BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Energy 95 LLC for Certification as a Competitive Retail Natural Gas Supplier	Case No. 12-1023-GA-CRS

ENERGY 95, LLC D/B/A QUAKE ENERGY, LLC'S
AMENDMENT TO 2016 RENEWAL CERTIFICATION APPLICATION
FOR COMPETITIVE RETAIL NATURAL GAS SUPPLIERS

Energy 95, LLC d/b/a Quake Energy LLC ("Quake"), by and through the undersigned counsel, respectfully requests that the Public Utilities Commission of Ohio (the "Commission") amend Quake's answer to Question No. B-5 on its March 17, 2016 Renewal Application for Certification as a Competitive Natural Gas Supplier (the "2016 Renewal Application"). In support of this amendment, Quake states as follows:

1. On March 19, 2012, Quake filed a Certification Application for Competitive Retail Natural Gas Suppliers, thus opening this matter. The Commission granted Certificate No. 12-247G(1) to Quake on April 18, 2012, effective through April 19, 2014.

2. On January 23, 2014, an individual named Richard R. Guiley ("Plaintiff Guiley") initiated a civil action against Quake in the Canton Municipal Court, Small Claims Division located in Canton, Ohio. *See Guiley v. Energy 95, LLC d/b/a Quake Energy, LLC*, Canton Mun. Court, Small Claims Div., Case No. 2014CVI00425 (the "Guiley Litigation"). The Guiley Litigation alleged violations of the Telephone Consumer Protection Act, 47 C.F.R. § 64,1200(5)(2)(1) and 16 C.F.R. § 310.4, and the Ohio Consumer Sales Practice Act, R.C. §§ 1345.01, *et seq.*

3. Quake did not defend or otherwise appear in the Guiley Litigation. On February 27, 2014, Plaintiff Guiley obtained a default judgment against Quake in the Guiley Litigation for the sum of $3,000.00 plus 3.00% interests and costs (the "2014 Judgment").

4. On February 20, 2014, Quake filed a Renewal Certification Application. The Commission granted Renewal Certificate No. 12-247G(2) to Quake on March 26, 2014, effective through April 20, 2016.

5. In March 2014, Quake became aware of the 2014 Judgment and paid it in full rather than contest it. Plaintiff Guiley filed a Satisfaction of Judgment in the Guiley Litigation on April 4, 2014, and the case was closed.

6. On March 17, 2016, Quake filed its 2016 Renewal Application with the Commission. The Commission granted Renewal Certificate No. 12-247G(3) to Quake on April 21, 2016, effective through April 20, 2018.

7. Question B-5 on the 2016 Renewal Application asked Quake to disclose whether it had been "held liable for fraud or any violation of any consumer protection or antitrust laws since the applicant last filed for certification." Quake answered "No." (*See* 2016 Renewal Application, p. 5, at § B-5, attached as **Exhibit 1**.)

8. Quake inadvertently answered "No" to Question No. B-5 on the 2016 Renewal Application when it should have answered "Yes" because the 2014 Judgment was for violations of the Telephone Consumer Protection Act and the Ohio Consumer Sales Practice Act.

9. As required by Question B-5 on the 2016 Renewal Application, an explanation of the violations and all relevant documents from the Guiley Litigation are attached as **Exhibit 2**.[1]

[1] Consistent with Question B-5 on the 2016 Renewal Application, Exhibit 2 is entitled "Exhibit B-5 'Disclosure of Consumer Protection Violations.'" In addition to the amendment requested herein, Quake requests that the Commission attach this Exhibit B-5 "Disclosure of Consumer Protection Violations" to its 2016 Renewal Application.

10. Quake's error in answering "No" to Question No. B-5 on its 2016 Renewal Application instead of "Yes" was accidental and not a deliberate attempt to mislead the Commission. Quake prepared and is filing this Amendment as soon as it became aware of the accidental error.

11. On March 12, 2018, Quake filed another Renewal Application. The Commission granted Renewal Certification No. 12-247G(4) to Quake, effective through April 20, 2020. Quake's certification to provide retail natural gas marketer and brokerage services, as well as aggregation, is therefore current.

12. In light of the foregoing, Quake respectfully requests that the Commission:

a. amend its Answer to Question No. B-5 from "No" to "Yes"; and

b. attach Exhibit B-5: "Disclosure of Consumer Protection Violations" to Quake's Renewal Certification Application for Competitive Retail Natural Gas Suppliers that was filed in this matter on March 17, 2016.

Respectfully submitted,

/s/ David M. Krueger

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EXHIBIT 1

status or ability to provide the services for which it is seeking renewed certification since applicant last filed for certification.

B-5 **Exhibit B-5 "Disclosure of Consumer Protection Violations,"** disclose whether the applicant, affiliate, predecessor of the applicant, or any principal officer of the applicant has been convicted or held liable for fraud or for violation of any consumer protection or antitrust laws since applicant last filed for certification.

☑ No ☐ Yes

If Yes, provide a separate attachment labeled as Exhibit B-5 "Disclosure of Consumer Protection Violations," detailing such violation(s) and providing all relevant documents.

B-6 **Exhibit B-6 "Disclosure of Certification Denial, Curtailment, Suspension, or Revocation,"** disclose whether the applicant or a predecessor of the applicant has had any certification, license, or application to provide retail natural gas or retail/wholesale electric service denied, curtailed, suspended, or revoked, or whether the applicant or predecessor has been terminated from any of Ohio's Natural Gas Choice programs, or been in default for failure to deliver natural gas since applicant last filed for certification.

☑ No ☐ Yes

If Yes, provide a separate attachment, labeled as Exhibit B-6 "Disclosure of Certification Denial, Curtailment, Suspension, or Revocation," detailing such action(s) and providing all relevant documents.

SECTION C - APPLICANT FINANCIAL CAPABILITY AND EXPERIENCE

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED

C-1 **Exhibit C-1 "Annual Reports,"** provide the two most recent Annual Reports to Shareholders. If applicant does not have annual reports, the applicant should provide similar information, labeled as Exhibit C-1, or indicate that Exhibit C-1 is not applicable and why.

C-2 **Exhibit C-2 "SEC Filings,"** provide the most recent 10-K/8-K Filings with the SEC. If applicant does not have such filings, it may submit those of its parent company. If the applicant does not have such filings, then the applicant may indicate in Exhibit C-2 whether the applicant is not required to file with the SEC and why.

C-3 **Exhibit C-3 "Financial Statements,"** provide copies of the applicant's two most recent years of audited financial statements (balance sheet, income statement, and cash flow statement). If audited financial statements are not available, provide officer-certified financial statements. If the applicant has not been in business long enough to satisfy this requirement, it shall file audited or officer-certified financial statements covering the life of the business.

C-4 **Exhibit C-4 "Financial Arrangements,"** provide copies of the applicant's current financial arrangements to conduct competitive retail natural gas service (CRNGS) as a business activity (e.g., guarantees, bank commitments, contractual arrangements, credit agreements, etc.)

C-5 **Exhibit C-5 "Forecasted Financial Statements,"** provide two years of forecasted financial statements (balance sheet, income statement, and cash flow statement) for the applicant's CRNGS operation, along with a list of assumptions, and the name, address, email address, and telephone number of the preparer.

EXHIBIT 2

EXHIBIT B-5: DISCLOSURE OF CONSUMER PROTECTION VIOLATIONS

On March 17, 2016, Energy 95, LLC d/b/a Quake Energy, LLC ("Quake") filed a Certification Application for Competitive Retail Natural Gas Suppliers (the "2016 Renewal Application) in *The Matter of the Application of Energy 95, LLC for Certification as a Competitive Retail Natural Gas Supplier*, Public Utilities Commission of Ohio Case No. 12-1023-GA-CRS.

As required by Question No. B-5 on the 2016 Renewal Application, Quake states the following:

1. On January 23, 2014, an individual named Richard R. Guiley ("Plaintiff Guiley") initiated a civil action against Quake in the Canton Municipal Court, Small Claims Division, located in Canton, Ohio. *See Guiley v. Energy 95, LLC d/b/a Quake Energy, LLC*, Canton Municipal Court, Small Claims Division, Case No. 2014CVI00425 (the "Guiley Litigation"). An image of the Guiley Litigation docket is attached as **Exhibit B-5(a)**.

2. Plaintiff Guiley alleged in his Complaint that Quake completed two unsolicited and pre-recorded telephone calls from fake caller-ID numbers to Plaintiff Guiley for the purposes of advertising Quake's services. (*See* Guiley Litigation Complaint, ¶¶ 5–9, attached as **Exhibit B-5(b)**.) Plaintiff Guiley further alleged that these telephone calls were violations of the Telephone Consumer Protection Act, 47 C.F.R. § 64,1200(5)(2)(1) and 16 C.F.R. § 310.4, and the Ohio Consumer Sales Practice Act, R.C. §§ 1345.01, *et seq.* (*See id.* at pp. 3–5.) Plaintiff Guiley requested damages in the amount of $3,000 for the alleged violations, as well as court costs, attorney fees, and interest at 3.00% per annum on the judgment. (*Id.* at p. 5.)

3. A hearing was scheduled in the Guiley Litigation for February 27, 2014. (*See* Notice of Hearing, attached as **Exhibit B-5(c)**.) Quake did not defend or otherwise appear in the Guiley Litigation because Quake was not aware of the Guiley Litigation or the hearing.

4. On February 27, 2014, Magistrate Judge Jeremy J. Foltz issued a report recommending that the Court enter a default judgment against Quake in the Guiley Litigation for the sum of $3,000, plus 3.00% interests and costs, and also accrued interest of $0.00. (*See* Report and Recommendation of Mag. J. Foltz dated February 27, 2014, attached as **Exhibit B-5(e)**.)

5. Judge John A. Poulos approved Magistrate Foltz's recommendation on March 14, 2014. (*See* Report of Judge J. Poulos dated March 14, 2014, attached as **Exhibit B-5(f)**.) Also on March 14, 2014, the clerk sent Magistrate Foltz's report to Plaintiff Guiley and Quake via ordinary mail. (*See* Notices of Mailing to Plaintiff Guiley and Quake dated March 14, 2014, attached as **Exhibit B-5(g)** and **(h)**, respectively.)

6. Quake became aware of the default judgment in the Guiley Litigation when it received the clerk's mailing enclosing Magistrate Foltz's report. Thereafter, Quake decided to pay the default judgment in full rather than contest it. Quake paid $3,060 in total to Plaintiff Guiley. Plaintiff Guiley filed a Satisfaction of Judgment on April 4, 2014, thereby closing the Guiley Litigation. (*See* Satisfaction of Judgment, attached as **Exhibit B-5(i)**.)

7. Consistent with Question No. B-5 on Quake's 2016 Renewal Application, Quake has included the following relevant documents in this Exhibit B-5:

a. Docket Image of all proceedings in the Guiley Litigation (Ex. B-5(a));

b. Complaint of Plaintiff Guiley against Quake (Ex. B-5(b));

c. Notice of February 27, 2014 Hearing (Ex. B-5(c));

d. Summons of Service (Ex. B-5(d));

e. Report and Recommendation of Magistrate Judge Jeremy J. Foltz for Default Judgment in favor of Plaintiff Guiley against Defendant Quake (Ex. B-5(e));

f. Judgment Entry of Judge John A. Poulos Approving Magistrate's Report and Recommendation (Ex. B-5(f));

g. Notice of Mailing of Report of Magistrate to Plaintiff Guiley (Ex. B-5(g));

h. Notice of Mailing of Report of Magistrate to Defendant Quake (Ex. B-5(h)); and

i. Satisfaction of Judgment (Ex. B-5(i)).

Case Information

GUILEY, RICHARD R VS ENERGY 95 LLC

Canton Municipal Court

2014CVI00425

Case Type

Small Claims

Filed On

Jan 23, 2014

Case Status

Closed on April 4th 2014.

Next Action

None

Financials

Costs	Payments	Balance
$67.00	$67.00	

Parties

Type	Name / Address	Attorney
DEFENDANT	ENERGY 95 LLC 1300 E 9TH CLEVELAND OH 44114	
PLAINTIFF	GUILEY, RICHARD R 415 S CHAPEL LOUISVILLE OH 44641	RICHARD GUILEY

Docket

▲Date	Docket Entry
Jan 23, 2014	COMPLAINT FILED FOR $3,000.00
Jan 23, 2014	HEARING SCHEDULED 02-27-2014 @9:30 AM
Jan 24, 2014	SMALL CLAIMS SENT CERTIFIED MAIL FOR ENERGY 95 LLC / DBA QUAKER ENERGY LLC ON 01/24/14 C/O NATIONAL REGISTERED AGENTS INC 1300 E 9TH ST CLEVELAND OH 44114. ARTICLE NUMBER: 3659
Feb 3, 2014	SUCCESSFUL SERVICE FOR ENERGY 95 LLC ON 01-29-2014 SIGNED BY JAMES WRIGHT. ARTICLE NUMBER: 3659

Ex. B-5(a)

▲Date	Docket Entry
Feb 27, 2014	REPORT OF MAGISTRATE ENTRY FILED. RECOMMENDATION FOR PLAINTIFF AGAINST DEFENDANT ENERGY 95 LLC IN SUM OF $3,000.00 PLUS 3.00% INTEREST AND COSTS AND ALSO ACCRUED INTEREST OF $0.00 EFFECTIVE FEBRUARY 27, 2014. JEREMY J. FOLTZ
Mar 14, 2014	JUDGMENT ENTRY: MAGISTRATES RECOMMENDATION APPROVED BY JUDGE JOHN A. POULOS ON 03-14-2014
Mar 14, 2014	REPORT OF MAGISTRATE SENT ORDINARY MAIL TO RICHARD R GUILEY @ 4670 DOUGLAS CIR NW PO BOX 35697 CANTON OH 44735
Mar 14, 2014	REPORT OF MAGISTRATE SENT ORDINARY MAIL TO ENERGY 95 LLC / DBA QUAKER ENERGY LLC @ C/O NATIONAL REGISTERED AGENTS INC 1300 E 9TH ST CLEVELAND OH 44114
Apr 4, 2014	SATISFACTION OF JUDGMENT FILED BY RICHARD R GUILEY FOR GUILEY, RICHARD R CASE CLOSED

IN THE CANTON MUNICIPAL COURT

SMALL CLAIMS DIVISION

CANTON, OHIO

Richard R. Guiley	:	CASE NO:
415 South Chapel Street	:	JUDGE:
Louisville, Ohio 44641	:	COMPLAINT - VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT OF 1991 and OHIO CONSUMER SALES PRACTICE ACT
Plaintiff,	:	
Energy 95 LLC d/b/a Quake Energy LLC	:	
c/o Agent for Service	:	
National Registered Agents, Inc.	:	
1300 East Ninth Street	:	
Cleveland, Ohio 44114	:	
Defendant.	:	

2014CV00425 CF

Phil Giavasis
Canton Municipal Court
Civil Division
2014 Jan 23 PM 12:25

Now comes the Plaintiff, Richard R. Guiley, and states, as and for his cause of action, the following:

1. Plaintiff is an individual that resides at 415 South Chapel Street, Louisville, Ohio which is located in Stark County, Ohio.

2. Plaintiff has a telephone (landline) at his residence.

3. Defendant Energy 95 LLC, d/b/a Quake Energy LLC, hereinafter "Quake Energy", is a business that, inter alia, solicits customers/clients via telephone solicitations as defined in The Telephone Consumer Protection Act of 1991 Title 47, Chapter 5, Subchapter II - Common Carriers, Section 227.

Ex. B-5(b)

4. In the alternative, Quake Energy retains - or is retained by - other businesses to solicit customers/clients via the telephone as defined in The Telephone Consumer Protection Act of 1991 Title 47, Chapter 5, Subchapter II - Common Carriers, Section 227.

5. On or about January 21, 2014 at 5:27 PM PM, Plaintiff received an "unsolicited advertisement" from, or on behalf of, Quake Energy, at his residence as defined in The Telephone Consumer Protection Act of 1991 Title 47, Chapter 5, Subchapter II - Common Carriers, Section 227. Said unsolicited advertisement was a "telephone solicitation" as defined in The Telephone Consumer Protection Act of 1991 Title 47, Chapter 5, Subchapter II - Common Carriers, Section 227 and/or 47 CFR 64.1200. Said solicitation was to change natural gas providers. See attached Exhibit "A", a printout of Plaintiff's caller ID. Caller ID showed "Ohio Call 1 216 523-4457".

6. The above-described telephone solicitation used a pre-recorded message to solicit Plaintiff. Plaintiff states he does not have an existing business relationship with Quake Energy and Plaintiff has not given written permission to Quake Energy to solicit their residential telephone with a pre-recorded message.

7. During the above-described pre-recorded telephone call, Plaintiff was asked to "press 1" if he wanted additional information concerning transferring carriers or purchasing natural gas less expensively – which Plaintiff followed through with in order to learn who was calling. There was no button to press to be removed from the calling list.

8. The caller ID being used and showing up on those called is a fake number. Any attempt to call 1 216 523 4457 results in the telephone company stating this number is disconnected or no longer in service.

9. Then on January 22, 2014, at 10:15 AM, Plaintiff received a second call from the same telephone number using the same caller ID display. See attached Exhibit "A".

COUNT I

10. Plaintiff realleges and incorporates paragraphs 1 through 9 as if fully rewritten herein.

11. Quake Energy has committed a violation of The Telephone Consumer Protection Act et seq., and as amended by making a pre-recorded telephone call to Plaintiffs residence entitling Plaintiff to statutory damages of $500.00. See The Telephone Consumer Protection Act of 1991 Title 47, Chapter 5, Subchapter II - Common Carriers, Section 227 and/or 47 CFR Section 64.1200 (5)(2)(1).

12. The actions of Quake Energy were willful and/or knowing as defined in Charvat v. Ryan, 116 Ohio St.3d 394, 2007-Ohio-6833, attached hereto as Exhibit "B", entitling Plaintiff to treble damages of $1,500.00.

COUNT II

13. Plaintiff realleges and incorporates paragraphs 1 through 12 as if fully rewritten herein.

14. Quake Energy has committed a second violation of The Telephone Consumer Protection Act et seq., and as amended by calling back a second time using a pre-recorded message. See 47 CFR 64.1200.

15. This second violation – part of a both telephone calls - was willful and knowing entitling Plaintiff to statutory damages of $1,500.00.

COUNT III

16. Plaintiff realleges and incorporates paragraphs 1 through 15 as if fully rewritten herein.

17. Quake Energy has committed a third violation of the Telephone Consumer Protection Act et seq., by using a fake caller id number. See 16 CFR § 310.4.

18. This third violation – part of a both telephone calls - was willful and knowing entitling Plaintiff to statutory damages of $1,500.00.

COUNT IV

19. Plaintiff realleges and incorporates paragraphs 1 through 18 as if fully rewritten herein.

20. Quake Energy has committed a fourth violation of the Telephone Consumer Protection Act et seq., by using a pre-recorded telephone message to solicit business without offering the consumer the ability to opt out. See 16 CFR § 310.4.

21. This fourth violation – part of a both telephone calls - was willful and knowing entitling Plaintiff to statutory damages of $1,500.00.

COUNT V

22. Plaintiff realleges and incorporates paragraphs 1 through 21 as if fully rewritten herein.

23. Defendants have violated the Ohio Consumer Sales Practice Act by violating the federal Telephone Consumer Protection Act.

24. In addition, Defendants have failed to register as a telephone solicitor in the State of Ohio and have violated the Ohio Consumer Sales Practice Act. See list of licensed telemarketers attached as Exhibit "C".

25. The Defendants actions and/or omissions are an unfair, deceptive and/or unconscionable act or practice.

26. Plaintiff has suffered damages, including but not limited to the statutory damages set forth in ORC 1345 and is entitled to $200.00 for each of the violations.

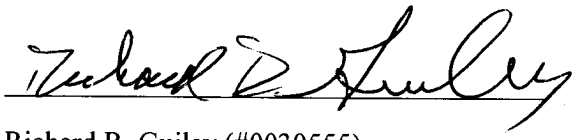
WHEREFORE, Plaintiff requests that this Court award Plaintiff the sum of Fifteen Hundred Dollars ($1,500.00) for each violation of The Telephone Consumer Protection Act of 1991 Title 47, Chapter 5, Subchapter II - Common Carriers, Section 227, against Energy 95 LLC d/b/a Quake Energy LLC. Additionally, Plaintiff requests damages of Two Hundred Dollars ($200.00) against Energy 95 LLC d/b/a Quake Energy LLC, as and for violation of the Ohio Consumer Sales Practice Act. Plaintiff is requesting the total cumulative damages to amount to the sum of $3,000.00. Further, Plaintiff requests that this Court order Energy 95 LLC d/b/a Quake Energy LLC to cease and desist from any further telephone calls to Plaintiff at his residence. Further, Plaintiff requests that this Court award Plaintiff his court costs, the costs of litigation and for any and all other relief, including equitable relief, that this Court deems necessary and appropriate, including interest at 3 % per annum on the judgment. Further, Plaintiff requests attorney fees should Plaintiff retain the services of independent counsel.

Richard R. Guiley (#0030555)
Plaintiff and Attorney
4670 Douglas Cir NW
P.O. Box 35697
Canton, Ohio 44735
(330) 244-4200
(330) 244-4204 fax
rick@guileylaw.net

REQUEST FOR SERVICE

TO THE CLERK:

Please serve the defendant by certified mail, return receipt requested, addressee only at the address listed in the caption.



Richard R. Guiley (#0030555)

CALLER ID LIST

Exhibit "A"

Jan. 22 2014 06:54PM

YOUR LOGO : GUILE HOME
YOUR FAX NO. : 3308756945

NO.	NAME	TELEPHONE NUMBER	TIME OF CALL	ANSWER	STATUS
01	OUT OF AREA	0000	Jan. 22 1:21PM		!
02	OHIO CALL	1-216-523-4457	Jan. 22 10:15AM		!
03	OUT OF AREA		Jan. 22 8:43AM		!
04	OHIO CALL	1-216-523-4457	Jan. 21 5:27PM		
05	NWPTRICHEY FL	1-727-232-0543	Jan. 21 12:49PM		
06	OUT OF AREA		Jan. 21 11:10AM		
07	BREAST CANCERFA	1-216-278-0034	Jan. 20 8:25PM		
08	OUT OF AREA	1-000-000-0000	Jan. 20 3:28PM		
09	PRIVATE CALLER		Jan. 20 2:24PM		
10	OUT OF AREA	000000	Jan. 20 12:03PM		
11	TOLL FREE CALLE	1-877-773-9491	Jan. 19 2:29PM		
12	OUT OF AREA		Jan. 18 10:27AM		
13	OUT OF AREA	0000	Jan. 17 12:19PM		
14	DEBT FREE SRVC	1-518-650-1474	Jan. 17 11:43AM		
15	OUT OF AREA		Jan. 16 3:13PM		
16	NOT IN USE	1-612-808-8162	Jan. 16 2:47PM		
17	WIRELESS CALLER	1-301-514-5504	Jan. 16 10:28AM		
18	OUT OF AREA	1-111-111-1111	Jan. 15 8:30PM		
19	VIRGINIA CALL	1-703-829-0487	Jan. 15 6:52PM		
20	MEDICALPLAN	1-360-934-4958	Jan. 14 8:31PM		
21	DEBT FREE SRVC	1-518-650-1474	Jan. 14 11:43AM		
22	WIRELESS CALLER	1-330-704-5920	Jan. 13 6:05PM		
23	LRC	1-314-627-2865	Jan. 13 2:43PM		
24	LOCKBOURNE OH	1-614-654-4058	Jan. 13 1:58PM		
25	OHIO-CALLER	1-614-494-5126	Jan. 13 11:53AM		
26	OHIO CALL	1-419-520-7311	Jan. 10 9:50AM		
27	CALIFORNIA CALL	1-530-619-3038	Jan. 10 8:54AM		
28	OHIO CALL	1-330-474-6196	Jan. 09 6:16PM		
29	LOCKBOURNE OH	1-614-654-4058	Jan. 09 3:32PM		
30	FTLAUDERDL FL	1-954-734-7293	Jan. 09 2:59PM		

! : YOU HAVE NOT CONFIRMED THE CALLER'S INFORMATION YET.
* : YOU CALLED BACK.
(SPACE): YOU CONFIRMED BY USING '+' OR '-' RECEIVING FAX AND RECEIVING VOICE.

TO TURN OFF THE AUTO-CALLER LIST, PRESS 'Menu' #26.
THEN SELECT OFF BY USING '+' OR '-'.

For support, visit www.panasonic.com/help (enter model KX-FL421).

Exhibit "B"

[Cite as *Charvat v. Ryan*, 116 Ohio St.3d 394, 2007-Ohio-6833.]

CHARVAT, APPELLANT, *v.* RYAN ET AL., APPELLEES.

[Cite as *Charvat v. Ryan*, 116 Ohio St.3d 394, 2007-Ohio-6833.]

To establish a knowing violation of the Telephone Consumer Protection Act, Section 227, Title 47, U.S.Code, for an award of treble damages, a plaintiff must prove only that the defendant knew that it acted or failed to act in a manner that violated the statute, not that the defendant knew that the conduct constituted a violation of law — To establish a willful violation of Section 227, Title 47, U.S.Code, for an award of treble damages, a plaintiff must prove that the defendant consciously and deliberately committed or omitted an act that violated the statute, irrespective of any intent to violate the law — To establish a knowing violation R.C. 1345.09, for an award of attorney's fees, a plaintiff need prove only that the defendant acted in a manner that violated the Consumer Sales Practices Act and need not prove that the defendant knew that the conduct violated the law.

(Nos. 2006-1647 and 2006-1855 – Submitted September 11, 2007 – Decided December 27, 2007.)

APPEAL from and CERTIFIED by the Court of Appeals for Franklin County, No. 05AP-1331, 168 Ohio App.3d 78, 2006-Ohio-3705.

SYLLABUS OF THE COURT

1. To establish a *knowing* violation of the Telephone Consumer Protection Act, Section 227, Title 47, U.S.Code, for an award of treble damages, a plaintiff must prove only that the defendant knew that it acted or failed to act in a manner that violated the statute, not that the defendant knew that the conduct itself constituted a violation of law.

2. To establish a willful violation of the Telephone Consumer Protection Act, Section 227, Title 47, U.S.Code, for an award of treble damages, a plaintiff must prove that the defendant consciously and deliberately committed or omitted an act that violated the statute, irrespective of any intent to violate the law.
3. To establish a knowing violation of R.C. 1345.09, for an award of attorney's fees, a plaintiff need prove only that the defendant acted in a manner that violated the Ohio Consumer Sales Practices Act, R.C. Chapter 1345, and need not prove that the defendant knew that the conduct violated the law. (*Einhorn v. Ford Motor Company* (1990), 48 Ohio St.3d 27, 548 N.E.2d 933, followed.)

LANZINGER, J.

{¶ 1} This case concerns unwanted telephone solicitation through use of automated equipment, which now makes a caller subject to liability under federal and state statutes. The issue before us is whether the terms "knowingly" and "willfully" as used in the Telephone Consumer Protection Act of 1991 ("TCPA"), Section 227, Title 47, U.S.Code, and the term "knowingly" in the Consumer Sales Practices Act ("CSPA"), R.C. Chapter 1345, require that a defendant merely act in a manner that violates the acts or whether the defendant must also know that the conduct violates the laws. We hold that a defendant need know only that it acted or failed to act in a certain manner—i.e., the facts underlying the offense, not that it knew that the conduct itself violated a law.

I. Case Background

{¶ 2} On December 9, 2003, appellant Phillip Charvat received a prerecorded message on his home telephone number from appellees, Thomas N. Ryan, D.D.S., and Thomas N. Ryan, D.D.S., Inc. (collectively, "Ryan") advertising various dental services. Ryan's call was made using automated

dialing equipment. After listening to the message, Charvat sent a letter to Ryan, demanding a copy of the office's "do not call" policy. Ryan never sent a copy of the policy to Charvat.

{¶ 3} On January 20, 2004, Charvat filed a complaint in the Franklin County Common Pleas Court, setting forth claims for multiple violations of the TCPA and the CSPA. Charvat asked for the statutory damages allowed by the federal and state laws, the treble damages allowed by the TCPA, the attorney fees allowed by the CSPA, and a permanent injunction. The facts are undisputed: Ryan admits a single violation of the TCPA but also emphasizes that he acted in good faith in attempting to comply with the law.[1]

{¶ 4} Ryan filed a motion for summary judgment on the ground that Charvat's damages were limited to a single TCPA violation, and Charvat responded that the unauthorized call constituted four violations, since it violated four TCPA provisions. The trial court rejected Charvat's argument and found Ryan liable for two violations of the TCPA: one for leaving the message and a second for failing to send Charvat a "do not call" policy. Charvat was awarded damages for a single violation of the CSPA.

{¶ 5} The trial court granted summary judgment for Ryan on the remaining TCPA and CSPA claims. Specifically, the court declined to award treble damages under the TCPA, finding that Ryan did not act with the required culpable mental state. Quoting *Charvat v. Colorado Prime, Inc.* (Sept. 17, 1998), 10th Dist. No. 97APG09-1277, 1998 WL 634922, the court held that " '[a] defendant must affirmatively know it is violating a *regulation* when making the telephone call for purposes of the treble damages provision.' " The court also

1. The record shows that Ryan's office contacted the Ohio Attorney General's office prior to embarking on his telemarketing campaign and was told that all he had to do was download and honor the federal do-not-call list. Although Charvat has not chosen to place his name on the list, registration is not a prerequisite for a consumer to maintain an action for violations of the TCPA. *State ex rel. Charvat v. Frye,* 114 Ohio St.3d 76, 2007-Ohio-2882, 868 N.E.2d 270, ¶ 22.

determined that attorney fees were not appropriate under the CSPA because " 'knowledge' means actual awareness that an act was a violation of the CSPA."

{¶ 6} On appeal, Charvat challenged the trial court's refusal to award treble damages or attorney fees. Regarding the federal law, the Tenth District Court of Appeals held that Charvat was entitled to statutory damages for the delivery of the message, in violation of Section 227(b)(1)(B), Title 47, U.S.Code, and for the failure to send the "do not call" policy, in violation of Section 64.1200(d)(1), Title 47, C.F.R.

{¶ 7} The court of appeals held, however, that the trial court did not abuse its discretion in finding that the violation that resulted from the call was not willful. The court held that Ryan did commit two separate violations in a single call by failing to identify his business and his telephone number. The court of appeals remanded the case to the trial court to weigh the "knowing" and "willful" status for the violations as well as for the failure to send the "do not call" policy to Charvat. The court also affirmed the denial of attorney fees under the CSPA.

{¶ 8} Charvat applied for reconsideration and then filed a motion for certification that a conflict existed over the interpretation of "knowingly" under the TCPA. The Tenth District determined that its decision conflicted with the Sixth District's decision in *Reichenbach v. Financial Freedom Ctrs., Inc.,* 6th Dist. No. L-03-1357, 2004-Ohio-6164. Accordingly, the court of appeals certified the following issue: "Whether a defendant 'knowingly' violates Section 227(b), Title 47, U.S.Code, or the regulations promulgated thereunder, for purposes of awarding treble damages under Section 227(b)(3), where the plaintiff demonstrates that the defendant had knowledge of the facts constituting the offense; or whether the plaintiff must prove that the defendant knew when it placed the offending call that the call constituted a violation of the TCPA or any regulations promulgated thereunder."

{¶ 9} We determined that a conflict exists and also accepted two propositions of law from Charvat's discretionary appeal. The first proposition deals with the meaning of the terms "knowingly" and "willfully" in the TCPA for the purpose of awarding treble damages, and the second concerns the meaning of the term "knowingly" for the purpose of awarding attorney fees under the CSPA. We will discuss the federal and then the state statutes.

II. Law and Analysis

A. Telephone Consumer Protection Act, Section 227, Title 47, U.S. Code

{¶ 10} The TCPA restricts the use of automated telephone equipment. See Section 227(b), Title 47, U.S.Code. Enacted in 1991 in response to "the burgeoning use of telephone solicitations to market goods and services in the United States, and the concomitant frustration of the American public," *Charvat v. Dispatch Consumer Servs., Inc.*, 95 Ohio St.3d 505, 2002-Ohio-2838, 769 N.E.2d 829, ¶ 18, the TCPA was intended to stop prerecorded voice messages from being sent to private residential telephones. Section 2, Pub. L.No. 102-243, 105 Stat. 2394, 2394-2395. Section 227(b)(1)(B), Title 47, U.S.Code, states that it is unlawful for any person to "initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party." The TCPA also provides in Section 227(b)(3)(B) for a private right of action "to recover for actual monetary loss from such a violation, or to receive $500 in damages for each such violation, whichever is greater."

{¶ 11} Anyone who receives a prerecorded telemarketing call at home, without first consenting to the call, may sue and recover damages. A residential customer may also sue for treble damages under Section 227(b)(3)(C), which provides for a private right of action: "If the court finds that the defendant *willfully or knowingly* violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award

to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph." (Emphasis added.)

{¶ 12} The question for us is what mental state is required for an award of treble damages under this subsection of the TCPA.

1. Definition of "Knowingly"

{¶ 13} Charvat urges us to interpret the term "knowingly" to mean that the appellees knew that they initiated a telemarketing call using a prerecorded message system, not that they knew they were violating the TCPA. In support of his argument, he relies on the case cited in the certification order, *Reichenbach v. Financial Freedom Ctrs., Inc*, 2004-Ohio-6164, in which the Sixth District Court of Appeals held that " 'the term "knowingly" merely requires proof of knowledge of the facts that constitute the offense.' " Id. at ¶ 37, quoting *Bryan v. United States* (1998), 524 U.S. 184, 193, 118 S.Ct. 1939, 141 L.Ed.2d 197.

{¶ 14} On the other hand, Ryan contends that use of the words "willfully" or "knowingly" in Section 227(b)(3) requires that the defendant have a culpable mental state. His position follows the Tenth District's, which held that for a violation to be "knowing," the caller "must affirmatively know it is violating a *regulation* when making the telephone call." *Charvat v. Colorado Prime, Inc.*, (Sept. 17, 1998), 10th Dist. No. 97APG09-1277, 1998 WL 634922, at *4.

{¶ 15} "Knowingly" is undefined in the TCPA, but courts have often defined the term in criminal cases. In *Bryan v. United States* (1998), 524 U.S. 184, 118 S.Ct. 1939, 141 L.Ed.2d 197, the United States Supreme Court explained that " 'knowingly' does not necessarily have any reference to a culpable state of mind or to knowledge of the law. As Justice Jackson correctly observed, 'the knowledge requisite to knowing violation of a statute is factual knowledge as distinguished from knowledge of the law.' [*Boyce Motor Lines, Inc. v. United States* (1952), 342 U.S. 337, 345, 72 S.Ct. 329, 96 L.Ed. 367.] * * * Thus, unless the text of the statute dictates a different result, the term 'knowingly' merely

requires proof of knowledge of the facts that constitute the offense." (Footnote omitted.) Id. at 193, 118 S.Ct. 1939, 141 L.Ed.2d 197. See also *United States v. Meade* (C.A.1, 1999), 175 F.3d 215, 226, fn. 5 ("knowing," as used in a criminal statute, "normally signifies that the government needs to prove only that the defendant knew of the facts comprising the offense, and nothing more"); *United States v. Cohen* (C.A.2, 2001), 260 F.3d 68, 76 (it matters only that defendant knowingly committed the deeds forbidden by statute, not that he intended to violate the statute); and *United States v. Barbosa* (C.A.3, 2001), 271 F.3d 438, 458 (interpretation of "knowingly" other than as with knowledge of the facts that constitute the offense would be tantamount to compelling the government to disprove a defense of ignorance of the law).

{¶ 16} It is true that in *Lambert v. California* (1957), 355 U.S. 225, 78 S.Ct. 240, 2 L.Ed.2d 228, which addressed a registration ordinance for felons that carried criminal penalties, the United States Supreme Court carved out an exception to the "ignorance of the law is no excuse" maxim, stating that "[n]otice is required in a myriad of situations where a penalty * * * might be suffered for a mere failure to act." Id. at 228, 78 S.Ct. 240, 2 L.Ed.2d 228. But that exception addressed a situation in which a person failed to take action and not one in which a person did take action. Also, in certain cases involving violations of tax laws, courts have concluded that the jury must find that the defendant was aware of the specific provision of the tax code the defendant was charged with violating where "highly technical statutes presented the danger of ensnaring individuals engaged in apparently innocent conduct." *Bryan v. United States* (1998), 524 U.S. 184, 194, 118 S.Ct. 1939, 1947, 141 L.Ed.2d 197.

{¶ 17} The TCPA is neither a criminal nor a highly technical statute and thus ignorance of the law is no defense. Although the evidence established that Ryan did not intend to violate any law, proof of such intent is not necessary.

{¶ 18} For an award of treble damages under the TCPA, the term "knowingly" requires that liability be imposed even without appellees' knowledge that the conduct violated the statute. To establish a "knowing" violation of the TCPA for an award of treble damages, a plaintiff must prove only that the defendant knew of the facts that constituted the offense. Such knowledge of the "facts that constitute the offense" does not mean that the individual must know that certain conduct actually violates a law because it "constitutes" an offense. We hold that to establish a *knowing* violation of the TCPA for an award of treble damages, a plaintiff must prove only that the defendant knew that it acted or failed to act in a manner that violated the statute, not that the defendant knew that the conduct itself constituted a violation of law.

2. Definition of "Willful"

{¶ 19} The federal telephone solicitation statute also does not define the companion term "willfully," in the "willfully or knowingly" standard set forth in Section 227(b)(3)(C). Charvat points out that Section 312, Title 47, U.S.Code, defines "willful." There, "willful" is defined as the "conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this chapter or any rule or regulation of the Commission authorized by this chapter or by a treaty ratified by the United States." Section 312(f)(1), Title 47, U.S.Code.

{¶ 20} Although this definition section is part of the Communications Act of 1934, Section 151 et seq., Title 47, U.S.Code, it is not part of the TCPA.[2] However, in the recent case of *In re Dynasty Mtge., L.L.C.* (2007), 22 F.C.C.R. 9453, the Federal Communications Commission examined the TCPA and determined that a willful violation means that the "violator knew that he was doing the act in question * * * [and that the] violator need not know that his

2. The definition in Section 312(f)(1) is part of the original Communications Act. The TCPA was added to the act later.

action or inaction constitutes a violation; ignorance of the law is not a defense or mitigating circumstance." Id. at 9470, fn. 86.

{¶ 21} In *Charvat v. Dispatch Consumer Servs., Inc.,* 95 Ohio St.3d 505, 2002-Ohio-2838, 769 N.E.2d 829, we commented that the TCPA is the "skeleton of a system designed to rein in the proliferation of telemarketing calls. Much of the detail was left to the FCC." Id. at ¶ 24. Congress delegated the implementation of the TCPA to the FCC. Accordingly, we defer to the FCC's definition of "willful." We hold that to establish a willful violation of the TCPA for an award of treble damages, a plaintiff must prove that the defendant consciously and deliberately committed or omitted an act that violated the statute, irrespective of any intent to violate the law. In principle then, the two standards of "knowingly" and "willfully" within the TCPA do not differ.

{¶ 22} Because Congress chose to employ a low threshold to assess treble damages, by requiring a caller's actions to be "knowing" or "willful," it is important to highlight the language in the second part of the provision for treble damages: "*[T]he court may, in its discretion*, increase the amount of the award to an amount equal to not more than 3 times the amount" of the greater of $500 or the actual money loss. (Emphasis added.)

{¶ 23} Thus, a two-part test is presented for the trial court to employ when ascertaining whether treble damages are appropriate in a particular case. First, the court must decide whether a violation was "knowing" or "willful." Then the court may, but need not, award treble damages.

B. Definition of "Knowingly" in Ohio Consumer Sales Practices Act

{¶ 24} In his claim for a violation of the state statute, Charvat challenges the trial court's denial of attorney fees under the CSPA. Similar to a treble damage award under the TCPA, attorney fees are not mandated under the CSPA. R.C. 1345.09 sets out the remedies available to a consumer for a violation of the CSPA: "The court *may* award to the prevailing party a reasonable attorney's fee

limited to the work reasonably performed, if either of the following apply: (1) The consumer complaining of the act or practice that violated this chapter has brought or maintained an action that is groundless, and the consumer filed or maintained the action in bad faith; (2) The supplier has *knowingly* committed an act or practice that violates this chapter." (Emphasis added.) R.C. 1345.09(F). Charvat asks us, in his discretionary appeal, to define "knowingly" as it is used in R.C. 1345.09.

{¶ 25} We addressed the definition of "knowingly" in *Einhorn v. Ford Motor Co.* (1990), 48 Ohio St.3d 27, 548 N.E.2d 933. There, we stated that a defendant "does not have to know that his conduct violates the law for the court to grant attorney fees" pursuant to R.C. 1345.09(F). Id. at 30, 548 N.E.2d 933. "[A] trial court may award a consumer reasonable attorney fees when the supplier in a consumer transaction intentionally committed an act or practice which is deceptive, unfair or unconscionable." Id. Both Charvat and Ryan agree that this is the proper definition of "knowingly" in the CSPA; neither party is challenging the discretionary authority of a trial court to grant attorney fees.

{¶ 26} Charvat argues that because appellees "knowingly" and "purposely" called appellant with a prerecorded message, the trial court erred in refusing to award appellant attorney fees. Appellees argue that even if they violated the CSPA knowingly, or, in the term employed in *Einhorn*, "intentionally," the matter of attorney fees is still committed to the sound discretion of the trial court, which did not abuse its discretion.

{¶ 27} The court of appeals followed the *Einhorn* analysis in addressing the issue of attorney fees, and we agree. Although both parties acknowledge that under the CSPA a plaintiff need prove only that the defendant intended to commit the act of violation and not that the conduct was intended to violate the act, we reiterate that the "knowing" commission of an act that violates R.C. Chapter 1345 does not mandate imposition of attorney fees. The trial court has the discretion to

determine whether attorney fees are warranted under the facts of each case. Therefore, we reaffirm *Einhorn* and hold that to establish a knowing violation of R.C. 1345.09, for an award of attorney fees, a plaintiff need prove only that the defendant acted in a manner that violated the CSPA and need not prove that the defendant knew that the conduct violated the law. *Einhorn*, 48 Ohio St.3d at 30, 548 N.E.2d 933.

III. Conclusion

{¶ 28} We hold that to establish a knowing or willful violation under the TCPA for the award of treble damages, or under the CSPA for an award of attorney fees, a plaintiff need not prove that the defendant knew that conduct violated the law but only that the defendant knew the underlying facts of the conduct. A trial judge has discretion to determine whether to award treble damages under the TCPA or attorney fees under the CSPA. Therefore, we affirm the judgment of the Franklin County Court of Appeals on the denial of attorney fees under the CSPA. We reverse the judgment of the court of appeals on the award of treble damages under the TCPA and remand this case to the trial court for application of the appropriate standard of law and further proceedings consistent with this opinion.

Judgment affirmed in part
and reversed in part,
and cause remanded.

MOYER, C.J., and PFEIFER, LUNDBERG STRATTON, O'CONNOR, O'DONNELL, and CUPP, JJ., concur.

Ferron & Associates, L.P.A., John W. Ferron, and Lisa A. Wafer, for appellant.

Schottenstein, Zox & Dunn Co., L.P.A., Matthew T. Green, John C. MacDonald, and Stephen J. Smith; and Wagenfeld Levine and Brian M. Zets, for appellees.

Marc Dann, Attorney General, William P. Marshall, Solicitor General, Elise Porter, Stephen P. Carney, Robert J. Krummen, and Christopher R. Geidner, Deputy Solicitors, urging reversal for amicus curiae, Attorney General of Ohio.

Forms

Telephone Solicitation Sales Act Application for Certification of Registration

TSSA Application Instructions

Upload TSSA Application

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AG Employee Portal
myOhio.gov
Careers
AGnet

INDIVIDUALS AND FAMILIES > CONSUMERS > TELEPHONE SOLICITORS

Telephone Solicitors

Updated 12/02/2013

Companies Currently Registered as Telephone Solicitors Under Telephone Solicitation Sales Act (TSSA)

Company	Expiration Date	State	Line of Business
Adjustable Bed Enterprises, Inc.	04/24/14	Florida	Furniture
Acquinity Interactive, LLC	05/21/14	Florida	Various Marketing
Auto Protection Alliance, LLC	05/23/14	California	Vehicle Service Contracts
Diamond Resorts International	02/08/14	Nevada	Tour & Travel Promoter
Etech Global Services, LLC	01/11/14	Texas	Various Marketing
ETourandTravel, Inc.	01/03/14	Florida	Tour & Travel Promoter
Electron Energy Sales LLC	08/29/14	Texas	Utility Rate Reducer
Energy Group Sales Inc.	08/05/14	New Jersey	Energy Supply Marketing
Loan Value Group	08/26/14	New Jersey	Various Marketing
Nexgen Energy, LLC	04/12/14	Florida	Energy Supply Marketing
Orange Lake Country Club, Inc.	11/20/14	Florida	Tour & Travel Promoter
Protective Administrative Services	05/16/14	Missouri	Warranties
Regional Marketing Consultants, Inc.	03/01/14	Georgia	Medical Doctors
Republic Telcom Worldwide, LLC	08/27/14	Ohio	Misc Goods
Rock Connections, LLC	08/28/14	Michigan	Marketing for Quicken Loans
Safe Streets USA, LLC	11/24/14	North Carolina	Security Monitoring
Segunda Fase Corp	12/13/13	Florida	Tour & Travel Promoter
Silver Lake Resort	03/15/14	Florida	Tour & Travel Promoter
Southeast Energy Consultants	06/15/14	Florida	Utility Rate Reducer
Summer Bay Sales & Marketing, LLC	04/01/14	Florida	Tour & Travel Promoter
Summit Advantage LLC	04/11/14	Ohio	Various Marketing
Surrey Vacation Resorts	01/02/14	Missouri	Tour & Travel Promoter
Txen Partners, LLC	06/05/14	Illinois	Vehicle Service Contracts
Vacation Reservation Center, LLC	11/06/14	Virginia	Tour & Travel Promoter

Pending TSSA Applications

Company	Activity Date	State	Line of Business
Absolute Warranty DBA Vehicle Assurance	11/19/13	Missouri	Vehicle Service Contracts
Aegis USA, Inc.	11/20/13	Texas	Various Marketing

Affinity Auto Program	11/19/13	California	Vehicle Service Contracts
monthlyautoprotection.com	11/15/13	California	Vehicle Service Contracts
Nationwide Biweekly Admin., Inc.	08/26/13	Ohio	3rd Pty Mortgage Payment Processor
Naviss, LLC	09/03/13	Missouri	Vehicle Service Contracts
Professional Marketing International (PMI)	11/19/13	Utah	Business Opportunities
Segunda Fase Corp.	11/12/13	Florida	Tour & Travel Promoter
Sperian Energy	09/30/13	California	Utillty Rate Reducer
VoiceTeam USA	11/19/13	Florida	Utility Rate Reducer

IN THE CANTON MUNICIPAL COURT
STARK COUNTY, OHIO
Phil G. Gia asis, Clerk of Court
SMALL CLAIM NOTICE AND SUMMONS

CASE # 2014-CVI-0425

Case Caption
GUILEY, RICHARD R Vs. ENERGY 95 LLC ET AL.

Phil Gia asis
Canton Municipal Court
Ci il Di ision
2014 Jan 24 AM 9:56

(Defendants)
ENERGY 95 LLC
C/O NATIONAL REGISTERED AGENTS INC
1300 E 9TH ST
CLEVELAND OH 44114

Plaintiffs Address
GUILEY, RICHARD R 415 S CHAPEL ST LOUISVILLE OH 44641

Plaintiffs Attorne
GUILEY, RICHARD R 4670 DOUGLAS CIR NW PO BOX 35697, CANTON OH 44735

Notice to Defendant

The Plaintiff sa s that there is due and owing to Plaintiff(s) from the Defendant(s) the sum of $3000.00 Dollars plus an court costs and interest as outlined in the enclosed complaint.

The Court will hold trial on this claim in the Canton Municipal Court, Canton City Hall , First Floor Court Room No. 1 on Thursday, February 27th, 2014 at 9:30 AM..

If ou do not appear at the trial, judgment ma be entered against ou b default, and our earnings ma be subjected to garnishment or our propert ma be attached to satisf the judgment. If our defense is supported b witnesses, account books, receipts, or other documents, ou must produce them at the trial. Subpoenas for witnesses, if re uested b a part , will be issued b the clerk. If ou admit the claim but desire time to pa , ou ma make such a re uest at the trial. If ou belie e ou ha e a claim against the plaintiff, ou must file a counterclaim with the court and must ser e the plaintiff and all other parties with a cop of the counterclaim at least se en da s prior the the date of the trial of the plaintiff s claim.

Small Claims Complaint and Summons to be ser ed b Certified Mail.

NOTE: Canton Municipal Court is located on the plaza floor of Canton City Hall at 218 Cleveland Ave SW, Canton Ohio

Subscribed and sworn to before me on Jan 24 2014

B : J Iacino
Deput Clerk

Ex. B-5(c)

USPS Article No: 7117 6 49 7500 077 3659

UNITED STATES POSTAL SERVICE

Date Produced: 02/03/2014

CANTON MUNICIPAL COURTS:

The following is the delivery information for Certified Mail™ item number 7117 6849 7500 0778 3659. Our records indicate that this item was delivered on 01/29/2014 at 10:44 a.m. in CLEVELAND, OH 44113. The scanned image of the recipient information is provided below.

Signature of Recipient : James Wright

CT Corporation

Address of Recipient :

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

2014CVI00425 SS

0000446683

Phil Giavasis
Canton Municipal Court
Civil Division
2014 Feb 3 PM 12:08

Customer Reference Number: 2014CVI00425

Ex. B-5(d)

IN THE CANTON MUNICIPAL COURT
CANTON, OHIO

CIVIL DIVISION

2014 FEB 27 AM 10: 48

GUILEY, RICHARD R P
Attorney GUILEY, RICHARD R

- vs -

ENERGY 95 LLC NP
QUAKER ENERGY LLC NP

Case Number **2014-CVI-425**

Report of the Magistrate
Small Claims

1. Finding upon account (wage claim, damages) for Pltf.
for $ 3000.00 against Deft(s), and costs.

2. Finding of Fact Pltf. awarded judgment against Deft(s) in the amt. of $3000.00 plus costs and legal interest effective 2/27/14. Above damages are found to be violations of Ohio Consumer Fair Practice Act and/or Federal Consumer Practice Act.

DATED 2/27/14

2014CVI00425 RRF

Magistrate

Phil Giavasis
Canton Municipal Court
Civil Division
2014 Feb 27 AM 11:18

MENT ENTRY

Upon the Court's own motion the Report of the Magistrate is approved and confirmed.

Comment:

DATED

Judge

A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ. R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. If a party makes a timely request for findings of fact and conclusions of law, the time for filing objections begins to run when the magistrate files a decision that includes findings of fact and conclusions of law.

HearList.app / Hearlist1.qrp

Ex. B-5(e)

CANTON MUNICIPAL COURT
NOTICE OF MAGISTRATE'S REPORT

Phil G. Giavasis, Clerk

Case Number: 2014-CVI-0425

Plaintiff:

GUILEY, RICHARD R
(Attorney)

GUILEY, RICHARD R

Vs.

Defendant:

ENERGY 95 LLC / DBA QUAKER ENERGY
C/O NATIONAL REGISTERED AGENTS IN
1300 E 9TH ST
CLEVELAND OH 44114

Magistrate recommends judgment in favor of the Plaintiff (GUILEY, RICHARD R).

On Thursday, February 27, 2014 Judgment has been rendered in favor of the Plaintiff in the amount of $3,000.00 plus 3.00% interest and costs and also accrued interest of $0.00 effective February 27, 2014.

You have fourteen (14) days from Thursday, February 27, 2014 to object to the report of the Magistrate. Objections to the Magistrate's Report shall be specific and state with particularity all grounds for objection.

Please note at this time that the Court may not require a prepared transcript at your expense, but rather may review the electronic record of your hearing when considering your objection.

IN THE EVENT TRANSCRIPTS ARE NEEDED, a one hundred dollar ($100.00) advance cash deposit will be required at the time of filing the objection.

Note: Original Magistrate's report on file at the Clerk of Canton Municipal Court, Canton City Hall, 218 Cleveland Ave S.W., Canton, OH 44702. Phone (330)489-3203.

Dated: 02/27/2014

By: K Cox
Deputy Clerk of Court

IN THE CANTON MUNICIPAL COURT
CANTON, OHIO

GUILEY, RICHARD R P
Attorney GUILEY, RICHARD R

2014 FEB 27 AM 10: 48

- vs -

ENERGY 95 LLC NP
QUAKER ENERGY LLC NP

Case Number **2014-CVI-425**

Report of the Magistrate
Small Claims

1. Finding upon account (wage claim, damages) for Pltf.
for $ 3000.00 against Deft(s), and costs.

2. Finding of Fact Pltf. awarded judgment against Deft(s) in the amt. of $3000.00 plus costs and legal interest effective 2/27/14. Above damages are found to be violations of Ohio Consumer Fair Practice Act and/or Federal Consumer Practice Act.

DATED 2/27/14

2014CVI00425 RRA

* 0 0 0 0 4 6 2 5 1 6 *

Phil Giavasis
Canton Municipal Court
Civil Division
2014 Mar 14 AM 11:08

Magistrate

MENT ENTRY

Upon the Court's own motion the Report of the Magistrate is approved and confirmed.

Comment:

2014 MAR 14 AM 11: 06

DATED 3/14/14

Judge

A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ. R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. If a party makes a timely request for findings of fact and conclusions of law, the time for filing objections begins to run when the magistrate files a decision that includes findings of fact and conclusions of law.

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Ex. 5-B(f)

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Name and Address of Sender	Phil G. Giavasis, Clerk Canton Municipal Court 218 Cleveland Ave SW Canton, OH 44702	Indicate type of mail: [X] Return Receipt For Merchandise	Check appropriate block for Registered Mail: [X] Without Postal Insurance	Affix stamp here if issued as certificate of mailing or for additional copies of the bill. ***POSTMARK AND DATE OF RECEIPT***	03-14-2014 - 11:08 AM

Line	Number of Article	Name of Addressee, street, and Post-Office Address	Postage	Fee	Handling Charge	Act. Value	Insured Value	Due Sender	R. R.	S. D.	S. H.	Rest. Del. Fee
1	2014-CVI-0425	RICHARD R GUILEY 4670 DOUGLAS CIR NW PO BOX 35697 CANTON OH 44735	0.46	1.15								

Image Available Electronically

Phil Gia asis
Canton Municipal Court
Ci il Di ision
2014 Mar 14 AM 11:0

0000462517

Total Number of Pieces listed by Sender	Total Number of Pieces Received at Post Office	POSTMASTER, PER (Name of receiving employee)	The Full declaration value is required on all domestic and international registered mail. The maximum indemnity payable for nonnegotiable documents under Express Mail document reconstruction insurance is $50,000 per piece subject to a limit of $500,000 per occurrence. The maximum indemnity payable on Express Mail merchandise insurance is $500. The maximum indemnity payable is $25,000 for Registered Mail, $500 for COD and $500 for Insured Mail. Special handling charges apply only to Third- and Fourth-Class parcels.

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PS Form 3877

Ex. 5-B(g)

0000462518

Name and Address of Sender	Phil G. Giavasis, Clerk Canton Municipal Court 218 Cleveland Ave SW Canton, OH 44702	Indicate type of mail: [X] Return Receipt For Merchandise	Check appropriate block for Registered Mail: [X] Without Postal Insurance	Affix stamp here if issued as certificate of mailing or for additional copies of the bill. ***POSTMARK AND DATE OF RECEIPT***	03-14-2014 - 11:09 AM

Line	Number of Article	Name of Addressee, street, and Post-Office Address	Postage	Fee	Handling Charge	Act. Value	Insured Value	Due Sender	R. R.	S. D.	S. H.	Rest. Del. Fee
1	2014-CVI-0425	ENERGY 95 LLC / DBA QUAKER ENERGY LLC C/O NATIONAL REGISTERED AGENTS INC 1300 E 9TH ST CLEVELAND OH 44114	0.46	1.15								

Image Available Electronically

Phil Gia asis
Canton Municipal Court
Ci il Di ision
2014 Mar 14 AM 11:0

0000462518

Total Number of Pieces listed by Sender	Total Number of Pieces Received at Post Office	POSTMASTER, PER (Name of receiving employee)	The Full declaration value is required on all domestic and international registered mail. The maximum indemnity payable for nonnegotiable documents under Express Mail document reconstruction insurance is $50,000 per piece subject to a limit of $500,000 per occurrence. The maximum indemnity payable on Express Mail merchandise insurance is $500. The maximum indemnity payable is $25,000 for Registered Mail, $500 for COD and $500 for Insured Mail. Special handling charges apply only to Third- and Fourth-Class parcels.

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PS Form 3877

Ex. 5-B(h)

2014 APR -4 PM 2:57

IN THE CANTON MUNICIPAL SMALL CLAIMS COURT
CANTON, OHIO

Richard R. Guiley	:	CASE NO: 2014 CVI 425
Plaintiff,	:	
-vs-	:	
Energy 95 LLC, d/b/a Quake Energy LLC	:	
Defendant.	:	

SATISFACTION OF JUDGMENT

The judgment in this matter having been fully paid and satisfied, the judgment is hereby released and discharged.

Richard R. Guiley (Plaintiff and Attorney)
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Canton, Ohio 44718
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rick@guileylaw.net

Proof of Service

A time-stamped copy of the foregoing was mailed by regular U.S. Mail to Energy 95 LLC, 640 Tillery St., Austin, Texas 78702 on this 4th day of April, 2014.

Richard R. Guiley (Plaintiff and Attorney)

2014CVI00425 SJ
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Phil Giavasis
Canton Municipal Court
Civil Division
2014 Apr 4 PM 2:58

Ex. B-5(i)

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Case No(s). 12-1023-GA-CRS

Summary: Amended Application Energy 95, LLC D/B/A Quake Energy, LLC's Amendment to 2016 Renewal Certification Application for Competitive Retail Natural Gas Suppliers (with Exhibits 1 and 2) electronically filed by Mr. David M Krueger on behalf of Energy 95, LLC d/b/a Quake Energy LLC