

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

Plaintiffs,

v.

VERDE ENERGY USA, INC.,

Defendant.

SUPERIOR COURT

COMPLEX LITIGATION DOCKET
AT HARTFORD

SEPTEMBER 18, 2019

**AFFIDAVIT OF SETH R. KLEIN IN SUPPORT OF
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT,
MODIFICATION OF THE CERTIFIED CLASS DEFINITION,
APPROVAL OF NOTICE PLAN AND SCHEDULING OF FAIRNESS HEARING**

I, Seth R. Klein, hereby declare as follows:

1. I am an attorney with the law firm of Izard Kindall & Raabe LLP (“IKR”), and am competent to declare the matters stated herein.

2. I am one of the attorneys representing the named plaintiff, Constance Jurich, in this putative class action lawsuit against Verde Energy USA, Inc. (“Verde” or “Defendant”). I submit this declaration in support of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement, Modification of the Certified Class Definition, Approval of Notice Plan and Scheduling of Fairness Hearing.

3. Plaintiff has obtained and analyzed substantial records concerning Verde’s contract language during the Class Period and the electricity that Verde provided to Connecticut variable rate consumers during that time, including Verde’s own costs. . Likewise, Defendant has deposed and obtained interrogatory responses and document discovery from Plaintiff and

Plaintiff's husband. The parties have exchanged initial expert reports, and Verde has deposed Plaintiff's experts.

4. The parties first agreed to mediate the action in 2017 and retained Brian Mone of Commonwealth Mediation and Conciliation, Inc. to serve as the mediator. On July 11, 2017, Mr. Mone conducted a full-day mediation; however, the parties were unable to reach agreement at the time.

5. Following extensive discovery and motion practice, the parties agreed to a second mediation in the Spring of 2019 and retained the Hon. Antonio C. Robaina (Ret.) to serve as the mediator (the "Mediator"). Judge Robaina conducted two full-day mediation sessions on May 9, 2019, and July 16, 2019. At the conclusion of the mediation on July 16, 2019, the parties both accepted the Mediator's proposed settlement, subject to the satisfaction of certain conditions, including the negotiation of a definitive settlement agreement and approval of the Settlement by the Court.

6. The parties thereafter engaged in detailed discussions to negotiate a Memorandum of Understanding and the Settlement Agreement.

7. Plaintiff's experts have conducted a settlement damages analysis under two methodologies. Under the first methodology, damages are calculated by comparing the rates charged by Verde to the public utility rates. Here, Verde has provided data showing that Settlement Class Members used a total of 1,028,949,238 Variable Kilowatt Hours. Based on data also provided by Verde, Plaintiff's experts have calculated that Settlement Class Members overpaid approximately \$11,535,920 pursuant to Verde's pricing over contemporaneous public utility rates. *Id.* Accordingly, the average damages allegedly suffered by Settlement Class

Members per kWh is \$0.0112, and the \$0.0095 recovery provided under the Settlement is 85% of that per-kWh damages amount

8. Under the second methodology, damages are calculated by comparing the rates charged by Verde to Verde's actual costs plus a reasonable gross margin. Under this methodology, Plaintiff's expert calculated that Settlement Class Members suffered approximately \$7,729,775 in damages. Accordingly, the average damages suffered by Settlement Class Members under this methodology is \$0.0075, meaning that the \$0.0095 per kWh payment under the Settlement would constitute more than full recovery of Settlement Class Member damages

9. Plaintiff and her counsel negotiated the amount to be paid by Verde for fees and an incentive award under the oversight and with the assistance of Judge Robaina. These negotiations occurred only *after* the substantive amounts proposed to be paid to Settlement Class Members had been finalized.

10. Through September 11, 2019, Plaintiff's counsel have spent approximately 1265 hours on this litigation, with a lodestar of \$998,182.50. Plaintiff's counsel also have incurred \$97,186.39 in unreimbursed expenses as of that date. Moreover, counsel anticipate needing to spend significant additional time on this litigation responding to Settlement Class Members' inquiries and seeking Final Approval for the Settlement, beyond the time already incorporated into the present lodestar estimate.

11. Plaintiff Constance Jurich has made extensive efforts in this litigation, including production of documents, responding to interrogatories, sitting for deposition, and general oversight of the litigation. Ms. Jurich will submit an affidavit detailing her efforts in conjunction

CERTIFICATION

Pursuant to Practice Book §10-14, I hereby certify that a copy of the above was electronically delivered September 18, 2019, to all counsel and pro se parties of record:

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/s/ Seth R. Klein
Seth R. Klein