

SHUB LAW FIRM LLC

Jonathan Shub
Kevin Laukaitis*
134 KINGS HIGHWAY EAST, 2ND FLOOR
HADDONFIELD, NJ 08033
Telephone: (856) 772-7200
jshub@shublawayers.com
klaukaitis@shublawayers.com

WITTELS MCINTURFF PALIKOVIC

J. Burkett McInturff
18 HALF MILE ROAD
ARMONK, NEW YORK 10504
Telephone: (910) 476-7253
jbm@wittelslaw.com

**Pro Hac Vice Motion Forthcoming*

Attorneys for Plaintiff and the Class

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RYAN MELVILLE,
on behalf of himself and all others similarly
situated,

Plaintiff,

v.

HOP ENERGY, LLC,

Defendant.

Civil Case No.: 12 Civ. 10406

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Ryan Melville (hereinafter “Plaintiff”), by his attorneys Shub Law Firm LLC and Wittels McInturff Palikovic, brings this consumer protection lawsuit in his individual capacity, and on behalf of a class of consumers defined below (the “Class”), against Defendant HOP Energy, LLC (hereinafter “HOP Energy”) and hereby alleges the following with knowledge as to his own acts, and upon information and belief as to all other acts:

NATURE OF THE CASE

1. Defendant HOP Energy provides heating oil to consumers in eight states across the Northeast.¹ This consumer protection action arises from HOP Energy’s breach of contract and bad faith pricing practices, causing tens of thousands of consumers to pay considerably more than they bargained for to obtain home heating oil.

2. Price is the most important consideration for heating oil consumers. Given that there is no difference at all in the heating oil that HOP Energy supplies as opposed to that supplied by other heating oil companies, the only reason a consumer chooses a particular heating oil company over another is for the potential savings offered in a competitive market.

3. As set forth herein, HOP Energy contracted with Plaintiff and the Class to sell its heating oil at the “Promotional Prevailing Retail Price for First Year Customers for home heating oil that is in effect at the time of delivery.” As also detailed below, before filing this action Plaintiff commissioned an initial yet detailed analysis from top-tier energy consulting experts regarding the prevailing retail price HOP Energy should have charged Plaintiff. This analysis (described below) demonstrates that HOP Energy categorically failed to charge the “Prevailing Retail Price,” much less provide the meaningful discounts afforded by the contract terms

¹ According to HOP Energy’s website, its family of energy brands provide services to customers in the following eight states: Connecticut, Delaware, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. See <https://hopenergy.com/locations/> (last accessed December 6, 2021).

“Promotional” and “for First Year Customers.” Because the facts do and will continue to demonstrate that Defendant took advantage of consumers’ lack of sophistication, inertia, and other widely known frailties in consumer-decision making, HOP Energy breached both the clear language of its customer contract and the implied covenant of good faith and fair dealing.

4. Plaintiff and the Class of HOP Energy’s heating oil customers defined below have been injured by Defendant’s unlawful practices. Plaintiff and the Class therefore seek damages and restitution for HOP Energy’s breach of contract and breach of the duty of good faith and fair dealing. Heating costs are a significant portion of most families’ budgets. To prey on consumers as Defendant has done here is unconscionable.

5. Only through a class action can HOP Energy’s customers remedy Defendant’s ongoing wrongdoing. Because the monetary damages suffered by each customer are small compared to the much higher cost a single customer would incur in trying to challenge HOP Energy’s unlawful practices, it is not financially feasible for an individual customer to bring his or her own lawsuit. Further, many customers do not realize they are victims of HOP Energy’s unlawful conduct. With this class action, Plaintiff and the Class seek to level the playing field and ensure that companies like HOP Energy engage in fair and upright business practices.

FACTUAL ALLEGATIONS

6. On October 19, 2018, Plaintiff Melville signed a home heating oil contract for a “capped-price” plan with a HOP Energy brand called DDLC Energy.² Plaintiff’s contract is a

² DDLC is a fictitious entity for HOP Energy. According to HOP Energy’s website, DDLC Energy is “a local subsidiary” of HOP Energy, and is otherwise described on the website as “Your local HOP Energy company.” See <https://hopenergy.com/locations/ddlc-energy/> (last accessed December 6, 2021). DDLC Energy is also not listed on Connecticut’s “business entity” search. See <https://service.ct.gov/business/s/onlinebusinesssearch?businessName=DDLC Energy> (last accessed December 6, 2021).

non-negotiable standardized form contract drafted by HOP Energy and is attached hereto as **Exhibit A.**

7. The contract defines itself as the “Agreement.” *Id.* at 1. Under the Agreement, Plaintiff’s home heating oil price was capped for the earlier of delivery of 1,000 gallons of oil or until October 31, 2019. *Id.* The Agreement defines the “period from 10/19/2018 through 10/31/2019” as the “Pricing Period.” *Id.* The contract states that the capped price “will expire at the earlier of the end of the Pricing Period or when all of the Agreement gallons stated above [i.e. 1,000 gallons] are delivered to you.” *Id.* Once the capped price period ends, on either October 31, 2019, or upon delivery of the thousandth gallon of oil, “[a]ll subsequent deliveries to you will be charged at our Promotional Prevailing Retail Price for First Year Customers for home heating oil that is in effect at the time of delivery.” *Id.*

8. The “DELIVERIES” section of the Agreement makes clear that “[h]eating oil deliveries will be made to you on an automatic delivery basis” and that the customer must “maintain your account on automatic delivery.” *Id.*

9. The “TERMINATION” section of the Agreement provides that the Agreement’s terms continue past the “Pricing Period.” *Id.* at 4. The “TERMINATION” section states that “[a]fter the Pricing Period, either party may terminate this Agreement upon written notice, provided that you will remain responsible for all purchases made by you before we receive notice of the cancellation.” *Id.* at 4. The “TERMINATION” section then emphasizes that “[a]ny gallons delivered to you after the Pricing Period has expired will be charged at our PROMOTIONAL PREVAILING RETAIL PRICE FOR FIRST YEAR CUSTOMERS for home heating oil that is in effect at the time of delivery.” *Id.* (emphasis in original).

10. The Agreement also includes two copies of a “**NOTICE OF CANCELLATION**” that can be used to terminate the Agreement. *Id.* at 7–8 (emphasis in original).

11. Finally, the Agreement contains a \$200 early termination fee if a consumer’s “account is cancelled or terminated . . . during the Pricing Period.” *Id.* at. 3.

12. On October 14, 2019, HOP Energy emailed Plaintiff Melville a letter advising him that “[a]s of 10/31/2019” the Pricing Period would end and that “if we don’t hear from you, your account will automatically default to the Variable Price Plan and you will remain on automatic delivery.” This letter is attached hereto as **Exhibit B** and does not contain the word “cancel.”

13. Plaintiff Melville took no action and in accordance with the Agreement, HOP Energy continued to deliver his home heating oil until he canceled his contract with HOP Energy in April 2021.

14. As detailed below, HOP Energy’s exorbitant rates after October 31, 2019 (the end of the Agreement’s “Pricing Period”) were set in bad faith and bear no resemblance to prevailing retail prices, much less do they reflect the meaningful discounts afforded by the Agreement’s plain language requiring that these rates be set at the “Promotional Prevailing Retail Price for First Year Customers.”

15. Before bringing this action, Plaintiff and his counsel commissioned an analysis from top-tier energy consulting experts regarding the prevailing retail price in Connecticut, Plaintiff’s home state. This analysis demonstrates that in the 18 months that Plaintiff remained a HOP Energy customer after October 31, 2019, the per-gallon rates HOP Energy charged were higher than the prevailing retail price 100% of the time. In fact, for the 18-month period

examined below, HOP Energy's prices were on average between 42% and 46% higher than the prevailing retail rate charged for the exact same heating oil. Worse, HOP Energy's improper per-gallon overcharges were highest during the winter heating season—when consumers need heating oil the most. For example, in January 2021 HOP Energy's rates were between 54% and 60% higher than the prevailing retail price for the exact same heating oil.

16. To arrive at these findings, Plaintiff's consulting experts obtained weekly residential heating oil price data between November 2019 and April 2021 published by the Department of Energy and Environmental Protection ("DEEP") of the State of Connecticut³ and the United States Energy Information Administration ("EIA").⁴

17. The Connecticut DEEP conducts a weekly survey of heating oil dealers in the state of Connecticut. The dealers are asked to provide average pricing information for their location and the survey results are published.

18. The EIA similarly publishes weekly residential heating oil prices for the New England region, including the state of Connecticut, for the duration of the heating season, which is defined as October through March of each year.⁵

19. Using the prices published in the public reports and surveys regarding prevailing

³ Energy Price and Supply Information, Heating Oil Price and Propane Prices: Heating Oil and Propane Survey. Available from: https://portal.ct.gov/-/media/DEEP/energy/SHOPP_Survey/ctheatingoilregionalretailpricespdf.pdf (last accessed December 6, 2021).

⁴ Energy Information Administration (EIA), Heating Oil and Propane Update. Available from: <https://www.eia.gov/petroleum/heatingoilpropane/> (last accessed December 6, 2021).

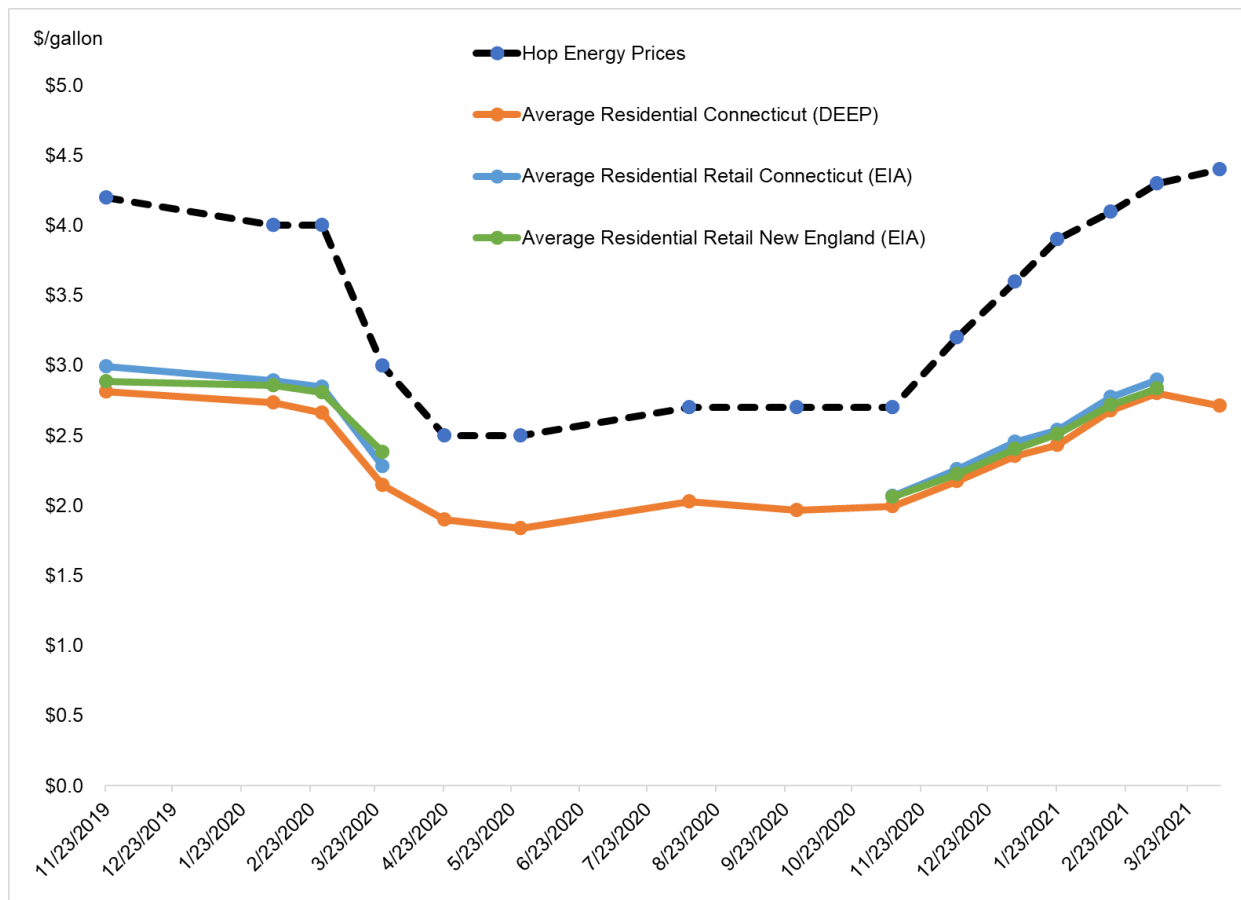
⁵ Specifically, the residential heating oil price reported by the EIA is the price charged for home delivery of No. 2 heating oil, excluding any discounts such as those for prompt cash payments. Prices reported in the EIA reports also do not include the taxes paid by residential customers. Energy Information Administration (EIA), Heating Oil and Propane Update: Definitions, Sources and Explanatory Notes. Available from: https://www.eia.gov/dnav/pet/TblDefs/pet_pri_wfr_tbldef2.asp (last accessed December 6, 2021).

retail heating oil prices in Connecticut and the New England region, Plaintiff's consulting experts compared the HOP Energy heating oil prices reflected in Plaintiff's invoices to the pricing data reflected in these public reports.

20. Specifically, the prices listed on Plaintiff's invoices on specific dates were compared to the average prices reported by the DEEP and EIA in the week corresponding with the delivery date of HOP Energy's heating oil.

6

(blue line for the state and green line for New England):



⁶ Residential heating oil prices for the months of April, May, June, July, August, and September are not reported by the EIA.

22. This graph demonstrates (1) that the three separate sources of public pricing data are highly consistent, and (2) that the prices HOP Energy charged Plaintiff are substantially higher than these three sources and thus do not reflect the “Promotional Prevailing Retail Price for First Year Customers” as required by HOP Energy’s customer contract.

23. Table 1 below shines further light on HOP Energy’s improper pricing practices. Table 1 compares the price information from Plaintiff’s HOP Energy invoices on specific dates (as shown in Column [a]) and the corresponding public governmental reports (i.e., Connecticut DEEP (Column [b]) and U.S. EIA (Columns [c] and [d])):

Table 1: HOP Energy Heating Oil Prices vs. Public Reports (Prices are in \$ per gallon)				
Date Delivered	HOP Energy Prices	Average Residential Connecticut (DEEP)	Average Residential Retail Connecticut (EIA)	Average Residential Retail New England (EIA)
	[a]	[b]	[c]	[d]
11/23/2019	\$4.20	\$2.81	\$2.99	\$2.89
2/6/2020	\$4.00	\$2.74	\$2.89	\$2.86
2/28/2020	\$4.00	\$2.66	\$2.85	\$2.81
3/26/2020	\$3.00	\$2.15	\$2.28	\$2.38
4/23/2020	\$2.50	\$1.90		
5/27/2020	\$2.50	\$1.84		
8/11/2020	\$2.70	\$2.03		
9/28/2020	\$2.70	\$1.97		
11/10/2020	\$2.70	\$1.99	\$2.07	\$2.06
12/9/2020	\$3.20	\$2.17	\$2.26	\$2.23
1/4/2021	\$3.60	\$2.35	\$2.45	\$2.40
1/23/2021	\$3.90	\$2.43	\$2.54	\$2.51
2/16/2021	\$4.10	\$2.68	\$2.77	\$2.72
3/9/2021	\$4.30	\$2.80	\$2.90	\$2.84
4/6/2021	\$4.40	\$2.71		
Min	\$2.50	\$1.84	\$2.07	\$2.06
Average	\$3.45	\$2.35	\$2.60	\$2.57
Max	\$4.40	\$2.81	\$2.99	\$2.89

24. Table 1 contains at least three separate indicia of how the heating oil prices HOP Energy charged Plaintiff were significantly higher than the prevailing weekly prices published by the DEEP and the EIA.

- o The average price charged by HOP Energy was \$3.45 per gallon, while the average residential heating oil prices were \$2.35 per gallon and \$2.60 in the DEEP and EIA reports respectively. In other words, while the weekly average prices compiled by the DEEP and EIA varied from one another by only \$0.25, HOP Energy's average price per gallon was between \$0.85 and \$1.10 higher than average prevailing market prices.
- o The lowest price HOP Energy charged Plaintiff was \$2.50 per gallon, which was approximately 36% higher than the lowest price reported by DEEP and approximately 21% higher than the lowest price reported by the EIA.
- o The highest price charged by HOP Energy during this 28-month period was \$4.40 per gallon, which was approximately 56% higher than the highest price reported by DEEP and was approximately 47% higher than the highest price reported by the EIA.

(Complaint continued overleaf)

25. The stark difference in heating oil prices charged by HOP Energy and the prevailing retail prices reflected in the public reports are even larger during the winter months. Table 2 below summarizes the percentage overcharge from the prevailing retail prices reflected in the public reports to HOP Energy's prices when it sold home heating oil to Plaintiff after October 31, 2019:

Table 2: Percent Overcharge from Public Reports to HOP Energy Heating Oil Prices (Prices are in \$ per gallon)				
Date Delivered	HOP Energy Price Per Gallon	HOP Energy % Overcharge Above Avg. Residential Connecticut (DEEP) Price Per Gallon	HOP Energy % Overcharge Above Avg. Residential Retail Connecticut (EIA) Price Per Gallon	HOP Energy % Overcharge Above Avg. Residential Retail New England (EIA) Price Per Gallon
	[a]	[b]	[c]	[d]
11/23/2019	\$4.20	49%	40%	45%
2/6/2020	\$4.00	46%	38%	40%
2/28/2020	\$4.00	50%	40%	42%
3/26/2020	\$3.00	40%	32%	26%
4/23/2020	\$2.50	32%		
5/27/2020	\$2.50	36%		
8/11/2020	\$2.70	33%		
9/28/2020	\$2.70	37%		
11/10/2020	\$2.70	35%	31%	31%
12/9/2020	\$3.20	47%	42%	44%
1/4/2021	\$3.60	53%	47%	50%
1/23/2021	\$3.90	60%	54%	55%
2/16/2021	\$4.10	53%	48%	51%
3/9/2021	\$4.30	53%	48%	51%
4/6/2021	\$4.40	62%		
Min	\$2.50	32%	31%	26%
Average	\$3.45	46%	42%	44%
Max	\$4.40	62%	54%	55%

26. HOP Energy's overcharge percentages in Table 2 above demonstrate the following three troubling facts:

- o During the winter of 2019/2020, HOP Energy's prices were approximately 40% to 50% higher than the average DEEP residential heating oil prices and 32% to 40% higher than the average EIA residential heating oil prices in Connecticut. In other words, during the winter of 2019/2020 families in Connecticut paid HOP Energy a massive premium for the exact same home heating oil sold elsewhere in the state.
- o During the winter of 2020/2021, HOP Energy's prices were approximately 35% to 60% higher than the average DEEP residential heating oil prices and 31% to 54% higher than the average EIA residential heating oil prices in Connecticut. To wit, for the last two winter heating seasons, consumers paid HOP Energy a massive premium for fungible home heating oil.
- o A comparison of HOP Energy's prices to the regional average prices reported by EIA similarly demonstrates how HOP Energy was not charging the "Promotional Prevailing Retail Price for First Year Customers" as required by its customer contract. The prices HOP Energy charged Plaintiff are on average 42% to 44% higher than the regional residential heating oil prices reported by EIA during the winter months of 2019/2020 and 2020/2021.

27. HOP Energy exploits the dramatic information asymmetry between HOP Energy and its customers to engage in improper price gouging. Consequently, HOP Energy's rates are consistently substantially higher than prevailing retail prices. In fact, no reasonable customer would interpret "Promotional Prevailing Retail Price for First Year Customers" to mean that

HOP Energy is contractually permitted to charge 60% or more above the prevailing retail price. The opposite is true—HOP Energy’s customer contract plainly contains a commitment by HOP Energy that its non-capped prices will be lower than the prevailing retail home heating oil prices. Any reasonable consumer would understand that a contractual commitment to charge the “Promotional Prevailing Retail Price for First Year Customers” is a contract for a price that is meaningfully lower than the prevailing retail price, not one that is on average between 42% and 46% higher than the prevailing retail rate charged for the exact same fuel oil.

28. To the extent HOP Energy claims it had discretion to set its heating oil prices, Defendant violated the implied covenant of good faith and fair dealing by exercising any price setting discretion it may have had in bad faith and in a manner inconsistent with Plaintiff’s and other consumers’ reasonable expectations. Reasonable consumers did not expect HOP Energy to use any supposed pricing discretion to profiteer off the information asymmetry between HOP Energy and its customers. Even if HOP Energy had unilateral discretion to set its heating oil rates (and it did not), Plaintiff and other reasonable consumers expect that notwithstanding Defendant’s profit goals, its prices would be consistent with prevailing retail prices and that Defendant would refrain from price gouging. Without these reasonable expectations, Plaintiff and other Class Members would not have agreed to buy home heating oil from Defendant.

29. HOP Energy’s improper conduct is designed to take advantage of consumers’ good faith and lack of knowledge of the heating oil market. HOP Energy did not honor its contractual commitment to consumers but rather deployed underhanded tactics to maximize its own profits at unsuspecting consumers’ expense. For example, a central component of HOP Energy’s sales strategy is to use consumer inaction following the expiration of the capped price period to saddle consumers with exorbitant prices.

30. It is well-established that defaults are powerful drivers of consumer behavior. There are various factors underlying this human tendency that have been discussed in the judgment and decision-making literature, such as the work about defaults, the “status quo bias,”⁷ and “nudges.”⁸

31. In this case, HOP Energy knew that once consumers’ capped price plans lapsed, it could charge excessive heating oil rates and many (if not most) consumers would not know they were being overcharged, and would simply pay the exorbitant charges, month after month after month.

32. As a result, HOP Energy is fleecing at least tens of thousands of unsuspecting consumers out of millions of dollars in exorbitant home heating oil costs. Defendant’s scheme, which often affects society’s most vulnerable citizens, is immoral, unethical, oppressive, and unscrupulous.

33. Plaintiff is but one of the many consumers harmed by HOP Energy’s practices. The purpose of this class action is to obtain redress for all of HOP Energy’s customers and to reform HOP Energy’s pricing practices going forward.

JURISDICTION AND VENUE

Subject Matter Jurisdiction

34. This Court has jurisdiction over the claims asserted in this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d), because the aggregate claims of the Class exceed the sum or value of \$5,000,000, the Class has more than 100 members, and diversity of citizenship exists between at least one member of the Class and Defendant.

⁷ Daniel Kahneman, Jack L. Knetsch and Richard H. Thaler (1991), “Endowment Effect, Loss Aversion, and Status Quo Bias,” *The Journal of Economic Perspectives*, Vol. 5, pp. 193–206.

⁸ R. Thaler and S. Sunstein (2008), *Nudge*, Yale University Press.

Personal Jurisdiction

35. This Court has specific personal jurisdiction over Defendant because it maintains sufficient contacts in this jurisdiction, including maintaining its principal place of business in this jurisdiction, and advertising, marketing, and selling heating oil in this jurisdiction. Several additional relevant acts took place in this District. With its headquarters in this District, HOP Energy processes enrollment transactions and payments in this District; directs marketing, billing, customer outreach, service, and tracking efforts from this District; and received payments from Plaintiff and Class Members and maintains a bank account in this District.

Venue

36. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1). Substantial acts in furtherance of the alleged improper conduct occurred within this District and Defendant is headquartered in this District.

PARTIES

37. Plaintiff Ryan Melville is a resident and citizen of Connecticut who lived in Woodstock, Connecticut at all relevant times. Plaintiff was a HOP Energy customer from October 2018 to April 2021.

38. Defendant HOP Energy, LLC is a limited liability company organized and existing under the laws of the State of Delaware. Its principal place of business is at 4 West Red Oak Lane, Suite 310, White Plains, NY 10604. At least one member of Defendant, HOP Energy Holdings, Inc., is a citizen of New York. HOP Energy does business in Connecticut through its office located at 410 Bank Street, New London, CT 06320.

39. HOP Energy provides residential and commercial heating oil and services to customers in Connecticut, Delaware, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. HOP Energy has approximately 100,000 customers.

CLASS ACTION ALLEGATIONS

40. As alleged throughout this Complaint, the Class claims all derive directly from a single course of conduct by Defendant. Defendant has engaged in uniform and standardized conduct toward the Class and this case is about the responsibility of Defendant, at law and in equity, for its knowledge and conduct. Defendant's conduct did not meaningfully differ among individual Class Members in its degree of care or candor, its actions or inactions, or in the content of its contractual promises and/or improper use of any pricing discretion. On information and belief, the form customer agreements for all of HOP Energy's customers are materially the same. The objective facts on these subjects are the same for all Class Members.

41. Plaintiff sues on his own behalf and on behalf of a Class for monetary and equitable relief under Rules 23(a), (b)(3), and (c)(4) of the Federal Rules of Civil Procedure.

42. The Class, preliminarily defined as follows: all HOP Energy customers in Connecticut, Delaware, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont (including customers of companies HOP Energy acts as a successor to) who purchased heating oil during the applicable statute of limitations period up to and including the date of judgment pursuant to contractual pricing terms that tied HOP Energy's prices to prevailing retail prices at the time of delivery.

43. Excluded from the Class are: Defendant; any parent, subsidiary, or affiliate of Defendant; any entity in which Defendant has or had a controlling interest, or which Defendant otherwise controls or controlled; and any officer, director, employee, legal representative,

predecessor, successor, or assignee of Defendant. Also excluded are all federal, state and local government entities; and any judge, justice or judicial officer presiding over this action and the members of their immediate families and judicial staff.

44. Plaintiff reserves the right, as might be necessary or appropriate, to modify or amend the definition of the Class and/or add Subclasses, when Plaintiff files his motion for class certification.

45. Plaintiff does not know the exact size of the Class since such information is in the exclusive control of HOP Energy. Plaintiff believes, however that the Class encompasses at least tens of thousands of individuals whose identities can be readily ascertained from Defendant's books and records. Accordingly, the members of the Class are so numerous that joinder of all such persons is impracticable.

46. The Class is ascertainable because its members can be readily identified using data and information kept by Defendant in the usual course of business and within its control. Plaintiff anticipates providing appropriate notice to each Class Member in compliance with all applicable federal rules.

47. Plaintiff is an adequate class representative. His claims are typical of the claims of the Class and do not conflict with the interests of any other members of the Class. Plaintiff and the other members of the Class were subject to the same or similar conduct engineered by the Defendant. Further, Plaintiff and members of the Class sustained substantially the same injuries and damages arising out of Defendant's conduct.

48. Plaintiff will fairly and adequately protect the interests of all Class Members. Plaintiff has retained competent and experienced class action attorneys to represent his interests and those of the Class.

49. Questions of law and fact are common to the Class and predominate over any questions affecting only individual Class Members, and a class action will generate common answers to the questions below, which are apt to drive the resolution of this action:

- a. Whether Defendant breached its customer contracts and violated the duty of good faith and fair dealing;
- b. Whether Class Members have been injured by Defendant's conduct;
- c. Whether, and to what extent, equitable relief should be imposed on Defendant to prevent it from continuing its unlawful practices; and
- d. The extent of class-wide injury and the measure of damages for those injuries.

50. A class action is superior to all other available methods for resolving this controversy because (1) the prosecution of separate actions by Class Members will create a risk of adjudications with respect to individual Class Members that will, as a practical matter, be dispositive of the interests of the other Class Members not parties to this action, or substantially impair or impede their ability to protect their interests; (2) the prosecution of separate actions by Class Members will create a risk of inconsistent or varying adjudications with respect to individual Class Members, which will establish incompatible standards for Defendant's conduct; (3) Defendant has acted or refused to act on grounds generally applicable to all Class Members; and (4) questions of law and fact common to the Class predominate over any questions affecting only individual Class Members.

51. Further, the following issues are also appropriately resolved on a class-wide basis under Federal Rule of Civil Procedure 23(c)(4):

- a. Whether Defendant breached its customer contracts and violated the duty of good faith and fair dealing;
- b. Whether Class Members have been injured by Defendant's conduct; and

- c. Whether, and to what extent, equitable relief should be imposed on Defendant to prevent it from continuing its unlawful practices.

52. Accordingly, this action satisfies the requirements set forth under Federal Rule of Civil Procedure 23(a), 23(b), and 23(c)(4).

CAUSES OF ACTION

COUNT I

BREACH OF CONTRACT

(ON BEHALF OF EACH CLASS MEMBER UNDER THE LAW OF THEIR STATE)

53. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

54. Plaintiff and the Class entered into valid contracts with Defendant for the provision of heating oil supply.

55. Pursuant to those contracts, after the Pricing Period expired Defendant was required to charge the “Promotional Prevailing Retail Price for First Year Customers for home heating oil that is in effect at the time of delivery.”

56. Pursuant to those contracts, Plaintiff and all Class Members agreed to pay Defendant’s rate and did so.

57. However, Defendant failed to perform its obligations under the contract, because its rates were not the “Promotional Prevailing Retail Price for First Year Customers for home heating oil that is in effect at the time of delivery.”

58. Plaintiff and all Class Members were damaged as a result because they were billed and paid prices for home heating oil that were higher than Defendant was authorized to charge under the contract’s terms.

59. As a result of Defendant's breaches, HOP Energy is liable to Plaintiff and members of the Class for damages and attorney's fees and expenses.

COUNT II

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING (ON BEHALF OF EACH CLASS MEMBER UNDER THE LAW OF THEIR STATE)

60. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

61. Plaintiff and the Class entered into valid contracts with Defendant for the provision of home heating oil supply.

62. Every contract has an implied covenant of good faith and fair dealing in the performance and enforcement of the contract. The implied covenant is an independent duty and may be breached even if there is no breach of the contract's express terms.

63. Under the contract, to the extent Defendant had discretion to set the price-per-gallon of home heating oil, it was obligated to exercise its discretion in good faith.

64. Plaintiff reasonably expected that Defendant's home heating oil rates would, notwithstanding Defendant's profit goals, reflect prevailing retail prices and that Defendant would not engage in price gouging. Without these reasonable expectations, Plaintiff and other Class Members would not have agreed to buy heating oil from Defendant.

65. Defendant breached the implied covenant of good faith and fair dealing by unreasonably exercising its rate-setting discretion to price gouge and frustrate Plaintiff's and other Class Members' reasonable expectations that Defendant's heating oil prices would be commensurate with prevailing retail prices.

66. As a result of Defendant's breaches, HOP Energy is liable to Plaintiff and members of the Class for damages and attorney's fees and expenses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

- (a) Issue an order certifying the Class defined above, appointing the Plaintiff as Class Representative, and designating the undersigned firms as Class Counsel;
- (b) Find that Defendant has committed the violations of law alleged herein;
- (c) Render an award of compensatory damages of at least \$25,000,000, the precise amount of which is to be determined at trial;
- (d) Issue an injunction or other appropriate equitable relief requiring Defendant to refrain from engaging in the practices alleged herein;
- (e) Declare that Defendant has committed the violations of law alleged herein;
- (f) Enter judgment including interest, costs, reasonable attorneys' fees, costs, and expenses; and
- (g) Grant all such other relief as the Court deems appropriate.

JURY DEMAND

Under Federal Rule of Civil Procedure 38, Plaintiff demands that a jury determine any issue triable of right.

(Complaint continued overleaf)

Dated: December 6, 2021

SHUB LAW FIRM LLC

By: /s/ Jonathan Shub
Jonathan Shub
Kevin Laukaitis*
134 KINGS HIGHWAY EAST, 2ND FLOOR
HADDONFIELD, NEW JERSEY 08033
Tel: (856) 772-7200
jshub@shublawayers.com
klauskaitis@shublawayers.com

WITTELS MCINTURFF PALIKOVIC

J. Burkett McInturff
18 HALF MILE ROAD
ARMONK, NEW YORK 10504
Telephone: (914) 319-9945
jbm@wittelslaw.com

**Pro Hac Vice Application Forthcoming*

Attorneys for Plaintiff and the Proposed Class

Exhibit A



410 Bank Street,
New London, CT 06320
(HOD.385) S1 License # 303006

Phone : (888) 225-5540
Fax : (860) 271-2050

www.ddlcenergy.com

Retail Credit Agreement

Applicant: Ryan Melville

Phone: [REDACTED]

Date: 10/19/18

CoApplicant:

Email: [REDACTED]

Billing Addr: [REDACTED] Woodstock, CT 06281

Delivery Addr: [REDACTED] Woodstock CT 06281

You agree that DDLc Energy ('We' or 'Seller') will order a consumer report in connection with this application and subsequent consumer reports in connection with any updates, renewals or extensions of credit. Upon your request, we will provide the name and address of the consumer credit agency furnishing such report to us. You understand that we will retain this application whether or not it is approved.

The Federal Equal Credit Opportunity Act prohibits us from discriminating against you in any way in the granting of credit. The federal agency which administers compliance with this law is the Federal Trade Commission, Washington, D.C. 20580. We have given to you and you acknowledge receipt of a complete description of the terms and conditions of our Retail Credit Agreement, which are below, and the notice of Your Billing Rights which are included with this form.

This Agreement covers your purchase of home heating oil from us under a CAPPED PRICE PROGRAM, described below. The Capped Price set forth in this Agreement will be available until 10/22/2018. If you have not accepted this offer by signing and returning this Agreement to us by this date, the offer to purchase home heating oil at the Capped Price set forth herein automatically expires and the Capped Price set forth below will not be available. You will need to contact us for the current Capped Price that we are offering at such later date.

CAPPED PRICE PROGRAM. You have elected our Capped Price Program, for the period from 10/19/2018 through 10/31/2019 (the "Pricing Period"), we will deliver up to 1000 gallons of home heating oil to you at a price not to exceed \$3.049 per gallon, plus applicable taxes. The underlying wholesale cost of your Capped Price is based on the previous day's New Haven, CT - Average Rack Price ("Rack Price"). Please note that this Rack Price, which changes daily, will be the basis for determining your Capped Price on the date of delivery. If the Rack Price on the date of your delivery is below the Rack Price on the date of this Agreement, which is 10/19/2018, then your price for the delivery will be the Capped Price set forth above less the difference between the price of the Rack Price at the date of this Agreement and the Rack Price on the date of your delivery. For example, if the Rack Price on the date of this Agreement was \$1.50 and the Rack Price was \$1.40 on the date of your delivery, then you would be charged \$0.10 less than the Capped Price in this Agreement, or $\$3.049 - \$0.10 = \$2.949$ for your delivery. If the Rack Price on the date of your delivery is above the Rack Price on the date of this Agreement, then your price for the delivery will be the Capped Price. We have secured in advance, in accordance with Connecticut law, the estimated amount of heating oil futures oil contracts or similar commitments to enable us to meet your needs during the Pricing Period. The Capped Price set forth in this paragraph will expire at the earlier of the end of the Pricing Period or when all of the Agreement gallons stated above are delivered to you, without further notification to you. All subsequent deliveries to you will be charged at our Promotional Prevailing Retail Price for First Year Customers for home heating oil that is in effect at the time of delivery.

Promotions : 1) First delivery promotional price \$2.499

RETAIL HEATING OIL DELIVERY AND SERVICES AGREEMENT**Terms and Conditions**

- 1. PARTIES:** In this Agreement, the words “we,” “us,” “our” and “Seller” mean DDLC Energy. The words “you,” “your” and “yours” mean every Buyer or Applicant.
- 2. DELIVERIES:** Heating oil deliveries will be made to you on an automatic delivery basis at the pricing set forth above, subject to these terms and conditions and those set forth above. You agree to accept each delivery and to pay the full amount shown on each delivery invoice in full within twenty five (25) days of receipt of the invoice, or if you are on a budget plan, budget payments are due within twenty five (25) days of receipt of the statement. You agree to purchase your heating oil exclusively from us, maintain your account on automatic delivery and remit all outstanding balances when due.
- 3. NON DELIVERY CONDITIONS:** We will not be responsible for failure to deliver heating oil for any of the following reasons: heating oil shortages, scarcity of labor, delay in deliveries by our suppliers, embargoes, strikes, riots, accidents, disorders, Acts of God, acts of any types by any governmental authority, or for any reason beyond our reasonable control. We will not be responsible for damages resulting from failure to deliver heating oil to vacant or unattended premises (in this Agreement, the term “vacant or unattended premises” means a location at which no adult occupant is present for at least twenty-four (24) consecutive hours).
- 4. SERVICE CONTRACT:** If you have a service contract with us, you will pay the invoice in full or cancel the service contract within thirty (30) days of the invoice, or if you are on a budget plan, in accordance with the terms of such plan.
- 5. BILLING AND SERVICE CHARGES:** If you have not paid an invoice for heating oil, services and/or a service contract in full within thirty (30) days, we will send you a statement (“Monthly Statement”) showing the amount due for deliveries, service charges and other amount due for more than thirty (30) days. You agree to pay a \$20.00 fee for all returned checks and returned Automated Clearing House transactions.
- 6. WHEN A LATE FEE WILL BE ADDED:** If we do not receive payment in full of the new balance on your Monthly Statement on or before the payment due date as reflected on the statement, a late fee (“Late Fee”) will appear on your next Monthly Statement and will be added to your new balance on that Monthly Statement.
- 7. LATE FEE:** The Late Fee is computed by a “Periodic Rate” of 1.5% per month, which is an ANNUAL PERCENTAGE RATE OF 18%. We will figure the Late Fee on your account by the Adjusted Balance Method. In no event will the Late Fee charge be more than the law allows.
- 8. HOW TO AVOID LATE FEE CHARGES:** If we receive payment in full of the new balance on your Monthly Statement on or before the payment due date reflected on the statement, no Late Fee will be added to your Monthly Statement.
- 9. COLLECTION COSTS; IRREGULAR PAYMENT AND DELAY OF ENFORCEMENT:** If we hire a collection agency or an attorney to collect your outstanding balance, you agree to pay, in addition to your balance, all cost of collection as permitted by law, including without limitation, reasonable attorney’s fees and court costs. We can accept late payment, partial payments or payments marked “payment in full” without losing any of our rights under this Agreement. We can delay in enforcing our rights under this Agreement without losing any of our rights under this Agreement.
- 10. CANCELLATION, BREACH AND LIQUIDATED DAMAGES:** If you cancel your account for any reason, remove your account from automatic delivery, fail to make payment on time or otherwise breach any of the terms and conditions of this Agreement, we may suspend service under this Agreement or terminate this Agreement with or without notice and without further responsibility. If your account is cancelled for any of these reasons during the Pricing Period, we will suffer damages, which include our costs of purchasing the required futures oil contracts or similar commitments and our administrative costs. However, at that time our actual damages will be difficult or impossible to calculate. Therefore, you agree that if your account is cancelled or terminated for any of these reasons during the Pricing Period, you will be charged a \$200 early termination fee. The early termination fee will be prorated based on remaining gallons to be

delivered by the Seller under this Agreement compared to the maximum gallons we have agreed to deliver as set forth above and will no longer apply after Seller has completed deliveries of the gallons as agreed to herein, and the Buyer's payment in full of those deliveries.

I ACKNOWLEDGE THAT THIS CONTRACT CONTAINS
THE PRECEDING LIQUIDATED DAMAGES PROVISION.

DS
RM
Applicant Initials

11. LIMITATION OF LIABILITY; WAIVER OF SUBROGATION: IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR SAVINGS) HOWEVER CAUSED, EVEN IF SUCH PARTY HAS BEEN ADVISED OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. To the extent any loss or damage is covered by insurance, the insured party waives any rights of recovery (including any rights of subrogation) against the other party.

12. TERMINATION: After the Pricing Period, either party may terminate this Agreement upon written notice, provided that you will remain responsible for all purchases made by you before we receive notice of the cancellation. Any gallons delivered to you after the Pricing Period has expired will be charged at our PROMOTIONAL PREVAILING RETAIL PRICE FOR FIRST YEAR CUSTOMERS for home heating oil that is in effect at the time of delivery.

13. YOUR BILLING RIGHTS:

This notice contains important information about rights and responsibilities under the Fair Credit Billing Act.

NOTIFY US IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR BILL. If you think your bill is wrong, or if you need more information about a transaction on your bill, write us on a separate sheet at the address listed on your bill as soon as possible. We must hear from you not later than sixty (60) days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights. In your letter, give us the following information: (a) Your name and account number; (b) The dollar amount of the suspected error; and (c) Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.



YOUR RIGHTS AND OUR RESPONSIBILITIES AFTER WE RECEIVE YOUR WRITTEN NOTICE. We must acknowledge your letter within thirty (30) days, unless we have corrected the error by then. Within ninety (90) days (sixty (60) days in Maryland), we must either correct the error or explain why we believe the bill was correct. After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including LATE FEES, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating but you are still obligated to pay the parts of your bill that are not in question. If we find that we made a mistake on your bill, you will not have to pay any LATE FEES related to any questioned amount. If we did not make a mistake, you may have to pay LATE FEES, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date it is due. If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten (10) days telling us that you still refuse to pay, we must tell anyone that we report you to that you have a question about your bill. And we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is. If we don't follow these rules, we can't collect the first \$50.00 of the questioned amount, even if your bill was correct.

Your Rights If You Are Dissatisfied With Your Credit Card Purchases. If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true: 1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than \$50. 2. You must not yet have fully paid for the purchase. If all of the criteria above are met and you are still dissatisfied with the purchase, contact us in writing at the address listed on your bill. While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

If you have authorized us to pay your bill automatically with your credit card, savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach us three (3) business days before the automatic payment is scheduled to occur.

14. BUYER’S RIGHT TO CANCEL: YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

<div>DocuSigned by:  F1E10E0730F4B8...</div> <hr/> Applicant Signature	<div>Ryan Melville</div> <hr/> Applicant Name (Please Print)	<div>10/19/2018</div> <hr/> Date
<div>Co-Applicant Signature</div> <div>DocuSigned by:  8933130A393642B...</div> <hr/> Company Signature	<div>Co-Applicant Name (Please Print)</div> <hr/>	<div>Date</div> <div>10/19/2018</div> <hr/> Date

By signing, YOU acknowledge that YOU have read and agree to all the terms and conditions of this Agreement.

YOUR BILLING RIGHTS

This notice contains important information about rights and responsibilities under the Fair Credit Billing Act.

NOTIFY US IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR BILL. If you think your bill is wrong, or if you need more information about a transaction on your bill, write us on a separate sheet at the address listed on your bill as soon as possible. We must hear from you not later than sixty (60) days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights. In your letter, give us the following information: (a) Your name and account number; (b) The dollar amount of the suspected error; and (c) Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

YOUR RIGHTS AND OUR RESPONSIBILITIES AFTER WE RECEIVE YOUR WRITTEN NOTICE. We must acknowledge your letter within thirty (30) days, unless we have corrected the error by then. Within ninety (90) days (sixty (60) days in Maryland), we must either correct the error or explain why we believe the bill was correct. After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including LATE FEES, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating but you are still obligated to pay the parts of your bill that are not in question. If we find that we made a mistake on your bill, you will not have to pay any LATE FEES related to any questioned amount. If we did not make a mistake, you may have to pay LATE FEES, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date it is due. If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten (10) days telling us that you still refuse to pay, we must tell anyone that we report you to that you have a question about your bill. And we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is. If we don't follow these rules, we can't collect the first \$50.00 of the questioned amount, even if your bill was correct.

SPECIAL RULE FOR CREDIT CARD PURCHASES. If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. There are two limitations on this right: (a) You must have made the purchase in your home state or, if not within your home state within 100 miles of your current mailing address; and (b) The purchase price must have been more than \$50. These limitations do not apply if the merchant is owned or operated by the creditor, or if the creditor mailed you the advertisement for the property or services.

CREDIT CARD PAYMENTS. If you have authorized us to pay your bill automatically with your credit card, savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach us three (3) business days before the automatic payment is scheduled to occur.

NOTICE OF CANCELLATION

Insert date of Transaction

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN TEN BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY, IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY DAYS OF THE DATE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO DDLC Energy at 410 Bank Street, New London, CT 06320 NOT LATER THAN MIDNIGHT OF _____
[insert 3rd business day after date of transaction above]

I HEREBY CANCEL THIS TRANSACTION

Buyer's Signature

Date

NOTICE OF CANCELLATION

Insert date of Transaction

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN TEN BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

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IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY DAYS OF THE DATE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

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[insert 3rd business day after date of transaction above]

I HEREBY CANCEL THIS TRANSACTION

Buyer's Signature

Date

Exhibit B

DDL Energy
410 Bank Street (HOD.385)
New London, CT 06320
(888) 225-5540

(HOD.385)
"S1-303006, RM-7945,PM-3386 P1-202648"

Ryan Melville
[REDACTED]
Woodstock, CT 06281

10/14/2019

Dear Ryan Melville,

Account Number: [REDACTED]

On behalf of DDL Energy, I would like to personally thank you for the opportunity to serve as your energy provider this past year.

As of 10/31/2019, your current pricing agreement will expire and it will be time to consider your options for the next 12 months. There are 2 price plans to choose from, though if we don't hear from you, your account will automatically default to the Variable Price Plan and you will remain on automatic delivery.

- Variable Price Plan - With this plan our prevailing retail price fluctuates as the cost of oil changes. A pricing agreement is not required for this plan.
- Cap Price Plan - This plan offers you a "cap", or maximum price per gallon on what your fuel will cost. If the price on the day your delivery exceeds your cap price, you won't have to pay more than the cap price. If the price on the day of your delivery is lower than your cap price, you will be able to take advantage of the lower price. A pricing agreement that defines your price is required for this plan, because we secure your gallons upfront for the year ahead.

Furthermore, please consider the benefits of our Preferred Payment Plan, which breaks out the cost of your heating oil monthly. This budget plan, which it is often referred to as, could also include the cost of your annual service agreement.

Lastly, we also have automatic payment options, as well as the ability to pay online.

Please don't hesitate to call our Customer Care Department and speak to any of our Representatives should you have any questions. If you have already been in touch with us regarding this matter, please disregard this notice.

As always, we thank you for your business.

Warmly,

Rick Johnson

General Manager