

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

BARRY JONES)
1705 North Davis Road)
Independence, MO 64056,)
)
Plaintiff,)

v.)

Case No. _____

CITY OF INDEPENDENCE)
(Serve Mayor Eileen Weir)
111 E Maple Ave)
Independence, MO 64050))

and)

INDEPENDENCE POWER & LIGHT)
(Serve Mayor Eileen Weir)
111 E Maple Ave)
Independence, MO 64050))

and)

ANDREW BOATRIGHT)
335 Hampton Park,)
Westerville, OH 43081)

and)

CONSTELLATION SOFTWARE INC.)
20 Adelaide Street East, Suite 1200)
Toronto, Ontario, Canada, M5C 2T6)

and)

N. HARRIS COMPUTER)
CORPORATION)
A Canadian Corporation)
(Serve Registered Agent)
C T Corporation System)
120 South Central Ave)

Clayton, Missouri 63105))
)
and)
)
ADVANCED UTILITY SYSTEMS)
2235 Sheppard Ave E)
North York, ON M2J 5B5)
)
Defendants.)

CLASS ACTION PETITION

COMES NOW Plaintiff Barry Jones, for his cause of action against Defendants
avers:

INTRODUCTION

1. This is an action to seek redress from the Defendants for damages and losses suffered by the Plaintiff and members of a Class of Missouri-only residents as a result of overcharging customers for their electric utility bills. These damages and losses include, but are not limited to, monetary damages and losses arising out of Defendants' overcharging of customers.

THE PARTIES

2. Plaintiff Barry Jones is and at all times relevant herein was a resident of Jackson County, Missouri.

3. Defendant City of Independence (hereinafter referred to as "Independence") is a political subdivision of the State of Missouri and may be served with process by serving Mayor Eileen Weir at 111 E Maple Ave, Independence, MO 64050.

4. Independence Power & Light (hereinafter referred to as “IPL”) is an electric power plant owned and operated by Defendant Independence and may be served with process by serving Mayor Eileen Weir at 111 E Maple Ave, Independence, MO 64050.

5. Defendant Andrew Boatright (hereinafter referred to as “Boatright”) is an individual who served as the Acting Director for Defendant IPL from July 2017 thru July 2018 and was responsible for accurate and lawful billing. Defendant Boatright resides at 335 Hampton Park, Westerville, OH 43081.

6. Defendant Constellation Software Inc. (hereinafter referred to as “Constellation”) is a Canadian Corporation which provides software and services to a number of industries across both the public and private sectors. Defendant Constellation maintains its principal place of business located at 20 Adelaide Street East, Suite 1200, Toronto, Ontario, Canada, M5C 2T6. Defendant Constellation wholly owns Defendant Harris.

7. Defendant N. Harris Computer Corporation (hereinafter referred to as “Harris”) is a Canadian Corporation which provides software solutions for the Public Sector, Healthcare, utilities and Private Sector throughout North America, Europe, Asia and Australia. Defendant Harris’ principal place of business is located at 1 Antares Drive, Suite 400, Ottawa, Ontario, Canada K2E 8C4, but maintains a registered agent for service of process in the State of Missouri, namely C T Corporation System, 120 South Central Ave, Clayton, Missouri 63105. Defendant Harris wholly owns Defendant Advanced.

8. Defendant Advanced Utility Systems Incorporated (hereinafter referred to as “Advanced”) is a Canadian Corporation which provides customer information and billing solutions to municipalities, utilities, and schools. Defendant Advanced maintains its principal place of business located at 2235 Sheppard Ave E, North York, Ontario, Canada M2J 5B5.

JURISDICTION AND VENUE

9. Jurisdiction is proper in this court pursuant to Mo. Rev. Stat. § 506.500. The tortious acts complained of in this action occurred in this State, by Defendants and Defendants’ employees and officers, all acting within the course and scope of their agency and employment in this State. Venue is proper in this court pursuant to § 508.010(4).

10. Because the class is limited to residents of the State of Missouri, more than two-thirds of the members of the class are residents of the State of Missouri for purposes of application of the Class Action Fairness Act; the defendant Independence maintains its principle place of business in the State of Missouri. There is no diversity of citizenship between the parties in this case.

GENERAL ALLEGATIONS

11. Section 510.265 RSMo. in limiting punitive damages to five times the amount of the civil damages verdict or \$500,000, but exempting the State of Missouri from such limitation is unconstitutional in violation of the Fourteenth Amendment to the United States Constitution and Article I, § 2 of the Missouri Constitution in that it treats

civil damages claims made on behalf of the state differently than those brought by civil plaintiffs and thereby violates equal protection because it lacks a rational basis.

12. Section 510.265 and 508.010 are part of a single legislative act entitled House Bill 393 passed by the General Assembly of Missouri in 2005. The provisions of the bill violate:

- a. the requirement of one subject, Mo. Const. Art. III, § 23;
- b. the requirement of clear title, Mo. Const. Art III, § 23;
- c. the privileges and immunities clause, Mo. Const. Art. X, § 13;
- d. the constitutional directives for amending statutes, Mo. Const. Art. III, § 28;
- e. the prohibition against special laws, Mo. Const. Art III, § 40 (28);
- f. separation of powers, Mo. Const. Art. II, § 1; and
- g. the limited to the purpose mandate, Mo. Const. Art. V, § 5.

13. Section 537.067 enacted as part of House Bill 393 passed by the General Assembly of Missouri in 2005 in altering the concept of joint and several liability is unconstitutional in violation of Article I, § 13 of the Missouri Constitution in that it retroactively applies legislation to acts that accrue prior to August 28, 2005 but are filed after August 28, 2005.

14. Defendant IPL generates and distributes electric service to over 58,000 residential and commercial customers within the 78 square-mile municipality of Independence, Missouri.

15. Missouri statute requires that all charges made or demanded by any electrical corporation “shall be just and reasonable and not more than allowed by law or by order or decision of the commission.” Mo. Rev. Stat. § 393.130.

16. Defendant Advanced is contracted to be the vendor for Defendant Independence’s utilities billing system. Defendants’ new billing system was introduced during the Spring of 2018.

17. On or about May of 2018, after Defendants’ billing system went into effect, Plaintiff and the Class Members started receiving electric utility bills charging and/or demanding payment for more electricity consumption than Plaintiff and the Class Members had actually consumed.

18. Plaintiff and the Class Members have continued to receive electric utility bills charging and/or demanding payment for more electricity consumption than Plaintiff and the Class Members had actually consumed.

19. Defendants’ conduct described herein violated Missouri Revised Statute § 393.130.

20. Numerous Class Members have notified Defendants they were being overcharged for their electrical consumption. Despite these complaints, Defendants have failed to take any corrective action or remedial measure.

21. Since May of 2018, Plaintiff and the Class Members have conferred a monetary benefit to Defendants. Defendants appreciated, accepted and retained the monetary benefit under inequitable and/or unjust circumstances.

22. At all times mentioned herein, the Defendants have acted by and through their duly-authorized officers, managers, agents, servants, and/or employees, all of whom have acted within the course and scope of their employment or other relationship.

CLASS ACTION

23. This action is brought by the Plaintiff individually on their own behalf and as a representative of the class defined herein.

24. Plaintiff brings this case on behalf of all persons who are customers of IPL. These persons have been overcharged for their electric utility consumption. There are thousands of persons who have been and continue to be overcharged for their electrical utilities since May of 2018.

25. There are numerous questions of law and/or fact common to the Plaintiff's claims including but not limited to:

- a. The degree to which Plaintiff and the Class Members were overcharged;
- b. The degree to which Defendants violated the Missouri Merchandising Practices Act;
- c. The degree to which Defendants were unjustly enriched at the expense of Plaintiff and the Class Members;
- d. The degree to which Defendants fraudulently misrepresented to Plaintiff and the Class Members their monthly electrical consumption;
- e. The degree to which Defendants negligently misrepresented to Plaintiff and the Class their monthly electrical consumption;

- f. Whether Defendants properly installed the electrical utility meters;
- g. Whether Defendants' electrical utility meters were operating properly;
- h. Whether Defendants accurately measured the electrical consumption of Plaintiff and the Class Members;
- i. Whether Defendants' conduct was of the requisite gravity or seriousness to give rise to liability for punitive damages, and the amount of punitive damages to be awarded to Plaintiff and the Class Members.

26. The claims of the representative Plaintiff are typical of the claims of the class.

27. The representative Plaintiff will fairly and adequately protect the interests of the class they represent.

28. The claims of the class or any defenses thereto present important common questions of law and/or fact, the disposition of which will materially advance the adjudication of the Plaintiff's claims and make class certification appropriate in the interests of justice.

COUNT I – VIOLATION OF MISSOURI MERCHANDISING PRACTICES ACT
(Plaintiffs v. All Defendants)

COMES NOW Plaintiff and for Count I of their Petition for Damages against Defendants, state and allege as follows:

29. To the extent they are not inconsistent with the allegations in this Count, Plaintiff incorporates all other allegations of this Petition as though more fully set forth herein.

30. Plaintiff and the Class Members purchased electricity from Defendant Independence.

31. Plaintiff's and the Class Members' purchase of electricity was primarily for family and/or household purposes.

32. In connection with the sale of electricity, Defendants committed and/or engaged in the following unlawful practices:

- a. Fraud;
- b. Misrepresentation;
- c. Deception;
- d. Unfair Dealing; and
- e. Conversion.

33. As a direct and proximate result of Defendants' violations of the Missouri Merchandising Practices Act, for which Defendants are jointly and severally liable, Plaintiff and the Plaintiff Class have suffered damages and losses. These damages and

losses include, but are not limited to, monetary damages and losses arising out of Defendants' overcharging of customers.

WHEREFORE, Plaintiff requests judgment to be entered in their favor against the Defendants jointly and severally, as follows:

- (a) an order certifying the Class for claims for monetary damages;
- (b) an amount of damages in such sum as is fair and reasonable to compensate the Plaintiff and Plaintiff Class in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000);
- (c) a judgment for punitive damages in an amount sufficient to punish and deter the Defendants from further such conduct;
- (d) an award for pre- and post-judgment interest and for costs and expenses as allowed by statute and law;
- (e) attorney's fees; and
- (f) such other and further relief as the Court deems necessary in the interests of justice.

COUNT II – CONVERSION
(Plaintiffs v. All Defendants)

COMES NOW Plaintiff and for Count II of their Petition for Damages against Defendants, state and allege as follows:

34. To the extent they are not inconsistent with the allegations in this Count, Plaintiff incorporates all other allegations of this Petition as though more fully set forth herein.

35. Plaintiff and the Class members were in possession of money.

36. Defendants took possession of Plaintiff's and the Class Members' money with the intent to exercise some control over the money.

37. Defendants thereby deprived Plaintiff and the Class Members of their right to possession of their money.

38. As a direct and proximate result of Defendants' conversion, for which Defendants are jointly and severally liable, Plaintiff and the Plaintiff Class have suffered damages and losses. These damages and losses include, but are not limited to, monetary damages and losses arising out of Defendants' overcharging of customers.

WHEREFORE, Plaintiff requests judgment to be entered in their favor against the Defendants jointly and severally, as follows:

- (a) an order certifying the Class for claims for monetary damages;
- (b) an amount of damages in such sum as is fair and reasonable to compensate the Plaintiff and Plaintiff Class in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000);

- (c) a judgment for punitive damages in an amount sufficient to punish and deter the Defendants from further such conduct;
- (d) an award for pre- and post-judgment interest and for costs and expenses as allowed by statute and law;
- (e) attorney's fees; and
- (f) such other and further relief as the Court deems necessary in the interests of justice.

COUNT III – UNJUST ENRICHMENT
(Plaintiffs v. All Defendants)

COMES NOW Plaintiff and for Count III of their Petition for Damages against Defendants, state and allege as follows:

39. To the extent they are not inconsistent with the allegations in this Count, Plaintiff incorporates all other allegations of this Petition as though more fully set forth herein.

40. Plaintiff and the Class Members conferred a monetary benefit on the Defendants when they paid Defendants money demanded for their electrical utilities.

41. Defendants appreciated Plaintiff's and the Class Members' monetary benefit.

42. Defendants accepted and retained the monetary benefit under inequitable and/or unjust circumstances.

43. As a direct and proximate result of Defendants' unjust enrichment, for which Defendants are jointly and severally liable, Plaintiff and the Plaintiff Class have suffered damages and losses. These damages and losses include, but are not limited to, monetary damages and losses arising out of Defendants' overcharging of customers.

WHEREFORE, Plaintiff requests judgment to be entered in their favor against the Defendants jointly and severally, as follows:

(g) an order certifying the Class for claims for monetary damages;

- (h) an amount of damages in such sum as is fair and reasonable to compensate the Plaintiff and Plaintiff Class in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000);
- (i) a judgment for punitive damages in an amount sufficient to punish and deter the Defendants from further such conduct;
- (j) an award for pre- and post-judgment interest and for costs and expenses as allowed by statute and law;
- (k) attorney's fees; and
- (l) such other and further relief as the Court deems necessary in the interests of justice.

COUNT IV – FRAUDULENT MISREPRESENTATION
(Plaintiffs v. All Defendants)

COMES NOW Plaintiff and for Count IV of their Petition for Damages against Defendants, state and allege as follows:

44. To the extent they are not inconsistent with the allegations in this Count, Plaintiff incorporates all other allegations of this Petition as though more fully set forth herein.

45. Defendants represented to Plaintiff and the Class Members that they consumed more electricity than they had.

46. Defendants' representations were made by Defendants with the intent that Plaintiff and the Class Members would rely on such representations in paying their electric utility bill.

47. Defendants' representations were false.

48. Defendants knew that they were false.

49. Defendants' representations were material to Plaintiff's and the Class Members' payment of their electric utility bills.

50. Plaintiff and the Class Members relied on the representations when paying their electric utility bills, and such reliance was reasonable under the circumstances.

51. As a direct and proximate result of such representations, for which Defendants are jointly and severally liable, Plaintiff and the Plaintiff Class have suffered damages and losses. These damages and losses include, but are not limited to, monetary damages and losses arising out of Defendants' overcharging of IPL customers.

WHEREFORE, Plaintiff requests judgment to be entered in their favor against the Defendants jointly and severally, as follows:

- (a) an order certifying the Class for claims for monetary damages;
- (b) an amount of damages in such sum as is fair and reasonable to compensate the Plaintiffs and Plaintiff Class in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000);
- (c) a judgment for punitive damages in an amount sufficient to punish and deter the Defendants from further such conduct;
- (d) an award for pre- and post-judgment interest and for costs and expenses as allowed by statute and law;
- (e) attorney's fees; and
- (f) such other and further relief as the Court deems necessary in the interests of justice.

COUNT V – NEGLIGENT MISREPRESENTATION
(Plaintiffs v. All Defendants)

COMES NOW Plaintiff and for Count V of their petition for Damages against Defendants, state and allege as follows:

52. To the extent they are not inconsistent with the allegations in this Count, Plaintiff incorporates all other allegations of this Petition as though more fully set forth herein.

53. Defendants in the course of their business represented to Plaintiff and the Class Members that they consumed more electricity than they had.

54. Defendants' representations were made by Defendants with the intent that Plaintiff and the Class Members would rely on such representations when paying their electric utility bills.

55. Defendants' representations were material to Plaintiff's and the Class Members' payment of their electric utility bills.

56. Defendants' representations were false.

57. Defendants failed to use ordinary care in making such representations.

58. Plaintiff and the Class Members relied on such representations when paying their electric utility bills and such reliance was reasonable under the circumstances.

59. As a direct and proximate result of such representations, for which Defendants are jointly and severally liable, Plaintiff and the Plaintiff Class have suffered damages and losses. These damages and losses include, but are not limited to, monetary damages and losses arising out of Defendants' overcharging of Defendants' customers.

WHEREFORE, Plaintiff requests judgment to be entered in their favor against the Defendants jointly and severally, as follows:

- (a) an order certifying the Class for claims for monetary damages;
- (b) an amount of damages in such sum as is fair and reasonable to compensate the Plaintiff and Plaintiff Class in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000);
- (c) a judgment for punitive damages in an amount sufficient to punish and deter the Defendants from further such conduct;
- (d) an award for pre- and post-judgment interest and for costs and expenses as allowed by statute and law;
- (e) attorney's fees; and
- (f) such other and further relief as the Court deems necessary in the interests of justice.

COUNT VI – BREACH OF CONTRACT
(Plaintiffs v. All Defendants)

COMES NOW Plaintiff and for Count VI of their Petition for Damages against Defendants, state and allege as follows:

60. To the extent they are not inconsistent with the allegations in this Count, Plaintiff incorporates all other allegations of this Petition as though more fully set forth herein.

61. Defendants were required to ensure all charges made or demanded to Plaintiff and/or the Class Members for their electric utility consumption be just and reasonable.

62. Defendants' charges and demands to Plaintiff and the Class Members for their electric utility consumption was unjust and unreasonable.

63. Defendants failed to charge and demand from Plaintiff and the Class Members a just and reasonable amount for their electric utility consumption in violation of their agreement with Plaintiff and the Class Members.

64. As a direct and proximate result of Defendants' breach of contract, for which Defendants are jointly and severally liable, Plaintiff and the Plaintiff Class have suffered damages and losses. These damages and losses include, but are not limited to, monetary damages and losses arising out of Defendants' overcharging of customers.

WHEREFORE, Plaintiff requests judgment to be entered in their favor against the Defendants jointly and severally, as follows:

- (a) an order certifying the Class for claims for monetary damages;

- (b) an amount of damages in such sum as is fair and reasonable to compensate the Plaintiff and Plaintiff Class in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000);
- (c) a judgment for punitive damages in an amount sufficient to punish and deter the Defendants from further such conduct;
- (d) an award for pre- and post-judgment interest and for costs and expenses as allowed by statute and law;
- (e) attorney's fees; and
- (f) such other and further relief as the Court deems necessary in the interests of justice.

COUNT VII – NEGLIGENCE PER SE
(Plaintiffs v. All Defendants)

COMES NOW Plaintiff and for Count VII of their Petition for Damages against Defendants, state and allege as follows:

65. To the extent they are not inconsistent with the allegations in this Count, Plaintiff incorporates all other allegations of this Petition as though more fully set forth herein.

66. Defendants were required to ensure all charges made or demanded from Plaintiff and the Class Members for their electric utility consumption be just and reasonable in compliance with Mo. Rev. Stat. § 393.130.

67. Defendants violated Mo. Rev. Stat. § 393.130 when they charged and/or demanded from Plaintiff and the Class Members an unjust and unreasonable amount for their electric utility consumption.

68. Plaintiff and the Class Members are members of the class of persons intended to be protected by Mo. Rev. Stat. § 393.130.

69. The injuries received by Plaintiff and the Class Members are the type that Mo. Rev. Stat. § 393.130 were designed to prevent.

70. Defendant's violations of Mo. Rev. Stat. § 393.130 was the direct and proximate cause of Plaintiff's and the Class Members' damages.

71. As a direct and proximate result of Defendants' negligence per se, for which Defendants are jointly and severally liable, Plaintiff and the Plaintiff Class have

suffered damages and losses. These damages and losses include, but are not limited to, monetary damages and losses arising out of Defendants' overcharging of customers.

WHEREFORE, Plaintiff requests judgment to be entered in their favor against the Defendants jointly and severally, as follows:

- (a) an order certifying the Class for claims for monetary damages;
- (b) an amount of damages in such sum as is fair and reasonable to compensate the Plaintiff and Plaintiff Class in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000);
- (c) a judgment for punitive damages in an amount sufficient to punish and deter the Defendants from further such conduct;
- (d) an award for pre- and post-judgment interest and for costs and expenses as allowed by statute and law;
- (e) attorney's fees; and
- (f) such other and further relief as the Court deems necessary in the interests of justice.

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