; (2) is or was a named account holder with Electricity Maine, LLC during the Class Period; (3) has not already received a payment from Electricity Maine, LLC resolving a claim asserted in the Action; (4) did not have, and is not seeking to have, the account balance discharged due to bankruptcy or receivership; (5) has not filed to Opt-Out or otherwise sought to be excluded from the Settlement, but instead, hereby waives the right to Opt-Out and agrees to be bound by the Settlement; (6) has the legal authority to submit the claim; (7) has provided information that is accurate and complete to the best of their knowledge, information, and belief; (8) has not been excluded from the Settlement Class under Section 3.1 of the Agreement; (9) will

timely provide any additional information requested by the Settlement Administrator to validate a Claim; (10) understands that, by submitting a Claim, the Settlement Class Member is deemed to have given a complete Release of all Released Claims; and (11) understands that Claims will be audited for veracity, accuracy, and fraud. The Claim Form will also require the Settlement Class Member to provide the Settlement Class Member's Unique Identification Code provided by the Settlement Administrator in the Notice Packet and Email Notice or available with proper authentication on the Claims Portal.

6.12 Only Settlement Class Members who submit a timely Claim Form or Claim through the Claims Portal, determined by the Settlement Administrator to be a Valid Claim, shall receive a Calculated Payment. Any Settlement Class Member who fails to submit a timely and valid Claim Form, and who does not Opt-Out, shall not be eligible to receive any Calculated Payment, but in all other respects shall be bound by all of the terms of this Agreement, including the terms of the Final Approval Order and the Release provided for herein, and shall be permanently barred and enjoined from bringing any action, claim, or proceeding of any kind against any of the Released Parties concerning any of the Released Claims.

6.13 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 Agreement.

6.14 The Settlement Administrator shall create and maintain the Settlement Website which will provide, among other things, the Claims Portal, copies of the Long-Form Notice, Email Notice, this Agreement, the Settlement Administrator's contact information, the Third Amended Complaint and Defendants' Answers thereto and certain selected Court orders from the Action,

the motions for and memoranda and affidavits in support of preliminary and final approval of the Settlement submitted by the Plaintiffs, and a method for requesting the Claim Form.

VII. OPT-OUTS AND OBJECTIONS

7.1 Opt-Out

a. Any Settlement Class Member, other than the Named Plaintiffs, may elect to be excluded from this Settlement by delivering written notice of the election to Opt-Out to the Settlement Administrator on or before the Opt-Out Deadline. Opt-Out requests must: (i) be signed by the Settlement Class Member who is requesting exclusion; (ii) include the full name, address, and phone number(s) of the Settlement Class Member; and (iii) expressly request to Opt-Out from the Settlement in the “Electricity Maine Class Action.” No Opt-Out request will be valid unless all of the information described above is included and timely received by the Settlement Administrator by the Opt-Out Deadline. No Settlement Class Member, or any person acting on behalf of, or in concert or participation with, the Settlement Class Member, may exclude any other Settlement Class Member from the Settlement. Settlement Class Members who do not timely and properly submit a written request to Opt-Out shall be bound by all of the terms of this Agreement, including the terms of the Final Approval Order and the Release provided for herein, and shall be permanently barred and enjoined from bringing any action, claim, or proceeding of any kind against any of the Released Parties concerning any of the Released Claims.

b. If a Settlement Class Member submits a timely Claim Form or submits a Claim through the Claims Portal, and a timely request to Opt-Out, the Claim Form or Claims Portal submission shall govern.

c. In the event that more than five percent (5%) of the Settlement Class Opt-Out, Defendant Electricity Maine shall have the option, at its sole discretion, to terminate this Agreement, in which circumstance the Settlement will become null and void and the Parties shall be deemed to have reverted *nunc pro tunc* to their respective status in the Action as of the date of this Agreement as set forth in Section XIII. Within five (5) business days after receiving notice from the Settlement Administrator that this threshold has been reached, which notice, and list of Opt-Outs, shall be provided by the Settlement Administrator not later than ten (10) business days before the Final Approval Hearing, Defendant Electricity Maine must notify Defendants' Counsel, Class Counsel, and the Court if it intends to exercise this exclusive right to terminate.

d. Named Plaintiffs affirmatively support this Settlement and shall not Opt-Out of this Settlement.

e. Neither Named Plaintiffs, Class Counsel, Defendants, nor Defendants' Counsel shall in any way encourage any Settlement Class Member to Opt-Out or discourage any Settlement Class Member from participating in the Settlement.

7.2 Objections

a. Any Settlement Class Member who wishes to object to the Settlement must file a written Objection and notice of intention to appear before the Court at the Fairness Hearing and serve copies on the Settlement Administrator, Class Counsel, and Defendants' Counsel. To be heard at the Fairness Hearing, Settlement Class Members must make an Objection in writing and file it with the Clerk of the Court by the Objection Deadline. Any Objection must (1) attach documents establishing, or provide information sufficient to allow the Parties to confirm, that the objector is a Settlement Class Member; (2) state whether it applies only to the objector, to a specific

subset of the class, or to the entire class; (3) include a statement of such Settlement Class Member's specific Objection(s); (4) state the grounds for the Objection(s); (5) identify any documents such objector desires the Court to consider; and (6) provide all information requested on the Claim Form.

b. Upon the filing of an Objection, Class Counsel and Defendants' Counsel may take the deposition of the objecting Settlement Class Member at an agreed-upon time and location, to obtain any evidence relevant to the Objection.

VIII. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF COSTS, AND NAMED PLAINTIFFS' ENHANCEMENT AWARDS

8.1 Subject to Court approval, Thomas Hallett and Benjamin Donahue of Hallett, Whipple, Weyrens P.A., and Robert Cummins of The Cummins Law Firm shall be appointed Class Counsel, without prejudice to Defendants' right to contest the appointment in the event that this Agreement is not fully implemented in accordance with its terms.

8.2 Class Counsel may file an application for the award of Attorneys' Fees and Costs in an amount that shall not, in the aggregate, exceed twenty-eight percent (28%) of the \$14 million Maximum Claimant Settlement Amount, or \$3,920,000. Class Counsel's application shall state the actual amount of fees and costs incurred by Class Counsel in prosecuting this Action, including a summary all hours spent and hourly rates applied, and Class Counsel agree to make available to Defendants and to the Court such records and information as support those actual fees and costs, as reasonable and necessary to perform a lodestar analysis of the fees and costs requested. Defendants may oppose Class Counsel's application for fees and costs, and reserve all rights to contest any application for fees and costs by Class Counsel. Class Counsel will also submit to the Court a motion seeking approval of the payment of Named Plaintiffs' Enhancement Award, in an amount which shall not exceed Five Thousand Dollars (\$5,000) per Named Plaintiff, as

compensation for Plaintiffs' efforts in bringing the Action and achieving the benefits of the Settlement on behalf of the Settlement Class. No interest will accrue on such amounts at any time. Defendants will not oppose the request for Named Plaintiffs' Enhancement Awards.

a. Defendant Electricity Maine will pay the amounts approved by the Court for the Attorneys' Fees and Costs and the Named Plaintiffs' Enhancement Awards, subject to the limits stated above, within fourteen (14) business days after the Effective Date.

b. The Court's approval of the Attorneys' Fees and Costs and the Named Plaintiffs' Enhancement Awards within the bounds described by this Settlement shall not be deemed material to, or a condition of, the Settlement. Even if the Court denies, in whole or part, the Attorneys' Fees and Costs requested by Class Counsel, and the Named Plaintiffs' Enhancement Awards requested by Plaintiffs, the Parties agree that the remainder of the terms of this Agreement shall remain in full force and effect.

8.3 Class Counsel and Plaintiffs shall provide Defendants Counsel with all necessary accounting and tax information, including W-9 forms, with reasonable advance notice to allow Defendants to make the payments set forth above.

8.4 Class Counsel shall file the application for the award of Attorneys' Fees and Costs, and motion for Named Plaintiffs' Enhancement Award, within sixty (60) days after the Notice Packet is sent out.

IX. FINAL APPROVAL

9.1 Class Counsel shall file a motion for final approval of the Settlement within sixty (60) days after the Notice Packet is sent to Settlement Class Members.

9.2 This Agreement is subject to, and conditioned upon, the issuance of the Final Approval Order by the Court. If the Settlement is finally approved, the Court will enter a judgment

dismissing the Action and all causes of action raised therein, with prejudice, as part of the Final Approval Order. The Parties waive any right to appeal or collaterally attack the Final Approval Order entered by the Court if substantially in the form of Exhibit E to this Agreement without material modifications.

9.3 At the Fairness Hearing, Plaintiffs shall request entry of the Final Approval Order:

- a. certifying the Settlement Class for purposes of the Settlement only;
- b. finally approving the Settlement, without material modification, as fair, reasonable, and adequate and directing its consummation pursuant to its terms;
- c. providing that each Settlement Class Member, who does not properly and timely Opt-Out in accordance with the terms of the Settlement, shall be bound by all provisions of the Settlement and the Final Approval Order;
- d. directing that the Action be dismissed, with prejudice, without cost to either side, except as provided for herein, and releasing the Released Parties from the Released Claims; and
- e. reserving jurisdiction over the Action, including all future proceedings concerning the administration, consummation, and enforcement of the Settlement.

9.4 Except as expressly set forth in this Agreement, the terms set forth herein are material and essential provisions, and in the event that the Court does not approve and accept all such provisions of this Agreement, this Agreement or any part of it is materially modified by the Court or is materially modified upon appeal or remand, or if the Effective Date does not occur,

this Agreement may be terminated and voided ab initio at the election of any Party pursuant to Section XIII.

9.5 For purposes of this Agreement, a “material modification” is one that substantially 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: (a) any change to the scope of the Released Claims; (b) any change to the Final Approval Order which limits or reduces any of the protections afforded to Defendants, (c) any increase in the cost of the Settlement to be borne by Defendants, to be determined at the sole discretion of Electricity Maine; or (d) any material change to the Notice, Claim Form, and claim or notice process. No order or action of the Court pertaining to Attorneys’ Fees and Costs or the Named Plaintiffs’ Enhancement Awards shall be considered to constitute a material modification so long as such order, action, or modification does not increase the cost thereof to be borne by Defendants, and does not require that Defendants do anything not specifically set forth herein.

X. RELEASE

10.1 Upon the Effective Date and without any further action by the Court or by any Party to this Agreement, Releasers, for good and sufficient consideration, the receipt and adequacy of which are acknowledged, shall be deemed to, and shall, in fact, have remised, released, and forever discharged any and all Released Claims, which they, or any of them, had, has, or may in the future have or claim to have, against any of the Released Persons.

10.2 The Releasers acknowledge and agree 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 the Released Claims, but that it is their intention to finally and forever settle and release the Released Claims that they may have.

10.3 In consideration of the Settlement and any Attorneys' Fees and Costs that are awarded by the Court, Class Counsel shall release the Released Persons of, and from, any and all claims for additional attorneys' fees and out-of-pocket litigation costs and expenses, beyond those granted by the Court.

10.4 The Parties intend the Settlement to be a final and complete resolution of all disputes between them with respect to the Action.

XI. REPRESENTATIONS AND WARRANTIES

The Parties and their counsel represent and warrant, as follows:

11.1 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 tax consequences of this Agreement, and fully understands and accepts the terms of this Agreement.

11.2 Defendants represent and warrant: (a) that they have the requisite corporate power and authority to execute, deliver, and perform the Agreement and to consummate the transactions contemplated hereby; (b) that the execution, delivery, and performance of the Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of Defendants; and (c) that the Agreement has been duly and validly executed and delivered by Defendants and constitutes their legal, valid, and binding obligations.

11.3 Plaintiffs represent and warrant that they are entering into the Agreement, on behalf of themselves individually and as the proposed representatives of the Settlement Class, of their own free will and without the receipt of any consideration other than what is provided in this Agreement and disclosed to, and authorized by, the Court. Plaintiffs further represent and warrant

that they have reviewed the terms of the Agreement in consultation with Class Counsel and believe them to be fair and reasonable, and agree that they will not file an Opt-Out request or an Objection.

11.4 Plaintiffs also 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 or may have arising out of this Action or could have asserted in this Action, 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, or is subject to any lien or other interest held by a third party.

11.5 Neither Party relies, or has relied, on any statement, representation, omission, inducement, or promise of the other 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.

XII. NO ADMISSIONS OF FAULT

This Agreement is conditioned upon final approval of the Court, and is made for settlement purposes only and does not represent an admission of liability or wrongdoing by any Party. Whether or not consummated, this Agreement shall not be construed as, offered in evidence as, received in evidence as, or deemed to be, evidence of a presumption, concession, or an admission by Plaintiffs, Defendants, any Settlement Class Member, or Released Persons, 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 person. Any reference to the alleged business practices of Defendants in the Settlement or the related court hearings and processes shall create no evidentiary or other inference

regarding the propriety of those business practices or any other business practices of Defendants or its affiliates.

XIII. TERMINATION OF AGREEMENT

13.1 Except as expressly set forth herein, Defendants and Plaintiffs each shall have the right to terminate the Settlement by providing written notice of their election to do so to the other Party within twenty (20) days after the date on which: (a) the Court declines to enter the Preliminary Approval Order or makes material changes thereto; (b) the Court refuses to approve the Settlement or any material part thereof; (c) the Court declines to enter the Final Approval Order or makes material changes thereto; (d) the Final Approval Order is vacated, modified, or reversed in any material respect; or (e) the Effective Date otherwise does not occur.

13.2 Except as otherwise provided herein, in the event the Settlement and this Agreement are terminated, or if the Effective Date fails to occur for any reason, the Parties shall be deemed to have reverted *nunc pro tunc* to their respective status in the Action as of the date of this Agreement, and the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered and without any prejudice in any way from the negotiations, fact, or terms of the Settlement. Furthermore, 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, Settlement Class Member, or Released Person; 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; shall not be used or asserted in any other manner or for any purpose; and all Parties, Settlement Class Members, and Released Persons shall stand in the same position as if this Agreement and Settlement had not been negotiated, made, or submitted to the Court.

XIV MISCELLANEOUS PROVISIONS

14.1 Entire Agreement

This Agreement, together with the exhibits hereto, constitutes the complete and 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 Defendants are entering into this Agreement in reliance upon any representations, warranties, or inducements other than those contained in this Agreement.

14.2 Plaintiffs' Authority

Class Counsel represents and warrants 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 Order, the Settlement Class, in order to effectuate the terms of this Agreement.

14.3 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 Plaintiffs' motion for preliminary approval without the need to collate and file a copy with original signatures.

14.4 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, as set forth in this Agreement.

14.5 Binding Nature

This Agreement shall be binding upon, and inure to the benefit of, the heirs, executors, administrators, successors, and assigns of the Plaintiffs, Settlement Class Members, Defendants, and the Released Persons.

14.6 Construing the Agreement

This Agreement shall be construed as jointly drafted by the Parties. It is recognized that this Agreement is the result of arm's-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.

14.7 Choice of Law

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

14.8 Jurisdiction

The Parties submit to the exclusive jurisdiction of the Court for the purpose of enforcing this Agreement or implementing any part of the Settlement embodied in this Agreement, except the Parties agree in the event of any future dispute concerning the Settlement, they will first ask Magistrate Judge John Nivison to mediate that dispute.

14.9 Headings

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

14.10 Media and Contact of Class Members

The Parties and their counsel agree that simultaneously with the Settlement Administrator's dissemination of the Notice Packet, they will jointly issue the media statement in the form attached hereto as Exhibit F. Beyond the joint media statement, if the Parties or their counsel are contacted by the press, media, or any industry association, they will respond only that the Action has been amicably resolved to the Parties' mutual satisfaction and direct the contacting party to the Settlement Website or Settlement Administrator. Prior to the Effective Date, no Party or their counsel shall make any reference to the value of the Settlement on any website, in any promotional material, or otherwise, except as required by law. The Settlement Administrator and Class Counsel may post the Long-Form and Email Notices and the motions for preliminary and final approval on their respective websites. Any posting on Class Counsel's website shall be in a format, style, and manner consistent with the settlement summaries routinely and presently posted on that website concerning other litigation.

14.11 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 Person or the appropriateness of class certification in any proceeding in any court, administrative agency, or other tribunal. In addition, any failure of the Court to approve the Settlement and any objections or interventions may not be used as evidence in the Action or any other proceeding for any other purpose

whatsoever. However, the Released Persons may file the Agreement and the Final Approval Order in any action or proceeding that may be brought against them in order to support a defense or counterclaim including based on principles of res judicata, collateral estoppel, release, accord and satisfaction, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

14.12 Effectiveness, Amendments, Binding Nature, and Third-Party Beneficiaries

a. 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 Class, 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.

b. All Released Persons other than Defendants are intended to be third-party beneficiaries of this Agreement.

14.13 Cooperation to Stay or Otherwise Dismiss Other Proceedings

The Parties 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 Settlement Class Member in, any other proceedings against any of the Released Persons which challenges the Settlement or otherwise asserts or involves, directly or indirectly, the Released Claims.

14.14 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 U.S. Mail and email to:

a. If to Plaintiffs or Class Counsel:

Thomas F. Hallett
Benjamin N. Donahue
HALLETT WHIPPLE WEYRENS
6 City Center
Suite 208
Portland, Maine 04101
thallett@hww.law
bdonahue@hww.law

and

Robert P. Cummins
THE CUMMINS LAW FIRM, P.C.
Two Canal Plaza
P.O. Box 4600
Portland, ME 04112-4600
rpc@cumminslawfirm.com

b. If to Defendants or Defendants' Counsel:

John J. Aromando
Katherine S. Kayatta
Sara A. Murphy
PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
jaromando@pierceatwood.com
kkayatta@pierceatwood.com
smurphy@pierceatwood.com

and

Melissa A. Hewey
Amy K. Olfene
Adrienne E. Fouts
DRUMMOND WOODSUM
84 Marginal Way
Suite 600
Portland, ME 04101
mhewey@dwmlaw.com
aolfene@dwmlaw.com
afouts@dwmlaw.com

14.15 Protective Orders

All orders, 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.

14.16 Waiver

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

14.17 Exhibits

All exhibits to this Agreement are material and integral parts hereof, and are incorporated by reference as if fully rewritten herein. Notwithstanding the foregoing, in the event that a conflict or inconsistency exists between the terms of this Agreement and the terms of any exhibit hereto, the terms of this Agreement shall prevail.

14.18 Counting of Days

If the date for performance of any act required by or under this Agreement falls on a Saturday, Sunday, or Court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

14.19 Attorneys’ Fees

Except as expressly provided herein, each of the Parties shall bear his, her, or its own attorneys’ fees and expenses in connection with the Action and the Settlement.

14.20 Support From The Parties

After a full investigation, discovery, and arm's-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 Class; (b) shall support motions for entry of the Preliminary Approval Order and Final Approval Order; and (c) will not encourage any persons to Opt-Out or file an Objection to the Settlement or this Agreement.

(Signature page follow)

Dated this 19th day of March, 2020

On behalf of Named Plaintiffs and the Settlement Class:

/s/ Thomas F. Hallett

Thomas F. Hallett
Benjamin N. Donahue
HALLETT WHIPPLE WEYRENS
6 City Center, Suite 208
Portland, Maine 04101
(207) 775-4255
thallett@hww.law
bdonahue@hww.law

/s/ Robert P. Cummins

Robert P. Cummins
THE CUMMINS LAW FIRM, P.C.
Two Canal Plaza
P.O. Box 4600
Portland, ME 04112-4600
(207) 553-4712
rpc@cumminslawfirm.com

On behalf of Defendants Electricity Maine, LLC and Spark HoldCo, LLC

/s/ John J. Aromando

John J. Aromando
Katherine S. Kayatta
Sara A. Murphy
PIERCE ATWOOD LLP
Merrill's Wharf, 254 Commercial Street
Portland, ME 04101
Tel: 207-791-1100
jaromando@pierceatwood.com
kkayatta@pierceatwood.com
smurphy@pierceatwood.com

On behalf of Defendants Provider Power, LLC, Kevin Dean, and Emile Clavet

/s/ Melissa A. Hewey

Melissa A. Hewey
Amy K. Olfene
Adrienne E. Fouts
DRUMMOND WOODSUM
84 Marginal Way, Suite 600
Portland, ME 04101
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aolfene@dwmlaw.com
afouts@dwmlaw.com

Katherine Veilleux, et al. v. Electricity Maine, LLC, et al.

Case No: 1:16-cv-571-LEW

Exhibit A
CLAIM FORM

IMPORTANT LEGAL MATERIALS

CLAIM FORM

GENERAL INSTRUCTIONS

Settlement Class Members who seek payment from the Settlement must timely complete and return this Claim Form *or* submit a claim online through the Claims Portal. Completed Claim Forms must be mailed to the Settlement Administrator at Heffler Claims Group, _____ . You may submit a claim through the Claims Portal at www._____.com. **Claim Forms and online claim submissions must be RECEIVED BY, OR SUBMITTED ONLINE TO, THE SETTLEMENT ADMINISTRATOR BY NO LATER THAN _____, 2020 at 11:59 pm, Eastern Time.**

Before you complete and submit this Claim Form, you should read and be familiar with the Long-Form Notice for the proposed Settlement enclosed with this Claim Form and also available at www._____.com. By submitting this Claim Form, you acknowledge that you have read and understand the Notice, and you agree to the Release included as a material term of the Settlement. If you submit a Valid Claim, you may be eligible for a cash benefit. Your specific benefit will be calculated based upon your amount of kilowatt hours purchased from Electricity Maine during the period from January 1, 2011 through and including November 30, 2019, as well as how many Valid Claims are submitted.

If you fail to submit a timely Claim Form, your Claim will be rejected, and you will be precluded from any recovery under the Settlement. If you are a member of the Settlement Class and you do not timely and validly seek exclusion from the Settlement Class (“Opt-Out”), you will be bound by any judgment entered by the Court approving the Settlement regardless of whether you submit a Claim Form.

In order to submit a Claim, you must provide the following information:

PLEASE PRINT OR TYPE

Full Name:

Current Mailing Address:

(City)

(State)

(Zip)

Email Address:

Unique Settlement Class Member ID:

Please identify the named account holder for the household:

Certification that this Claim Form is True, Correct, and Submitted Subject to the Penalty of Perjury

I hereby certify under penalty of perjury that:

1. I have read the Settlement Agreement and agree to its terms, including the Release;
2. I am or was a named account holder with Electricity Maine, LLC during the Class Period;
3. I have not already received a payment from Electricity Maine, LLC resolving a claim asserted in the Action;
4. I did not have, nor am I seeking to have, the account balance discharged due to bankruptcy or receivership;
5. I have not filed to Opt-Out or otherwise sought to be excluded from the Settlement, but instead, hereby waive the right to Opt-Out and agree to be bound by the Settlement;
6. I have the legal authority to submit this Claim;
7. The information provided in this Claim Form is accurate and complete to the best of my knowledge, information, and belief;
8. I am not a person or entity excluded from the Settlement Class as defined in the Settlement Agreement including any of the following: (a) the Defendants; (b) officers, directors, shareholders, and employees of Defendants; (c) parents, subsidiaries, and affiliates of any Defendant; (d) any entity in which a Defendant has a controlling interest; (e) any attorneys representing Defendants in this Action, and their employees; (f) any judge to whom the Action is currently assigned or was previously assigned, and their staff; (g) Plaintiffs' counsel and their employees; and (h) any heirs, immediate family members, successors, and assigns of all such persons.
9. I will timely provide any additional information requested by the Settlement Administrator to validate my Claim. Any such additional information provided to the Settlement Administrator to support my Claim is an original or a complete and true copy of the original document;
10. I understand that by submitting this Claim Form, I am deemed to have given a complete Release of all Released Claims; and
11. I understand that Claims will be audited for veracity, accuracy, and fraud. Illegible Claims Forms will be rejected. If a Claim Form is determined not to be a Valid Claim, I understand it will be rejected.

By signing below, you are submitting to the jurisdiction of the United States District Court for the District of Maine.

Signature:

Date:

Katherine Veilleux, et al. v. Electricity Maine, LLC, et al.

Case No: 1:16-cv-571-LEW

Exhibit B
EMAIL NOTICE

LEGAL NOTICE OF A CLASS ACTION SETTLEMENT IN THE CASE OF:

Katherine Veilleux et al. v. Electricity Maine et al.

**IF YOU WERE AN ELECTRICITY MAINE, LLC CUSTOMER YOU COULD
RECEIVE A CASH PAYMENT FROM THIS CLASS ACTION SETTLEMENT**

A Federal Court approved this Notice. This is not a solicitation from a lawyer.

WHAT IS THIS ABOUT?

A proposed settlement has been reached in a lawsuit concerning rates for electricity charged by Electricity Maine, LLC.

CLAIM FORM DEADLINE

Claims must be received by [DATE] in order to seek to participate in the Settlement.

WHO'S INCLUDED?

The Settlement includes all residential and small business consumers who purchased electricity from Electricity Maine, LLC at any time from January 1, 2011, through and including November 30, 2019. Please see the Settlement Website www.____.com, for information on certain exclusions.

YOUR OTHER OPTIONS:

If you do not Opt-Out in writing by [DATE], you will be bound by the terms of the Settlement as well as all orders of the Court, and will have no right to sue later for the claims released by the Settlement. If you want to participate in the Settlement, but object to its terms, you may file an Objection by [DATE]. The Court will hold a hearing on [DATE] to consider whether to approve the Settlement and whether to award up to \$3,920,000 in Attorney's Fee and Expenses to Class Counsel and \$5,000 to each Named Plaintiff. You may attend this hearing, but you do not have to. Complete information is available in the Long-Form Notice on the Settlement Website, www.____.com or by calling xxx-xxx-xxxx.

WHAT ARE THE BENEFITS?

The settlement provides up to a maximum fund of \$14,000,000 for payments to Settlement Class Members who submit Valid Claims. If you timely submit a Valid Claim Form, you may be eligible for a benefit, in an amount equal to \$0.0023565 per kilowatt hour purchased by you at any time between from January 1, 2011 through and including November 30, 2019. In no event shall the Calculated Payment paid to any Claimant be less than \$2.50. Depending on how many claims are filed, your benefit may be reduced.

WHO REPRESENTS ME?

The Court appointed Thomas Hallett and Benjamin Donahue of Hallett, Whipple Weyrens, P.A. and Robert Cummins of The Cummins Law Firm, P.A. as Class Counsel, whom you do not have to pay. If you want your own lawyer, you may hire one at your expense.

Katherine Veilleux, et al. v. Electricity Maine, LLC, et al.
Case No: 1:16-cv-571-LEW

Exhibit B
EMAIL NOTICE

HOW CAN I GET A BENEFIT?

Class Counsel can be reached at (800-898-4255) or www.hww.law.

Using the unique Settlement Class Member identification code provided to you, submit the Claim Form enclosed in your Notice Packet or visit the Settlement Website, www.____.com, to submit a Claim through the Claims Portal.

Katherine Veilleux, et al. v. Electricity Maine, LLC, et al.
Case No: 1:16-cv-571-LEW

Exhibit C
LONG FORM NOTICE OF SETTLEMENT

If you purchased electric supply from Electricity Maine, LLC between January 1, 2011 and November 30, 2019, you could receive a cash payment from a class action settlement. This notice may affect your legal rights. Please read it carefully.

A court has authorized this Notice. This is not a solicitation from a lawyer.

This Notice informs you of a proposed settlement in a class action lawsuit concerning rates for electricity charged by Electricity Maine, LLC (“Electricity Maine”).

The lawsuit is captioned *Katherine Veilleux, et al. v. Electricity Maine, LLC, et al.*, Case No. 1:16-v-571-LEW (the “Action”), and it was filed in the United States District Court, District of Maine (the “Court”). In the Action, Plaintiffs allege that Defendants engaged in deceptive marketing practices which caused Plaintiffs to purchase electricity from Electricity Maine, and to pay more than they otherwise would have for their electric supply. Defendants deny these allegations and any wrongdoing or unlawful conduct.

- The settlement provides for payments that will provide up to \$14,000,000 to pay claims to those residential and small-business customers who purchased electricity from Electricity Maine between January 1, 2011, and November 30, 2019.
- Electricity Maine has also agreed to waive payments of amounts owed by Settlement Class Members for electricity purchased during the Class Period that were more than one hundred twenty (120) days overdue as of November 30, 2019.
- The Settlement of the Action will resolve claims against Electricity Maine, Spark HoldCo, LLC, Provider Power, LLC, Kevin Dean, and Emile Clavet (“Defendants”). The Settlement affects all individual residential and small business consumers who purchased electric supply from Electricity Maine, LLC at any time from January 1, 2011 through and including November 30, 2019. Excluded from the Settlement Class are: (a) the Defendants; (b) officers, directors, shareholders, and employees of Defendants; (c) parents, subsidiaries, and affiliates of any Defendant; (d) any entity in which a Defendant has a controlling interest; (e) any attorneys representing Defendants in this Action, and their employees; (f) any judge to whom the Action is currently assigned or was previously assigned, and their staff; (g) Plaintiffs’ Counsel and their employees; and (h) any heirs, immediate family members, successors, and assigns of all such persons.
- To make a claim, submit the Claim Form enclosed in your Notice Packet or visit the Settlement Website, www._____.com, to submit a Claim through the Claims Portal.

Questions? Visit www._____.com or call X-XXX-XXXX

YOUR RIGHTS AND OPTIONS IN THIS SETTLEMENT		DEADLINE
Submit a Claim Form	To receive a payment under the Settlement, you must submit a valid Claim Form by the Claim Deadline.	[DATE]
Opt-Out	You may exclude yourself from the Action and the Settlement. This is the only option that allows you ever to bring or join another lawsuit raising the same legal claims against the Defendants. You will receive no cash payment from this Settlement.	[DATE]
File Objection	Write to the Court about any aspect of the Settlement you don't think is fair, adequate, or reasonable. If you object to any aspect of the Settlement, you must submit a written Objection and a Claim Form by the Objection Deadline.	[DATE]
Go to a Hearing	Speak to the Court about the Settlement (if you object to any aspect of the Settlement, you must first submit a written Objection by the Objection Deadline noted above).	[DATE]
Do Nothing	You will not receive any cash payment; also, you will have no right to sue later for the claims released by the Settlement.	

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- To settle the case and to avoid the further inconvenience, expense, and disruption of this lawsuit, Defendants have agreed to pay each Settlement Class Member who submits a Valid Claim an amount equal to \$0.0023565 per kilowatt hour purchased by the Claimant as a customer of Electricity Maine, during the period of January 1, 2011 through and including November 30, 2019. In no event shall the Calculated Payment paid to any Claimant be less than \$2.50.
- The Court still has to decide whether to finally approve the Settlement. Payments will be sent to Settlement Class Members only if the Court approves the Settlement and the Settlement Class Member timely submits a Valid Claim. If there are appeals, payments will not be made until the appeals are resolved and the Settlement becomes effective.
- **Final Approval Hearing.** On _____, at _____ [].m., the Court will hold a hearing to determine: (i) whether the proposed Settlement should be approved as fair, reasonable, and adequate and should receive final approval; (ii) whether the Action and claims raised therein should be dismissed with prejudice; (iii) whether the Released Persons should be released from the Released Claims; (iv) whether Class Counsel's application for Attorneys' Fees and Costs should be granted in whole or in part; and (v) whether the motion for the Named Plaintiffs' Enhancement Award should be granted in whole or in part. The hearing will be held in [CITY], in the courtroom of the Honorable Lance E. Walker, which is located in Courtroom _____. This hearing date may change without further notice to you. Consult the Settlement Website at www._____.com, or the Court docket in this case, for updated information on the hearing date and time.

Questions? Visit www._____.com or call X-XXX-XXXX

- The lawyers who brought the Action will ask the Court for up to \$3,920,000 in attorneys’ fees and expenses, which, if approved by the Court, will be paid by Defendants. Defendants have the right to oppose this request for attorneys’ fees and expenses.
- The Plaintiffs, Katherine Veilleux, Jennifer Chon, Rocky Coast Acupuncture PC, and James Tilton, will ask the Court for \$5,000 each in Named Plaintiffs’ Enhancement Awards in recognition of their assistance in the prosecution of the Action, which, if approved by the Court, will be paid by Defendants.
- **Your legal rights are affected whether you act or do not act. Read this Notice carefully.**

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at www._____.com, or contact the Settlement Administrator at _____.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

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Questions? Visit www._____.com or call X-XXX-XXXX

1. How Do I Know If I Am Affected By The Settlement?

The Action involves claims arising from electricity rates charged by Electricity Maine.

For purposes of Settlement only, the Court has conditionally certified a Settlement Class that is defined as:

- All individual residential and small business consumers who purchased electric supply from Electricity Maine at any time from January 1, 2011 through and including November 30, 2019.

Excluded from the Settlement Class are: (a) the Defendants; (b) officers, directors, shareholders, and employees of Defendants; (c) parents, subsidiaries, and affiliates of any Defendant; (d) any entity in which a Defendant has a controlling interest; (e) any attorneys representing Defendants in this Action, and their employees; (f) any judge to whom the Action is currently assigned or was previously assigned, and their staff; (g) Plaintiffs' Counsel and their employees; and (h) any heirs, immediate family members, successors, and assigns of all such persons. If the Settlement does not become effective (for example, because it is not finally approved, or the approval is reversed on appeal), then the Action will continue.

2. What Is the Action About?

Plaintiffs allege that Defendants engaged in deceptive marketing practices that caused Plaintiffs to purchase electric supply from Electricity Maine at rates higher than they otherwise would have paid during the period from January 1, 2011 through and including November 30, 2019. Defendants deny those allegations and that they have any liability to Plaintiffs or the Settlement Class.

3. Why Is This Action Being Settled?

Counsel for both Plaintiffs and Defendants have determined that there is significant risk, disruption, and expense in continuing the Action. Among other issues, the issues in the case include: (i) whether Defendants acted improperly; (ii) whether Plaintiffs suffered any damages; and (iii) whether Defendants can prove other defenses to the Action. In particular, even if Plaintiffs convince the Judge or jury that they are entitled to damages, there is a substantial risk that a Judge or jury would not impose any damages. Even if Plaintiffs were to succeed in the trial court, any judgment would be at risk on appeal and the collectability of that judgment might be uncertain. After considering the risks and costs of further litigation, the Parties have concluded that it is in everyone's best interest that the Plaintiffs' claims be settled and dismissed on the terms of the Settlement. Plaintiffs and Class Counsel believe that the terms and conditions of the Settlement are fair, reasonable, adequate, and equitable, and that the Settlement is in the best interest of the Settlement Class.

4. What Can I Receive From The Settlement?

The settlement will provide up to \$14,000,000 to pay claims to those residential and small-business customers who purchased electricity from Electricity Maine between January 1, 2011, and November 30, 2019. Settlement Class Members who submit Valid Claims shall be paid up to an amount equal to \$0.0023565 per kilowatt hour purchased by the Claimant, as a customer of Electricity Maine, during the

Questions? Visit www._____.com or call X-XXX-XXXX

period of January 1, 2011 through and including November 30, 2019. In no event shall the Calculated Payment paid to any Claimant be less than \$2.50. In order to file a Valid Claim, each Settlement Class Member must follow the directions on the Claim Form or submit a Claim through the online Claims Portal on the Settlement Website at www._____.com. Valid Claims will be paid only if the Court approves the Settlement.

Under the settlement, Electricity Maine has also agreed to waive payments of amounts owed by Settlement Class Members for electricity purchased during the Class Period that were more than one hundred twenty (120) days overdue as of November 30, 2019.

5. How Do I Make A Claim?

To make a Claim, you must either (1) complete and mail the Claim Form received in your Notice Packet or (2) submit a Claim through the online Claims Portal on the Settlement Website.

Claim Forms and Claims submitted online through the Claims Portal must be received by the Settlement Administrator by 11:59 p.m. Eastern Time on _____, 2020.

To receive a benefit, Settlement Class Members must submit a signed or e-signed certification that the Settlement Class Member (1) has read the Settlement Agreement and agrees to its terms, including the release; (2) is or was a named account holder with Electricity Maine, LLC during the Class Period; (3) did not have, and is not seeking to have, the account balance discharged due to bankruptcy or receivership; (4) has not filed to Opt-Out or otherwise sought to be excluded from the Settlement, but instead, hereby waives the right to Opt-Out and agrees to be bound by the Settlement; (5) has not already received a payment from Electricity Maine, LLC from the Electricity Maine account that is the subject of this Claim; (6) has provided information through the Claims Portal that is accurate and complete to the best of their knowledge; (7) has not been excluded from the Settlement Class under Section 3.1 of the Agreement; (8) will timely provide any additional information requested by the Settlement Administrator to validate a Claim; (9) understands that by submitting a Claim through the Claims Portal, the Settlement Class Member is deemed to have given a complete Release of all Released Claims; and (10) understands that Claims will be audited for veracity, accuracy, and fraud.

Payments will be issued only if the Court gives final approval to the proposed Settlement and after the final approval is no longer subject to appeal. Please be patient as this may take months or even years in the event of an appeal.

6. When Do I Get My Payment?

Filing a Claim does not provide a guaranteed payment. A Final Approval Hearing is scheduled for _____, 2020. If the Court approves the Settlement and there are no appeals, then benefit payments will be distributed after the Settlement is no longer subject to appeal or review and the Settlement Administrator has completed its review and audit of all Claim Forms to validate the veracity of the Claims and prevent the payment of Claims which represent waste, fraud, or abuse. If the Court does not approve the Settlement, or if the Settlement is overturned on appeal, no payments will be issued.

Questions? Visit www._____.com or call X-XXX-XXXX

7. **Who are My Lawyers and What Do Plaintiffs and Their Lawyers Get?**

The Court has appointed Thomas Hallett and Benjamin Donahue of Hallett, Whipple, Weyrens P.A., and Robert Cummins of The Cummins Law Firm, P.C. as Class Counsel. Class Counsel can be reached at (800-898-4255) or www.hww.law.

To date, Class Counsel has not been compensated for any of their work on the Action since it was filed in 2016. As part of the Settlement, Class Counsel may apply to the Court to award them fees and costs in an amount to be determined, up to a total maximum amount of twenty-eight percent of the maximum settlement amount, or \$3,920,000, from Defendants. Defendants have the right to oppose Class Counsel's application for such Attorneys' Fees and Expenses.

In addition, the named Plaintiffs will apply to receive a Named Plaintiffs' Enhancement Award of \$5,000 each, which, if approved by the Court, will be paid by Defendants. This payment is designed to compensate the named Plaintiffs for the time, effort, and risks they undertook in pursuing litigation.

Class Counsel shall file their application for Attorneys' Fees and Expenses and the motion for Named Plaintiffs' Enhancement Award, as well as the motion for final approval of the Settlement, within sixty (60) days after Notice is sent to Settlement Class Members. A copy of that application and the motions will be available on the Settlement Website. The Court will determine the amount, if any, of Attorneys' Fees and Expenses, as well as the amount of the Named Plaintiffs' Enhancement Award. Any award of Attorneys' Fees and Expenses shall be in addition to, and not part of or subject to, the amount paid to Class Members or the cap on the Maximum Settlement Amount.

8. **What Happens If I Do Not Opt-Out From The Settlement?**

If you are a Settlement Class Member and you do not Opt-Out from the Settlement, you will be bound by all orders and judgments of the Court, and you will also be legally bound by the Settlement, including to the Release of claims. This means that in exchange for being a Settlement Class Member and being eligible for the benefits of the Settlement, you will not be able to sue, continue to sue, or be part of any other lawsuit against Electricity Maine or any of the Released Persons that involves the Released Claims.

You will not be responsible for any out-of-pocket costs or attorneys' fees concerning this Action if you stay in the Settlement Class.

Staying in the Settlement Class also means that you agree to the following terms of the Settlement:

Upon the entry of a Final Approval Order and without any further action by the Court or by any Party to the Agreement, the Settlement Class Members and Plaintiffs, including any person claiming rights derivative of any Settlement Class Member or Plaintiffs as their spouse, parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, executor, predecessor, successor, assignee, representative of any kind, shareholder, partner, director, employee or affiliate, shall be deemed to have, and by operation of the judgment shall have, fully, finally, and forever released, relinquished, and discharged against the Released Persons all Released Claims (including, without limitation, any unknown claims).

Without limiting the foregoing, the Release specifically extends to any claims that the Releasers do not know or suspect to exist in their favor at the time that the Settlement, and

Questions? Visit www._____.com or call X-XXX-XXXX

the Release contained in the Agreement, become effective. In connection with such Release, the Releasers 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 full definitions of Released Claims and Released Persons and a full explanation of the scope of the Release are set forth in the Settlement Agreement, which is available on the Settlement Website.

9. How Do I Opt-Out From The Settlement?

You can Opt-Out from the Settlement if you wish to retain the right to sue Defendants separately for the Released Claims. If you Opt-Out, you cannot file a Claim or Objection to the Settlement.

To Opt-Out, you must mail an Opt-Out request to the Settlement Administrator at _____ . The Opt-Out requests must: (i) be signed by the Settlement Class Member who is requesting exclusion; (ii) include the full name, address, and phone number(s) of the Settlement Class Member requesting exclusion; and (iii) include the following statement: "I request to Opt-Out from the Settlement in the Electricity Maine Class Action." The Opt-Out request must be received by the Settlement Administrator by the Opt-Out Deadline set forth above.

10. How Do I Object To The Settlement?

You can ask the Court to deny approval of the Settlement by timely filing an Objection with the Court. You cannot ask the Court to order a larger Settlement, but instead, the Court can only approve or disallow the Settlement proposed. If the Court denies approval to the entire Settlement, no benefit payments will be made, and the Action will continue.

You can also ask the Court to disapprove the requested payments to Plaintiffs and to their attorneys.

If you want to raise an Objection to the Settlement for the Court to consider at the Final Approval Hearing, you must submit that Objection, in writing, by the Objection Deadline set forth above, and you must also file a notice of intention to appear before the Court at the Final Approval Hearing. Any Objection must (1) attach documents establishing, or provide information sufficient to allow the Parties to confirm that, you are a Settlement Class Member; (2) state whether the Objection applies only to you, to a specific subset of the class, or to the entire class; (3) include a statement your specific Objection(s); (4) state the grounds for the Objection(s); (5) identify any documents you desire the Court to consider; and (6) provide all information requested on the Claim Form.

Failure to include this information and documentation may be grounds for overruling and rejecting your Objection. All information listed herein must be filed with the Clerk of the Court, delivered by mail, express mail, personal delivery, or electronic filing, such that the Objection is received by the Clerk on or before the Objection Deadline set forth above.

Questions? Visit www._____.com or call X-XXX-XXXX

To raise an Objection, you must also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney.

By filing an Objection, you consent to the jurisdiction of the Court, including to any order of the Court to produce documents or provide testimony prior to the Final Approval Hearing. You further consent to a deposition, at the request of Class Counsel or Defendants' Counsel prior to the Final Approval Hearing.

If you file an Objection to the Settlement, you still must timely submit a Claim according to the instructions described above.

You **must** also send a copy of your Objection and serve your notice of intention to appear before the Court at the Final Approval Hearing to the Settlement Administrator, Class Counsel, and Defendants' Counsel:

Class Counsel:

Thomas F. Hallett
Benjamin N. Donahue
HALLETT WHIPPLE WEYRENS, P.A.
6 City Center, Suite 208
Portland, Maine 04101
thallett@hww.law
bdonahue@hww.law

and

Robert P. Cummins
THE CUMMINS LAW FIRM, P.C.
Two Canal Plaza
P.O. Box 4600
Portland, ME 04112-4600
rpc@cumminslawfirm.com

Defendants' Counsel:

John J. Aromando
Katherine S. Kayatta
Sara A. Murphy
PIERCE ATWOOD LLP
Merrill's Wharf, 254 Commercial Street
Portland, ME 04101
jaromando@pierceatwood.com
kkayatta@pierceatwood.com
smurphy@pierceatwood.com

and

Melissa A. Hewey
Amy K. Olfene
Adrienne E. Fouts
DRUMMOND WOODSUM
84 Marginal Way, Suite 600
Portland, ME 04101
mhewey@dwmlaw.com
aolfene@dwmlaw.com
afouts@dwmlaw.com

11. When Will The Court Decide If The Settlement Is Approved?

The Court will hold a Final Approval Hearing on _____ to consider whether to approve the Settlement. The hearing will be held in the _____, before the Honorable Judge Lance E. Walker on _____ at _____ [].m. The hearing is open to the public. This hearing date, time, and location may change without further notice to you. Consult the Settlement Website at

Questions? Visit www._____.com or call X-XXX-XXXX

www.____.com, or the Court docket for this Action, for updated information on the hearing date, time, and location.

12. How Do I Get More Information?

You can inspect certain court documents connected with the Action on the Settlement Website. Other papers filed in this Action are available by accessing the Court docket.

You can contact the Settlement Administrator at _____.

Questions? Visit www.____.com or call X-XXX-XXXX

Katherine Veilleux, et al. v. Electricity Maine, LLC, et al.
Case No: 1:16-cv-571-LEW

Exhibit D

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

KATHERINE VEILLEUX, JENNIFER CHON,
ROCKY COAST FAMILY ACUPUNCTURE
PC, and JAMES TILTON, individually and on
behalf of all others similarly situated,

Plaintiffs

v.

ELECTRICITY MAINE, LLC, PROVIDER
POWER, LLC, SPARK HOLDCO, LLC,
KEVIN DEAN and EMILE CLAVET

Defendants

CASE NO: 1:16-cv-571-LEW

**[PROPOSED] ORDER APPROVING PLAINTIFFS' UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

THIS CAUSE is before the Court on Plaintiffs' unopposed Motion for Preliminary Approval of Class Action Settlement. Having reviewed the Motion, the Settlement Agreement, the Declarations of Thomas Hallett, Benjamin Donahue, and Robert Cummins, and the record in this case, and for good cause shown:

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Court finds for the purposes of preliminary approval, that the proposed Settlement, as set forth in the Parties' Settlement Agreement, is fair, reasonable, adequate, and in the best interest of the Settlement Class. The Court further finds that the Settlement was entered into at arm's-length by experienced counsel. The Court therefore preliminarily approves the proposed Settlement.

2. The Court finds that it will likely be able to certify the Settlement Class, for settlement purposes only, defined as:

All residential and small business consumers who purchased electricity from Electricity Maine, LLC during the period from January 1, 2011 through and including November 30, 2019.

Excluded from the Settlement Class are: (a) the Defendants; (b) officers, directors, shareholders, and employees of Defendants; (c) parents, subsidiaries, and affiliates of any Defendant; (d) any entity in which a Defendant has a controlling interest; (e) any attorneys representing Defendants in this Action, and their employees; (f) any judge to whom the Action is currently assigned or was previously assigned, and their staff; (g) Plaintiffs' Counsel and their employees; and (h) any heirs, immediate family members, successors, and assigns of all such persons.

3. The Court preliminarily finds, for settlement purposes only, that: the Settlement Class is so numerous that joinder of all members is impracticable; there are questions of fact and law common to the Settlement Class and that those questions predominate over questions affecting only individual Settlement Class Members; Plaintiffs' claims are typical of the claims of the Settlement Class; Plaintiffs will fairly and adequately protect the interests of the Settlement Class; and class treatment is superior to individual resolution of claims by Settlement Class Members.

4. For settlement purposes only, the Court preliminarily appoints Plaintiffs Katherine Veilleux, Jennifer Chon, Rocky Coast Acupuncture PC, and James Tilton as the representatives of the Settlement Class.

5. For settlement purposes only, the Court preliminarily appoints Thomas Hallett and Benjamin Donahue of Hallett Whipple Weyrens P.A., and Robert Cummins of the Cummins Law Firm, P.A. to act as Class Counsel to the Settlement Class.

6. The Court approves, as to form and content, the Email Notice and Notice Packet attached as Exhibits B and C, respectively, to the Settlement Agreement, and finds that the distribution of the Notice meets the requirements of due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

7. The Court approves the following schedule for dissemination of the Notice, requesting exclusion from the Settlement Class, or objecting to the Settlement, and submitting papers in connection with final approval, as follows:

Within 10 business after entry of the Preliminary Approval Order	Defendants will provide to the Settlement Administrator such data reasonably available and necessary for administration of the Settlement, including, for Settlement Class Members, their names and last known addresses and email addresses.
Not later than 30 days after entry of the Preliminary Approval Order	The Settlement Administrator shall send the Notice Packet to all Settlement Class Members by First Class Mail and shall send the Email Notice to each Settlement Class Member for whom it has a valid email address.
Within 30 days after entry of the Preliminary Approval Order	The Settlement Administrator shall cause the Settlement Agreement, this Order, and a copy of the Long-Form and Email Notice to be posted on the Settlement Website.
Upon mailing of the Notice Packet	Claim Period begins.
Within 60 days after mailing of the Notice Packet	Plaintiffs shall file a motion for final approval of settlement, an application for the award of Attorneys' Fees and Costs, and motion requesting the Named Plaintiffs' Enhancement Awards. The Settlement Administrator shall cause any such application and motions to be posted on the Settlement Website.
90 days after mailing of Notice Packet	Claim Deadline: Deadline for Settlement Class Members to submit Claim Forms. Opt-Out Deadline: Deadline for Settlement Class Members to Opt-Out of Settlement. Objection Deadline: Deadline for Settlement Class Members to file a written objection to terms of Settlement and a notice of intention to appear before the Court at the

	Fairness Hearing, and serve copies on the Settlement Administrator, Class Counsel, and Defendants' Counsel.
97 days after mailing of Notice Packet	Deadline for the Settlement Administrator to provide counsel with affidavit of mailing of Notice.
97 days after mailing of Notice Packet	Deadline for the Settlement Administrator to provide counsel a list of all Settlement Class Members who returned a timely request to Opt-Out of the Settlement (as described in the Notice).
At least 21 days prior to Fairness Hearing	Class Counsel shall serve and file an affidavit of the Settlement Administrator declaring compliance with the Notice provisions of this Order.
7 days prior to Fairness Hearing	Deadline for filing reply papers by the Parties in further support of the Settlement and/or in response to any Objections.

8. The Court approves Heffler Claims Group as the Settlement Administrator, with the responsibilities set forth in the Settlement Agreement.

9. Any Settlement Class Member (except for the Named Plaintiffs) may request to be excluded (or "Opt-Out") from the Settlement Class. A Settlement Class Member who wishes to Opt-Out of the Settlement Class must give written notice to the Settlement Administrator, by the Opt-Out Deadline. Opt-Out requests must: (a) be signed by the Settlement Class Member who is requesting exclusion; (b) include the full name, address, and phone number(s) of the Settlement Class Member who is requesting exclusion; and (c) expressly request to Opt-Out from the Settlement in the "Electricity Maine Class Action." No Opt-Out request will be valid unless all of the information described above is included and timely received by the Settlement Administrator by the Opt-Out Deadline. . Except for those persons who have properly and timely submitted requests to Opt-Out, all Settlement Class Members shall be bound by the Settlement Agreement and the Final Approval Order, including the Release, regardless of whether they file a Claim or receive any monetary relief. Any person who timely and properly submits a request to Opt-Out shall not: (a) be bound by any orders or the Final Approval Order nor by the Release contained therein; (b) be entitled to any relief under the Settlement Agreement; (c) gain any rights by virtue

of the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement Agreement. Each Settlement Class Member requesting to Opt-Out must personally sign his, her, or its own individual request to Opt-Out. No person may Opt-Out of the Settlement Class for any other person, or be Opted-Out by any other person, and no person shall be deemed Opted-Out of the Settlement Class through any purported “mass” or “class” opt-outs.

10. Any Settlement Class Member who intends to object to the Settlement must do so by the Objection Deadline. In order to object, the Settlement Class Member must file with the Court prior to the Objection Deadline, and provide a copy to Class Counsel and Defendants’ Counsel, also prior to the Objection Deadline, a document that:

- a. establishes, or provides information sufficient to allow the Parties to confirm that, the objector is a Settlement Class Member;
- b. states whether it applies only to the objector, to a specific subset of the class, or to the entire class;
- c. includes a statement of such Settlement Class Member’s specific Objection(s);
- d. states the grounds for the Objection(s);
- e. identifies any documents such objector desires the Court to consider; and
- f. provides all information requested on the Claim Form.

Any Settlement Class Member who fails to file and serve timely a written Objection containing all of the information listed in items (a) through (f) of the previous paragraph 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. Any Settlement Class Member who files and serves a written Objection must also file

and serve a notice of his/her/its intent to appear at the Fairness Hearing at the same time the Objection is filed and served. No Settlement Class Member who fails to submit this notice of intent to appear will be permitted to offer testimony or argument at the Fairness Hearing.

Upon the filing of an Objection, Class Counsel and Defendants' Counsel may take the deposition of the objecting Settlement Class Member at an agreed-upon time and location, and to obtain any evidence relevant to the Objection. Failure by an objector to make himself, herself, or itself available for deposition or comply with expedited discovery may result in the Court striking the Objection. The Court may tax the costs of any such discovery to the objector or the objector's counsel if the Court determines that the Objection is frivolous or is made for an improper purpose.

11. A Final Approval Hearing is hereby scheduled to be held before the undersigned on _____, 2020 at _____ a.m./p.m., to consider the fairness, reasonableness, and adequacy of the Settlement Agreement; the entry of a Final Approval Order in the case; any application for Attorneys' Fees and Costs; the motion for the Named Plaintiffs' Enhancement Awards; and any other related matters that are brought to the attention of the Court in a timely fashion.

12. Any Settlement Class Member that has not filed a request to Opt-Out may appear at the Final Approval Hearing in person or by counsel and may be heard, to the extent allowed by the Court, in opposition to the fairness, reasonableness, and adequacy of the Settlement Agreement; provided, however, that no person shall be heard in opposition to the Settlement Agreement, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless, in accordance with the deadlines above, such person: (a) filed with the Clerk of the Court a notice of such person's intention to appear as well as a statement that indicates the basis for such person's opposition to the Settlement Agreement, and any

documentation in support of such opposition; and (b) serves copies of such notice, statement, and documentation upon all counsel.

13. The date and time of the Final Approval Hearing shall be set forth in the Notice, but shall be subject to adjournment by the Court without further notice to the Settlement Class Members other than which may be posted on the Court's docket and the Settlement Website.

14. If final approval of the Settlement is not granted, or if the Settlement is terminated for any reason, the Settlement and all proceedings had in connection therewith shall be without prejudice to the Parties' rights to assert any right or position that could have been asserted if the Settlement had never been reached or proposed to the Court; the Parties shall return to the *status quo ante* in the Action as it existed on the date the Settlement Agreement was executed; and all Orders issued pursuant to the Settlement and preliminary and final approval process shall be vacated. In such event, the Settlement Agreement and all negotiations concerning it shall not be used or referred to in this Action, or any other action, for any purpose whatsoever.

15. The Court hereby stays all proceedings in this Action 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.

16. Additionally, the Court hereby prohibits and/or enjoins any other person or counsel from representing or prosecuting any claims on behalf of this Settlement Class in any other court.

Dated: _____, 2020
Portland, Maine

SO ORDERED:

Hon. Lance E. Walker

Katherine Veilleux, et al. v. Electricity Maine, LLC, et al.
Case No: 1:16-cv-571-LEW

Exhibit E

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

KATHERINE VEILLEUX, JENNIFER CHON,
ROCKY COAST FAMILY ACUPUNCTURE
PC, and JAMES TILTON, individually and on
behalf of all others similarly situated,

Plaintiffs

v.

ELECTRICITY MAINE, LLC, PROVIDER
POWER, LLC, SPARK HOLDCO, LLC,
KEVIN DEAN and EMILE CLAVET

Defendants

CASE NO: 1:16-cv-571-LEW

[PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL

THIS CAUSE is before the Court on Plaintiffs' Motion for Final Approval of the Settlement and upon Class Counsel's Application for Award of Attorneys' Fees and Costs, and Motion Requesting the Named Plaintiffs' Enhancement Awards. Due and adequate notice having been given to the Settlement Class, and the Court having considered the Settlement Agreement, all papers filed and proceedings had herein, and all oral and written comments received regarding the proposed Settlement, and having reviewed the record in this litigation, and good cause appearing, **IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:**

1. For purposes of this Final Judgment and Order of Dismissal ("Judgment"), the Court adopts all defined terms as set forth in the Settlement Agreement filed in this Action.
2. The Court has jurisdiction over the subject matter of the Action, the Plaintiffs, the Settlement Class Members, and Defendants (the "Settling Parties").

3. With respect to the Settlement Class and for purposes of approving this Settlement only, this Court finds as to the Settlement Class that:

- a. the Settlement Class is so numerous that joinder of all members is impracticable;
- b. there are questions of law or fact common to the Settlement Class;
- c. the claims of Plaintiffs are typical of the claims of the Settlement Class;
- d. the Plaintiffs will fairly and adequately protect the interests of the Settlement Class;
- e. questions of law and fact common to Settlement Class Members predominate over any questions affecting only individual Settlement Class Members; and
- f. settlement of this class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

4. For purposes of, and solely in connection with, the Settlement, the Court certifies the following Settlement Class:

All residential and small business consumers who purchased electricity from Electricity Maine, LLC during the period from January 1, 2011 through and including November 30, 2019.

Excluded from the Settlement Class are: (a) the Defendants; (b) officers, directors, shareholders, and employees of Defendants; (c) parents, subsidiaries, and affiliates of any Defendant; (d) any entity in which a Defendant has a controlling interest; (e) any attorneys representing Defendants in this Action, and their employees; (f) any judge to whom the Action is currently assigned or was previously assigned, and their staff; (g) Plaintiffs' Counsel and their

employees; and (h) any heirs, immediate family members, successors, and assigns of all such persons.

5. Based on evidence and other material submitted in conjunction with the Final Approval Hearing, the Court hereby finds and concludes that (a) the Notice was disseminated to the Settlement Class Members in accordance with the Settlement Agreement and the Court's Preliminary Approval Order, and (b) the Notice and the Settlement Website complied with this Court's Preliminary Approval Order.

6. The Court finds and concludes that the Notice Packet, the Email Notice, the Claim Form, the Settlement Website, and all other aspects of the Notice, Opt-Out, and Claims submission procedures set forth in the Settlement Agreement fully satisfy the requirements of due process, were the best notice practicable under the circumstances, and support the Court's exercise of jurisdiction over the Settlement Class and the Settlement Class Members.

7. **[AS NEEDED:]** Certain persons who fall within the definition of the Settlement Class have requested to Opt-Out of the Settlement and have complied with the procedures established by the Settlement Agreement and this Court. These persons are _____, and they will not be bound by the terms of the Settlement Agreement.

8. **[AS NEEDED]** This Court has considered and overruled all Objections to the Settlement.

9. The Court finds that the Settlement Agreement is the product of arm's-length settlement negotiations between the Parties.

10. The Court hereby approves the Settlement as set forth in the Settlement Agreement, the Release, and all other terms in the Settlement Agreement, as fair, just, reasonable, and adequate

as to the Parties and the Settlement Class. The Parties are directed to perform in accordance with the terms set forth in the Settlement Agreement.

11. Upon the Effective Date as defined in the Settlement Agreement and by operation of this Judgment, Plaintiffs and each Settlement Class Member, who did not properly and timely Opt-Out, shall be bound by the terms of the Settlement as set forth in the Settlement Agreement and this Judgment, and shall be deemed to have released, dismissed, and forever discharged the Released Claims against each and every one of the Released Persons, with prejudice and on the merits, without cost to any of the Parties.

12. Each and every Settlement Class Member, who did not timely and properly Opt-Out, and any person actually or purportedly acting on behalf of any such Settlement Class Member, is hereby permanently barred and enjoined from commencing, instituting, continuing, pursuing, maintaining, prosecuting, or enforcing any Released Claims (including, without limitation, in any individual, class or putative class, representative, or other action or proceeding), directly or indirectly, in any judicial, administrative, arbitral, or other forum, against the Released Persons. This permanent bar and injunction is necessary to protect and effectuate the Settlement Agreement, this Judgment, and this Court's authority to effectuate the Settlement Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments.

13. This Action and the causes of action set forth in the Complaint are dismissed with prejudice. The Parties are to bear their own attorneys' fees and costs, except as otherwise expressly provided in the Settlement Agreement and in this Order.

14. Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of 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 Released 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 the Released Persons in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. The Released Persons may file the Settlement Agreement and/or the Judgment for this Action or in any other action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, waiver, release, accord and satisfaction, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

15. If for any reason the Effective Date does not occur, then (a) the certification of the Settlement Class shall be deemed vacated, (b) the certification of the Settlement Class for settlement purposes shall not be considered as a factor in connection with any subsequent class certification issues; (c) the Parties shall return to the *status quo ante* in the Action as it existed on the date the Settlement Agreement was executed, without prejudice to the right of any of the Parties to assert any right or position that could have been asserted if the Settlement had never been reached or proposed to the Court.

16. Upon consideration of Class Counsel's Application for an Award of Attorneys' Fees and Costs and any opposition thereto, Defendant shall pay Class Counsel \$_____ in Attorneys' Fees and Costs as hereby determined by the Court as just, fair, and reasonable. This award shall be paid separate and apart from the amounts received by the Claimants.

17. Upon consideration of Class Counsel's motion for Named Plaintiffs' Enhancement Award to the Plaintiff, the motion is GRANTED. Consistent with that term of the Settlement Agreement, Defendant shall pay Plaintiffs Katherine Veilleux, Jennifer Chon, Rocky Coast Acupuncture PC, and James Tilton the amount of \$5,000 each.

18. Within 120 days from the Effective Date, the Settlement Administrator shall destroy all personally identifying information about any Settlement Class Member in its possession, custody, or control, including but not limited to any list that the Settlement Administrator received from Defendants in connection with the Settlement Administrator's efforts to provide Notice to Settlement Class Members.

19. This document is a final, appealable order, and shall constitute a judgment for purposes of Rule 54 of the Federal Rules of Civil Procedure.

Dated: _____
Portland, Maine

SO ORDERED:

Hon. Lance E. Walker

Katherine Veilleux, et al. v. Electricity Maine, LLC, et al.
Case No: 1:16-cv-571-LEW

Exhibit F
JOINT MEDIA STATEMENT

The parties to a putative class action lawsuit, Veilleux et al. v. Electricity Maine et al., have reached a settlement, pending final court approval. The case, which was filed in 2016 and is pending in the United States District Court, District of Maine, includes a claim that competitive electricity provider Electricity Maine, LLC failed to provide proper notice to its residential and small commercial customers regarding rate increases. The settlement allows residential and small commercial customers of Electricity Maine between January 1, 2011 and November 30, 2019 to make a claim for reimbursement based on the kilowatt hours of electricity purchased by each customer.

To learn more about the settlement or to make a claim please visit the settlement website at www.____.com.

Katherine Veilleux, et al. v. Electricity Maine, LLC, et al.
Case No: 1:16-cv-571-LEW

Exhibit G
CLASS COUNSEL'S WAIVER OF CLAIMS

Class Counsel Benjamin N. Donahue, Thomas F. Hallett, and Robert Cummins, and the employees of Hallett Whipple Weyrens and The Cummins Law Firm, do hereby intentionally, knowingly, and voluntarily waive, fully and finally with prejudice, all rights and claims which they now have or may ever have as individuals, excluding as Class Counsel, if any, arising from or related to the Third Amended Class Action Complaint filed on or about December 26, 2018, and any conduct alleged therein, in the case captioned *Katherine Veilleux, Jennifer Chon, Rocky Coast Family Acupuncture PC, and James Tilton, individually and on behalf of others similarly situated v. Electricity Maine, LLC, Provider Power, LLC, Spark HoldCo, LLC, Kevin Dean, and Emile Clavet*, Case Number: 1:16-cv-571-LEW, pending in the United States District Court, District of Maine. The undersigned hereby represent that they are duly authorized to execute this Waiver on behalf of the parties hereto and to bind them fully.

DATED: _____

Thomas F. Hallett, *individually and on behalf of the*
employees of Hallett Whipple Weyrens
HALLETT WHIPPLE WEYRENS
6 City Center, Suite 208
Portland, Maine 04101
(207) 775-4255
thallett@hww.law

DATED: _____

Benjamin N. Donahue, *individually and on behalf of the
employees of Hallett Whipple Weyrens*
HALLETT WHIPPLE WEYRENS
6 City Center, Suite 208
Portland, Maine 04101
(207) 775-4255
bdonahue@hww.law

DATED: _____

Robert P. Cummins, *individually and on behalf of the
employees of The Cummins Law Firm*
The Cummins Law Firm
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Portland, ME 04112
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rpc@cumminslawfirm.com