

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff

v.

COMPLAINT

STARION ENERGY, INC.;
STARTELDM, LLC;
TELELINK, LLC;
TELESTARS, LLC;
F E Z LLC d/b/a SHORETEK;
RUZHDI DAUTI; and
DASHMIR MURTISHI

Defendants

MASSACHUSETTS ELECTRIC COMPANY
d/b/a NATIONAL GRID and
NSTAR ELECTRIC COMPANY
d/b/a EVERSOURCE ENERGY

Trustee-Defendants only

I. INTRODUCTION

1. The Commonwealth of Massachusetts, by and through Attorney General Maura Healey, brings this enforcement action against retail electricity supplier Starion Energy, Inc. (“Starion”), various closely-related telemarketing entities (the “Telemarketing Defendants”), and

certain of Starion's corporate officers (together with Starion and the Telemarketing Defendants, the "Defendants") for unfair and deceptive conduct in violation of Massachusetts law.

2. Defendants made multiple misrepresentations and committed other unfair acts and practices to extract millions of dollars from Massachusetts consumers through sales in the Commonwealth's competitive electric supply market.

3. Certain of the Defendants also knowingly violated the Commonwealth's laws concerning telemarketing by making sales calls to consumers on the Massachusetts Do Not Call Registry, by failing to make disclosures required by law, and by masking the geographic origin of their sales calls. These Defendants also violated the Commonwealth's laws on telemarketing by selling Starion's electricity supply through "robocalls" that played pre-recorded messages.

4. The Commonwealth requests that this Court order Defendants to pay civil penalties, restitution, and other compensation for the harms caused by their unfair and deceptive sales conduct in Massachusetts pursuant to the Massachusetts Consumer Protection Act, G.L. c. 93A, §§ 2, 4, the Telephone Consumer Protection Act, G.L. c. 159C, § 8, and the common law. The Commonwealth also seeks permanent injunctive relief to remedy and prevent additional harm caused by Defendants' conduct.

5. Massachusetts Electric Company d/b/a National Grid ("National Grid") and NSTAR Electric Company d/b/a Eversource Energy ("Eversource") are only included in this complaint as trustee-defendants because they happen to hold assets of Defendant Starion, and they have not engaged in any wrongdoing whatsoever regarding the subject matter of this complaint.

II. JURISDICTION AND VENUE

6. The Attorney General is authorized to bring this action pursuant to G.L. c. 93A, § 4; G.L. c. 12, § 10; G.L. c. 12, § 11E; G.L. c. 164, § 102C(a); and G.L. c. 159C, § 8.

7. This Court has jurisdiction over the subject matter of this action pursuant to G.L. c. 93A, § 4; G.L. c. 12, § 10; G.L. c. 12, § 11E; G.L. c. 164, § 102C(a); and G.L. c. 159C, § 8. This Court has personal jurisdiction over the Defendants pursuant to G.L. c. 223A, § 3 and G.L. c. 159C, § 12.

8. Venue is proper in Suffolk County pursuant to G.L. c. 223, § 5 and G.L. c. 93A, § 4.

III. THE PARTIES

9. The Plaintiff is the Commonwealth of Massachusetts, by and through the Office of Attorney General Maura Healey, who brings this action in the public interest, pursuant to G.L. c. 93A, § 4; G.L. c. 12, § 10; G.L. c. 12, § 11E; G.L. c. 164, § 102C(a); and G.L. c. 159C, § 8.

10. Defendant Starion Energy, Inc. is a Delaware corporation with a principal place of business at 751 Straits Turnpike, Suite 2000, P.O. Box 845, Middlebury, CT 06762. Starion is a competitive retail supplier of electricity that sells electricity to residential customers in the Commonwealth through telemarketing and door-to-door sales.

11. Defendant StartelDM, LLC (“Startel”) is a Connecticut corporation with a principal place of business at 1 Overlook Court, Prospect, CT 06712. Startel formerly conducted telemarketing sales in the Commonwealth on behalf of Starion from 2014–2016.

12. Defendant Telelink, LLC (“Telelink”) is an Ohio corporation with a principal place of business at 1839 Elm Road, NE, Warren, OH 44483. Telelink currently conducts

telemarketing sales in the Commonwealth on behalf of Starion.

13. Defendant Telestars, LLC (“Telestars”) is a Pennsylvania corporation with a principal place of business at 170 W State Street, Sharon, PA 16146. Telestars currently conducts telemarketing sales in the Commonwealth on behalf of Starion.

14. Defendant F E Z, LLC, d/b/a Shoretek (“Shoretek”) is a South Carolina corporation with a principal place of business at 3820 Palmetto Drive, Myrtle Beach, SC 29577. Shoretek currently conducts telemarketing sales in the Commonwealth on behalf of Starion.

15. Defendant Ruzhdi Dauti is a real person with a business address at 751 Straits Turnpike, Suite 2000, P.O Box 845, Middlebury, CT 06762. Mr. Dauti serves as the president of Starion.

16. Defendant Dashmir Murtishi is a real person with a business address at 751 Straits Turnpike, Suite 2000, P.O Box 845, Middlebury, CT 06762. Mr. Murtishi is a principal of Starion and also receives a salary for overseeing Starion’s telemarketing operations.

17. Trustee-Defendant Massachusetts Electric Company d/b/a National Grid is a Massachusetts corporation with a principal place of business at 40 Sylvan Road, Waltham, MA 02451. National Grid is a Massachusetts local electric distribution company. The Commonwealth includes National Grid as a party to this complaint solely to request that this Court issue a summons for trustee process to National Grid and command National Grid to attach assets held for Starion.

18. Trustee-Defendant NSTAR Electric Company d/b/a Eversource Energy is a Massachusetts corporation with a principal place of business at 800 Boylston Street, 17th Floor, Boston, MA 02199. Eversource is a Massachusetts local electric distribution company. The

Commonwealth includes Eversource as a party to this complaint solely to request that this Court issue a summons for trustee process to Eversource and command Eversource to attach assets held for Starion.

IV. FACTS

A. BACKGROUND

1. Massachusetts' Restructured Electricity Market

19. In 1997, the Massachusetts General Court restructured the electricity industry, creating a market for the supply of electricity ("Restructuring"). The purpose of Restructuring was to save electricity customers money on their electricity bills by creating a competitive market for electricity supply services.

20. In restructuring the electricity industry, the Legislature recognized that electricity is an essential service, stating that "electricity service is essential to the health and well-being of all residents of the commonwealth." St. 1997, c. 164, § 1(a).

21. Prior to Restructuring, Massachusetts distribution companies¹ were responsible for every aspect of the provision of electric service to Massachusetts customers, including the generation, sale (supply), and delivery (distribution services) of electricity. As a result of Restructuring, all Massachusetts electric utilities divested themselves of all of their generation assets.

¹ The technical legal term for what is referred to in common parlance as a "utility" is "distribution company." See G.L. c. 164, § 1.

22. Massachusetts distribution companies continue to deliver electricity to all Massachusetts electric customers in their respective service territories. For these services, Massachusetts distribution companies charge distribution rates to their electric customers.

23. The distribution companies' rates for distribution services are highly regulated and are set by the Massachusetts Department of Public Utilities (the "Department").

24. Although electricity consumers cannot choose the distribution company that provides them with distribution services, consumers can choose to buy their electricity *supply* in the electricity supply market created by Restructuring.

25. As a result of Restructuring, all Massachusetts electric customers pay separate charges for electricity supply and distribution services. However, both charges appear on a single bill that the customer receives from his or her electric distribution company.

26. The entities that market and sell electricity service directly to Massachusetts electric customers are called "competitive suppliers."

27. Competitive suppliers, as is the case with Starion here, do not necessarily generate electricity themselves, but rather, buy the commodity in the wholesale market and resell it to retail customers.

28. On any given day, the electricity that the customer receives is the same regardless of whether a customer purchases his or her supply from a distribution company or a competitive supplier.

29. All wholesale electricity in Massachusetts is purchased in one of the markets administered by Independent System Operator New England ("ISO-NE").

30. Competitive suppliers must be licensed by the Department and are subject to regulation, but the Department does not set their rates and competitive suppliers are not required to disclose their rates to the Department.

31. Electricity customers buy their electricity supply from their distribution company unless they purchase it from a competitive supplier.

32. The two largest electric distribution companies in Massachusetts are National Grid and Eversource.

33. When a customer buys electricity supply from its distribution company, that service is called “basic service.”

34. Basic service is procured through a competitive process in which each distribution company solicits and receives bids.

35. For residential customers, the electric distribution companies each solicit bids every six months for rates that will go into effect at certain pre-appointed periods of the year. For example, Eversource purchases its fixed basic service electric supply for all of its residential customers in its eastern territory for the two periods of January 1–June 30 and July 1–December 31. The process is overseen by the Department.

36. A residential customer who so chooses can elect to receive variable basic service instead of fixed basic service. Unlike fixed basic service, the variable basic service rate changes every month to reflect the anticipated wholesale price of electricity in those months.

37. The monthly variable basic service rates are set at the same time that the distribution companies determine their fixed basic service rates. For example, Eversource’s

eastern division's variable basic service prices for January, February, March, April, and June are determined at the same time its fixed basic service rate for January 1–June 30 are determined.

38. Almost all residential customers in Massachusetts receive fixed basic service.

39. Very few basic service customers—significantly less than 1 percent—pay the variable basic service rate.

40. Distribution companies earn a profit through the rates they charge for distribution service, but they *do not* earn any profit from providing basic service electricity supply.

2. Unfair or Deceptive Acts or Practices in the Retail Electric Supply Market.

41. The Consumer Protection Act, G.L. c. 93A, § 2 provides: “Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

42. Pursuant to its authority to do so under G.L. c. 93A, § 2, the Attorney General has promulgated consumer protection regulations concerning unfair or deceptive acts or practices generally and consumer protection regulations specific to retail advertising. *See* 940 C.M.R. 3.00 et seq. and 940 C.M.R. 6.00 et seq. These regulations apply to competitive suppliers marketing and selling electricity supply in the Commonwealth.

43. Additionally, in recognition of the potential for consumers to be harmed by unfair or deceptive acts or practices in the new retail electric supply market created by Restructuring, the Massachusetts General Court directed the Attorney General to “promulgate rules and regulations relative to methods, acts, and practices of electric and generation companies and suppliers.” G.L. c. 164, § 102C(a).

44. Consistent with this directive, the Attorney General has promulgated regulations concerning unfair or deceptive acts or practices in the competitive electric supply market. Those regulations are codified at 940 C.M.R. 19.00.

45. 940 C.M.R. 19.00 provides, *inter alia*, that it is an unfair or deceptive act or practice “to make any material representation to the public or to any consumer . . . which the seller knows or should know has the capacity or tendency to deceive or mislead a reasonable consumer, or that has the effect of misleading a reasonable consumer, in any material respect” 940 C.M.R. 19.04.

46. 940 C.M.R. 19.00 provides, *inter alia*, that it is an unfair or deceptive act or practice to make a misrepresentation relating to “the business relationship between any retail seller of electricity and any distribution company.” 940 C.M.R. 19.04(b).

47. 940 C.M.R. 19.00 provides, *inter alia*, that it is an unfair or deceptive act or practice to make a misrepresentation relating to “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.” 940 C.M.R. 19.04(g).

48. 940 C.M.R. 19.00 provides, *inter alia*, that it is an unfair or deceptive act or practice to make a misrepresentation relating to “the amount of money to be saved by a consumer, expressed in any manner, if a consumer chooses one retail seller of electricity, including a distribution company, over any other entity selling electricity.” 940 C.M.R. 19.04(h).

49. 940 C.M.R. 19.00 provides, *inter alia*, that it is an unfair or deceptive act or practice to make a misrepresentation relating to “the period of time for which any price will remain in effect.” 940 C.M.R. 19.04(j).

50. 940 C.M.R. 19.00 provides, *inter alia*, that 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 customer, or has the effect of deceiving or misleading such a customer, in any material respect.” 940 C.M.R. 19.05(1).

51. 940 C.M.R. 19.00 provides, *inter alia*, that it is an unfair or deceptive act or practice to fail to provide the consumer “[c]omplete, accurate pricing information” 940 C.M.R. 19.05(3)(b).

52. Additional relevant provisions of 940 C.M.R. are set forth in the counts contained in Section V of this complaint.

3. Purchase of Receivables: Relevant to Trustee Process

53. Most, if not all, competitive suppliers in Massachusetts elect to bill their customers through the bills issued by those customers’ electric distribution companies, such as National Grid.

54. This program is referred to in National Grid and Eversource’s Department-approved tariffs as the Commonwealth’s “purchase of receivables program.”

55. Starion specifically has elected to bill its customers through those customers’ electric distribution companies.

56. Starion has customers in the service territories of National Grid and Eversource.

57. Under the purchase of receivables program, the distribution company issues bills that include both the distribution company's distribution charge *and* the competitive supplier's supply charge.

58. Following the issuance of a bill, the distribution company purchases the right of the supplier to collect the supply charges (referred to as "receivables") from each of the competitive supplier's customers. The distribution company purchases these "receivables" at a pre-defined discount from the competitive supplier—here, Starion.

59. By participating in the purchase of receivables program, Starion generates a series of credits with National Grid and Eversource as those companies issue bills to Massachusetts electricity customers who receive their electric supply from Starion.

60. National Grid and Eversource each ultimately pay each credit to Starion after holding it for a predetermined period of time.

61. Accordingly, National Grid and Eversource are each currently in possession of assets that are unconditionally due to Starion absolutely and without contingency.

B. STARION KNOWINGLY SIGNED UP MASSACHUSETTS CUSTOMERS TO HIGH-PRICED SERVICES BASED ON MISLEADING STATEMENTS AND FAILURES TO DISCLOSE.

1. Starion Charges High Rates to Customers on the "Starion Simple" Plan in Other States.

62. Starion was founded in 2009.

63. Starion is a privately-held corporation.

64. Since its founding, Starion has consistently been owned and managed by a small group of five founding members.

65. Those members include Dashmir Murtishi, a convicted felon who has been twice convicted of selling drugs in Connecticut.

66. Those members also include Robert Zappone, who in 2006 settled claims with the State of Connecticut that he, along with others, ran a bait and switch predatory mortgage lending scheme.

67. Starion began marketing and selling its “Starion Simple” plan in certain restructured states starting in 2011.

68. Starion marketed its Starion Simple plan through telemarketing.

69. Starion customers who took service under the Starion Simple Plan received Starion’s electricity supply service.

70. The Starion Simple plan is a “variable” rate plan, which means that the rate that Starion charges per kWh of electricity can change from month-to-month.

71. During the winter of 2013–2014, most of the eastern half of North America experienced an extreme cold period.

72. This cold period caused the wholesale price of electricity in the eastern area of the United States to increase substantially during the winter months.

73. However, the effect of the cold period on electricity markets was short-lived.

74. For example, in the ISO-NE market, which includes Connecticut and Massachusetts, prices spiked in January and February, but decreased substantially in March and returned to normal by April.

75. During the extreme cold period, Starion increased the rates it charged to its Starion Simple customers.

76. However, even after the extreme cold period ended and wholesale market prices returned to normal, Starion continued to charge high rates.

77. Starion charged Starion Simple customers in its east coast states and D.C. 21.97¢/kWh starting in February of 2014.

78. Starion continued to charge Starion Simple customers in east coast states and D.C. 21.97¢/kWh into November of 2014.

79. Starion's rates were twice as high or higher during this period than the supply rates available from these customers' local electric distribution companies.

80. For example, the highest rate that a customer in Connecticut would pay for default service during this time period was 9.99 cents/kWh.

81. While charging these prices to existing customers, Starion continued to sign up customers in these states for electricity supply.

82. Starion signed up these customers to short-term "promotional" rates that were lower than the supply rates offered by those customers' local electric distribution companies.

83. After a short period, however, Starion increased those customers' rates to match the high 21.97¢/kWh rates it charged longer-tenured Starion Simple customers.

2. Starion's Variable "Bait and Switch" Pricing Scheme

84. The rates that Starion charged its variable rate customers in other states were the result of a common pricing plan that Starion uses to price all of its variable rate customers in all of the states in which it does business.

85. Starion's entire business model is essentially a "bait and switch" scheme.

86. Starion prices its Starion Simple rates low when the customer starts with Starion and then increases the customer's rate if the customer remains a customer with Starion after a certain period of time.

87. For the first one to two months, Starion charges customers a low "initial" or "introductory" rate that is lower than Starion's actual wholesale cost to purchase electricity.

88. Following this introductory period, Starion charges customers a "middle" rate for one to two months. The middle rate is a rate that is always somewhat higher than the introductory rate.

89. Following the "middle" period, Starion charges the customer Starion's "ongoing rate."

90. The "ongoing rate" is always higher than the "middle" rate.

91. The "ongoing rate" is often or always twice as high or higher than the supply rate available from his or her state-regulated electric distribution company.

92. At the time that Starion markets to potential customers, Starion knows what rate it is charging current customers for the "middle" and "ongoing" periods but does not disclose those rates to potential customers.

93. The "ongoing rate" remains fixed from month-to-month unless Starion's president, Ruzhdi Dauti, decides to adjust the ongoing rate.

94. In practice, Starion's pricing process typically leads to the "ongoing rate" being fixed for months at a time, notwithstanding the description of Starion Simple as a "variable" product.

95. Starion customers who do not notice Starion's high rates and cancel could pay high rates for months or even years.

96. Indeed, Starion has a policy of charging higher rates to customers who have been with Starion for a longer period of time because Starion believes that those customers are less likely to cancel.

97. Starion also often charges a daily or monthly "account management fee" in addition to its per kWh charges.

98. Starion's pricing strategy was designed by its president, Ruzhdi Dauti.

99. Mr. Dauti was and is the only person at Starion who has responsibilities regarding what price to charge a given Starion Simple customer in Massachusetts in any particular month.

3. Starion Markets the Starion Simple Plan in Massachusetts Through Telemarketing

100. In or around July or August of 2014, Starion began marketing the Starion Simple plan to customers in the Commonwealth through telemarketing.

101. At all times relevant to the allegations in this complaint, Starion founder and principal Dashmir Murtishi was and is responsible for overseeing Starion's telemarketing operations.

102. Starion first engaged telemarketer Startel to market the Starion Simple plan in the Commonwealth on Starion's behalf.

103. Startel was an entity that Starion's founders created in 2009 for the singular purpose of marketing and selling Starion's electricity supply services.

104. Mr. Murtishi owned a 100 percent interest in Startel until sometime in 2014. At which point, Mr. Murtishi sold his interest in Startel to his wife, Suzana Murtishi, for \$1.

105. Ms. Murtishi held a 100 percent ownership interest in Startel at the time that Starion began using Startel to market electricity in Massachusetts.

106. However, Mr. Murtishi continued to manage Startel and Starion's telemarketing following the sale of Startel to his wife.

107. In or around 2016, Starion orchestrated an organizational restructuring of its telemarketing operations, whereby Starion divided up Startel's telemarketing responsibilities amongst three entities—Telelink, Telestars, and Shoretek.

108. There were no changes to telemarketing operations as the result of the change in the entities that performed Starion's telemarketing.

109. In particular, Mr. Murtishi continued to manage Starion's telemarketing activities following the reassignment of Startel's telemarketing responsibilities to Telelink, Telestars, and Shoretek.

110. Mr. Murtishi was aware of Starion's pricing practices when Starion first entered the Massachusetts market in 2014.

111. Mr. Murtishi directed the Telemarketing Defendants to make telemarketing phone calls to Massachusetts.

112. At Mr. Murtishi's direction, Startel drafted the script that it used to market Starion's electricity supply in Massachusetts.

113. Mr. Murtishi approved the script.

114. The script provided as follows:

Hi this is (name) calling in regards to your (utility co.) electric bill, on behalf of Starion Energy. This is just a real quick call to let you know starting next month you're able to receive a rate reduction on the supply portion of your (utility co.)

electric bill and I'm simply giving you a call to make sure we get your reduction applied, so it will be effective for your next (utility co.) reading.

115. Starion may have made occasional minor wording changes to its script over time, but the representations and the disclosures made in the script were all essentially the same.

116. Starion's script did not disclose that the "rate reduction" and any resulting savings was part of a "promotional" or "introductory" rate that would expire after only one or two months.

117. Starion's script did not disclose Starion's three-tiered pricing scheme whereby Starion had a plan to charge customers a particular rate at the end of a brief transition period that would be much higher than the residential basic service rates offered through the Commonwealth's electric distribution companies.

118. Starion's script did not disclose any of the "ongoing" supply rates that Starion charged to its current Starion Simple customers in Massachusetts.

119. Starion's script did not disclose to Massachusetts customers that the current "ongoing" supply rates for the Starion Simple Plan were in excess of 20¢/kWh.

120. Indeed, Starion's script's representation that the customer's bill would include a "rate reduction" "starting" next month suggested that the rate reduction would continue into the future.

121. Starion's script also failed to disclose that the customer would be charged a monthly "account management fee" of \$6.72 or \$9.97 in addition to the rates that customers paid to Starion.

122. When Starion filed for its application for a license to market and sell electricity in Massachusetts, it provided the Department of Public Utilities with a different script that had additional disclosures.

123. Starion, in fact, never used the script that it provided to the Department of Public Utilities to market and sell to Massachusetts customers.

124. Starion did not even disclose its high rates or its three-tiered pricing scheme in the fine print of its terms of service.

125. Starion's terms of service provided as follows, relative to price:

Your variable price shall be calculated monthly and shall reflect the cost of electricity obtained from all sources (including energy, capacity, settlement, ancillaries), related transmission and distribution charges and other market-related factors, plus all applicable taxes, fees, charges or other assessments and Starion's costs, expenses and margins.

126. Starion's terms of service regarding price are themselves misleading because they represent that Starion's variable pricing is based on "market-related factors."

127. Starion's monthly variable rates do not reflect market conditions and often increase when the wholesale cost of electricity decreases.

128. In addition, agents of the Telemarketing Defendants often went "off script" and made additional misrepresentations to Massachusetts customers.

129. For example, the Telemarketing Defendants made additional representations of savings that were not in the script.

130. The Telemarketing Defendants' agents also misrepresented that they were calling from the customer's electric distribution company and/or that they were calling in connection with a state or distribution company "program" to save customers money.

131. For example, the Telemarketing Defendants often represented that they were “calling in regards to the National Grid bill” and failed to disclose that the agents were in fact calling on behalf of Starion.

4. Starion Markets the Starion Simple Plan in Massachusetts Through Robocalls.

132. In or around March of 2016, Starion began also marketing its electricity supply services in Massachusetts through unsolicited phone calls that would play pre-recorded messages.

133. These types of telemarketing phone calls are often referred to as “robocalls.”

134. Starion’s unsolicited phone calls that marketed its electricity supply through pre-recorded messages were initially made by Startel and later made by the other Telemarketing Defendants.

135. Starion and the Telemarketing Defendants used at least three different pre-recorded messages to market Starion’s electricity supply services in Massachusetts.

136. Starting in or around March of 2016, Starion marketed its electricity supply services through the following pre-recorded message:

Did you know that due to new laws that have been passed in your area, you now have the right to receive a lower rate on your current electric bill? Most Americans are overpaying on their energy bills by hundreds of dollars each year. Keeping up with expensive monthly bills is an affliction felt by many. If you’re currently paying \$70 or more on your monthly energy bills, please press 1 now or press 9 to be removed from our calling list.

137. There is no federal or state law that gives electricity customers a “right to receive a lower rate” on their electricity bills.

138. Starion's pre-recorded message did not disclose that it was a sales solicitation by Starion, a private company.

139. Starion's pre-recorded message did not disclose that the "lower rate" was an introductory rate, that the customer would receive a variable rate, that the customer's rate would ultimately be much higher than both the introductory rate and the rate available from the customer's utility, or that the customer would be charged an "account management fee" in addition to Starion's supply rate.

140. Starting in or around March of 2016, Starion also marketed its electricity supply services through another pre-recorded message, which provided as follows:

This is a message regarding your current electricity bill, informing you that you are now qualified under a recent bill passed in Congress called the American Recovery Reinvestment Act, permanently reducing your electric bill up to 60 percent through the U.S. Renewal Energy Program. The program will stop the new 14 percent increase rate coming soon. Press 1 now if you're paying more than \$70 for electricity or press 2 now to stop the increase coming soon. Press 9 to get removed from this calling list.

141. There is no federal "U.S. Renewal Energy Program."

142. There is no provision of the American Recovery and Reinvestment Act that has any relation to a potential contract for electricity supply services between Starion and a potential customer.

143. In March of 2016, there was no "14 percent increase rate coming soon" in Massachusetts.

144. In fact, all of the Commonwealth's residential basic service supply rates decreased in the period following March 2016.

145. In particular, on or about March 15, 2016, National Grid filed its fixed basic service rates starting on April 1, 2016, and those rates were more than 5 cents/kWh lower than the residential fixed basic service rates that were in effect in March of 2016.

146. Starion's pre-recorded message also did not disclose that it was a sales solicitation by Starion, a private company.

147. Starion's pre-recorded message did not disclose that the "lower rate" was a promotional rate, that the customer would receive a variable rate, that the customer's rate would ultimately be much higher than both the introductory rate and the rate available from the customer's utility, or that the customer would be charged an "account management fee" in addition to Starion's supply rate.

148. In or around November of 2016, Starion's agents also used robocalls to place the following pre-recorded message on the voicemail systems of electricity customers in the Commonwealth:

This is an important announcement regarding your utility company and your monthly power bill. You now have a choice to immediately reduce costs up to 15% each month while continuing to be serviced by your current utility provider. Please call us at 708-831-6141 with your bill available.

149. Starion's pre-recorded message did not disclose that it was a sales solicitation by Starion, a private company.

150. Starion's pre-recorded message did not disclose that the "lower rate" was an introductory rate, that the customer would receive a variable rate, that the customer's rate would ultimately be much higher than both the introductory rate and the rate available from the

customer's utility, or that the customer would be charged an "account management fee" in addition to Starion's supply rate.

5. Starion's Additional Violations of the Massachusetts Telephone Consumer Protection Act

151. Starion and the Telemarketing Defendants caused unsolicited telemarketing sales calls to be made to individual residential Massachusetts consumers.

152. The Telemarketing Defendants, acting on Starion's behalf and at the instruction of Mr. Murtishi, made thousands of unsolicited telemarketing sales calls to individual residential Massachusetts consumers per month.

153. Starion and the Telemarketing Defendants intentionally used a blocking device or service to make it appear to individual residential Massachusetts consumers that phone calls were being placed to Massachusetts area codes, such as "413."

154. Initially, these unsolicited phone calls were made from Startel's call centers in Pennsylvania, Ohio, and South Carolina.

155. Later, these unsolicited phone calls were made by Telelink, Telestars, and Shoretek (Startel's successors) from the same call centers (*i.e.*, from Startel's former call centers) in Ohio, Pennsylvania, and South Carolina, respectively.

156. At Starion's direction, the Telemarketing Defendants' agents never disclosed to any individual Massachusetts residential customer the name of the telemarketing company that was contacting them.

157. The Telemarketing Defendants' agents often did not disclose to individual Massachusetts residential customers that they were calling on behalf of Starion or failed to do so within the first minute of the telemarketing call.

158. The Telemarketing Defendants' agents often did not disclose to individual Massachusetts residential customers that the purpose of the call was to sell Starion's electricity supply services or failed to do so within the first minute of the telemarketing call.

159. The Telemarketing Defendants, acting on Starion's behalf, placed unsolicited calls to Massachusetts residential consumers who were on the Massachusetts Do Not Call Registry.

160. Starion and the Telemarketing Defendants downloaded the Massachusetts Do Not Call Registry and thus had actual notice of the Commonwealth phone numbers that were on the Do Not Call Registry.

161. Per its arrangement with the Telemarketing Defendants, Starion was responsible for ensuring any phone numbers on the Massachusetts Do Not Call Registry were removed from the Telemarketing Defendants' lists of potential customers.

162. Starion entered into a number of settlements with individual residential Massachusetts consumers who were contacted by one or more of the Telemarketing Defendants at numbers that were on the Massachusetts Do Not Call Registry.

163. The amounts paid to these consumers pursuant to these settlement agreements were made by Starion and Starion has not, to date, sought any reimbursement from the Telemarketing Defendants of those amounts.

164. Each of the Telemarketing Defendants also fielded inbound customer complaints from Massachusetts customers, so each of the Telemarketing Defendants had actual notice of the misleading nature of Starion's sales presentation and the fact that the Telemarketing Defendants were regularly violating the Commonwealth's telemarketing laws.

165. Starion and the Telemarketing Defendants' violations were knowing and willful.

6. Starion Charges High Rates to Customers Signed Up as a Result of Unfair and Deceptive Acts and Practices.

166. Having signed up Massachusetts customers to the Starion Simple plan, Starion priced those customers' electricity by the same pricing method that Starion used to price Starion Simple plan customers in other states.

167. Whenever Starion marketed its Starion Simple plan in Massachusetts, Starion had a plan for the price that it is going to charge in each of the three periods, including the higher "ongoing" period.

168. When Starion first marketed its Starion Simple Plan in the Eversource service territory in November of 2014, Starion planned to and did charge Massachusetts electric customers 19.99 cents/kWh during the "ongoing" period.

169. Additionally, the "ongoing rate" for Starion Simple customers who were enrolled as of February of 2015 was 21.47 cents/kWh, which stayed fixed for months.

170. Starion's 21.47 cents/kWh rate was several cents/kWh higher than any residential fixed basic service rate ever charged in the Commonwealth.

171. For every month in the nearly four years since Starion began marketing to residential customers, Starion's ongoing rate has been higher than the fixed basic service rates available through those customers' distribution companies.

172. Mr. Dauti priced electricity supply to Starion customers in this manner despite his awareness of Starion's representations and lack of disclosures made to Massachusetts customers.

7. Prerequisites to Suit

173. Pursuant to G.L. c. 93A, § 4, at least five days prior to the filing of this action, the Attorney General notified Defendants of her intended action and gave Defendants multiple opportunities to confer as to the proposed action.

V. CAUSES OF ACTION

**COUNT I
UNFAIR OR DECEPTIVE ACTS OR
PRACTICES IN VIOLATION OF G.L. c. 93A
(AGAINST STARION, STARTEL, TELELINK, TELESTARS,
SHORETEK, RUZHDI DAUTI, AND DASHMIR MURTISHI)**

174. The Commonwealth reasserts and realleges paragraphs 1–173 above and incorporates them herein by reference.

175. Defendants are, at all times relevant, persons acting in trade or commerce as defined in G.L. c. 93A.

176. Defendants are, at all times relevant, “retail sellers of electricity” as that term is defined in 940 C.M.R. 19.03.

177. Mr. Dauti and Mr. Murtishi had personal involvement in Starion's unfair or deceptive acts as described in the allegations above.

178. The Attorney General has promulgated regulations that provide notice that the conduct described therein violates G.L. c. 93A, § 2. Those regulations are codified at 940 C.M.R. 3.00 et seq., 940 C.M.R. 6.00 et seq., and 940 C.M.R. 19.00 et seq.

179. Pursuant to 940 C.M.R. 19.04(g) it is an unfair or deceptive act or practice for a retail seller of electricity to make a misleading representation relating to “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”

180. Pursuant to 940 C.M.R. 19.04(h), it is an unfair or deceptive act or practice for a retail seller of electricity to make a misleading representation relating to “the amount of money to be saved by a consumer, expressed in any manner, if a consumer chooses one retail seller of electricity, including a distribution company, over any other entity selling electricity.”

181. Defendants violated 940 C.M.R. 19.04(g) and 940 C.M.R. 19.04(h) by falsely claiming in telemarketing calls and robocalls that the Starion Simple plan would provide customers with “rate reductions” when in fact the Starion Simple plan was specifically designed to eventually charge customers high rates that would always be higher than the fixed basic service rates available through those customers’ distribution companies.

182. Defendants also violated 940 C.M.R. 19.04(g) and 19.04(h) by representing in robocalls that the customers’ distribution company’s residential fixed basic service rates were set to increase when in fact all of the Commonwealth’s residential basic service rates were set to decrease.

183. Defendants’ agents also violated 940 C.M.R. 19.04(g) and 940 C.M.R. 19.04(h) by making additional promises of savings.

184. Pursuant to 940 C.M.R. 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.”

185. Defendants violated 940 C.M.R. 19.04(j) by failing to disclose that Starion's price for electricity was an introductory price that would only be available for one to two months and that prices following the introductory period would be double or treble the introductory price.

186. Pursuant to 940 C.M.R. 6.03(4), an "unfair or 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."

187. Pursuant to 940 C.M.R. 19.05(1), "[i]t 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."

188. Pursuant to 940 C.M.R. 19.05(2), "[i]t 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."

189. Defendants violated 940 C.M.R. 6.03(4), 940 C.M.R. 19.05(1), and 940 C.M.R. 19.05(2) by failing to disclose relevant, material information about its variable rate contracts that may have caused consumers not to enter into those contracts.

190. Defendants failed to disclose to customers that the initial rate was a promotional rate.

191. Defendants failed to disclose to customers that the rates charged under the Starion Simple plan would be higher than the Commonwealth's basic service prices following the end of the promotional period.

192. Defendants failed to disclose that the Starion Simple plan rates for customers on the plan's "ongoing" rates were more than double the introductory rate.

193. Defendants failed to disclose that the customer would pay an additional "account management fee" in addition to the per kWh charge that he or she was paying to Starion.

194. The Attorney General's regulations also require disclosure of pricing information. 940 C.M.R. 19.05 requires competitive suppliers to disclose "[c]omplete, accurate pricing information, including . . . a definition and a complete explanation of each and every charge that the retail seller may bill to a consumer" 940 C.M.R. 19.05(3)(b).

195. Significantly, 940 C.M.R. 19.05 requires retail sellers of electricity to disclose "complete, accurate" "pricing" information—i.e., complete and accurate information concerning how the customer's electricity will be "priced."

196. Starion failed to disclose to customers that the Starion Simple plan consisted of a three-tiered pricing structure whereby Starion would charge customers increasingly high rates.

197. Additionally, Starion's terms of service indicated that pricing would be based on market-based factors, when in fact its prices had little to nothing to do with market prices.

198. Pursuant to 940 C.M.R. 19.04(b), it is an unfair or deceptive act or practice to misrepresent "the business relationship between any retail seller of electricity and any distribution company."

199. Pursuant to 940 C.M.R. 19.04(c), it is also 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."

200. Defendants' agents violated 940 C.M.R. 19.04(b) and 940 C.M.R. 19.04(c) by misrepresenting that they were agents of customers' distribution companies.

201. Pursuant to 940 C.M.R. 19.04, it is an unfair or deceptive act or practice "to make any material representation to the public or to any consumer, either directly or through any type of marketing or agreement, or through the use of any misleading symbol or representation, which the seller knows or should know has the capacity to deceive or mislead a reasonable consumer, or that has the effect of deceiving or misleading a reasonable consumer, in any material respect"

202. Defendants violated 940 C.M.R. 19.04 by falsely representing in robocalls that a new law gave consumers the right to receive a "reduction" on their energy bills, that Starion's services were somehow the result of the American Recovery and Reinvestment Act, and that Starion's services were a part of a fake federal government program.

203. The Telemarketing Defendants and their agents, at all times relevant, acted with actual or apparent authority from Starion to market and sell Starion's electricity supply in Massachusetts.

204. The Telemarketing Defendants and their agents, at all times relevant, committed these unfair and deceptive acts and practices within the scope of their engagement—namely, conducting telemarketing sales for Starion.

205. The Telemarketing Defendants and their agents were, at all times relevant, motivated to engage in these unfair acts or practices at least in part to serve their principal, Starion, by providing it with additional customers and therefore more profits.

206. Starion is therefore jointly and severally liable for all losses to customers whom the Telemarketing Defendants induced to enter into contracts with Starion and who paid more than they would have paid if they received fixed basic service.

207. To-date, Massachusetts residential electricity customers who entered into electricity supply contracts with Starion have paid millions of dollars more than they would have paid if they had received fixed basic service.

208. Defendants knew or should have known that the conduct described in this Count I violated G.L. c. 93A and thus the Commonwealth is also entitled to recover additional civil penalties up to \$5,000 per violation pursuant to G.L. c. 93A, § 4.

COUNT II
BREACH OF THE COVENANT OF
GOOD FAITH AND FAIR DEALING
(AGAINST STARION)

209. The Commonwealth reasserts and realleges paragraphs 1–173 above and incorporates them herein by reference.

210. Pursuant to G.L. c. 12, § 10, the Attorney General “shall take cognizance of all violations of law or of orders of courts, tribunals or commissions affecting the general welfare of the people, including . . . unlawful practices . . . for the undue enhancement of the price of articles or commodities in common use, and shall institute or cause to be instituted such . . . civil proceedings before the appropriate state and federal courts, tribunals and commissions as he may deem to be for the public interest.”

211. Pursuant to G.L. c. 12, § 11E(a), the Attorney General is empowered to “appear and participate in . . . judicial proceedings on behalf of any group of customers in connection with any matter involving rates, charges, prices and tariffs of an electric company”

212. Starion charged its Starion Simple variable rates through contracts entered into with Massachusetts consumers.

213. Those agreements expressly provided that they “shall be governed by Massachusetts law.”

214. In every contract in Massachusetts there is an implied covenant that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract, which means that in every contract there exists an implied covenant of good faith and fair dealing.

215. By virtue of the covenant of good faith and fair dealing, Starion’s contracts obligated it to be faithful to an agreed common purpose that is consistent with the justified expectations of the other party, here, its customers.

216. When a contract contains an indefinite price term—such as Starion’s variable price for electricity here—the seller does not have unfettered discretion to set the price. Rather, under the covenant of good faith and fair dealing, the seller must set the price reasonably and in good faith.

217. Moreover, customers had the justified expectation that they would be charged rates based on market prices. Starion’s terms of service provided that the customer’s rate would reflect certain market costs to provide electricity as well as “other market-based factors.”

218. Here, Starion has failed to satisfy this obligation. Instead of setting its rates in good faith based on market prices, Starion charged rates that had little or no relationship to wholesale electricity costs or any “other market-based” factor.

219. In particular, Starion charged rates based on a three-tiered scheme to charge Massachusetts customers high rates.

220. Under the covenant of good faith and fair dealing, Starion should have billed Massachusetts customers at a reasonable, market-based rate as promised—for example, a rate similar, competitive, or equivalent to the variable basic service rates charged by customers’ distribution companies during this period. In the alternative, Starion should have billed its customers at Starion’s wholesale costs to provide electricity plus a reasonable profit margin.

221. Massachusetts customers have been damaged by Starion’s breach of the covenant of good faith and fair dealing, paying millions of dollars more than they would have paid but for Starion’s breach.

COUNT III
VIOLATION OF THE MASSACHUSETTS
TELEMARKETING VIOLATIONS
(AGAINST STARION, STARTEL, TELELINK,
TELESTARS, SHORETEK, AND DASHMIR MURTISHI)

222. The Commonwealth reasserts and realleges paragraphs 1–173 above and incorporates them herein by reference.

223. Pursuant to G.L. c. 159C, § 8(a), the Attorney General is empowered to initiate proceedings relating to a knowing violation or threatened violation of Massachusetts Telemarketing Solicitation Act, which is codified at G.L. c. 159C.

224. Starion and the Telemarketing Defendants are all corporations that have done

business in the Commonwealth.

225. Starion and the Telemarketing Defendants made or caused to be made telephonic sales calls to consumers in the Commonwealth for the purposes of marketing and selling Starion's electricity supply services.

226. Pursuant to G.L. c. 159C, § 3, "A telephone solicitor shall not make or cause to be made an unsolicited telephonic sales call to a consumer . . . if the consumer's name and telephone number appear on the then current quarterly no sales solicitation calls listing made available by the office under section 2."

227. Starion and the Telemarketing Defendants violated G.L. c. 159C, § 3 by making telephonic sales calls to consumers whose numbers were included in the Massachusetts Do Not Call Registry.

228. Mr. Murtishi personally oversaw and actively participated in the implementation of all of the Telemarketing Defendants' practices that resulted in Starion and the Telemarketing Defendants contacting customers on the Massachusetts Do Not Call Registry.

229. Starion, the Telemarketing Defendants, and Mr. Murtishi's violations of G.L. c. 159C, § 3 were knowing and willful.

230. Starion, the Telemarketing Defendants, and Mr. Murtishi caused telephonic sales calls to be made to these consumers even though they had actual knowledge that those consumers' phone numbers were included in the Massachusetts Do Not Call Registry.

231. Pursuant to G.L. c. 159C, § 4, "No telephone solicitor shall intentionally cause to be installed or shall intentionally use a blocking device or service to circumvent a consumer's use of a call identification service or device."

232. Starion, the Telemarketing Defendants, and Mr. Murtishi intentionally used a blocking device or service to circumvent a consumer's use of a call identification service or device.

233. Specifically, Starion, the Telemarketing Defendants, and Mr. Murtishi used a blocking device or service to mislead the customer into thinking that these Defendants' calls originated in the Commonwealth when in fact they were made from call centers in Ohio, Pennsylvania, and South Carolina.

234. Pursuant to G.L. c. 159C, § 5A(a), "[a] telephone solicitor shall disclose all of the following information within the first minute of a telephonic sales call and before requesting, accepting or arranging for payment by a consumer: (i) that the purpose of the telephone call is to make a sale or solicit funds; (ii) the correct name of the telemarketing company that employs the individual telemarketer who is making the call; (iii) the correct name of the ultimate seller whose goods or services are being offered by means of the telemarketing call; and (iv) a complete and accurate description of the goods or services being offered including, but not limited to, the retail market value of the goods or services.

235. Per Starion and Mr. Murtishi's direction to them, the Telemarketing Defendants never disclosed to the individual residential consumers they called the name of their telemarketing company in violation of G.L. c. 159C, § 5A(a).

236. The Telemarketing Defendants often did not disclose to the individual residential consumer that they were calling on behalf of Starion and that they were contacting said consumer in order to market and sell Starion's electricity supply services. Even in instances where those disclosures were made, they were often not made within the first minute of the

telemarketing sales call.

237. Pursuant to G.L. c. 159C, § 3, “[a] telephone solicitor shall not make or cause to be made an unsolicited telephonic sales call to a consumer . . . (iii) in the form of electronically transmitted facsimiles; or (iv) by use of a recorded message device.”

238. Starion, the Telemarketing Defendants, and Mr. Murtishi made or caused to be made telemarketing sales calls to Massachusetts consumers that used a pre-recorded message in violation of G.L. c. 159C, § 3.

239. 940 C.M.R. 3.16 provides that it is a violation of G.L. c. 93A to fail to “comply with existing statutes, rules, regulations or laws, meant for the protection of the public’s health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection.” 940 C.M.R. 3.16(2).

240. G.L. c. 159C, § 8(a) is a law meant for the protection of the public’s health, safety, or welfare promulgated by the Commonwealth with the intent to provide the consumers of the Commonwealth protection.

241. Accordingly, because G.L. c. 159C is an existing statute meant for the protection of the public’s welfare, Starion, the Telemarketing Defendants, and Mr. Murtishi’s violations of G.L. c. 159C are also violations of G.L. c. 93A.

242. Pursuant to G.L. c. 159C, § 8(a) and G.L. c. 93A, Starion, the Telemarketing Defendants, and Mr. Murtishi are liable for civil penalties up to \$5,000 for each knowing violation and for penalties no less than \$1,500 for each knowing violation involving a consumer who is 65 years of age or older, as well as additional relief, including but not limited to relief making affected consumers whole.

VI. PRAYER FOR RELIEF

WHEREFORE, the Commonwealth requests that the Court grant the following relief after a trial on the merits and pursuant to G.L. c. 93A, § 4 and G.L. c. 159C:

- a. Enjoin Defendants, their agents, servants, employees, sales and customer service representatives, successors or assigns, and all other persons, directly or indirectly, alone or in active concert or participation with others, through any corporation, partnership, trust, association, franchise, distributorship or other device, who receive actual notice of the Order, from engaging or assisting, in any way, in any conduct that is unlawful pursuant to G.L. c. 93A and the regulations promulgated under it, including, but not limited to, any conduct that violates 940 C.M.R. 3.00 et seq., 940 C.M.R. 6.00 et seq., and 940 C.M.R. 19.00 et seq.;
- b. Order Defendants to make full and complete restitution to each person who has suffered ascertainable loss by reason of Defendants' acts or practices found in violation of G.L. c. 93A, § 2;
- c. Impose a civil penalty pursuant to G.L. c. 93A, § 4 in the amount of \$5,000 for each violation of G.L. c. 93A, § 2 found against Defendants;
- d. Order Starion to make full and complete restitution to each person who has suffered ascertainable loss by reason of Starion's breach of the covenant of good faith and fair dealing.
- e. Enjoin Defendants, their agents, servants, employees, sales and customer service representatives, successors or assigns, and all other persons, directly or indirectly, alone or in active concert or participation with others, through any corporation,

partnership, trust, association, franchise, distributorship or other device, who receive actual notice of the Order, from engaging or assisting, in any way, in any conduct that is unlawful pursuant G.L. c. 159C.

- f. Impose a civil penalty on Defendants pursuant to G.L. c. 159C, § 8(a) in the amount of \$5,000 for each knowing violation of G.L. c. 159C.
- g. Award the Commonwealth its costs of investigating and litigating this action, including reasonable attorneys' fees; and
- h. Grant such other and further relief this Court deems equitable and proper.

JURY DEMAND

The Commonwealth hereby demands a trial by jury on every count so triable.

COMMONWEALTH OF MASSACHUSETTS

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