

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
SUPERIOR COURT DEPARTMENT

MIDDLESEX, ss

DOCKET NO.

RAFAEL FUENTES, on behalf of himself
and all others similarly situated,

Plaintiff

v.

SFE ENERGY MASSACHUSETTS , INC.,

Defendant

RECEIVED

4/11/2019

CLASS ACTION COMPLAINT WITH JURY DEMAND

INTRODUCTION

This complaint is brought by Plaintiff Rafael Fuentes (“Plaintiff” or “Mr. Fuentes”) on behalf of himself and all other similarly situated consumers, against SFE Energy Massachusetts, Inc. (“Defendant”, “SFE Energy”, or “SFE”) based on its unfair and deceptive actions which resulted in enrollment of Mr. Fuentes and other consumers in SFE’s costly natural gas and electricity services. Defendant’s agents have materially misrepresented themselves as being associated with utility distribution companies, have failed to properly disclose the costs and terms of their services in violation of public policy and Massachusetts regulations, and have purposely preyed upon unsophisticated individuals and those with limited English proficiency like Mr. Fuentes. Mr. Fuentes and other consumers have been harmed by SFE’s unfair and deceptive business practices and seek to have this matter certified as a class action.

THE PARTIES AND JURISDICTION

1. Plaintiff Rafael Fuentes is an individual who resides in Somerville, Massachusetts.
2. Defendant SFE Energy Massachusetts, Inc. is a Delaware corporation with a principal place of business at 1000 Milverton Drive, Suite 608, Mississauga, Ontario, Canada. SFE Energy is a competitive retail supplier of electricity and gas that sells utility services to residential customers in Massachusetts through door-to-door sales.
3. This court has jurisdiction over the subject matter of this action pursuant to G.L. c. 212, § 3 and G.L. c. 215 § 6.
4. Venue is proper in Middlesex County because Mr. Fuentes resides there.

FACTS

A. BACKGROUND RE MASSACHUSETTS' COMPETITIVE SUPPLY MARKET

5. In 1997, the Massachusetts Legislature passed the Electric Restructuring Act (the "Act"), St. 1997, c. 164, which deregulated electric utility services in the Commonwealth, and created a competitive market for the supply of energy. The purpose of the deregulation was to reduce electricity costs and encourage innovation, efficiency, and improved service through the competitive market. St. 1997, c. 164, §§ 1(f),(g).
6. The Act mandated that the Massachusetts Department of Public Utilities (the "DPU") promulgate rules and regulations related to the competitive market "to provide retail customers with the **utmost consumer protections** contained in law" G.L. c. 164, §1F (emphasis added). The regulations DPU adopted pursuant to this directive are located at 220 CMR 1.00, et seq.
7. The DPU also subsequently adopted regulations that similarly allow customers to choose a third-party competitive gas supplier. 220 CMR 14.

8. Prior to the change in the law, electric and gas utility companies were responsible for every aspect of the provision of such services to Massachusetts customers. They owned the power plants that generated electricity and gas, provided gas and electricity to customers, sent bills, handled customer calls, and maintained local poles and lines. In other words, they were responsible for generation, sale (supply), and delivery (distribution) of the utilities.
9. As a result of the restructuring of the market, consumers can now choose to buy their electric and gas *supply* from the new utility supply market rather than their respective distribution companies.
10. The entities that market and sell utility services are commonly known as “competitive suppliers.”
11. Even after the restructuring in 1997, Massachusetts distribution companies continue to deliver (distribute) electricity and gas to all Massachusetts customers in their respective territories. The three electric distribution companies currently operating in Massachusetts are National Grid, Eversource, and Unitil.
12. As a result of the 1997 restructuring, customers now pay separate amounts for utility supply and distribution services. While the rates for distribution and supply are different, both charges appear on a single bill that the customer receives from his or her distribution company.
13. The distribution companies’ rates for distribution services are highly regulated and are set by the DPU.
14. While competitive suppliers must be licensed by the DPU, DPU does not set their rates and competitive suppliers are not required to disclose their rates to DPU.

15. In other words, competitive suppliers can charge any prices they wish for electricity and/or natural gas services.
16. On the other hand, the prices for “basic” electricity service provided by a distribution company to those customers who do not contract with an alternative utility supplier are the result of a highly competitive process overseen by the DPU.
17. Likewise, DPU is heavily involved in setting the distribution companies’ rates for supply of “basic” natural gas service and must approve distribution companies’ proposed rates.
18. While the original stated purpose of the 1997 restructuring of the energy market was to save consumers money, the vast majority of consumers pay higher rates in the competitive supply market than they would if they were contracting for basic service with their local distribution services.
19. In fact, the Massachusetts Attorney General’s Office (the “AGO”) issued a 52 page report in March 2018 in which it concluded that “Massachusetts consumers in the competitive supply market paid **\$176.8 million** more than they would have paid if they had received electric supply from their electric company during the two-year period from July 2015 to June 2017.¹ A subsequent report by the same author measured the loss at **\$253 million** over a three-year period.²
20. The AGO also found that low-income households experienced the most marked losses: First, on average, low-income households paid significantly more to competitive suppliers than if they had taken service from their respective distribution companies during the same time

¹ “Are Consumers Benefiting from Competition? An Analysis of the Individual Residential Electricity Supply Market in Massachusetts,” Massachusetts Attorney General’s Office (March 2018) (the “AGO Report”), available at <https://www.mass.gov/doc/comp-supply-report-final> (emphasis in original), at viii.

² Maryland’s Residential Electric and Gas Supply Markets: Where Do We Go from Here?, Prepared by Susan M. Baldwin and Sarah M. Bosley on behalf of the Maryland Office of People’s Counsel (Nov. 2018), available at <http://opc.maryland.gov/Portals/0/Hot%20Topics/Maryland%20Electric%20and%20Gas%20Residential%20Supply%20Report%20November%202018.pdf>, at 35.

period. Moreover, the average premium that low-income customers paid for competitive service was higher than the premium that non-low-income customers paid during the same period.³

21. Despite the fact they are generally losing money and getting the exact same electricity by doing so, low-income households participate in the competitive supply market at higher rates than higher income households.⁴ In addition, a community's percentage of Hispanic households and households with limited English proficiency correlates with higher rates of participation in the residential market for competitive supply.⁵
22. Complaints regarding the practices of competitive suppliers, including of their misleading promises to deliver savings, have increased significantly in recent years. The AGO received approximately 215 complaints about competitive electricity suppliers between 2006 and 2013 and over 700 between 2014 and March 2018.
23. The 700 complaints commonly allege that the competitive supplier came to the consumer's door unsolicited, falsely represented an affiliation with the customer's distribution company, that the supplier took advantage of a language barrier, that the supplier engaged in high pressure sales tactics and that the supplier switched the account without the customer's affirmative consent.⁶ These types of complaints have been typical not just in Massachusetts but also across the other states with competitive utility supply markets.

B. FACTS CONCERNING DEFENDANT SFE ENERGY

24. SFE Energy is one of the more than fifty active alternative utility suppliers in the Massachusetts market and offers supply of both electricity and natural gas.

³ The AGO Report at 17.

⁴ Id. at 27.

⁵ Id.

⁶ Id.

25. SFE Energy has been registered as a foreign corporation in Massachusetts since September 2014 and was incorporated in April 2014. Its corporate headquarters are located in Mississauga, Ontario, Canada.
26. SFE Energy also has affiliates operating in other states under slightly different names (SFE California, Inc., SFE Connecticut, Inc., SFE Energy Illinois, SFE Energy Maryland, SFE Energy NJ, SFE Energy NY, SFE Energy Ohio, SFE Energy Pennsylvania, SFE Energy Texas, and SFE Energy, Inc.). SFE Energy also operates in Canada as Summitt Energy. All of these entities have the same President, Gerald Haggerty.
27. SFE Energy has been licensed by DPU to be a competitive supplier of electricity in Massachusetts since March 2015 and a competitive supplier of gas since December 2015.
28. SFE Energy primarily gets new customers through door-to-door sales. As SFE states on their website, it has “a large door to door sales team selling a variety of products and services.” <http://www.sfeenergy.com/door-to-door> (last accessed Apr. 11, 2019).
29. Upon information and belief, sales representatives have strong incentives to sign new customers up for SFE services as their compensation structure involves commissions based on sign-ups.
30. As a result, SFE Energy sales representatives use deceptive sales tactics, such as routinely telling prospective customers that they are working for or with a distribution company like Eversource or National Grid, thereby misrepresenting the fact that SFE is an independent company in no way related to utility distribution companies.
31. DPU maintains an unpublished database of complaints about competitive supply companies.
32. DPU has received approximately 70 complaints about SFE Energy since it began operating in Massachusetts. More than a dozen of these complaints concerned unauthorized switch in

supply services where the consumers did not realize that the door-to-door salespeople were not employees of their utility companies and/or did not knowingly sign up for their services.

33. For example, one Everett resident complained that in February 2018 an SFE solicitor came to her apartment, asked to see her National Grid bill and made her believe she represented National Grid in some fashion.

34. Several of the complaints against SFE Energy were made by or on behalf of limited English proficient consumers.

35. For example, one Waltham resident lodged a complaint in April 2018 about how someone had shown up at his door earlier that year and solicited his wife who does not speak English.

36. Another complaint from 2018 involved an individual who claimed to work with National Grid trying to solicit elderly individuals who speak very limited English with promises of lowering their bills.

37. In addition, several complaints were from low-income neighborhoods of color, including Roxbury and Dorchester.

C. DEFENDANTS' UNFAIR AND DECEPTIVE ACTIONS AGAINST MR. FUENTES

38. Mr. Fuentes is a native of El Salvador. He almost exclusively speaks Spanish and has limited English proficiency.

39. Mr. Fuentes works as a parking attendant and shares custody of his two kids with his ex-wife.

40. Mr. Fuentes lives in Somerville, Massachusetts, and like other residents of Somerville, his gas and electricity utilities are distributed by Eversource.

41. Until August 2017, Eversource supplied Mr. Fuentes with gas and electricity.

42. In August 2017, someone rang Mr. Fuentes' doorbell and asked to speak to him about his utility services.

43. The individual, upon information and belief, was Michael Karnes (“Mr. Karnes”), who was working for SFE Energy, a fact Mr. Fuentes did not learn until much later. Mr. Karnes had information concerning Mr. Fuentes’ account with Eversource and said he was there to do a check of Mr. Fuentes’ services. He did not mention that he was affiliated with any company, and the only company name that was mentioned was Eversource. He also did not speak Spanish.
44. Mr. Karnes conducted the entire exchange with Mr. Fuentes in English, despite the fact that Mr. Fuentes is a native Spanish speaker and has limited English proficiency.
45. Unbeknownst to Mr. Fuentes, Mr. Karnes was not affiliated with Eversource and was in fact an employee and/or agent of SFE Energy. During the course of the interaction, Mr. Karnes had Mr. Fuentes sign a document, which he said was just to verify his account information.
46. Unbeknownst to Mr. Fuentes, he signed a three-year contract (the “Contract”) for SFE Energy to be the supplier of his electricity and natural gas.
47. The Contract was not explained to Mr. Fuentes either in English or in his native Spanish. It was not translated into Spanish in any shape or fashion.
48. The Contract Mr. Fuentes signed, which upon information and belief, is or was for some period of time SFE Energy’s standard contract for new customers, is replete with oppressive and unconscionable terms, that even a sophisticated customer who speaks and reads English would not understand.
49. According to the Contract, after a two month “discount” (in which the rate for services will be \$.1313 cents per kilowatt hour and \$.7790 per therm of natural gas), the monthly price of services would go up to fixed rates of \$.1437 per kilowatt hour and \$.8490 per therm of natural gas.

50. However, these rates, which as discussed in greater detail below, are *significantly* more than Eversource's rates and, in fact, were not actually fixed for the entire three-year term of the Contract.

51. In addition, the Contract has a provision in tiny print—less than 8 point font size—on its second page which states that there could be an increase in SFE's rates because of an increase in SFE Energy's "costs or cost components[.]" This language is absolutely buried in the Contract in a provision entitled "Change in Law":

5. Change in Law. SFE may pass through or allocate, as the case may be, any increase or decrease in our costs or cost components (including changes to rate calculation) related to the natural gas supply and/or electric generation service and related products and services that results from the implementation of a new (or changes to any) law, rule, regulation, ordinance, statute, judicial decision, administrative order, ISO business practice or protocol, natural gas and/or electric generation service or ISO tariff, rule of any regulatory commission or agency with jurisdiction in the state in which the accounts are located. Such increases or decreases will be included in subsequent invoices or billing to you. The changes as described here may change any or all of the components described within this Agreement regardless of how they are classified.

52. This provision, which is not on the first page of the agreement, nor in the provision entitled "Pricing and Billing," in fact means that SFE's rates are variable and can be reset at SFE's sole discretion. It also means the rates are not in fact "fixed" as indicated on the first page of the Contract.

53. Yet, there is no indication on the first page of the agreement, where the rates are indicated and said to be "fixed" that SFE has the sole discretion to increase their rates because of an increase in their costs or components.

54. SFE in fact did increase their rates beyond those listed on the first page of the Contract. For example, from December 19, 2017 to November 20, 2018 Mr. Fuentes was charged \$.15550 per kilowatt hour rather than the \$.1437 "fixed" rate on the Contract.

55. Mr. Fuentes was also charged a \$4.98 monthly charge for service. The provision allowing for this charge is written in English and in tiny print of less than 8 point font size, which any consumer would struggle to read, and which would be even more challenging for a consumer with limited English proficiency. Mr. Fuentes was not charged this fee when he received his

supply services from Eversource and would not have been charged it if he continued to receive supply services from Eversource.

56. The Contract contains various other oppressive and/or unconscionable provisions concerning rates and services, all of which are hidden in tiny text among various paragraphs of the Contract. These include:

- a. An automatic renewal of the Contract at the end of the three-year term;
- b. An early termination fee of \$2.50 “plus applicable taxes, for each month or partial month” remaining of the three-year term.

57. In addition, the Contract purports to take away a consumer’s ability to recover certain damages in a lawsuit. Paragraph 16 states that “The remedy in any claim or suit by You will be solely limited to direct actual damages. By entering into the Agreement(s), You waive any right to any other remedy in law or equity. In no event will either SFE or You be liable for consequential, incidental, indirect, special, or punitive damages.”

58. The font size on all these provisions is smaller than size 8 and would be extremely difficult for anyone to read and understand, let alone a non-English speaker.

59. Mr. Karnes did not explain any of these provisions to Mr. Fuentes and he did not disclose SFE Energy’s pricing structure to him.

60. In addition to convincing Mr. Fuentes to sign the Contract by misrepresenting what it was and what was contained in it, Mr. Karnes made a phone call to SFE’s so-called “independent verification services” while he was still at Mr. Fuentes’ residence. While on the call, Mr. Karnes reached someone by the name of “Kevin.”

61. Mr. Karnes gave “Kevin” information concerning Mr. Fuentes’ account and then handed his phone to Mr. Fuentes. He told Mr. Fuentes to just confirm the information.

62. “Kevin” spoke extremely quickly during his conversation with Mr. Karnes and used sophisticated language, which would be difficult for even a native English speaker to understand.
63. Mr. Fuentes did not understand the majority of the questions he was asked and as a result answered “yes” or some variation thereof to the majority of the questions as he was instructed to do by Mr. Karnes.
64. At no point during the phone call did Mr. Fuentes understand that SFE Energy was a separate company from Eversource and that he was signing up for their services. At no point did Kevin stop to verify that Mr. Fuentes actually understood that he would have a new supplier for his utilities and that his rates would change significantly.
65. Upon information and belief, the purpose of the phone call was not to verify that Mr. Fuentes actually had affirmatively chosen to sign up for SFE Energy’s services but only to superficially comply with DPU regulations and thus try to insulate SFE Energy from potential liability over the method by which it obtains new customers.
66. Even after the call with “Kevin,” Mr. Fuentes had no idea he has signed up with a utility supplier other than Eversource or that his utility rates would change.
67. As is typical with consumers with alternative utility suppliers, even after SFE switched his supply services Mr. Fuentes continued to get all of his bills from Eversource, as Eversource remained his distribution company.
68. At some point in early 2018, Mr. Fuentes noticed that his Eversource bills were higher than they had been in the past, even accounting for the time of the year and higher heating costs.
69. As a result, Mr. Fuentes called Eversource to inquire about his unusually high bills. The Eversource representative whom he spoke with in Spanish told him that Eversource was no

longer his supplier and that SFE was. The representative briefly explained to him what an alternative utility supplier was and suggested he call SFE directly to resolve the situation.

70. Mr. Fuentes was shocked and confused, as he did not know how his supply company had changed. He was upset because he felt that he had been taken advantage of and deceived. He was also very embarrassed that he unknowingly had switched companies and increased his utility bill.
71. Mr. Fuentes called SFE Energy the next day and was told he had signed up in August 2017 and would have to pay an early termination fee to get out of the three year contract he knew nothing about.
72. After efforts to resolve the issue on his own proved futile, Mr. Fuentes contacted Greater Boston Legal Services for help.
73. As he suspected, Mr. Fuentes has paid substantially more for SFE Energy's supply services of both electricity and natural gas than he would have had he continued to be an Eversource "basic service" customer and/or become a participant to Somerville's municipal aggregation electricity program.⁷
74. Even during the so-called discounted first two months of his service, Mr. Fuentes paid more for SFE Energy than he would have with Eversource and/or Somerville's municipal aggregation program. According to the Contract, the "discounted" introductory rates for Mr. Fuentes were \$.1313 per kilowatt hour for electricity and \$.7790 per therm for natural gas. In August, September, and October of 2017, Eversource's basic electricity service was

⁷ The 1997 restructuring empowered cities and towns to create large buying groups of residential and business electricity accounts in order to seek bids for cheaper supply rates. Pursuant to this provision, the City of Somerville launched a municipal aggregation program for residents and businesses in July 2017. Somerville residents receiving basic service from Eversource were automatically enrolled in July 2017 unless they opted out. The initial default rate for electricity service, which will remain in effect through January 2020, is \$0.10538/kWh.

\$0.10318 per kilowatt hour and the Somerville municipal aggregation rate was \$0.10538 per kilowatt hour. In August, September, and October of 2017, Eversource's basic gas service rate was \$0.31480 per therm.

75. Thus, even with the "discount" of the first two months, Mr. Fuentes paid over double what he would have for gas supply and substantially more for electricity supply as well.
76. Upon information and belief, Mr. Fuentes has paid at least double what he would have for gas supply and also substantially more for electricity supply for as long as he has been signed up for SFE Energy.
77. For example, from September 20 to October 19, 2018 Mr. Fuentes used 194 kilowatts of electricity. He was charged \$30.17 for these 194 kilowatts, at a rate of \$0.15550 per kilowatt hour. During September and October, 2018, Eversource's rate for electricity was \$0.11397 per kilowatt hour and the Somerville municipal aggregation program's contracted default rate was \$0.10538 per kilowatt hour. Therefore, had Mr. Fuentes continued getting his supply services from Eversource, he would have only paid \$22.11 for that period of time and had his service been automatically transferred via Somerville's municipal aggregation he would have paid only \$20.44.
78. In addition, Mr. Fuentes paid a \$4.98 customer charge for supply that he would not have had to pay if he had gotten his supply from Eversource or had he been enrolled in Somerville's municipal program. The \$4.98 customer charge essentially functioned as a \$0.02569 per kilowatt surcharge on his already higher rates.
79. In total, Mr. Fuentes paid a total of \$35.15 for supply charges for service between September 20 to October 19, 2018, when he would have paid \$22.11 with Eversource or \$20.44 with

municipal aggregation. Thus, he paid more than fifty percent more to SFE than he would otherwise have.

80. The price difference is even more marked for the natural gas services that Mr. Fuentes has been receiving. For example, from September 20, 2018 to October 19, 2018 Mr. Fuentes used 10 Therms of natural gas. Mr. Fuentes was charged \$8.49 for the supply of these 10 Therms from SFE Energy based on a rate of \$.84900 per therm of gas used. During the same period, Eversource's basic service rate was \$.27620 per Therm. Thus, if Mr. Fuentes had continued to have Eversource basic service, he would have been charged only \$2.76 during the relevant time period. In other words, Mr. Fuentes paid over three times what he would otherwise have for natural gas between September 20, 2018 and October 19, 2018.
81. Not only has Mr. Fuentes been paying substantially more for his utilities because he was wrongfully signed up for SFE Energy's services, but he has been damaged in other ways.
82. Mr. Fuentes has been forced to spend time and energy trying to resolve the situation and has had to retain and meet with counsel. Mr. Fuentes has also experienced anxiety from realizing how high his bills are and has attempted to lower his utility consumption as a result. His relationship with his children has been affected and he has repeatedly refused their requests to turn on the television and use other electronic products. Further, he has been embarrassed and ashamed that he was tricked into changing his utility company to one that cost him more money.
83. On November 13, 2018, Mr. Fuentes' counsel sent a demand for relief pursuant to G.L. c. 93A to Defendant via certified mail, return receipt requested, which demand reasonably described the acts and practices complained of and injuries suffered.

84. The Defendant received Plaintiff's demand and responded via email on November 27, 2018 but did not offer any sort of reasonable relief.
85. Defendant thus did not tender a reasonable offer of settlement within 30 days of receipt of the demand letter.

D. CLASS ALLEGATIONS

86. Plaintiff brings this action against SFE on behalf of himself and all others similarly situated Massachusetts residents who, according to Defendant's records, were solicited for and signed up for SFE's electric and/or gas services from March 2015 to the present on the same (or substantially similar) form contract that Mr. Fuentes was deceived into signing, including but not limited to consumers with limited English proficiency. Excluded from the class are persons who have released SFE for the claims asserted.
87. All criteria for class certification under G.L. c. 93A, § 9(2) and Mass. R. Civ. P. 23 are satisfied:
- a. The proposed class (the "Class") is so numerous that joinder of all its members is impracticable. Upon information and belief, thousands of Massachusetts consumers were solicited for and signed up for SFE's electric and/or gas services by signing the same (or substantially similar) Contract as Mr. Fuentes did during the relevant time period.
 - b. Mr. Fuentes and class members are similarly situated since their claims are based on the same basic fact pattern and legal theories (their having been deceived resulting in enrollment in a service (or services) for which they paid demonstrably more for no actual benefit).

- c. Mr. Fuentes' claims and those of the Class involve common questions of law and fact, including:
 - i. Whether, in order to solicit customers, Defendant's agents or employees materially misrepresented facts including, but not limited to their connection to the utility distribution company, that customers would be charged significantly higher rates by SFE compared to the distribution company, and that SFE's higher prices are actually variable, not fixed as claimed.
 - ii. Whether Defendant's agents or employees engaged in meaningful and understandable third party verification in a manner that allowed customers to understand that they were affirmatively choosing SFE to supply their energy instead of their present company, most likely Eversource and/or National Grid.
 - iii. Whether this conduct constituted unfair and deceptive acts and practices in violation of Massachusetts consumer protection law.
 - iv. Whether Mr. Fuentes and the Class are entitled to damages; and
 - v. Whether Mr. Fuentes and the Class are entitled to injunctive relief.

These common questions predominate over any questions affecting only individual class members.
- d. In addition, Mr. Fuentes' injuries from Defendant's deceptive actions are similar to injuries suffered by class members. These include economic harm and emotional distress.
- e. Mr. Fuentes will fairly and adequately represent the class members' interests. All claims are based on the same basic fact pattern and legal theories and Mr.

Fuentes' interests are consistent with the interests of the class. Mr. Fuentes has no interests antagonistic to, or in conflict with, the Class he seeks to represent. In supporting his individual claims, Mr. Fuentes will simultaneously advance the claims of the absent class members. In addition, Mr. Fuentes has retained counsel experienced in consumer class actions and consumer protection litigation.

- f. A class action is superior for the fair and efficient adjudication of the claims. Class members are generally unsophisticated of the protections provided by G.L. c. 93A and the Code of Massachusetts Regulations. In addition, class members' damages are not substantial enough to make individual litigation cost-effective. This is especially true for low-income class members who cannot afford the costs and lost work time required to bring individual suits. Moreover, multiple individual suits would produce excessive costs for all parties involved, including the Commonwealth and the court(s) adjudicating those claims. Finally, the class action device also avoids inconsistent or contradictory results resulting from individual litigation.

CLAIMS FOR RELIEF

CAUSE OF ACTION I: VIOLATIONS OF THE MASSACHUSETTS CONSUMER PROTECTION LAW, G.L. C. 93A

88. Plaintiff repeats and realleges all preceding allegations as if fully set forth herein.
89. At all times relevant to this complaint, Defendant was engaged in "trade or commerce" in Massachusetts within the scope of G.L. c. 93A, § 1.
90. At all times relevant to this complaint, Defendant was a "retail seller of electricity" as defined by 940 CMR 19.03.

91. At all times relevant to this complaint, Defendant was a “retail seller” of “competitive generation service” as defined by 940 CMR 19.03 and 220 CMR 11.02.
92. Pursuant to 940 CMR 6.03(4), an “unfair and deceptive representation may result not only from direct representation and the reasonable inferences they create, but from the seller’s omitting or obscuring a material fact.”

Defendant’s misrepresentation of SFE’s independent relationship from Eversource

93. Pursuant to 940 CMR 19.04(b) it is an unfair and deceptive act and therefore a violation of G.L. c. 93A for a retail seller of electricity to make any misleading representations, which it “knows or should know has the capacity or tendency to deceive or mislead a reasonable consumer, or that has the effect of deceiving or misleading a reasonable consumer, in any material respect, including but not limited to representations relating to . . . the business relationship between any retail seller of electricity and any distribution company.”
94. Pursuant to 940 CMR 19.04(c) it is an unfair or deceptive act or practice to misrepresent “benefits to the consumer arising from the business relationship between a retail seller of electricity and a distribution company.”
95. Pursuant to 940 CMR 19.05(1), it is an unfair or deceptive act or practice for a retail seller of electricity “to fail to disclose material information about its products, services, or business, where such failure has the capacity or tendency to deceive or mislead a reasonable consumer, or has the effect of deceiving or misleading such a consumer, in any material respect.”
96. Pursuant to 940 CMR 19.05(2), it is an unfair or deceptive act or practice for a retail seller of electricity “to fail to disclose to a consumer any material fact the disclosure of which may have influenced a reasonable consumer not to enter into a transaction.”

97. Defendant and its agents violated 940 CMR 19.04(b) and (c), 940 CMR 6.03(4), and 940 CMR 19.05(1) and (2) by failing to make clear SFE's independent relationship from Eversource, Mr. Fuentes' distribution company. Had Mr. Fuentes known this material fact he would not have signed the Contract.
98. In addition, upon information and belief, Defendant and its agents violated 940 CMR 19.04(b) and (c), 940 CMR 6.03(4), and 940 CMR 19.05(1) and (2) by failing to make clear SFE's independent relationship from Eversource and other distribution companies to class members.
99. Defendant's unfair, misleading and deceptive acts were made even more unconscionable by their knowledge that Mr. Fuentes did not speak English as a first language, therefore making him easy to take advantage of.

Defendant's failure to disclose accurate pricing information

100. In addition, Defendant violated 940 CMR 19.05(1) and (2) by failing to disclose the huge increase in price that would result from Mr. Fuentes signing the contract. Had Mr. Fuentes been aware of this fact, he would not have signed the Contract.
101. Pursuant to 940 CMR 19.04(e) it is an unfair or deceptive act or practice for a retail seller of competitive generation service to misrepresent "the distribution price, the generation price or the total delivered price of electricity . . . or service to be charged to a consumer." 940 CMR 19.04(e)).
102. Pursuant to 940 CMR 19.04(g), it is an unfair or deceptive act or practice for a retail seller of competitive generation service to misrepresent "the difference between any price being charged by any retail seller of electricity, including a distribution company, and any

price being charged by any other retail seller of electricity, including a distribution company.””

103. Defendant violated 940 CMR 19.04(e) and (g) by failing to properly disclose that Mr. Fuentes would be charged significantly more by signing the Contract and that in fact SFE—a separate company from Eversource—would have unfettered discretion to increase their already higher rates.
104. Pursuant to 940 CMR 19.04(j), it is an unfair or deceptive act or practice for a retail seller of electricity to make a misleading representation relating to “the period of time for which any price will remain in effect.”
105. Defendant violated 940 CMR. 19.04(j) by failing to properly disclose that the “fixed” prices on first page of the Contract were not in fact fixed and were subject to fluctuations in SFE’s costs.
106. Defendant violated 940 CMR 6.03(4), and 940 CMR 19.05(1) and (2) by failing to disclose relevant, material information about its relationship (and lack thereof) with Eversource and about its rates vis-à-vis Eversource’s (which were much lower), as well as the actual variability of its rates. Defendant also violated the same regulations by failing to properly disclose that Mr. Fuentes would pay an additional \$4.98 a month customer charge by signing the Contract.
107. The regulations concerning retail sellers of electricity also require that a retail seller of competitive generation service provide consumers with certain disclosures in no less than 10 point font. 940 CMR 19.05(3). These disclosures include but are not limited to: complete, accurate pricing information, including information specific to the consumer’s actual electricity usage history; a definition and a complete explanation of each and every charge

that the retail seller may bill to a consumer; and a complete explanation of any applicable connection, re-connection or termination procedures or fees. Id.

108. In addition, for consumers on the standard offer generation service, the retail seller of electricity is also required to disclose certain terms, including but not limited to the availability to the consumer, whenever needed, of default generation; and that the service that the customer is currently receiving is the standard offer generation service, with a full explanation of the conditions under which the customer may return to standard offer generation service. 940 CMR 19.05(3)(c).

109. Defendant violated 940 CMR 19.05(3) by either completely failing to include certain disclosures (such as the fact that Mr. Fuentes was at that time receiving default generation services) in the Contract and by including several other required disclosures (such as the full explanation of pricing information) in significantly smaller font size than 10.

110. Defendant's violations of 940 CMR are per se violations of G.L. c. 93A § 2.

Defendant's failure to properly verify affirmative choice

111. 220 CMR 11.05(4) requires that a competitive supplier obtain verification that each customer choosing that competitive supplier has "affirmatively chosen that entity."

112. Upon information and belief, Defendant and its agents failed to properly verify that each member of the proposed class had affirmatively chosen its services and remained willfully blind to the fact that their "consent" was not actually informed "consent."

113. The Executive Office of Energy and Environmental Affairs ("EOEEA"), the government body that oversees DPU, issued sub-regulatory guidance in the form of frequently asked questions posted on their website in or about 2014. The guidance dictates that if a customer

does not speak English, verification of affirmative choice “must be completed in the customer’s language and the customer must sign a contract in that same language.”

114. Contrary to the sub-regulatory guidance, Defendant’s “independent” verification service conducted Mr. Fuentes’ verification in English even though English is not Mr. Fuentes first language and he has limited English proficiency.

115. As explained above, Defendant’s “independent” verification service ignored the fact that Mr. Fuentes did not fully understand the questions being asked. It was thus not actually set up to determine whether Mr. Fuentes had affirmatively chosen to receive services from SFE and instead was meant to superficially but not strictly comply with 220 CMR 11.05(4).

116. In addition, the Contract given to and signed by Mr. Fuentes was written entirely in English, contrary to the sub-regulatory guidance published on EOEEA’s website. Furthermore, the Contract was never translated into Spanish for Mr. Fuentes, nor was it explained to him in Spanish.

117. Defendant’s violations of 220 CMR are per se violations of G.L. c. 93A § 2.

Defendant’s Other Unfair and Deceptive Actions

118. In addition, it was unfair and deceptive for Defendant to include terms that were void as against public policy in the Contract. For example, Defendant included a one-sided prohibition against multiple and punitive damages.

119. It was also unfair and deceptive, as well as oppressive, of Defendant to include an early termination fee that is in no way tied to the actual cost of termination and that was buried in the Contract in tiny print.

120. Defendant’s violations of G.L. c. 93A, § 2, were knowing and willful in nature.

Damages

121. As a direct and proximate result of Defendant's violations of G.L. c. 93A, § 2, Mr. Fuentes paid *significantly* higher amounts for the exact same utility services he had been receiving from Eversource. Other similarly situated class members have also had to pay significantly higher amounts for utility services as a result of Defendant's unfair and deceptive practices.

122. As a direct and proximate result of Defendant's violations of G.L. c. 93A, § 2, Mr. Fuentes also suffered harm by experiencing emotional distress and anxiety resulting from his higher utility bills, by expending time and energy to try to discover why his bills were higher, then in retaining and consulting with his counsel. Other similarly situated class members have also suffered harm by experiencing emotional distress and anxiety as a result of Defendant's unfair and deceptive practices.

Demand For Relief

123. On November 13, 2018, pursuant to G.L. c. 93A Mr. Fuentes—through counsel—sent a demand for relief to the defendant via certified mail, return receipt requested, which demand reasonably described the acts and practices complained of and injuries suffered.

124. The Defendant received Plaintiff's demand and responded via email on November 27, 2018 but did not offer a reasonable settlement within 30 days of receipt of the demand letter.

125. Defendant's failures to make a reasonable written tender of settlement was in bad faith with knowledge or reason to know that its conduct violated G.L. c. 93A, § 2.

REQUEST FOR A JURY TRIAL

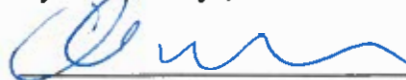
The Plaintiff claims his right to trial by jury on all claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant following relief:

1. Enjoin Defendant, its agents, servants, employees, sales and customer service representatives, and assigns from engaging in the wrongful, deceptive, unfair, and unconscionable practices alleged herein;
2. Declare Defendant's actions as alleged herein as unlawful and in violation of G.L. c. 93A;
3. Allow Plaintiff and class members to be terminated from the Contract without paying any sort of termination fees;
4. Award Plaintiff and class members actual, statutory, treble, and/or punitive damages, as well as attorneys' fees and costs;
5. Grant such other relief this Honorable Court shall deem just.

Rafael Fuentes
By his attorneys,



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Dated April 11, 2019