

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

KATHERINE VEILLEUX, JENNIFER CHON,
JAMES TILTON and ROCKY COAST FAMILY
ACUPUNCTURE, P.A., 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

DECLARATION OF CLASS COUNSEL

We, Thomas F. Hallett, Benjamin N. Donahue, and Robert Cummins declare as follows:

1. Thomas Hallett is a trial attorney licensed to practice law in the State of Maine and Commonwealth of Massachusetts. Tom has practiced law in one or both of those states for 37 years. Tom is the managing partner at Hallett Whipple Weyrens (HWW) and the attorney charged with overseeing HWW's representation of Plaintiffs Katherine Veilleux, Jennifer Chon, Rocky Coast Family Acupuncture, P.A., and James Tilton.

2. Benjamin Donahue is a trial attorney licensed to practice law in Maine. He has practiced law for seven years.

3. Ben and Tom, with the support of other attorneys and staff at HWW, have been involved in the above-captioned matter since its inception and at all pertinent times have kept contemporaneous time records of the time spent investigating and prosecuting this case. A copy

of HWW's billing records from September 2016 through June 31, 2020 are attached to this Declaration as Exhibit A.

4. Attorney Robert Cummins became involved at Tom and Ben's request shortly before the case was filed. Attorney Cummins brought a depth of knowledge and experience in prosecuting class action claims. Attorney Cummins has practiced law since 1962. His curriculum vitae is attached to this Declaration as Exhibit B. His contemporaneous billing records are attached as Exhibit C.

5. Investigating, litigating, and negotiating this matter required a substantial commitment by Class Counsel. For HWW, it represented the largest commitment to a contingency fee the firm had ever made. HWW is a small trial law firm. We recognized from the outset the significant risk including losing the case outright, and the threat of no recovery even in the event of a favorable outcome. Racketeering in Corrupt Organization (RICO) civil actions are complex matters, have very specific evidentiary requirements and are difficult to win. We also appreciated and were incentivized by the prospects of a contingency fee, should we prevail.

6. It may not have been a bet-your-firm case, but it was close.

7. Our concerns about time commitment were realized as the litigation progressed. Ben managed the discovery process and conducted much of the briefing, research and day to day tasks which were time-consuming and frequently complex. In 2018, this matter consumed nearly half of his total billable hours. Other attorneys at HWW, including Michael Whipple, David Weyrens, Timothy Zerillo and Daniel Feldman, all performed relatively limited but necessary legal work as set forth in the billing.

8. We began investigating this case in late summer 2016, approximately four months before it was filed by analyzing data the Electricity Maine, LLC disclosed to regulators—including

the Maine Public Utilities Commission and the U.S. Energy Information Administration. We interviewed Electricity Maine customers. We also retained two private investigators to conduct more wide-spread information gathering. Our investigation confirmed reports that Maine ratepayers were paying Electricity Maine prices well in excess of the standard offer, and receiving renewal notices that failed to disclose these deceptively-high prices.

9. After we were retained by Plaintiffs Katherine Veilleux and Jennifer Chon in the early fall, we conducted an extensive pre-filing workup. We retained expert witnesses to develop damages and causation models, researched and briefed the complex legal issues anticipated to arise in this case, and drafted the initial complaint.

10. This case has been aggressively defended throughout. We litigated at least three challenges to the legal sufficiency of Plaintiffs' allegations and dealt with attempts to compel arbitration or requests to dismiss based on the existence of an alleged arbitration agreement.

11. Defendants frequently sought to foreclose the scope of discovery, forcing us to bring numerous discovery disputes to the court's attention.

12. The discovery process involved the exchange of at least 45,000 documents including huge datasets that we processed and provided to our experts; seventeen depositions, including Fed. R. Civ. P. 30(b)(6) depositions which required an understanding of technical topics related to the power supply industry; and interrogatories propounded by both sides.

13. During the fall of 2018, we prepared extensively for an evidentiary hearing on Defendants' request to dismiss Plaintiff James Tilton's case because of an alleged arbitration agreement. With trial-like preparation, we extensively prepared witnesses, examinations, cross-examinations, exhibits, arguments, and conducted considerable pre-trial briefing. Ultimately, the need for a hearing was mooted when the Court granted our Motion for Leave to Amend (ECF No.

81) and Motion to Strike (ECF No. 95) and denied Defendants' Motion to Dismiss and Motion for Judgment on the Pleadings. (ECF Nos. 145, 91).

14. Plaintiffs' Motion to Certify (ECF No. 163) was supported by considerable evidence, including complex statistical evidence that Plaintiffs' proposed as common proof of causation and damages issues on behalf of putative class members.

15. After briefing was complete on Plaintiffs' Motion to Certify, we conducted a two-day judicial settlement conference with Magistrate Judge Nivison.

16. We reached a proposed settlement at the end of the second day. However, it was month—until December 3, 2019—before that agreement was reduced to writing as the various Defendants were independently negotiating their settlement contributions with Judge Nivison.

17. The terms of the proposed settlement included a \$14,000,000 in cash payments available to Settlement Class Members on a claims-made basis, with each individual's claim calculated based on their electricity usage; at least \$360,000 of forgiven debt for Electricity Maine accounts receivable that are over 180 days past due; Administrative costs paid by Defendants of between, estimated to be between \$100,000 and \$200,000.

18. Although our damages model made the proposed \$14,000,000 settlement a substantial discount, there were questions about liability with respect to those Defendants who had resources to pay a significant judgment; and collectability issues for the Defendants against whom we had the strongest liability cases. To the extent that only the individual defendants, Emile Clavet and Kevin Dean, or Electricity Maine were found liable, the prospect of being unable to collect any substantial money against them for Class Members was a very real, daunting and substantial risk, and was quite frankly agonized over by Class Counsel. Ultimately, we determined that the

proposed \$14,000,000 claims-made settlement would provide the most significant recovery to class members given all the risks involved.

19. Counsel for all parties signed a terms sheet on December 3, 2019. Negotiating the terms sheet into a settlement agreement, however, took significant time. Class Counsel, using data and best practices from a recent report from the Federal Trade Commission, pressed for a claims process that would reach as many Electricity Maine customers as possible and produce a high claims rate. The claims process sought by Class Counsel was contested by defense counsel at every turn. The claims process has turned out to be very successful, in significant part due to aggressive positions taken by Class Counsel.

20. Attorneys Donahue and Hallett have billed at various rates during the four years of this litigation. Attorney Hallett's usual hourly fee ranged from \$350 to \$450 during the 4 years of this litigation. Mr. Donahue's fees have ranged from \$175 to \$245 during the four years.

21. Other partners at HWW who have performed work on this case have billing rates similar to Tom. Attorney Feldman's billing rates are similar to Ben's. Litigation paralegals at HWW bill at \$100 per hour.

22. Because HWW is working on a contingency fee, a specific hourly rate was not assigned to attorneys and staff working on this matter. Rather than attempt to calculate which time was billed at which rates over the years, Attorneys Hallett and Donahue submit to this Court that a blended rate of \$300 per hour best captures the market value of their work perform on this case. Blended rates are frequently accepted by courts and the proposed rate of \$300 is reasonable for attorneys practicing in the District of Maine. *See, e.g., Sherwood Brands of R.I., Inc. v. Smith Enters.*, 2002 U.S. Dist. LEXIS 27465, *12 (D.R.I. Sept. 3, 2002) (accepting a blended hourly rate as the basis for a lodestar calculation).

23. The total number of hours worked by HWW is 3205.1 through June 31, 2020. HWW’s billing records from September through June 31, 2020 for this matter are attached as Exhibit A.

24. The total legal fee billing for HWW is \$940,197.

25. Attorney Cummins’ standard billing rate is \$700. His rate for work performed in the District of Maine is \$500 per hour. He performed 834.5 hours of work on this case, for a total lodestar of \$417,250. Attorney Cummins’ billing records are attached as Exhibit B.

26. The total lodestar for Class Counsel is \$1,357,447.00.

27. The total amount of costs incurred by HWW is \$159,206.99. These costs are itemized as follows:

CATEGORY	AMOUNT
Service Fees	\$ 646.97
Filing Fees	\$ 400.00
Copies	\$ 1,057.25
Private Investigator Fees	\$ 4,950.00
Court Reporters	\$ 6,996.63
Postage	\$ 23.54
Expert Witness Fees	\$ 143,465.50
Witness Fees	\$ 839.13
Attorney Mileage	\$ 347.35
Research Materials	\$ 10.00
Electronic Data Storage	\$ 443.62
Meals at depositions	\$ 27.00

29. These expenses were all incurred in furtherance of this litigation. The most significant expense, Plaintiffs’ expert witnesses, a Ph. D economist and his research firm, were retained to analyze Defendants’ business practices, pricing, and their impact on consumer behavior. Plaintiffs’ experts conducted extensive analysis and issued reports (ECF No. 163-2),

which became a focal point of this litigation and contributed significantly to the merits of Plaintiffs' Motion to Certify.

30. Heffler Claims Group, the settlement administrator, has informed us that the estimated cost of administration was \$600,000, but is now expected to be higher because of the significant claims filing rate.

Dated August 11, 2020

I declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

/s/ Benjamin N. Donahue

Benjamin N. Donahue, Esq.

I declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

/s/ Thomas F. Hallett

Thomas F. Hallett, Esq.

I declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

/s/ Robert P. Cummins

Robert P. Cummins, Esq.