

**STATE OF CONNECTICUT
PUBLIC UTILITIES REGULATORY AUTHORITY**

APPLICATION OF PALMCO POWER : DOCKET NO. 10-01-24RE01
CT, LLC FOR AN ELECTRIC :
SUPPLIER LICENSE – INVESTIGATION :
OF MARKETING AND ENROLLMENT :
PRACTICES : February 17, 2017

JOINT MOTION TO APPROVE SETTLEMENT

George Jepsen, Attorney General for the State of Connecticut (“Attorney General”) and Elin Swanson Katz, Consumer Counsel, request that the Public Utilities Regulatory Authority (“PURA” or “Authority”) approve the attached settlement agreement with Palmco Power CT, LLC (“Palmco” or the “Company”) in a final decision to resolve this proceeding. Palmco and Prosecutorial support this joint motion and the settlement agreement.

In the settlement agreement, Palmco agrees to make a \$5 million voluntary donation and contribution to the State of Connecticut in two installments over a period of 10 months and further agrees to voluntarily relinquish its electric supplier license in Connecticut for a period of five years from April 15, 2015, when PURA ordered Palmco to cease and desist door-to-door marketing in Connecticut, for a net period of three years, after which time it may seek PURA authority to operate in Connecticut. The Attorney General and Consumer Counsel represent that approval of the settlement agreement is in the public interest and fully and adequately resolves this matter.


Respectfully submitted,

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Service is hereby
certified to all parties and
intervenor on this agency's
service list for this proceeding.



Michael C. Wertheimer
Assistant Attorney General

STATE OF CONNECTICUT

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SETTLEMENT AGREEMENT

STATE OF CONNECTICUT

PUBLIC UTILITIES REGULATORY AUTHORITY

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SETTLEMENT AGREEMENT

WHEREAS, this Settlement Agreement is entered into by and between Palmco Power CT, LLC ("Palmco" or the "Company"), George Jepsen, Attorney General for the State of Connecticut ("Attorney General"), and Elin Swanson Katz, Consumer Counsel, on behalf of the State of Connecticut, Office of Consumer Counsel ("OCC") (collectively, the "Settling Parties"), in connection with the above-captioned matter pending before the Public Utilities Regulatory Authority ("PURA" or "Authority");

WHEREAS, on February 25, 2015, the Authority opened this proceeding after receiving certain customer complaints against Palmco. *See* February 25, 2015 Final Decision, Docket No. 10-01-24RE01, *Application of Palmco Power CT for and Electric Supplier License - Reopening*. On April 16, 2015, the Authority issued a cease and desist order prohibiting Palmco "from conducting any door-to-door marketing until approved to do so by the Authority." Docket No. 10-01-24RE01, Cease and Desist Order, 4.

WHEREAS, the parties engaged in discovery and the Authority conducted hearings in this matter in July 2015 and in February, March, May and August 2016. On August 29 and September 12, 2016, the parties filed their briefs in this matter. In those briefs, the Attorney General and the OCC (jointly referred to herein as "the State") described conduct that they allege violated state law, state regulations, Authority

decisions or was otherwise deceptive and unfair practices within the meaning of Section 42-110j et seq. of the Connecticut General Statutes;

WHEREAS, the Settling Parties have raised competing and disputed claims with regard to the various issues related to the Authority's investigation, but wish to resolve those issues on mutually agreeable terms, and without establishing any precedent or principles applicable to any other proceedings; and

WHEREAS, it is the policy of the Authority, consistent with Conn. Gen. Stat. §16-19jj, to encourage the use of settlements to resolve contested cases and proceedings.

NOW THEREFORE, in consideration of the exchange of promises and covenants herein contained, the legal sufficiency of which is hereby acknowledged, the Settling Parties agree, subject to approval by the Authority, as follows:

STIPULATED FACTS

For purposes of this Settlement, the Settling Parties agree as follows:

1. Palmco is a limited liability corporation organized and existing under the laws of Connecticut, with its principal place of business located at 8751 18th Avenue, Brooklyn, NY 11214.
2. At all times relevant to this Settlement, Palmco was engaged in the trade or commerce of providing, as an Electric Supplier, as defined in Connecticut General Statutes § 16-1, licensed by the PURA, residential electric generation services (the "Services") to Connecticut consumers.
3. Palmco began marketing electric generation supply services in Connecticut in January 2011.

4. Between January, 2011 and April, 2015, Palmco served a total of 50,424 customers in Connecticut. As of the date of this Settlement Agreement, Palmco serves less than 1,000 customers.

5. At all times relevant to this Settlement, Robert Palmese was Palmco's President and Managing Member. In that capacity, Robert Palmese was ultimately responsible for Palmco's operations in Connecticut.

STATE'S POSITION

The State contends as follows:

Preliminary Statement

6. From January, 2011 to October, 2015, Palmco systematically and repeatedly deceived and misled consumers in the State of Connecticut in violation of Connecticut law. Palmco's improperly trained sales force used deceptive, misleading and coercive sales tactics to market its products in Connecticut, including providing false and misleading information concerning the pricing of the Company's rates. Palmco then transitioned its customers to a variable rate product, which was generally the highest rate charged in the State. At the same time, Palmco's compliance operation failed to oversee and discipline its sales force, which allowed the abusive behavior to continue. Moreover, this Agreement follows regulatory and legal actions in New York and New Jersey resolving allegations of substantially similar conduct by Palmco affiliates in those states.

Palmco's Contracts Were Deceptive and Misleading

7. Palmco's retail electric supplier contracts inaccurately and deceptively described how the customer's variable rate prices were determined. Conn. Gen. Stat § 16-245o(f)(2) provides that:

[e]ach contract for electric generation services shall contain all material terms of the agreement, a clear and conspicuous statement explaining the rates that a customer will be paying, including the circumstances under which the rates may change, a statement that provides the specific directions to the customer as to how to compare the price term in the contract to the customer's existing electric generation service charge on the electric bill and how long those rates are guaranteed.

(Emphasis added). Palmco's retail electric supply agreement provided that the customer's variable rate would be determined as follows:

[b]eginning in the fourth billing cycle [after the conclusion of the introductory rate] and thereafter, you will be placed on a Variable Monthly Rate Plan and pay Palmco a price for electric generation supply service that may vary from month to month, based on a zonal locational marginal price ("LMP") determined on a day ahead or real time basis, any supply and agency functions that Palmco performs for you, line loss, compliance costs, certain transmission, capacity, ancillary, and administrative costs incurred by Palmco, and other prevailing market conditions.

...

You will be billed and pay Palmco for electric generation supply service based on meter readings and consumption information that Palmco receives from your utility ("Billing Quantity") Palmco will have the option to adjust the billing quantity for fuel and line losses retained by your utility or any interstate transporters from the Purchased Quantities.¹

The contract further provided that, "the sales points for electricity will be at one or more points on the ISO-NE administered transmission system located outside the municipality"

In December, 2015, Palmco transferred its variable rate customers to fixed-rate contracts. Prior to that time, Palmco did not determine the price of its variable rates as described in its contract. Palmco's variable rates bore no relation to ISO New England wholesale prices or zonal LMPs. In fact, for the sample period April 2013 through December 2015, Palmco's weighted average price correlated inversely with ISO New England's published day ahead LMPs.² Palmco never changed its rates to reflect the line

¹ SE-14A

² August 29, 2016 AG Brief, Exhibit A.

loss adjustments, fuel losses, transmission costs or any of the other variables identified.³

Instead, Palmco admitted that it set its variable rates at:

the price the market generally would bear at a particular point in time, regardless whether such price would result in a short-term profit or a loss, and has no relation to a standard offer rate of a utility, which is a regulated rate. Further, there was no algorithm or formula used because Palmco's rates were determined by what the market would bear at a particular point in time with consideration of Palmco's costs, among other things, during the relevant period, and was not a formula-based rate that was determined by cost inputs, as a regulated rate would be.⁴

As a result, Palmco's Connecticut customers generally paid: (1) the highest rates charged by any supplier in Connecticut;⁵ (2) rates 40 percent higher than the next highest supplier in Connecticut;⁶ (3) rates nearly triple the standard service rate offered by the utilities;⁷ and (4) for an average 750 kWh user, bills more than \$100 per month higher than a standard service customer.⁸ As a result, Palmco's customers paid rates that were more than \$10 million higher than if those customers had received standard service for the thirty-three (33) months ending December 2015.⁹ As Palmco has served Connecticut customers for more than 72 months, the cumulative harm suffered by Palmco customers was far higher than \$10 million. Palmco's pricing mechanism was deceptive, misleading, inconsistent with the representations in the customer contract and nowhere explained in a "clear and conspicuous" manner as required by Conn. Gen. Stat § 16-245o(f)(2).

³ Late Filed Exhibit 23, 24; December 22, 2015 Tr. 603-609.

⁴ AG-12.

⁵ Tr. 966.

⁶ Tr. 967-68.

⁷ Tr., 958.

⁸ Tr., 961.

⁹ AG-8.

Palmco's Door to Door Marketing and Sales Practices Were Deceptive and Misleading

8. Prior to the April 16, 2015 cease and desist order, Palmco enrolled approximately 30,000 customers through door-to-door marketing. The record in this proceeding reveals a clear and consistent pattern of abusive and deceptive sales tactics that violate Connecticut law. The evidence in this proceeding demonstrates that Palmco door-to-door sales agents:

- switched Connecticut consumers to Palmco without authorization, sometimes forging customer signatures;¹⁰
- impersonated utility employees or failed to inform Connecticut consumers that the agents were not affiliated with the local electric distribution company;¹¹
- guaranteed savings for customers, when in fact Palmco's variable rate product was generally among the highest rates in Connecticut;¹²
- marketed the Palmco generation rate as "more competitive" than standard service rates when in fact Palmco rates were not competitive but substantially higher than standard service rates;¹³ and
- failed to explain that Palmco's rates became variable after a limited two or three month fixed rate period.¹⁴

Palmco also allowed door-to-door sales agents who were suspended for marketing and sales-related misconduct in other states to market in Connecticut during those suspensions.¹⁵

Palmco's door-to-door marketing and sales practices violated Conn. Gen. Stat. §§ 16-245o(h)(2)(A),¹⁶ 16-245o(h)(2)(B),¹⁷ 16-245o(h)(4)¹⁸ and 16-245o(f)(2).¹⁹

¹⁰ AG-1; OCC-13.

¹¹ AG-1.

¹² AG-1.

¹³ AG-1.

¹⁴ AG-1.

¹⁵ AG-1.

¹⁶ Conn. Gen. Stat. § 16-245o(h)(2)(A) provides:

[f]or any sale or solicitation, including from any person representing such electric supplier, aggregator or agent of an electric supplier or aggregator (i) identify the person and the electric generation services company or companies the person represents; (ii) provide a statement that the person does not represent an electric distribution company; (iii) explain the purpose of the solicitation; and (iv) explain all rates, fees, variable charges and terms and conditions for the services provided.

¹⁷ Conn. Gen. Stat. § 16-245o(h)(2)(B) provides:

Palmco's Telephone Sales and Practices Were Deceptive and Misleading

9. Palmco voluntarily ceased telephone sales in September, 2015. Prior to that time, Palmco enrolled about 17,500 customers from its telemarketing efforts.²⁰ Transcripts of the telemarketing calls reveal a clear and consistent pattern of abusive and deceptive sales

[f]or door-to-door sales to customers with a maximum demand of one hundred kilowatts, which shall include the sale of electric generation services in which the electric supplier, aggregator or agent of an electric supplier or aggregator solicits the sale and receives the customer's agreement or offer to purchase at a place other than the seller's place of business, be conducted (i) in accordance with any municipal and local ordinances regarding door-to-door solicitations, (ii) between the hours of ten o'clock a.m. and six o'clock p.m. unless the customer schedules an earlier or later appointment, and (iii) with both English and Spanish written materials available. Any representative of an electric supplier, aggregator or agent of an electric supplier or aggregator shall prominently display or wear a photo identification badge stating the name of such person's employer or the electric supplier the person represents and shall not wear apparel, carry equipment or distribute materials that includes the logo or emblem of an electric distribution company or contains any language suggesting a relationship that does not exist with an electric distribution company, government agency or other supplier.

¹⁸ Conn. Gen. Stat. § 16-245o(h)(4):

[n]o entity, including an aggregator or agent of an electric supplier or aggregator, who sells or offers for sale any electric generation services for or on behalf of an electric supplier, shall engage in any deceptive acts or practices in the marketing, sale or solicitation of electric generation services.

¹⁹ Conn. Gen. Stat. § 16-245o(f)(2):

[n]o electric supplier shall provide electric generation services unless the customer has signed a service contract or consents to such services by one of the following: (A) An independent third-party telephone verification; (B) receipt of a written confirmation received in the mail from the customer after the customer has received an information package confirming any telephone agreement; (C) the customer signs a contract that conforms with the provisions of this section; or (D) the customer's consent is obtained through electronic means, including, but not limited to, a computer transaction. Each electric supplier shall provide each customer with a demand of less than one hundred kilowatts, a written contract that conforms with the provisions of this section and maintain records of such signed service contract or consent to service for a period of not less than two years from the date of expiration of such contract, which records shall be provided to the authority or the customer upon request. Each contract for electric generation services shall contain all material terms of the agreement, a clear and conspicuous statement explaining the rates that such customer will be paying, including the circumstances under which the rates may change, a statement that provides specific directions to the customer as to how to compare the price term in the contract to the customer's existing electric generation service charge on the electric bill and how long those rates are guaranteed. Such contract shall also include a clear and conspicuous statement providing the customer's right to cancel such contract not later than three days after signature or receipt in accordance with the provisions of this subsection, describing under what circumstances, if any, the supplier may terminate the contract and describing any penalty for early termination of such contract. Each contract shall be signed by the customer, or otherwise agreed to in accordance with the provisions of this subsection. A customer who has a maximum demand of five hundred kilowatts or less shall, until midnight of the third business day after the latter of the day on which the customer enters into a service agreement or the day on which the customer receives the written contract from the electric supplier as provided in this section, have the right to cancel a contract for electric generation services entered into with an electric supplier.

²⁰ Specifically, telemarketing made up 37% of its sales in 2012, 18% of its sales in 2013, 43% of its sales in 2014, 40% of its sales from January to April of 2015 and nearly 90% of its sales from May to September 2015 after PURA ordered the Company to cease door-to-door marketing operations. Tr. 228, 270, 941-942; OCC-19.

tactics that violate Connecticut law. The evidence in this proceeding demonstrates that

Palmco telemarketing sales agents:

- Advised customers that the telesales marketing agent was calling on behalf of the "State of Connecticut" or that Palmco was otherwise affiliated or endorsed by the State of Connecticut;²¹
- Advised customers that if they were not receiving "government assistance" for their electric bills that they "qualified" for a program with cheaper rates;²²
- Consistently failed to inform the customer of the actual rate Palmco would charge the customer;²³
- Misled customers as to how Palmco would determine its "competitive" variable price;²⁴
- Misled customers by claiming their rate would be "price protected" or that a customer does not "have to worry about any of your increases" when in fact Palmco's variable rate product was often double or even triple the utility standard service price to compare;²⁵
- Misled customers by claiming the standard service rate was a variable rate;²⁶
- Falsely claimed that the utility standard service rate price to compare was much higher than it was;²⁷
- Guaranteed savings for customers, when in fact Palmco's variable rate product was generally among the highest rates in Connecticut;²⁸
- Marketed the Palmco generation rate as "more competitive" than standard service rates when in fact Palmco rates were not competitive but substantially higher than standard service rates;²⁹
- Failed to disclose the utility standard service rate as required under Connecticut law.³⁰

Palmco's telemarketing sales violated Conn. Gen. Stat. §§ 16-245o(h)(2)(A), 16-245o(h)(3),³¹ 16-245o(h)(4) and 16-245(f)(2).

²¹ AG-2A.

²² AG-2A.

²³ AG-2B.

²⁴ AG-2A, 2B

²⁵ AG-2A.

²⁶ AG-2A.

²⁷ AG-2A.

²⁸ AG-2A.

²⁹ AG-2A.

³⁰ AG-2A.

³¹ Conn. Gen. Stat. § 16-245o(h)(3) provides:

[n]o electric supplier, aggregator or agent of an electric supplier or aggregator shall (A) advertise or disclose the price of electricity to mislead a reasonable person into believing that the electric generation services portion of the bill will be the total bill amount for the delivery of electricity to the customer's location, or (B) make any statement, oral or written, suggesting a prospective customer is required to

Customer Complaints

10. Palmco did not maintain customer complaint records as mandated by PURA Order No. 6 in Docket No. 10-01-24 and by Conn. Agencies Regs. § 16-245-2(g). In Docket No. 10-01-24, PURA ordered that:

Palmco shall maintain its customer complaint records to indicate: (1) the date of the complaint; (2) the name and address of the complainant; (3) the address or location of the complaint; (4) a description of the complaint; and (5) a description of the resolution of the complaint.

Conn. Agencies Regs. § 16-245-2(g) requires that an electric supplier shall, among other things, "[m]aintain all records of customer complaints for a minimum of three (3) years from the date of complaint." Palmco did not maintain customer complaints as required by PURA order or Connecticut regulations. Palmco retained only complaints from government agencies including PURA, the OCC, or the Attorney General, and from consumer groups such as the Better Business Bureau. Palmco did not maintain complaints received directly from its customers.

Sales Agent Training

11. Palmco did not directly train any of the 805 sales agents who marketed or sold Palmco generation services in Connecticut from 2013 to October, 2015 in violation of Conn. Gen. Stat. § 16-245o(h)(1). Conn. Gen. Stat. § 16-245o(h)(1) provides:

[a]ny third-party agent who contracts with or is otherwise compensated by an electric supplier to sell electric generation services shall be a legal agent of the electric supplier. No third-party agent may sell electric generation services on behalf of an electric supplier unless (A) the third-party agent is an employee or

choose a supplier. When advertising or disclosing the price for electricity, the electric supplier, aggregator or agent of an electric supplier or aggregator shall (i) disclose the electric distribution company's current charges, including the competitive transition assessment and the systems benefits charge, for that customer class, and (ii) indicate, using at least a ten-point font size, in a conspicuous part of any advertisement or disclosure that includes an advertised price, (I) the expiration of such advertised price, and (II) any fixed or recurring charge, including, but not limited to, any minimum monthly charge.

independent contractor of such electric supplier, and (B) the third-party agent has received appropriate training directly from such electric supplier.

(Emphasis added). Palmco contracted with third-party marketing firms to provide 805 agents to market and sell its electric generation supply services in Connecticut. Palmco offered "webinar," not in person, training to supervisors and trainers at these third-party marketing firms and left the training of its sales agents to those or other supervisors and trainers.

The State contends that Palmco's acts and practices, as set forth herein, constitute violations of Connecticut laws, regulations, Authority orders and the Connecticut Unfair Trade Practices Act ("CUTPA").

PALMCO'S POSITION

12. Palmco neither admits nor denies that its acts and practices, as set forth herein, constitute violations of state law, regulation, PURA orders or CUTPA.

ASSURANCES

13. Palmco assures that the practices described in paragraphs six through eleven above have been discontinued.

14. Palmco assures that in 2016, it made various improvements, including hiring several individuals with significant retail electric experience for upper-management positions.

15. Palmco assures that, it has committed to undertake a third-party compliance audit to identify improvements to its training, compliance, and marketing functions.

GENERAL PROVISIONS

16. Nothing contained in this Settlement Agreement may be taken as, or construed to be, an express or implied admission or confession of any violation of law, or any other matter of fact or law, of any liability or wrongdoing of any kind.

Except as otherwise specified herein, this Settlement Agreement shall apply to Palmco, including any subsidiary, division, affiliate, thereof: (a) whose day-to-day operations are controlled by Palmco or Palmco affiliate, or (b) through which Palmco may now or hereafter act, as well as any successors in interest.

REPRESENTATIONS AND WARRANTIES

17. Palmco states that it is represented by legal counsel, and that it is fully advised of its legal rights in this matter.

Palmco states that the person signing below on behalf of Palmco is fully authorized to act on its behalf and legally bind the company to perform all the obligations set forth herein.

PAYMENTS

18. The effective date of this Settlement Agreement shall be thirty (30) days after the Settlement is approved by the PURA in a final decision (“Effective Date”).

Palmco shall pay the sum of FIVE MILLION 00/100 DOLLARS (\$5,000,000) representing a voluntary donation and contribution to the State of Connecticut, in two separate payments as follows. Within thirty (30) days of the Effective Date, Palmco will pay the sum of THREE MILLION 00/100 DOLLARS (\$3,000,000). By the later of January 2, 2018 or within three hundred (300) days of the Effective Date, Palmco will pay an additional TWO MILLION 00/100 DOLLARS (\$2,000,000). The payments shall be in the form of a wire transfer, cashier’s or bank check payable to “Treasurer, State of Connecticut.”

VOLUNTARY RELINQUISHMENT OF ELECTRIC SUPPLIER LICENSE

19. Palmco will voluntarily relinquish the Electric Supplier License approved by the Department of Public Utility Control in Docket No. 10-01-24 on June 16, 2010, and if not

already effected, take all steps necessary to transfer all of its remaining Connecticut customers to their respective electric distribution company's standard service, within thirty (30) days of the Effective Date. Palmco shall send a letter by first class mail informing each customer that they are being transferred to their utility's standard service. Palmco shall file a copy of this letter for PURA review and approval within fifteen (15) days of the date of this Settlement Agreement. Palmco may apply for approval from the Authority for a license to operate as an Electric Supplier in Connecticut, but such approval shall not become effective until the later of: (1) April 16, 2020; or (2) three years following the return of Palmco's last Connecticut customer to that customer's utility standard service. In the event Palmco elects to apply for a license to operate as an Electric Supplier in Connecticut, Palmco must demonstrate to the satisfaction of the Authority that it has taken remedial steps to address and eliminate the practices described in Paragraphs six through eleven above, as well as any other conditions the Authority deems appropriate to demonstrate that Palmco meets the technical, financial and managerial capability to operate as an Electric Supplier in Connecticut. Palmco shall demonstrate that its conduct, practices and procedures in the other jurisdictions in which it operates after the Effective Date support any application for an Electric Supplier license in Connecticut. Palmco shall file any application to operate as an electric supplier in Connecticut in a re-opener of Docket No. 10-01-24 and shall serve copies of that application on the Attorney General and the OCC. The Attorney General and the OCC reserve the right to oppose any such future application. The PURA may approve, reject or condition any future application in any manner it deems appropriate.

20.

RELEASE OF CLAIMS

20. The Attorney General and the OCC, individually and, respectively, withdraw and release all claims against Palmco and its directors, officers, employees, parent companies, affiliates, successors and assigns arising out of or relating to any matter referred to or described in Docket No. 10-01-24RE01. Palmco will not assert and does release any claims against the State, the Attorney General or the OCC arising out of or relating to any matter referred to or described in Docket No. 10-01-24RE01. The Settling Parties agree to file a joint motion to have the Authority accept the Settlement Agreement as a full resolution of Docket No. 10-01-24RE01. With this voluntary donation and contribution specified in Paragraph 18 of the Settlement Agreement, together with the stipulations and commitments provided in Paragraph 19, the Attorney General and the OCC consider this matter resolved.

AUTHORITY APPROVALS AND OTHER CONDITIONS

21. The provisions of this Settlement Agreement are not severable. This Settlement Agreement is conditioned on its full approval by the Authority without additional conditions or requirements. The Settling Parties agree that, if the Authority does not approve this Settlement Agreement in its entirety, any party may, but is not required to, revoke its acceptance of the Settlement Agreement. In the event any party invokes its right to revoke the Settlement Agreement pursuant to this subsection, this filing shall be deemed to be withdrawn, the releases of claims referred to in Paragraph 20 shall be deemed rescinded, and the Settlement Agreement shall not constitute a part of the record in any proceeding or used for any other purpose.

23. This Settlement Agreement shall not be deemed in any respect to constitute an admission by any party that any allegation or contention in this proceeding is true or false. The entry of an order by the Authority approving the Settlement Agreement shall not in any respect constitute a determination by the Authority as to the merits of any other issue raised in this proceeding.

24. The making of this Settlement Agreement establishes no principles and shall not be deemed to foreclose any party from making any contention in any proceeding or investigation, except as to those issues and proceedings that are stated in this Settlement Agreement as being specifically resolved and terminated by approval of this Settlement Agreement.

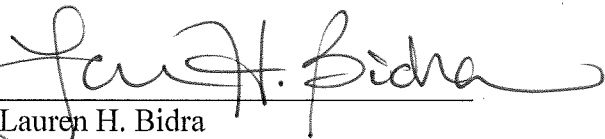
The signatories listed below represent that they are authorized on behalf of their principals to enter into this Settlement Agreement.

GEORGE JEPSEN
ATTORNEY GENERAL OF THE
STATE OF CONNECTICUT

ELIN SWANSON KATZ
OFFICE OF CONSUMER
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Robert Palmese

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Dated: February 15, 2017