

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

Docket No. 218-2014-CV-632

Halifax-American Energy Company, LLC  
Freedom Logistics, LLC d/b/a Freedom Energy Logistics, LLC  
Resident Power Natural Gas & Electric Solutions, LLC  
PNE Energy Supply, LLC  
*Plaintiffs*

v.

Provider Power, LLC  
Electricity N.H., LLC d/b/a E.N.H. Power  
Electricity Maine, LLC  
Emile Clavet  
Kevin Dean  
*Defendants*

**FIRST AMENDED COMPLAINT**

This case arises from Defendants' conspiracy with Plaintiffs' former sales representative to steal Plaintiffs' customer lists and other confidential/proprietary information, and then use that information to harm Plaintiffs' businesses and gain an unfair advantage in the highly competitive markets for energy supply and brokerage services. Plaintiffs bring this Complaint for preliminary and permanent injunctive relief, and for recovery of damages caused by Defendants' unlawful conduct.

**PARTIES**

1. Plaintiff Halifax-American Energy Company, LLC ("HAEC") is a New Hampshire corporation with a principal place of business at 5 Dartmouth Drive, Auburn, New Hampshire 03032. HAEC is a retail energy provider, serving commercial and industrial customers located throughout New England.

2. Plaintiff Freedom Logistics, LLC d/b/a Freedom Energy Logistics, LLC ("FEL") is a New Hampshire corporation with a principal place of business at 5 Dartmouth Drive,

Auburn, New Hampshire 03032. FEL operates in Maine as an energy supplier and broker, and in New Hampshire as aggregator. FEL serves commercial and industrial customers.

3. Plaintiff PNE Energy Supply LLC (“PNE”) is a New Hampshire corporation with a principal place of business at 5 Dartmouth Drive, Auburn, New Hampshire 03032. PNE is registered in New Hampshire as a competitive electric power supplier (“CEPS”), supplying electricity to residential and commercial customers.

4. Plaintiff Resident Power Natural Gas & Electric Solutions, LLC (“Resident Power”) is a New Hampshire corporation with a principal place of business at 5 Dartmouth Drive, Auburn, New Hampshire 03032. Resident Power is a registered in New Hampshire as an electricity aggregator, providing electricity rates to residential customers and small businesses through CEPS.

5. Defendant Provider Power, LLC (“Provider Power”) is, upon information and belief, a Maine limited liability company with a principal place of business at 306 Rodman Road, Auburn, ME 04211.

6. Defendant Electricity N.H., LLC d/b/a E.N.H. Power (“ENH”) is, upon information and belief, a Maine limited liability company with a principal place of business at 306 Rodman Road, Auburn, ME 04211. ENH is a wholly-owned subsidiary of Provider Power. ENH operates in New Hampshire as a CEPS, using the trade name “ENH Power,” and as an electricity aggregator, using the trade name “Provider Power.”

7. Defendant Electricity Maine, LLC (“EME”) is, upon information and belief, a Maine limited liability company with a principal place of business at 306 Rodman Road,

Auburn, ME 04211. EME is a wholly-owned subsidiary of Provider Power, and it operates in Maine as a competitive electricity provider (“CEP”).<sup>1</sup>

8. Defendant Emile Clavet (“Clavet”) is natural person with a principal place of business at 306 Rodman Road, Auburn, ME 04211. Upon information and belief, Clavet is an owner and Vice President of each Provider Power, ENH, and EME (collectively the “Defendant Companies”). Clavet participated in and directed the wrongful conduct of the Defendant Companies as alleged herein.

9. Defendant Kevin Dean (“Dean”) is a natural person with a principal place of business at 306 Rodman Road, Auburn, ME 04211. Upon information and belief, Dean is an owner and President of each of the Defendant Companies. Dean participated in and directed the wrongful conduct of the Defendant Companies as alleged herein.

#### **JURISDICTION AND VENUE**

10. This Court has subject-matter jurisdiction over this matter pursuant to RSA 491:7.

11. This Court has personal jurisdiction over Defendants, as each of them conducts business in New Hampshire, and participated in conduct in New Hampshire that gives rise to Plaintiffs’ claims.

12. Venue is appropriate in this Court pursuant to RSA 507:9.

#### **FACTUAL ALLEGATIONS**

##### **A. Plaintiffs’ Operations In New England’s Energy Supply and Brokerage Markets**

13. Plaintiffs HAEC, FEL, PNE, and Resident Power (collectively “Plaintiffs” or the “Freedom Companies”) operate as competitive suppliers and aggregators of electricity and natural gas. As competitive suppliers, HAEC, PNE and FEL obtain energy at wholesale rates

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<sup>1</sup> Competitive suppliers are referred to in New Hampshire using the acronym “CEPS” (competitive electric power supplier), and in Maine using the acronym “CEP” (competitive electricity provider).

through a regional independent service operator, ISO-New England. As aggregators, FEL and Resident Power bundle, or “aggregate,” customers, and then pair those customers with competitive suppliers to obtain energy at rates typically lower than rates offered by regional utilities (i.e., Unitil Energy Systems, PSNH, and New Hampshire Electric Cooperative).

**(1) HAEC and FEL**

14. HAEC was formed in 2006 as a retail energy provider, serving commercial, industrial and institutional customers located throughout New England. In New Hampshire, HAEC has provided electricity supply services to commercial and industrial customers since 2007, through a partnership with a separate entity, South Jersey Energy Company, which is a registered CEPS.

15. FEL also was formed in 2006. FEL operates as energy aggregator in all New England states except Vermont, and as a competitive supplier in Maine. FEL also provides energy consulting services to companies seeking to do business as competitive suppliers.

16. In New Hampshire, FEL has been operated as an aggregator since 2009 to serve commercial and industrial customers.

17. In Maine, FEL has operated as an aggregator since 2007. FEL also has been licensed as a CEP to serve residential customers since December 22, 2010. On April 29, 2011, FEL’s CEP license was amended to include commercial and industrial customers.

**(2) PNE and Resident Power**

18. Prior to 2011, Plaintiffs, through HAEC and FEL, served only commercial and industrial customers in New Hampshire. In 2011, Plaintiffs formed PNE and Resident Power in order to expand into new residential electricity markets that were created in New Hampshire as a result of the deregulation of the state’s energy markets.

19. On June 28, 2011, Resident Power received approval from the New Hampshire PUC (“NH PUC”) to provide aggregation services to residential and small commercial customers.

20. On September 19, 2011, PNE was registered by the NH PUC as the first CEPS to serve residential customers in New Hampshire.

**B. Increasing Competition and Disputes Between Defendants and Plaintiffs**

21. The specific events giving rise to Plaintiffs’ claims began in February 2013, as detailed below. During the three prior years, Defendants put themselves in direct competition with Plaintiffs by establishing energy supply and aggregation firms in New Hampshire and Maine. This competition, together with prior litigation between FEL and EME in Maine, motivated Defendants’ subsequent efforts to try to harm Plaintiffs’ businesses.

**(1) Events in Maine**

22. Defendants first entered the energy supply market in September 2010, when they obtained licensing for EME to operate as a CEP in Maine. Two years later, in September 2012, Defendants amended EME’s license to permit the company to work also as an electricity broker/aggregator.

23. By the time of EME’s initial licensing, Plaintiff had already developed extensive expertise in the energy supply markets in Maine and elsewhere in New England. As a result, Defendants engaged Plaintiffs to provide business consulting services to EME,

24. On July 19, 2011, EME and FEL entered into a three-year consulting agreement, pursuant to which FEL guided EME in securing electricity through ISO-New England, and meeting the regulatory and technical requirements to operate as a competitive supplier.

25. In May 2012, with more than two years remaining in the consulting agreement's three-year term, EME abruptly terminated the agreement without cause. In response, in June 2012, FEL filed an arbitration demand that asserted claims against EME for breach of contract. The arbitration hearing was conducted a year later in June 2013. At the conclusion of the hearing, the arbitrator found that EME had breached the consulting agreement, and awarded FEL damages totaling nearly \$900,000, representing recovery of FEL's unpaid invoices, interest and late fees, attorney's fees, and monthly payments of \$25,000 owed FEL for the remainder of the agreement.

26. On August 22, 2014, the United States District Court for the District of Maine affirmed the arbitration award.

**(2) Events in New Hampshire**

27. In June 2012, at approximately the same time litigation broke out between EME and FEL in Maine, Defendants began competing with Plaintiffs in the energy supply and aggregation markets in New Hampshire.

28. On June 8, 2012, ENH received approval from the NH PUC to operate as a CEPS. Six months later, on January 18, 2013, Provider Power was approved as an aggregator of electricity.

**C. Defendants' Secret Hiring of Plaintiffs' Sales Representative**

29. Upon Provider Power's registration with the NH PUC in January 2013, Defendants stood in direct competition with Plaintiffs in the electricity supply and aggregation markets in Maine and New Hampshire. One month later, in February 2013, Defendants began conspiring with one of Plaintiffs' sales representatives, Frank Dumont, to gain an unfair

competitive advantage in these markets through the misappropriation of Plaintiffs' customer lists, sales leads, and other confidential information.

(1) **Dumont's Position With the Freedom Companies**

30. Dumont started working for Plaintiffs in February 2011, when he was hired by HAEC as a sales consultant. At that time, Dumont entered into a confidentiality, non-solicitation, and non-disclosure agreement with HAEC (the "HAEC Agreement") which barred him from soliciting HAEC customers on behalf of other suppliers, and required him to protect the confidentiality of customer lists and other confidential and proprietary information belonging to HAEC and any other Freedom Company.

31. In March 2011, Dumont was elevated to the position of sales representative, with responsibility for promoting and generating customers for Resident Power, as well as the other Freedom Companies. In consideration for Dumont's promise to work exclusively for the Freedom Companies, Plaintiffs paid Dumont a guaranteed salary of \$2,000/month, as well as sales commissions and other consideration.

32. One of Dumont's responsibilities was promoting Resident Power's "channel partner program" in New Hampshire. Under this program, Resident Power enters into agreements with oil and natural gas distributors (i.e., the "channel partners"), to market Resident Power's aggregation services to the distributors' customers. The channel partners then receive commissions on customers that engage Resident Power to place them with competitive electricity suppliers.

33. As a sales representative, Dumont received access to highly confidential and proprietary information owned by Plaintiffs, including Resident Power's customer enrollment

list, Plaintiffs' database of sales leads, and pricing analyses that Plaintiffs created to formulate proposals for prospective customers.

34. Resident Power's customer enrollment list is maintained on Plaintiffs' computer server and can only be accessed through use of a password. Dumont was not authorized to modify, download, or transfer the list; these functions required a restricted administrative password that was not released to Dumont or other sales representatives.

35. Plaintiffs' database of sales leads is maintained on a private website called "SalesForce.com," which contains valuable sales information compiled by Plaintiffs for existing and prospective commercial customers. This information includes the name, email and telephone number of the appropriate contact person at each customer, and the expiration date of the customer's existing energy supply contract. This information allows Plaintiffs to determine when customers will need to consider new energy supply agreements, and to direct Plaintiffs' proposals to the appropriate people.

**(2) Defendants' Conspiracy With Dumont**

36. In January 2013, as Provider Power was registering as an aggregator in New Hampshire, a sudden and unprecedented increase in electricity prices forced PNE to suspend its operations for two months. (The other Freedom Companies continued operations during this period.) Defendants moved quickly to exploit PNE's suspension for the benefit of ENH and Provider Power.

37. On or about February 25, 2013, Defendants – through Defendants Kevin Dean and Emile Clavet – began negotiating with Frank Dumont for Dumont to work for Defendants. Defendants then knew that Dumont was already working for Plaintiffs, and that he was barred



under the HAEC Agreement (which Defendants obtained) from disclosing the Freedom Companies' confidential or proprietary information.

38. From the start of his negotiations with Defendants, Dumont touted his ability to expand Defendants' aggregation and supply businesses in New Hampshire and Maine. Dumont claimed he could expand Defendants' businesses through the use of sales leads, customer lists, and other confidential information obtained from Plaintiffs. It was only after Dumont made these representations, and began disclosing Plaintiffs' confidential information to Defendants, that Clavet and Dean agreed to hire Dumont on a three-month trial basis, paying him a salary of \$500 per week plus commissions.

39. For example, Dumont knew that as of February 2013, Defendants' business in New Hampshire was limited to serving residential and small commercial customers; ENH had no medium or large commercial accounts (i.e., customers with electricity usage exceeding 20,000 kilowatt hours ("KWH") per month). On March 2 and 3, 2013, Dumont logged into Plaintiffs' Salesforce.com website and downloaded files containing sales leads for more than 250 commercial accounts. Dumont then forwarded the files to himself, using his personal "gmail" email account. With these files, Dumont could determine when each commercial customer was due to renew its supply agreement, and the contact person at each customer.

40. A few days later on March 12, Dumont emailed Kevin Dean and stated that if he joined Defendants, he wanted "to be allowed to work my existing larger commercial accounts and try to maintain my relationships with them. But steering them away from 'you know who.'" (Emphasis added.) The referenced "larger commercial accounts" were, in fact, the commercial customers of PNE and FEL, not Dumont.

41. In the same March 12 email to Dean, Dumont represented he could duplicate Resident Power's channel partner program for Defendants, at the expense of Resident Power.

Dumont stated:

What I would like you to consider is a similar structure I had with RP [Resident Power]. Part of which was the ability to 'hire' channel partners that I know could be very effective ... RP [Resident Power] is killing me and Kevin, I am requesting that you give me the power to represent [you]. Can you hear the word RdismantleP? (Emphasis added.)

42. Several hours later on March 12, having received no response from Dean, Dumont sent a follow up email in which he again described, in thinly veiled terms, his readiness to exploit his position with Plaintiffs for Defendants' benefit, stating:

The option I described is not one I believe you have in place now with regards to channel partners and being able to build strategic channel partner relationships. ... Keep in mind that I am aware of competitors and upcoming competitors, pricing offers and marketing strategies. ... I have more to say in this regard, but my horoscope told me not to divulge too much details. lol (Emphasis added.)

43. This further email finally triggered a response from Kevin Dean, who informed Dumont he would forward the information to Clavet, and they would discuss "a mutually beneficial path forward."

44. On March 18, 2013, Dumont met with Defendants at their offices in Auburn, Maine. After the meeting, Dumont continued to cite his access to Plaintiffs' channel partners and commercial accounts to convince Defendants to hire him immediately.

45. On March 20, Dumont emailed Clavet and stated: "Look forward to hearing back from you. I do have accounts/relationships chomping at the bit."

46. On March 22, Dumont emailed Clavet again to remind him: "I have several channel partners waiting." Dumont described the channel partner program he could create for Provider Power and urged Clavet to act quickly, before Plaintiffs learned of their activities,

stating: “Basically we want this to be a fast track for these guys while we have the ostriches head in the ground, \*if you know what I mean.” (Emphasis added.)

47. On March 29, Dumont once again emailed Clavet and stated:

Before we head into the weekend I was hoping to touch base. As you can imagine we are heading into a prime sale time of the year. On the commercial side there are bids in the works and many I’ve held off on as I await further detail. On the residential side I have ‘partners’ in waiting both here in NH, ME and Ma. (Emphasis added).

48. By early April 2013, Dumont did not yet have an offer, but Clavet informed him that Defendants were almost ready to wrap up an agreement. In an attempt to provide further proof of his value to Defendants, Dumont disclosed to Clavet confidential information about one of Plaintiffs’ commercial prospects, The Common Man Family of Restaurants, that Dumont had downloaded from Plaintiffs’ Salesforce.com website on March 3, 2013. Based on that information, Dumont knew The Common Man’s current supply contract was due to expire.

49. On April 2, 2013, Dumont informed Clavet that while he and Defendants continued efforts “to finalize” an employment agreement, Dumont would forward information that Defendants could use “for bidding” on The Common Man contract. Clavet responded immediately that Dumont should “send [the information] over,” adding: “Maybe we can test with this.” In other words, The Common Man lead would “test” Dumont’s value to Defendants.

50. On April 3, 2013, Dumont informed Clavet:

I have another commercial bid for you. This is only one meter with a decent load. Bid decision is by the end of this month. Let me know if you would like to try this out. It is PSNH and I know the competitors, target price, etc. Would be a nice test on the commercial side. (Emphasis added.)

51. On April 5, 2013, Dumont emailed Clavet a copy of a Resident Power Supplier Notice,” which is used to notify customers that Resident Power has found them a low-cost

electricity supplier, and that the customers' accounts will be transferred from the utility to that supplier. The Supplier Notice identifies the supplier and rate, and informs the customers they have five days to opt out of the supply agreement.

52. When Dumont sent Clavet the Supplier Notice on April 5, he informed Clavet that the Notice "just went out" to Resident Power's customers, and that the customers could still opt out of the agreement for no penalty if they acted immediately. As a result, Defendants had a small window of time to present competing offers to the same customers. Dumont cautioned Clavet that Defendants would have to act quickly, stating: "If we can do anything, timing is critical."

53. Minutes later, Dumont emailed Clavet again and queried: "Let's just say if I might have some lists at my disposal, what could we do?" (Emphasis in original.) In other words, Dumont was suggesting he provide Defendants with Resident Power's customer lists, so that Defendants (Provider Power) could contact those customers to offer of a competing rate.

54. Dumont's solicitation had its intended effect. On April 8, 2013, Defendants informed him that Clavet had given final approval to hiring Dumont, and that Dumont would receive an employment agreement "this week."

55. On or about April 11, 2013, Dumont signed an employment agreement with Defendants. Two days later, on April 13, 2013, Dumont downloaded the Resident Power customer list from Plaintiffs' computer server and forwarded the list to himself (again, using his personal "gmail" email account).

**(3) Concealment of Defendants' Employment of Dumont**

56. Dumont and Defendants concealed their negotiations from Plaintiffs.

57. In April 2013, as Defendants and Dumont were concluding negotiations, Dumont informed Plaintiffs he intended to take a leave from his full-time employment with the Freedom Companies for three to four months (a period that coincided with the three-month term of Dumont's initial employment agreement with Defendants).

58. Dumont knew if he disclosed he had been hired by Defendants, Plaintiffs would have severed their ties to Dumont, thereby terminating his access to Plaintiffs' customer lists, sales leads, and other proprietary information. Accordingly, Dumont lied about the reason for his "leave," informing Plaintiffs he was going to work as a "home inspector." Dumont asked that Plaintiffs continue to pay him commissions on prior sales during the leave period. When Plaintiffs asked Dumont directly if he was working for competing energy brokers or suppliers, Dumont lied again and denied that he was.

59. On April 29, 2013, Plaintiffs, unaware that Dumont had been hired by Defendants, agreed to Dumont's request to pay him commissions during his alleged leave to work as a "home inspector." As part of this arrangement, Dumont and Plaintiffs entered into a "Departure Agreement," which provided that the Freedom Companies would continue to pay Dumont commissions on his prior sales, and Dumont would assist in continued account maintenance for those accounts. The Agreement barred Dumont from working with any direct competitors of the Freedom Companies while receiving commissions; barred Dumont from soliciting "any customer of [the Freedom Companies] for period of two years after this Agreement's termination or expiration"; and required Dumont to preserve the confidentiality of the Freedom Companies' client information and other confidential/proprietary information.

60. Defendants likewise concealed their hiring of Dumont from Plaintiffs.

Defendants did not disclose this issue even as they had repeated contact with Plaintiffs during the course of the EME-FEL arbitration hearing, which occurred in June 2013.

**D. Actions In Furtherance of Defendants' Conspiracy With Dumont**

61. Once his three-month trial employment period began with Defendants, Dumont continued to provide Defendants with Plaintiffs' confidential and proprietary information, thereby enabling Defendants to compete unfairly with Plaintiffs. Dumont then pointed to clients and accounts he had taken from Plaintiffs as evidence that Defendants should offer him a permanent position after the three-month trial period ended.

62. As noted, on April 13, 2013, two days after signing an employment agreement with Defendants, Dumont downloaded the Resident Power customer list and forwarded the list to himself. Upon information and belief, Defendants used this information to compete with Plaintiffs.

63. In addition, Dumont, while acting on behalf of Defendants and holding himself out as a Provider Power representative, began contacting Plaintiffs' commercial customers to denigrate Plaintiffs' business practices and ethics, and urge the customers to move their accounts to ENH and EME.

64. For example, on April 23, 2013, Dumont emailed Northway Bank, then a commercial customer of FEL, and stated:

I wanted to reach out to let you know that I made a personal decision to leave my former company as I did not agree with how things effected [sic] my customers, and myself for that matter. It was a personal conscience decision. With that said, I now work with ENH Power under the Provider Power family. ... The pricing is extremely competitive and most of all, they have a sterling reputation and are 100% hedged. I do recall the one bank in Tilton that was being sold. ... I wanted to see if we can get that account enrolled with ENH Power.

65. On May 2, 2013, Dumont emailed Clavet and Dean to report on his attempts to secure a channel partner agreement on Provider Power's behalf with CVW Oil, a New Hampshire oil distributor that was then a channel partner of Resident Power's. Dumont informed Clavet and Dean that CVW Oil had access to 15,000 residential customers, and warned, "if we do not use them [CVW's customers], they (most) likely will go to Resident Power."

66. On May 3, 2013, Dumont informed Clavet that several fuel companies were prepared to enter into channel partner agreements with Provider Power, including CVW Oil, Stiles Fuel, Lampron Energy, and Lake Sunapee Plumbing & Heating. Each of these companies was a channel partner of Resident Power. Dumont noted in the email: "At the end of the day Emile, I hope that you see me as part of your long term relationship goals beyond the trial period."

67. On May 14, 2013, Dumont emailed Clavet and again raised the issue of his future prospects with Defendants, stating: "I wanted to get a sense of what the future looks like for myself and Provider Power."

68. By early June 2013, Dumont had not received assurance that Defendants would continue his employment after the three-month trial period. On June 3, 2013, Dumont once again raised the issue with Clavet, stating: "I want to make sure I know where my future is with Provider Power and wouldn't mind a little feedback from you in this regard."

69. At that point, with the end of the three-month trial period fast approaching, Dumont used information misappropriated from Plaintiffs to close the deal with Defendants – just as he had done during his initial negotiations with Defendants in April 2013.

70. On June 6, 2013, Dumont emailed Clavet a confidential pricing/cost analysis that PNE had prepared for one of its commercial customers, Berlin City Auto. The PNE pricing/cost analysis demonstrated the savings realized by Berlin City Auto under certain supply agreements offered by PNE. Dumont knew that with this information, Defendants could underbid PNE's proposal. In his June 6 email to Clavet, Dumont noted: "Hopefully we can catch some low rates for [Berlin City Auto]."

71. Dumont's misappropriation of Plaintiff's confidential information once again had its intended effect. Six days later on June 12, 2013, Dumont contacted Provider Power's payroll department and reported: "Just spoke with Emile and he will be keeping me on on an ongoing basis."

72. During the next two months, Defendants continued to use inside information that Dumont obtained from Plaintiffs to compete unfairly with FEL and PNE for commercial accounts. For example, on June 28, 2013, Dumont, acting on behalf of Provider Power, contacted one of Resident Power's channel partners, Lake Sunapee Plumbing & Heating, and requested a list of the Lake Sunapee customers that had signed aggregation agreements with Resident Power. Dumont stated that ENH would use the list to send marketing information to customers on the list.

73. In August 2013, Dumont induced one of FEL's customers, Maine Mall Motors, to enter into a direct supply agreement with EME. On at least six occasions before this occurred, Dumont had requested that FEL provide him with confidential quotes of rates that FEL could obtain for Maine Mall Motors. Upon information and belief, Defendants used these rate quotes to present more favorable rates on behalf of EME.



74. As Dumont intended, his misuse of Plaintiffs' information impressed Defendants. On August 3, 2013, for example, Clavet emailed Dumont, stating: "Great job on the accounts you landed. We have big plans for growth." Dumont promptly responded: "Emile, many more accounts to come. ... I have 'others' chomping [at] the bit to use my services and to be blunt, I don't want to go anywhere but battle this market hand in hand moving forward."

75. Defendants continued to conceal from Plaintiffs that they were waging this "battle" using confidential information obtained through Dumont. At the same time, Dumont pressured Plaintiffs' former customers and channel partners not to disclose to Plaintiffs that Dumont had been involved in inducing the customers and partners to sever ties with Plaintiffs to join Defendants. For example, on August 16, 2013, Dumont emailed Lake Sunapee Plumbing & Heating and urged: "Please DO NOT mention my name if Resident Power calls wondering why you are not with them anymore. Just say ENH Power called directly."

**E. Plaintiffs' Discovery of Defendants' Conspiracy With Dumont**

76. Defendants' conspiracy with Dumont continued without Plaintiffs' knowledge for five months. On August 23, 2013, however, a FEL customer, the Retail Association of Maine ("RAM"), informed Plaintiffs that Dumont had emailed RAM a sales proposal on behalf of Provider Power. Dumont did this only minutes after learning, through a confidential email announcement from Plaintiffs, that FEL had closed a sales agreement with RAM. As a result of this incident, Plaintiffs immediately terminated Dumont's employment.

77. At that time, Plaintiffs did not know the scope of Defendants' complicity with Dumont. By letter dated September 5, 2013, Plaintiffs informed Defendants that Dumont's work as a sales representative for Defendants, and his solicitation – on behalf of Provider Power, EME and ENH – of Plaintiffs' customers, violated Dumont's non-compete and confidentiality

agreements with Plaintiffs, including the April 29, 2013 Departure Agreement, which barred Dumont from soliciting any customer of the Freedom Companies for a period of two years after the Agreement's termination. Plaintiffs requested that Defendants ensure they did not induce any further violation of Dumont's legal obligations to Plaintiffs.

78. In response to this letter, Defendants represented that they had terminated Defendants' employment, effective September 11, 2013, and directed Dumont to "cease all activities taken on Provider Power's behalf and to cease holding yourself out as a representative of Provider Power."

79. Defendants' representations that they had terminated Dumont, and required him to discontinue all further dealings on Defendants' behalf, were false, as demonstrated by a voicemail message that Clavet left with Dumont on September 24, 2013. In the message, Clavet suggested the following subterfuge to allow Dumont to continue to exploit information he had obtained from Plaintiffs:

The clients that are in the pipe, why don't you give me a call tonight. Tell me if you think they could wait another 3 weeks – if you told them you were looking at getting some new relationships that would give them sharper prices, maybe they'd let you do that. If not, we can transfer them to somebody else, and then maybe we'd talk about a signing bonus to get you caught up when we hire you.

80. On September 25, 2013, Plaintiffs – as yet unaware of the scope of Defendants' complicity with Dumont – filed suit against Dumont alone, seeking preliminary and permanent injunctive relief and damages. See Halifax-American Energy Company, LLC, et al. v. Frank Dumont, Rockingham County Superior Court, Docket No. 218-2013-CV-1083.<sup>2</sup> Plaintiffs obtained a preliminary injunction barring Dumont from soliciting Plaintiffs' existing or former

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<sup>2</sup> Dumont subsequently filed for bankruptcy, resulting in the automatic stay of this proceeding.

customers; for working with any other energy supplier or broker/aggregator; or from using or disclosing Plaintiffs' confidential or proprietary information.

81. On October 4, 2013, Plaintiffs issued a subpoena duces tecum to Defendants which called for the production of all email and other communications exchanged between Defendants and Dumont, as well as email and other documents reflecting the solicitation of any of Plaintiffs' customers and accounts on behalf of Defendants.

82. Between October 22, 2013, and November 20, 2013, Defendants produced, in multiple installments, documents that, they alleged, were responsive to Plaintiffs' subpoena.

83. In fact, Defendants failed to produce and, upon information and belief, deliberately withheld, email and other evidence that demonstrated the full extent of Defendants' conspiracy with the Dumont. Plaintiffs discovered Defendants' concealment by obtaining email records directly from customers that had been solicited by Dumont on behalf of Defendants, and by extracting information stored electronically on Dumont's "gmail" accounts.

## **CAUSES OF ACTION**

### **Count I** **Injunctive Relief**

84. Plaintiffs repeat the allegations of the above paragraphs as if fully set forth herein.

85. Defendants have misappropriated Plaintiffs' customer lists, sales leads, work product, and other confidential and proprietary information.

86. Plaintiffs are entitled to an injunction to:

- a. Require Defendants to return all confidential and proprietary information obtained by them from Plaintiffs;
- b. Prevent any further use by Defendants of this information.

**Count II**  
**Violation of RSA 358-A**

87. Plaintiffs repeat the allegations of the above paragraphs as if fully set forth herein.
88. Each Defendant is a “person” within the meaning of RSA 358-A:1, I.
89. At all relevant times to the facts set forth herein, each Defendant was engaged in “trade” or “commerce” within New Hampshire within the meaning of RSA 358-A:1, II.
90. Each Defendant engaged in unfair methods of competition and/or unfair or deceptive acts or practices in the conduct of trade or commerce within New Hampshire; unfair and deceptive conduct includes, but is not limited to, the following:
- a. Soliciting and retaining Dumont’s employment while he was employed by Plaintiffs and subject to a non-competition agreement;
  - b. Exploiting Dumont’s relationship with Plaintiffs to obtain Plaintiffs’ confidential and proprietary business information;
  - c. Soliciting Plaintiffs’ customers and prospective customers through the use of Dumont and Plaintiffs’ confidential and proprietary information;
  - d. Directing others, including Dumont, to engage in such solicitation and acquisition of confidential and proprietary information.
91. Defendants engaged in said practices willfully and intentionally and in bad faith.
92. As a direct and proximate result of such unfair methods of competition and/or unfair or deceptive acts or practices, Plaintiffs are entitled to statutory damages, actual damages, double or treble damages, and the cost of suit and reasonable attorneys’ fees.

**Count III**  
**Tortious Interference with Contract**  
**(Customer Contracts)**

93. Plaintiffs repeat the allegations of the above paragraphs as if fully set forth herein.

94. Defendants knew that Plaintiffs had entered into contractual agreements with RAM, Maine Mall Motors, Berlin City Auto, and other customers.

95. Defendants have tortiously interfered with Plaintiffs' contractual agreements with these customers by intentionally and improperly inducing them to enter into agreements with Defendants.

96. Plaintiffs are entitled to recover damages caused by Defendants' tortious interference with Plaintiffs' contractual agreements with their customers, including but not limited to the disgorgement of all profits realized by Defendants as a result of said interference.

**Count IV**  
**Tortious Interference with Contract**  
**(Dumont contracts)**

97. Plaintiffs repeat the allegations of the above paragraphs as if fully set forth herein.

98. Defendants knew that Plaintiffs had entered into contractual agreements with Dumont which contained non-compete/non-solicitation provisions, and required Dumont to preserve the confidentiality of Plaintiffs' confidential and proprietary information.

99. Defendants tortiously interfered with Plaintiffs' contractual agreements with Dumont by intentionally and improperly inducing Dumont to misappropriate confidential and proprietary information from Plaintiffs and then use that information to compete unfairly with Plaintiffs, for example by soliciting Plaintiffs' customers and accounts on behalf of Provider Power.

100. Plaintiffs are entitled to recover damages caused by Defendants' tortious interference with Plaintiffs' contractual agreements with Dumont, including but not limited to the disgorgement of all profits realized by Defendants as a result of said interference.

**Count V**  
**Tortious Interference with Economic Relations**

101. Plaintiffs repeat the allegations of the above paragraphs as if fully set forth herein.

102. Defendants knew that Plaintiffs had beneficial economic relationships with their customers.

103. Defendants have tortiously interfered with these relationships by intentionally and improperly inducing them to enter into agreements with Defendants.

104. Plaintiffs are entitled to recover damages caused by Defendants' tortious interference with Plaintiffs' economic relations with their customers, including but not limited to the disgorgement of all profits realized by Defendants as a result of said interference.

**Count VI**  
**Tortious Interference with Prospective Contractual Relations**

105. Plaintiffs repeat the allegations set forth in the above paragraphs as fully set forth herein.

106. Plaintiffs had established pre-contractual relations and ongoing discussions with prospective customers, and had a reasonable expectation of economic advantage with the prospective customers.

107. Defendants tortiously interfered with Plaintiffs' prospective contractual relations with these customers by intentionally and improperly inducing them not to enter into agreements with Plaintiffs.

108. Defendants employed wrongful means – including but not limited to the use of confidential and proprietary information that was misappropriated from Plaintiffs, and the use of false and defamatory statements regarding Plaintiffs – to intentionally induce Plaintiffs'

prospective customers not to enter into agreements with Plaintiffs, and, accordingly, interfered improperly with Plaintiffs' prospective contractual relations.

109. Plaintiffs are entitled to recover damages caused by Defendants' tortious interference with Plaintiffs' prospective contractual relations, including but not limited to the pecuniary harm resulting from the loss of the benefits of the relations.

**Count VII**  
**Misappropriation of Trade Secrets**

110. Plaintiffs repeat the allegations set forth in the above paragraphs as if stated in full herein.

111. Plaintiffs' customer lists, sales leads, and pricing information constitute "trade secrets" within the meaning of RSA 350-B:1, IV.

112. Plaintiffs took reasonable steps to preserve the secrecy of this information.

113. Defendants knew the customer lists, sales leads, and pricing information that Dumont obtained from Plaintiffs was confidential and was not to be disclosed to or used for the benefit of any third person.

114. Defendants intentionally and knowingly misappropriated Plaintiffs' customer lists, sales leads, pricing information, and other confidential and proprietary information, and used that information to unfairly compete with Plaintiffs.

115. As a result of Defendants' misappropriation of trade secrets, Defendants are liable to Plaintiffs for damages within the jurisdictional limit of this Court.

**Count VIII**  
**Civil Conspiracy**

116. Plaintiffs repeat the allegations set forth in the above paragraphs as if stated in full herein.

117. Each Defendant agreed, and acted in concert with the other Defendants to engage in wrongful acts directed at Plaintiffs, and each Defendant has engaged in tortious conduct in furtherance of that scheme.

118. The acts taken by Defendants in furtherance of their unlawful scheme have proximately caused damages and irreparable harm to Plaintiffs.

119. As co-conspirators, each Defendant is jointly and severally liable for harm caused to Plaintiffs by the acts taken in furtherance of their unlawful scheme.

**Count IX**  
**Respondent Superior**

120. Plaintiffs repeat the allegations set forth in the above paragraphs as if stated in full herein

121. In or about April 2013, Defendants hired Frank Dumont.

122. Defendants were responsible for the acts of its employees and agents.

123. After Defendants hired Dumont, Dumont acted within the scope of his employment for Defendants while committing the wrongful and tortious acts alleged herein, including:

- a. Misappropriating Plaintiffs' confidential and proprietary information;
- b. Using that information to unlawfully solicit and induce Plaintiffs' customers to enter supply and aggregation agreements with Defendants;
- c. Making false and defamatory statements regarding Plaintiffs.

124. Plaintiffs have suffered substantial damages and losses as a proximate result of the wrongful conduct of Defendants' agent and employee, Dumont.



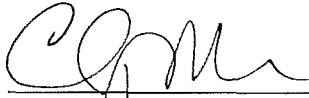
WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

- A. Enjoin Defendants from using any confidential or proprietary information of Plaintiffs;
- B. Award Plaintiffs the damages to which they are entitled as a result of Defendants' conduct;
- C. Award Plaintiffs recovery of the attorney's fees and costs incurred in bringing this action; and
- D. Grant such further and other relief as this Court deems just and appropriate.

Respectfully submitted,

HALIFAX-AMERICAN ENERGY COMPANY,  
LLC, FREEDOM ENERGY LOGISTICS, LLC  
PNE ENERGY SUPPLY, LLC, RESIDENT  
POWER NATURAL GAS & ELECTRIC  
SOLUTIONS, LLC

By their attorneys,



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Dated: February 20, 2015

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