

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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VINCENT J. EMILIO, on behalf of himself :  
and all others similarly situated, : Index No. 03-01412  
 : (Scheinkman, J.)  
 :  
 : Plaintiff, :  
 :  
 : vs. :  
 :  
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 :  
 : ROBISON OIL CORP. d/b/a ROBISON, :  
 :  
 : Defendant. :  
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**SETTLEMENT AGREEMENT**

This settlement agreement and the annexed exhibits (the “Settlement Agreement”) is made and entered into as of this 14th day of November, 2011, by and between Plaintiff Vincent J. Emilio (“Plaintiff”), individually and on behalf of the class defined herein (the “Class”), and Defendant Robison Oil Corp. d/b/a Robison (“Defendant” or “Robison”) (hereinafter, collectively with Plaintiff, the “Parties”), having reached a settlement (the “Settlement”) of the disputes between them in the above-captioned action (the “Action”), by their respective attorneys, subject to Court approval.

WHEREAS:

A. On January 28, 2003, Plaintiff commenced this action by filing his Class Action Complaint (“Complaint”) asserting claims for damages based on Defendant’s alleged failure to provide advanced notice required in connection with its automatically renewable, annual electric supply service contracts with its customers.

B. On June 3, 2003, Plaintiff moved for class certification of the class defined in his Complaint. The motion was denied by the lower court by Order dated September 2, 2003, and

Plaintiff appealed. On appeal, the denial was affirmed by the February 28, 2005 Decision and Order of the Appellate Division, Second Department, of the New York State Supreme Court. In its February 28, 2005 Decision, the Second Department declined to address Plaintiff's request for leave to file an amended complaint, since it had not been made by notice of motion and thus was not properly before the court.

C. On March 19, 2004, while Plaintiff's appeal of the lower court's September 2, 2003 Order denying class certification was pending in the Appellate Division, Second Department, Plaintiff filed a formal motion for leave to amend his complaint to assert claims, *inter alia*, for breach of contract and violations of New York General Business Law ("GBL") § 349 based on allegations that Defendant was charging electric supply rates in excess of those required under the renewal terms of its customer contracts. On May 6, 2004, Defendant filed a cross-motion for summary judgment, opposing Plaintiff's motion to amend and seeking dismissal of the Complaint.

D. By Order dated September 7, 2004, the lower court denied Plaintiff's March 19, 2004 motion to amend, and granted Defendant's cross-motion for summary judgment. Plaintiff appealed, and by Decision and Order dated April 4, 2006, the Appellate Division, Second Department, affirmed so much of the lower court order as granted Defendant's cross-motion for summary judgment and dismissed the second and third causes of action asserted in the Complaint, but held that Plaintiff was entitled to amend his Complaint to add claims alleging breach of contract and deceptive trade practices in violation of GBL § 349 based on allegations that Defendant unilaterally increased Plaintiff's rate for electricity supply in middle of the renewal term of Plaintiff's contract.

E. On May 19, 2006, Plaintiff served his First Amended Class Action Complaint (the “Amended Complaint”), asserting claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and violation of GBL § 349, based on allegations that Defendant unilaterally increased the rates for its annual, fixed-rate electric supply contracts mid-term. On September 6, 2006, Plaintiff filed a motion for class certification, seeking certification of the following class pursuant to Civil Practice Law and Rules (“CPLR”) Article 9:

All persons and entities within the State of New York who, for the period beginning on January 28, 1997 and continuing to the present, were wrongfully and deceptively required to pay Robison amounts in excess of the electric rates required under the terms of their annual fixed-rate electric supply service contracts with Robison.

F. By Decision and Order dated October 31, 2007, the lower court denied Plaintiff’s September 6, 2006 class certification motion. Plaintiff thereafter appealed, and by Decision and Order dated June 2, 2009, the Appellate Division, Second Department, reversed and granted Plaintiff’s motion for class certification, holding that Plaintiff’s claims for breach of contract and violations of GBL § 349 could proceed as a class action on behalf of the class identified in the Amended Complaint, quoted *supra*. In its June 2, 2009 Decision and Order, the Appellate Division, Second Department, also certified Plaintiff Emilio as class representative.

G. In February, 2010, at the request of counsel for Plaintiff, the Action was transferred to the Commercial Division of New York State Supreme Court, Westchester County and assigned to the Honorable Alan D. Scheinkman. Thereafter, the Parties negotiated the form of a notice of pendency of the class action to be disseminated to potential class members pursuant to CPLR 904. By Amended Order entered July 16, 2010 (the “Notice Order”), Justice Scheinkman directed the dissemination of notice of the pendency of the class action, and the

right to request exclusion from the certified class, to all potential members of the following class as defined by the Court:

All persons and entities within the State of New York who, for the period beginning on January 28, 1997 and continuing to September 6, 2006, were wrongfully and deceptively required to pay Robison amounts in excess of the electric rates required under the terms of their annual fixed-rate electric supply service contracts with Robison (the “Class”).

H. Notice of pendency of the class action was disseminated in the manner provided in the Notice Order, and Justice Scheinkman was so advised by the Parties. Thereafter, at a conference among the Court and counsel for the Parties on February 10, 2011, the Parties advised the Court that discovery was completed, and counsel for Plaintiff requested that a date for trial of the Action be set by the Court. Justice Scheinkman scheduled the Action for trial to commence on November 14, 2011, and ordered Plaintiff to file by March 2, 2011 a Note of Issue and Certificate of Readiness for Trial, which was timely filed by Plaintiff.

I. Beginning after the issuance of the June 2, 2009 Decision and Order of the Appellate Division, Second Department, granting Plaintiff’s 2006 motion for class certification, the Parties began to explore the possibility of a negotiated resolution of the Action by settlement. The negotiations included the Parties’ ongoing exchange of documents, data and other information by which a framework for potential settlement could be established. Multiple settlement proposals were exchanged by the Parties, and the parameters for a fair, reasonable and adequate settlement were actively explored and revised a number of times throughout the course of the settlement negotiations. On October 18, 2011, the Parties agreed to settle the Action, subject to the completion of satisfactory settlement papers and Court approval, and reported the Settlement to the Court on October 19, 2011.

J. The Action has been actively and vigorously litigated by the Parties since its inception. In addition to the extensive motion practice and three appeals described, *supra*, the Parties have exchanged tens of thousands of pages of potentially relevant documents, including copies of all of the relevant electric customer contracts maintained in Defendant's records, and multiple computerized databases containing all of the electric transaction data for its customers during the relevant period. During the prosecution of the Action, Defendant has deposed Plaintiff twice, and Plaintiff has deposed four of Defendant's officers, employees and consultants. In addition to reviewing the more than 10,000 pages of documents produced by Defendant, Plaintiff's counsel, assisted by their computer database analysis expert, have engaged in hundreds of hours of review and analysis of the computerized electric customer transaction data and other relevant customer information and documents produced by Defendant, both in connection with preparation for trial and the continuing settlement negotiations of the Parties.

K. Although Plaintiff and counsel for Plaintiff and the Class defined herein ("Settlement Class Counsel") believe that Plaintiff's claims have substantial merit based on the thorough investigation they have conducted, they recognize that the claims are disputed and that the ultimate outcome of the Action, including any trial that might take place, is uncertain, and that the Class could ultimately recover no benefits whatsoever, or benefits that are substantially less favorable than the benefits achieved for the Class under the terms of the Settlement. Plaintiff and Settlement Class Counsel also have taken into account factors including the length and expense of continued proceedings necessary to prosecute the Action against Defendant through trial and appeals, as compared to the Class receiving their certain benefits now under the Settlement. Plaintiff and Settlement Class Counsel, therefore, desire to settle the Action on the

terms and conditions hereinafter set forth, and believe such Settlement to be fair, reasonable and adequate and in the best interests of Plaintiff and the other members of the Class defined herein.

L. Defendant has denied, and continues to deny, each and every allegation of wrongdoing made against it and that could have been made against it in the Amended Complaint, and asserts that it has meritorious defenses to those claims, that its conduct has been lawful and proper in all respects, that no person or entity has been deceived by Defendant or has suffered any harm or damages as a result of any matter that is the subject of or underlies any of the claims against it in the Action, and that judgment should be entered dismissing all claims against it with prejudice. Defendant has entered into this Settlement Agreement for the purpose of avoiding the continuing additional expense, inconvenience, distraction and risk of this litigation, without admitting any wrongdoing or liability whatsoever. By so doing, Defendant desires to settle, compromise and terminate the Action with prejudice, and put to rest forever all claims alleged in the Amended Complaint.

M. Plaintiff and Defendant agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Defendant or a concession by Plaintiff that the claims lack merit.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned Parties, through their respective counsel and subject to all of the terms and conditions set forth herein and the approval of the Court pursuant to CPLR Article 9, that this Action, as well as the claims alleged in the Amended Complaint, hereby are compromised and settled on the terms and conditions hereinafter set forth:

1. Promptly after the execution of the Settlement Agreement, the Parties shall apply to the Court for the entry of an Order Preliminarily Approving Class Action Settlement,

Scheduling Fairness Hearing and Authorizing Dissemination of Notice of Settlement (the “Preliminary Approval Order”) substantially in the form annexed as Exhibit A:

(a) Certifying the following Class for purposes of this Settlement:

All persons and entities within the State of New York who, for the period beginning on January 28, 1997 and continuing to September 6, 2006 (the “Class Period”), allegedly were wrongfully and deceptively required to pay Robison Oil Corp. d/b/a Robison (“Robison”) amounts in excess of the electric rates required under the terms of their annual fixed-rate electric supply service contracts with Robison (the “Class”).

Excluded from the Class are Robison, its subsidiaries, affiliates, owners, executive officers, directors and employees, and any persons previously requesting exclusion in response to dissemination of the Notice of Pendency of Class Action and any judge presiding, or who has presided, over the action.

(b) Scheduling a hearing (the “Fairness Hearing”) to determine whether the proposed Settlement should be approved as fair, reasonable and adequate to the members of the Class, and the amount of fees and costs to be paid to in connection with the administration of the Settlement, and the amount of fees and expenses to be awarded to Plaintiff’s counsel and incentive fees to Plaintiff;

(c) Approving as to form the content of the Notice of Proposed Settlement of Class Action and Fairness Hearing, and Claim Form/Release (the “Settlement Notice”), attached hereto as Exhibit B, and the Summary Notice of Proposed Settlement of Class Action and Fairness Hearing (“Summary Settlement Notice”), attached as Exhibit D hereto;

(d) Directing (i) the Settlement Administrator to mail the Settlement Notice, by first-class mail, to the members of the Class (as determined and identified by Settlement Class Counsel) who have not previously requested exclusion and to whom notice of pendency of the Action previously was disseminated pursuant to the Notice Order, (ii) the Settlement Administrator to publish the Summary Settlement Notice in the manner agreed to by the Parties;

(iii) Defendant and Settlement Class Counsel and the Settlement Administrator to post the agreed-upon Settlement Notices and other documents as set forth herein to their respective websites, and (iv) the Settlement Administrator to mail notice to all Robison electric customers who previously were mailed notice of pendency of the class action pursuant to the Notice Order, but who have been determined by Settlement Class Counsel not to have an “Allowed Claim” under the Settlement, that they have been determined by Settlement Class Counsel not to be part of the Class and will not be entitled to share in any benefits under the Settlement, but will not be required under the Settlement to release any claims they may have against Robison;

(e) Finding that the mailing of the Settlement Notice, the publication of the Summary Settlement Notice, and the website postings pursuant to Paragraph 1(d) hereof constitutes the best notice practicable under the circumstances and is due and sufficient notice of the matters set forth in the Settlement Notice and Summary Settlement Notice to all members of the Class, pursuant to CPLR 904, 907 and 908, and that the Settlement Notice and Summary Settlement Notice and their dissemination as prescribed herein and in the Preliminary Approval Order fully satisfy the requirements of due process and the CPLR;

(f) Appointing RG2 Claims Administration LLC, designated as Settlement Administrator selected by the Parties for approval by the Court in the Preliminary Approval Order (and subject to further court order and this Settlement Agreement), to administer the notice procedures of the Settlement, as well as administering the claims process, maintaining the Settlement Fund and disbursing the Settlement Consideration (as further described in Paragraphs 2-5, *infra*);

(g) Empowering Settlement Class Counsel, assisted as appropriate by the computer database analysis expert utilized by Settlement Class Counsel during Plaintiff’s



prosecution of the Action and negotiation of the Settlement, to supervise the dissemination of notice of the Settlement to Class members, as well as the administration and disbursement of the Settlement Fund (as further described in Paragraphs 2-5, *infra*); and

(h) Pending the final determination of the fairness, reasonableness and adequacy of the proposed Settlement, enjoining any member of the Class either directly, representatively, or in any other capacity from prosecuting, instituting or commencing, on behalf of that Class member or the Class, any claim alleged in the Amended Complaint.

2. (a) Defendant will pay total settlement consideration of \$700,000 (“Settlement Consideration”), in accordance with the following schedule:

(i) Within three (3) business days after entry by the Court of the Preliminary Approval Order, Defendant shall pay \$15,000 of the Settlement Consideration to RG2, the Settlement Administrator, to be applied to the Settlement Administrator’s costs of preliminarily administering the Settlement prior to final approval by the Court.

(ii) The \$685,000 balance of the Settlement Consideration remaining after the payment prescribed in Paragraph 2(a)(i), *supra*, shall be paid by Defendant, within ten (10) calendar days after entry by the Court of the Final Judgment as prescribed in Paragraph 7, *infra*, into a settlement fund escrow account (the “Settlement Fund”) to be established and maintained by the Settlement Administrator in accordance with this paragraph and Paragraph 4, *infra*.

(b) The Settlement Fund will be held initially in the Huntington National Bank depository institution, which shall take no action except upon written instructions signed by Settlement Class Counsel or by the Settlement Administrator acting with the approval of Settlement Class Counsel. The Settlement Fund, with the exception of the amount of bank

charges, if any, imposed by the designated depository institution in connection with the preliminary administration of the Settlement, shall be maintained in a fully FDIC insured, non-interest bearing account.

(c) Subject to further order and direction by the Court, Settlement Class Counsel is authorized to execute such documents and procedures for payment of taxes, providing notice to the Class and administering the Settlement as are consistent with the terms of the Settlement Agreement.

(d) The Settlement Fund shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Settlement Agreement and/or further order(s) of the Court.

3. The Settlement Consideration and the Settlement Fund shall be allocated and distributed as follows, subject to approval of the Court:

(a) Settlement Consideration equaling \$275,000 will be allocated as “Net Settlement Benefits” for distribution to members of the Class.

(b) An allowed claim (“Allowed Claim”) will be calculated by Settlement Class Counsel, with the assistance of their database analysis expert, for each of the 2,549 Class members identified by Settlement Class Counsel as entitled to an Allowed Claim, based on the transaction data, contracts and other customer account information produced by Defendant during the course of the litigation. The Allowed Claim will be calculated pursuant to a formula which analyzes when the Class member was an electric customer of Defendant during the Class Period, the Class member’s applicable electric supply service contract(s), and the amounts charged by and paid to Defendant for electricity supply under the applicable contract(s) during

the Class Period. Specifically, each Class member's Allowed Claim will be calculated as follows:

(i) For each Class member to whom Defendant first supplied electricity beginning in or after March, 2000, the Allowed Claim will include the sum of the Class member's monthly payments to Defendant during the Class Period in excess of the electric supply rate per Kilowatt Hour ("KwH") in effect on the first day of the first monthly billing cycle of each twelve month annual period (the "Renewal Date"), adjusted as appropriate to reflect any new written annual fixed-rate contract(s) between the Class member and Robison resulting in an annual period with a different Renewal Date ("Method 1"). The Allowed Claim determined under Method 1 will include allocable sales taxes, and will include interest computed at the non-compounded annual rate of 2% ending on October 31, 2011. The Allowed Claim will be reduced for the total underpayment, if any, by the Class member for the electricity supplied by Defendant during the Class Period, as reflected in the Class member's transaction data produced to Plaintiff by Defendant during the course of the prosecution of the Action.

(ii) For each Class member to whom Defendant first supplied electricity beginning prior to March, 2000, the Allowed Claim will include the sum of two components, and will be calculated as follows ("Method 2"):

(a) First, with respect to electricity purchased during any monthly billing cycle ending in or after May 2000 and continuing during the Class Period until the first new written annual fixed-rate contract between the Class member and Defendant, the Allowed Claim will include the greater of: (1) the sum of each monthly payment by the Class member to Defendant in excess of 90% of the cost of electric energy provided by Con Edison

under the applicable retail tariff, up to a maximum of \$100; or (2) the amount computed for that Class member for the same period under Method 1, *supra*; and

(b) Second, with respect to electricity purchased during the period beginning with the first new written annual fixed-rate contract between the Class member and Defendant and continuing to the end of the Class Period, the Allowed Claim will include the amount computed for this period under Method 1, *supra*.

(c) The Allowed Claim determined under Method 2 will include allocable sales taxes, and will include interest computed at the non-compounded annual rate of 2% from the date of each payment amount included in the Allowed Claim until October 31, 2011. The Allowed Claim will be reduced for the total underpayment, if any, by the Class member for the electricity supplied by Defendant during the Class Period, as reflected in the Class member's transaction data produced to Plaintiff by Defendant during the course of the prosecution of the Action.

(iii) For each Class member for whom neither Method 1 or Method 2, *supra*, results in an Allowed Claim but who made one or more payments to Defendant based on any increase in the customer's kWh fixed-rate for electricity as determined under Method 1 for any billing cycle without a corresponding written annual fixed-rate contract between the Class member and Defendant, the Allowed Claim will be \$20 ("Method 3"). Additionally, if the Allowed Claim for any Class member calculated under Method 1 or Method 2 is less than \$20, the Allowed Claim for that Class member also will be \$20.

(iv) In order to fully effect the terms of the Settlement, and subject to the agreement of Defendant (which shall not be withheld unreasonably), Settlement Class Counsel is authorized, up until the time of distribution of the Net Settlement Benefits to the

members of the Class, to adjust a Class member's Allowed Claim in a manner consistent with the above-described methods if supported by subsequently obtained documents, data and/or information.

(c) Net Settlement Benefits will be distributed *pro rata* based on the percentage that the total amount of Allowed Claims (as identified for each Class member on the Claim Form sent with the Notice of Settlement) for those Class members properly filing their Claim Form bears to the total Net Settlement Benefits of \$275,000. The total Allowed Claims for all Class members has been calculated as of the date of the Settlement Agreement at \$587,873. Thus, based on this amount, if the total Allowed Claims for all Class members who properly file a Claim Form is less than or equal to \$275,000, each Class member properly filing a claim would be entitled to receive 100% of the Class member's Allowed Claim. Conversely, each Class member properly filing a Claim Form would be entitled to receive approximately 46.8% of the Class member's Allowed Claim if 100% of all possible claims were filed, and proportionately greater than 46.8% to the extent the filing rate for Allowed Claims is less than 100%.

(d) For all Class members properly filing Claim Forms, their share of the Net Settlement Benefits will be distributed by check issued by the Settlement Administrator in accordance with the schedule prescribed in Paragraph 3(g), *infra*.

(e) In the event that the total amount of Allowed Claims for those Class members properly filing their Claim Form is less than the total Net Settlement Benefits of \$275,000, the remainder shall be paid on Defendant's behalf to Defendant or to the banking institution designated by Defendant, in accordance with the schedule prescribed in Paragraph 3(g), *infra*.

(f) The remainder of the Settlement Fund, \$425,000, shall be distributed as follows, subject to Court approval:

(i) Payment of the costs of administration of the Settlement, including the balance of the fees and costs of the Settlement Administrator and the fees of the computer database analysis expert utilized by Settlement Class Counsel in connection with their supervision of the administration of the notice and claims process and distribution of the Net Settlement Benefits to the Class pursuant to Paragraph 1(g), *supra*;

(ii) Payment of an incentive fee to Plaintiff in the amount of \$5,000 on account of his extensive, active participation in the prosecution of the Action, including sitting for two different depositions by Defendant, the drafting and submission of multiple affidavits in connection with the class certification and other motions filed in the Action, his continuing factual investigation in support of the claims asserted in the Action, and his attendance at several court proceedings;

(iii) Payment of the expenses incurred by counsel for Plaintiff and the Class in connection with the prosecution of the Action, including the fees of the computer database analysis expert utilized by Plaintiff's counsel during the prosecution of the Action and negotiation of the Settlement; and

(iv) Payment of the remainder of the Settlement Fund as attorneys' fees to counsel for Plaintiff and the Class on account of their successful prosecution and resolution of the Action.

(g) The Settlement Administrator shall distribute the Net Settlement Benefits payable to Class members properly filing claims, the amounts awarded by the Court as the costs of administration of the Settlement, Plaintiff's incentive fee, and the fees and expenses of

counsel for Plaintiff and the Class, and any amount payable to Robison under Paragraph 3(e), *supra*, no earlier than the ninety-first (91st) day after the Effective Date of the Settlement (as defined in Paragraph 8, *infra*).

4. (a) The Settlement Fund shall, upon the Effective Date (defined in Paragraph 8, *infra*), constitute a “qualified settlement fund” with the meaning of Treasury Regulation Sections 1.468B-1 through 1.468B-3, 26 C.F.R. §§ 1.468B-1 through 1.468B-3 (1992). The Parties and the Settlement Administrator shall treat the Settlement Fund as a qualified settlement fund for all reporting purposes under the federal tax laws.

(b) The Settlement Administrator shall pay any taxes (and any other tax-related fees and expenses) required under applicable law without prior approval of the Court. Neither Plaintiff, Defendant nor their counsel shall have any responsibility for the payment of taxes described in this paragraph.

(c) The Settlement Administrator shall serve as the administrator of the Settlement Fund within the meaning of Treasury Regulation Section 1.468B-2(k)(3), 26 C.F.R. § 1.468B-2(k)(3) (1992). The Settlement Administrator will comply with all applicable reporting, withholding, and filing requirements for a qualified settlement fund, including as provided for in Treasury Regulation Sections 1.468B-1 through 1.468B-3, 26 C.F.R. §§ 1.468B-1 through 1.468B-3 (1992). Neither Plaintiff, Defendant, nor their counsel shall have any responsibility for the payment or withholding of taxes assessed on the Settlement Fund. The Parties to this Settlement agree to cooperate with the Settlement Administrator, each other and any tax attorneys or accountants to the extent reasonably necessary to carry out the provisions of this Paragraph 4.

5. (a) (i) The Settlement Administrator shall be responsible for the administration of the Settlement, including but not limited to mailing the Settlement Notice to members of the Class and publication of the Summary Settlement Notice, processing Claim Forms submitted by Class members, and making the Settlement Fund distributions as prescribed in Paragraph 3, *supra*.

(ii) The Settlement Administrator shall also be responsible after entry of the Preliminary Approval Order for mailing a notice, in a form agreed to by the Parties, to all Robison electric customers who previously were mailed notice of pendency of the class action pursuant to the Notice Order but who have been determined by Settlement Class Counsel not to have an “Allowed Claim,” to notify them that they have been determined by Settlement Class Counsel not to be part of the Class under the Settlement and will not be entitled to share in any of the Net Settlement Benefits, but will not be required under the Settlement to release any claims they may have against Robison.

(b) Settlement Class Counsel and their computer database analysis expert will assist the Settlement Administrator in the administration of the Settlement and the distribution of the Net Settlement Benefits, including providing the Settlement Administrator with a computerized list of the Class members and the amount of their Allowed Claims to be included in the Notice/Claim Form disseminated to each Class Member, and additional database analyses as appropriate with respect to the distribution of the Net Settlement Benefits allocable to each Class Member submitting a Claim Form in the form required under the Settlement Agreement.

(c) Settlement Class Counsel shall respond to inquiries from Class members regarding the Settlement, including questions regarding the computation of their Allowed Claims and their allocable Net Settlement Benefits; inquiries regarding the processing of Claim Forms



shall be handled by the Settlement Administrator. Settlement Class Counsel also shall respond to inquiries from other Robison customers who are advised pursuant to Paragraph 5(a)(ii) that they have been determined not to be members of the Class entitled to share in the Net Settlement Benefits.

(d) Defendant and its counsel shall have no responsibility for the administration of the Settlement other than cooperating in good faith with Settlement Class Counsel and the Settlement Administrator as necessary to effect the administration of the Settlement in accordance with the terms of this Settlement Agreement.

(e) The administration of the Settlement, payments out of the Settlement Fund, and the final computation of each Class member's *pro rata* share of the Net Settlement Benefits shall be under the authority of the Court.

6. (a) Upon the Effective Date of the Settlement, as defined in Paragraph 8 hereto, Plaintiff and all other members of the Class who have not been excluded therefrom, on behalf of themselves, their respective heirs, executors, attorneys and administrators, successors and/or assigns of any person(s) they represent in any and every capacity whatsoever (collectively the "Releasing Parties"), for good and sufficient consideration, receipt of which is hereby acknowledged, shall be deemed to have fully, finally, and irrevocably released, relinquished and forever discharged Defendant and any owner, parent corporation, direct and indirect subsidiary companies, and any other person, firm, trust, corporation, or other entity related to, affiliated with, employed by, or acting as an officer, director, manager, attorney or agent for Defendant, including but not limited to Singer Holding Corporation, together with their predecessors, successors and assigns (collectively, the "Released Parties"), from all claims (including known claims, as well as "Unknown Claims" defined below), demands, rights, liabilities and causes of

action of every nature and description whatsoever, whether asserted or that could have been asserted by Plaintiff or by any of the Releasing Parties against the Released Parties, directly, indirectly, representatively, derivatively or in any other capacity, in this Action or any other forum (judicial, administrative, arbitral or other), based on, arising out of, in connection with or relating to the facts alleged in the Amended Complaint for the period beginning on January 28, 1997 and continuing to September 6, 2006, including but not limited to, claims for breach of contract, quasi-contract, violations of New York General Business Law § 349, violations of New York General Obligations Law § 5-903, and violations of any other state or federal statutes, regulations or principles of common law, of any kind, nature and/or description, matured or unmatured, liquidated, or unliquidated, accrued or unaccrued, known or unknown, contingent or non-contingent, whether at law, equity, or otherwise, that exist as of the date of this Settlement Agreement or heretofore existed (the “Released Claims”).

(b) “Unknown Claims” means any and all settled claims which Plaintiff or any Class member or Releasing Party does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, and any claims of the Released Parties which Defendant does not know or suspect to exist in his, her or its favor, which if known by him, her or it might have affected his, her or its decision not to object to the Settlement Agreement or the Settlement.

(c) No Robison electric supply customer not included in the Class and/or determined not to have an Allowed Claim shall be included within the Releasing Parties.

7. Upon the approval by the Court of the Settlement, a Final Judgment shall be entered in the Action, substantially in the form annexed hereto as Exhibit C:

(a) Approving the Settlement and adjudging the terms to be fair, reasonable and adequate; directing consummation of its terms and provisions, including the distribution of the Net Settlement Benefits to the members of the Class so entitled; awarding the fees and costs of the Settlement Administrator and the computer database analysis expert utilized by Settlement Class Counsel in connection with their supervision of the administration of the Settlement; awarding Plaintiff's counsel such attorneys' fees and expenses including expert fees, and Plaintiff such incentive fees, as the Court deems appropriate; and retaining jurisdiction to effectuate the foregoing;

(b) Dismissing the Amended Complaint against Defendant in the Action on the merits and with prejudice, and permanently barring Plaintiff and the other Releasing Parties from prosecuting against the Released Parties any Released Claim; and

(c) Containing such other and further provisions consistent with the terms and provisions of this Settlement Agreement as the Court may deem advisable.

8. The Settlement embodied in this Settlement Agreement shall not become effective (the "Effective Date") until all of the following conditions have been satisfied, unless one or more such conditions is expressly waived by Plaintiff and Defendant in writing:

(a) The entry by the Court of a Preliminary Approval Order, substantially in the form annexed as Exhibit A hereto;

(b) The entry by the Court of the Final Judgment substantially in the form annexed as Exhibit C hereto approving the Settlement and dismissing the Amended Complaint against Defendant in the Action on the merits and with prejudice; and

(c) The expiration of any time for appeal or review of the Final Judgment referred to in Paragraph 7 and 8(b), or if any appeal is filed and not dismissed, such Final

Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or by writ of certiorari.

9. Upon the Effective Date, as defined in Paragraph 8 hereof, each of the Released Parties shall be deemed to have, and by operation of law and the Final Judgment shall have, fully, finally and irrevocably released, relinquished and forever discharged Plaintiff, the Class members, Settlement Class Counsel and all other counsel representing Plaintiffs and the Class members in the Action from all claims arising out of, relating to, or in connection with the institution, prosecution, assertion or resolution of the Action and the Released Claims; provided, however, that nothing in this Settlement Agreement or the Final Judgment shall bar any action or release any claim to enforce the terms of this Settlement Agreement or the Final Judgment.

10. If the Settlement does not become effective, all monies paid by Defendant pursuant to Paragraph 2(a)(ii) of this Settlement Agreement and Settlement, less the amount of bank charges, if any, imposed by the designated depository institution in connection with the preliminary administration of the Settlement, shall be returned to Defendant within ten (10) business days of the date on which the Settlement fails to become effective, by remitting a check prepared by the Settlement Administrator in the amount of the balance of the Settlement Fund to counsel for Defendant.

11. Consistent with and to the fullest extent provided for under CPLR § 4547 and any other relevant law, neither this Settlement Agreement nor any proceedings taken in accordance with the terms set forth herein shall be construed or deemed to be evidence, or any admission or concession, either (a) on the part of Plaintiff, of the lack of merit of this Action, or (b) on the part of Defendant, of any breach of contract, violation of any statute or regulation or principle of common law or of any liability or wrongdoing, or that any person or entity has suffered any

damages as a result of any matter that underlies any of the allegations or claims that were or could have been brought with respect to the facts alleged in the Amended Complaint in the Action. Any such evidence, admission or concession is expressly denied and disclaimed by Plaintiff and Defendant. Neither this Settlement Agreement, nor the fact of its execution, nor any of its provisions, shall be offered or received in evidence in any action or proceeding of any nature or otherwise referred to or used in any manner in any court of other tribunal, except as evidence of the fact of the making of this Settlement Agreement in an action or proceeding seeking to enforce its terms.

12. In the event the proposed Settlement is not approved by the Court, or for any reason the Parties fail to obtain a Final Judgment as described in Paragraph 7 above or the Settlement fails to become effective as described in Paragraph 8 hereof, then, in any such event, the Settlement shall become null and void and of no further force and effect, and shall not be used or referred to for any purpose whatsoever. In such event, the Settlement Agreement and all negotiations shall become null and void, and all proceedings relating thereto shall be withdrawn without prejudice as to the rights of any and all Parties thereto who shall be restored to their respective positions existing as of the date of the Settlement Agreement.

13. The Parties to this Settlement Agreement and to the Settlement embodied herein agree to cooperate in the prompt submission of this Settlement Agreement to the Court, and to take all steps that may be required by the Court and otherwise to use their best efforts to consummate the Settlement and to obtain entry of the Preliminary Approval Order and Final Judgment.

14. The Parties agree that, except for communications between Settlement Class Counsel or the Settlement Administrator and Plaintiffs and Class members, and communications

between Defendant's counsel and Defendant, no Party or their counsel shall initiate, directly or indirectly, any releases, announcements or other communication with the public or the press about the Settlement other than the website disclosures expressly agreed to in the Settlement, and in the event of any communication or inquiry from the public or the press, will limit their responses to directing the public or the press to the Court files, and to the papers publicly available regarding the case on the website of Settlement Class Counsel. Nothing in this Paragraph 14 will impose a duty on the Parties or their counsel to prevent independently initiated communication regarding the Settlement by the public or the press.

15. This Settlement Agreement shall be binding and shall inure to the benefit of the Parties hereto and their respective successors, assigns, executors, administrators, heirs and legal representatives, as the case may be; provided, however, that no assignment by any Party hereto shall operate to relieve such Party hereto of his, her, or its obligations hereunder.

16. This Settlement Agreement and the exhibits hereto constitutes the sole and entire agreement among the Parties hereto with respect to the subject matter hereof, and no representations, warranties, inducements, promises or agreements (oral or otherwise) not embodied or incorporated herein, can override the terms of this Settlement Agreement. Any and all prior discussions, negotiations, agreements and understandings relating thereto are superseded hereby and merged herein. The provisions of this Settlement Agreement (including any time periods specified herein) may be modified by written agreement of all Parties with the consent of the Court without further notice to the Class, unless the Court requires such notice. The terms or provisions of this Settlement Agreement may not be changed, waived, modified or varied in any manner whatsoever unless in writing duly signed by all Parties hereto or their counsel. Any failure by any Party to this Settlement Agreement to insist on strict performance by any other

Party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Settlement Agreement by such other Party.

17. This Settlement Agreement, including but not limited to the releases contained herein, shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to its conflict of laws principles. This Settlement Agreement shall be considered to have been negotiated, executed and delivered, and to be performed, wholly within the State of New York. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Settlement Agreement, and all Parties hereto and members of the Class submit to the exclusive jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Settlement Agreement.

18. This Settlement Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties hereto, all Parties hereto have contributed substantially and materially to the preparation of this Settlement Agreement.

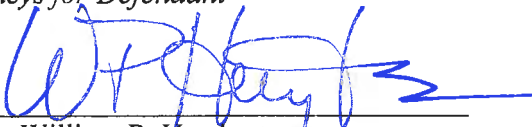
19. The undersigned each represent that they have the full authority necessary to execute this Settlement Agreement.

20. This Settlement Agreement may be executed in separate counterparts, and a facsimile or "PDF" signature shall be deemed to constitute an original signature for the purposes hereof.

Dated: White Plains, New York  
November 14, 2011

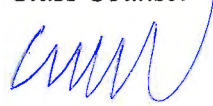
BLEAKLEY PLATT & SCHMIDT, LLP

*Attorneys for Defendant*

By:   
William P. Harrington  
One North Lexington Ave., 7th Floor  
White Plains, New York 10601  
(914) 287-6104

LAW OFFICES OF WILLIAM R.  
WEINSTEIN

*Settlement Class Counsel*

By:   
William R. Weinstein  
199 Main Street, 4th Floor  
White Plains, New York 10601  
(914) 997- 2205

MICHAEL A. KATZ, ESQ.

*Co-Settlement Class Counsel*

By:   
Michael A. Katz  
630 Third Ave., 23rd Floor  
New York, New York 10017  
(212) 682-6260



# **Exhibit A**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
VINCENT J. EMILIO, on behalf of himself :  
and all others similarly situated, : Index No. 03-01412  
 : (Scheinkman, J.)  
 :  
 : Plaintiff, :  
 :  
 : vs. :  
 :  
 :  
 :  
 : ROBISON OIL CORP. d/b/a ROBISON, :  
 :  
 : Defendant. :  
 :  
-----X

**PROPOSED ORDER PRELIMINARILY  
APPROVING SETTLEMENT, SCHEDULING FAIRNESS  
HEARING AND AUTHORIZING DISSEMINATION OF NOTICE**

Plaintiff Vincent J. Emilio (“Plaintiff”), individually and on behalf of the class defined in the Settlement Agreement and herein (the “Class”), and Defendant Robison Oil Corp. d/b/a Robison (“Defendant” or “Robison”) (hereinafter, collectively with Plaintiff, the “Parties”), having reached a proposed settlement (the “Settlement”) of the disputes between them in the above-captioned action (the “Action”), which is embodied in the Settlement Agreement presented to the Court;

The Parties having applied to this Court for approval of the Settlement and for dismissal of Plaintiff’s Amended Class Action Complaint with prejudice upon the terms and conditions set forth in the Settlement Agreement; and

The Court having read and considered the Settlement Agreement and accompanying exhibits, and the Parties to the Settlement Agreement having consented to the entry of this Preliminary Approval Order, and all capitalized terms used herein having the same meaning defined in the Settlement Agreement;

IT IS HEREBY ORDERED THAT:

1. The requirements for class certification under Article 9 of the New York Civil Practice Law and Rules (“CPLR”), upon preliminary review, are satisfied, and the following Class is preliminarily certified for the purpose of considering and approving the Settlement:

All persons and entities within the State of New York who, for the period beginning on January 28, 1997 and continuing to September 6, 2006 (the “Class Period”), allegedly were wrongfully and deceptively required to pay Robison Oil Corp. d/b/a Robison (“Robison”) amounts in excess of the electric rates required under the terms of their annual fixed-rate electric supply service contracts with Robison (the “Class”).

Excluded from the Class are Robison, its subsidiaries, affiliates, owners, executive officers, directors and employees, and any persons previously requesting exclusion in response to dissemination of the Notice of Pendency of Class Action and any judge presiding, or who has presided, over the action.

2. For purposes of the Settlement, this Court preliminarily finds and concludes that the numerosity, typicality, commonality and adequacy requirements of CPLR Article 9 are satisfied, and that in accordance with Article 9, common issues of fact and law predominate and make certification of the Action as a class action superior to other available methods for the fair and efficient adjudication of the controversy.

3. The Court appoints Plaintiff Vincent J. Emilio as representative of the Class and the attorneys identified as “Settlement Class Counsel” in the Settlement Agreement, William R. Weinstein of Law Offices of William R. Weinstein, and Michael A. Katz, as counsel for the Class for purposes of this Settlement. The Court also preliminarily finds and concludes that in negotiating and entering into the Settlement Agreement, Plaintiff and Settlement Class Counsel have fairly and adequately represented and protected the interests of all Class members, as required under CPLR Article 9.

4. The Court preliminarily approves the Settlement Agreement as fair, adequate and reasonable to the Class, subject to the Fairness Hearing as described in the notice and summary notice to be disseminated to the Class pursuant to CPLR Article 9.

5. The Court approves, as to form and content, the Notice of Proposed Settlement of Class Action and Fairness Hearing and Claim Form/Release (“Settlement Notice”), annexed as Exhibit B to the Settlement Agreement, and the Summary Notice of Proposed Settlement of Class Action and Fairness Hearing (“Summary Settlement Notice”), annexed as Exhibit D to the Settlement Agreement, and finds that the mailing and dissemination of the Settlement Notice substantially in the manner set forth in Paragraph 7 of this Preliminary Approval Order, and the publication of the Summary Settlement Notice substantially in the manner set forth in Paragraph 7 of this Preliminary Approval Order, meet the requirements of CPLR Article 9 and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice for all purposes to all persons entitled thereto.

6. Settlement Class Counsel is hereby authorized to retain RG2 Claims Administration LLC, 30 South 17th Street, Philadelphia, PA 19103, to act as Settlement Administrator for the Settlement of the Action. The Settlement Administrator shall be responsible, under the direction of Settlement Class Counsel, for (i) the dissemination of notice to the Class and other Robison electric customers not included in the Class in accordance with this Preliminary Order, and (ii) establishing and administering the Settlement Fund, including distributing the Net Settlement Benefits to Class members, and distributing the settlement administration fees and costs, attorneys’ fees and expenses and Plaintiff’s incentive fees as may be awarded by the Court in accordance with the Final Judgment after the Settlement becomes final. Insofar as the Settlement Administrator is not qualified to do so, Settlement Class Counsel

is authorized to retain tax counsel or accountants in connection with the determination of any tax liability of the Settlement Fund, which amounts are to be paid from the Settlement Fund.

7. Within 30 days after entry of this Preliminary Approval Order:

(a) The Settlement Administrator shall cause a copy of the Settlement Notice, substantially in the form annexed as Exhibit B to the Settlement Agreement, to be distributed to all persons within the Class by mailing such Settlement Notice to the addresses listed on the Class list prepared by Settlement Class Counsel pursuant to the Settlement Agreement, with the addresses having been subject to appropriate updating by the Settlement Administrator, followed by the re-mailing of returned Settlement Notices as appropriate in light of any further updating as determined by the Settlement Administrator to be appropriate;

(b) The Settlement Administrator shall cause a copy of the Summary Settlement Notice, substantially in the form annexed as Exhibit D to the Settlement Agreement, to be published on one weekday in a size no smaller than 1/12 of a page, in the *Westchester Journal-News*;

(c) Settlement Class Counsel William R. Weinstein, Robison and the Settlement Administrator shall cause the Settlement Notice, the Settlement Agreement with exhibits and Plaintiff's Amended Class Action Complaint to be posted on their websites with a conspicuous link to such information identifying the existence of the Settlement of the Action until fifteen (15) days following the Effective Date of the Settlement; and

(d) The Settlement Administrator shall cause a copy of a notice in a form agreed to by the Parties to be mailed to all Robison electric customers who previously were mailed notice of pendency of the class action but who have been determined by Settlement Class Counsel not to have an "Allowed Claim" to notify them that they have been determined by

Settlement Class Counsel not to be part of the Class under the Settlement and will not be entitled to share in any of the Net Settlement Benefits, but will not be required under the Settlement to release any claims they may have against Robison.

8. A Fairness Hearing will be held before this Court at \_\_ .m. on the \_\_\_\_\_ day of \_\_\_\_\_ 2012, in Courtroom 105, New York State Supreme Court, Westchester County, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY 10601, on the fairness of the proposed Settlement, including: (1) whether to finally approve the Settlement as set forth in the Parties' November 14, 2011 Settlement Agreement as fair, reasonable, and adequate; (2) whether a Final Judgment in the form of Exhibit C to the Settlement Agreement should be entered dismissing the Action against Defendant with prejudice; and (3) whether the application of Settlement Class Counsel for the payment of the settlement administration fees and costs, an award of attorneys' fees and expenses including expert fees, and an award of incentive fees to Plaintiff, should be granted. The Court may adjourn or continue the Fairness Hearing without further notice to the members of the Class.

9. At or before the Fairness Hearing, Settlement Class Counsel shall file proof, by affidavit of the Settlement Administrator, of the dissemination of notice in accordance with this Preliminary Order. Additionally, Settlement Class Counsel William R. Weinstein and Robison shall file proof by affidavit or affirmation that the required documents were posted to their websites in accordance with this Preliminary Approval Order.

10. Any Class member who did not previously request exclusion from the Class in response to the mailing of the notice of pendency of class action disseminated to all potential members of the Class pursuant to the Court's July 16, 2010 Notice Order shall have the right to object to the Settlement of the Action, to Settlement Class Counsel's application for payment of

the settlement administration's fees and costs, an award of attorneys' fees and expenses including expert fees, and an award of incentive fees to Plaintiff, or to the proposed Final Judgment, and shall have the right to appear and be heard at the Fairness Hearing, either personally or through an attorney retained at the Class member's own expense. Any such objections to the Settlement shall be considered by the Court at the Fairness Hearing only if, no later than fifteen days prior to the Fairness Hearing, the objecting Class Member files with the Court, and mails by first-class mail to Settlement Class Counsel and Defendant's Counsel at the addresses prescribed in the Settlement Notice and Summary Settlement Notice, a notice of his, her or its intention to appear and supporting papers, along with a detailed statement of the reason(s) for the objection. Any Class member who does not make his, her or its objection in the manner provided in this paragraph shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the proposed Settlement or the application of Settlement Class Counsel for the payment of the settlement administration's fees and costs, an award of attorneys' fees and expenses including expert fees and an award of incentive fees to Plaintiff.

11. Upon the Effective Date of the Settlement, all Class members shall be barred forever from asserting any Released Claim against any Released Party, and by operation of the Final Judgment shall be conclusively deemed to have fully and finally released the Released Parties from all Released Claims.

12. All Class members are preliminarily enjoined from commencing or prosecuting any actions asserting any of the Released Claims, either directly, representatively, derivatively or in any other capacity, against any Released Party, pending the final determination of whether the Settlement Agreement should be finally approved by the Court.

13. The reasonable fees and costs of the Settlement Administrator for preliminarily administering the Settlement prior to final approval shall be paid by Robison in the manner set forth in Paragraph 2(a)(i) of the Settlement Agreement.

14. Pending final determination of whether the Settlement will be approved, all other proceedings in this Action shall be stayed.

15. It shall be the responsibility of Settlement Class Counsel to respond to inquiries from Class members regarding the Settlement, including questions regarding the computation of their Allowed Claims and their allocable Net Settlement Benefits, other than inquiries regarding the processing of Claim Forms, which shall be handled by the Settlement Administrator. Settlement Class Counsel also shall respond to inquiries from other Robison customers who are advised pursuant to Paragraph 7(d) of this Preliminary Approval Order that they have been determined not to be members of the Class entitled to share in the Net Settlement Benefits. Defendant and its counsel shall have no responsibility for the administration of the Settlement other than cooperating in good faith with Settlement Class Counsel and the Settlement Administrator as necessary to effect the administration of the Settlement in accordance with the terms of the Settlement Agreement.

16. This Court has jurisdiction over all claims of all Class members asserted in this Action, and has jurisdiction over all Class members.

17. In the event the Settlement Agreement shall terminate, or not become effective for any reason, this Preliminary Approval Order, including its provisions preliminarily certifying the Class, shall be vacated and shall not be used or referred to for any purposes whatsoever in this Action or in any other case or controversy; in such event, the Settlement Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights



of the Parties hereto, who shall be restored to their respective positions as of the date of the Settlement Agreement.

18. The Court may, for good cause shown, extend any of the deadlines set forth in this Preliminary Approval Order without further notice to the Class. The Settlement Hearing may be adjourned or continued without further order of the Court.

Dated: White Plains, New York  
November \_\_\_\_, 2011

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J.S.C.

# **Exhibit B**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
VINCENT J. EMILIO, on behalf of himself :  
and all others similarly situated, : Index No. 03-01412  
 : (Scheinkman, J.)  
 :  
Plaintiff, :  
 :  
vs. :  
 :  
 :  
ROBISON OIL CORP. d/b/a ROBISON, :  
 :  
 :  
Defendant. :  
-----X

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT  
AND FAIRNESS HEARING, AND CLAIM FORM/RELEASE**

TO: ALL PERSONS AND ENTITIES WITHIN THE STATE OF NEW YORK WHO, FOR THE PERIOD BEGINNING ON JANUARY 28, 1997 AND CONTINUING TO SEPTEMBER 6, 2006 (THE "CLASS PERIOD"), ALLEGEDLY WERE WRONGFULLY AND DECEPTIVELY REQUIRED TO PAY ROBISON OIL CORP. D/B/A ROBISON ("ROBISON") AMOUNTS IN EXCESS OF THE ELECTRIC RATES REQUIRED UNDER THE TERMS OF THEIR ANNUAL FIXED-RATE ELECTRIC SUPPLY SERVICE CONTRACTS WITH ROBISON (THE "CLASS").

EXCLUDED FROM THE CLASS ARE ROBISON, ITS SUBSIDIARIES, AFFILIATES, OWNERS, EXECUTIVE OFFICERS, DIRECTORS AND EMPLOYEES, AND ANY PERSONS PREVIOUSLY REQUESTING EXCLUSION IN RESPONSE TO DISSEMINATION OF THE NOTICE OF PENDENCY OF CLASS ACTION AND ANY JUDGE PRESIDING, OR WHO HAS PRESIDED, OVER THE ACTION.

This Notice is given pursuant to an order of the Supreme Court of the State of New York for Westchester County, to inform you of the proposed settlement (the "Settlement") of the above-captioned class action (the "Action"). The Settlement is between Plaintiff Vincent J. Emilio ("Plaintiff"), individually and on behalf of the Class described above, and Defendant Robison Oil Corp. d/b/a Robison ("Defendant" or "Robison") (hereinafter, collectively with

Plaintiff, the “Parties”). Records indicate that you are included within the above-described Class.

NOTE: If you requested exclusion from the Class in response to the Notice of Pendency of Class Action previously disseminated pursuant to the July 16, 2010 Amended Order of the Court, then you will not be entitled to participate in the benefits of the Settlement and you will not be bound by any Final Judgment entered in the Action approving the Settlement and releasing the claims of Class members.

There will be a hearing (the “Fairness Hearing”) on \_\_\_\_\_, 2012 at \_\_\_\_\_m. in Courtroom 105, New York State Supreme Court, Westchester County, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY 10601, on the fairness of the proposed Settlement, including: (1) whether to finally approve the proposed Settlement as set forth in the Parties’ Settlement Agreement dated November 14, 2011 as fair, reasonable, and adequate; (2) whether a Final Judgment should be entered dismissing the Action against Robison with prejudice; and (3) whether the application of Settlement Class Counsel for the payment of the settlement administration fees and costs, an award of attorneys’ fees and expenses including expert fees, and an award of incentive fees to Plaintiff, should be granted. If the Settlement is approved, eligible Class members who have not previously requested to be excluded from the Class will be entitled to claim Settlement benefits and will be barred from asserting certain legal claims. The Court may adjourn or continue the Fairness Hearing without further notice to Class members.

The purpose of this Notice is to explain to you:

1. What the Lawsuit Is About, and the Certified Class.
2. Summary of the Settlement, the Settlement Benefits Potentially Distributable to Class Members, and the Judgment and Releases.
3. Application of Settlement Class Counsel for Payment of the Settlement Administration Fees and Costs, an Award of Attorneys’ Fees and Expenses, and an Award of Incentive Fees to Plaintiff.

4. The Fairness Hearing.
5. Your Options as a Member of the Class, including Your Right to File a Claim for Settlement Benefits, and Your Right to Object to the Settlement.
6. How to Get More Information.

**1. What the Lawsuit Is About, and the Certified Class.**

Plaintiff Vincent J. Emilio has asserted claims against Robison based on Robison's pricing and billing practices for the electric supply services Robison provided to Plaintiff and certain other Robison electric customers. Plaintiff claims that Robison unilaterally and prematurely increased the price per kilowatt hour for electric supply services Robison provided to Plaintiff and other customers under Robison's annual fixed-price contracts with them, and that Robison then continued to improperly bill for the electric supply services at the excessive increased rates. Plaintiff claims, among other things, that Robison's alleged unilateral mid-term price increases are deceptive and violated New York law prohibiting deceptive consumer practices. Plaintiff also alleges that these price increases violate the terms of Robison's annual fixed-price contracts with Plaintiff and its other customers, and Robison's duty of good faith and fair dealing owed to its customers under their contracts with Robison.

The Court has made no final ruling on the validity of Plaintiff's claims. Robison has denied and continues to deny the allegations made by Plaintiff, and has asserted affirmative defenses. The Settlement does not constitute an admission of any wrongdoing whatsoever by Robison, and Robison is entering into the Settlement solely for the purpose of avoiding the continuing additional expense, inconvenience, distraction and risk of this litigation, without admitting any wrongdoing whatsoever.

**The Certified Class.** By Preliminary Approval Order entered \_\_\_\_\_, 2011, the Court has preliminarily certified the following class for the purpose of considering and approving the Settlement:

All persons and entities within the State of New York who, for the period beginning on January 28, 1997 and continuing to September 6, 2006 (the “Class Period”), allegedly were wrongfully and deceptively required to pay Robison Oil Corp. d/b/a Robison (“Robison”) amounts in excess of the electric rates required under the terms of their annual fixed-rate electric supply service contracts with Robison (the “Class”).

Excluded from the Class are Robison, its subsidiaries, affiliates, owners, executive officers, directors and employees, and any persons previously requesting exclusion in response to dissemination of the Notice of Pendency of Class Action and any judge presiding, or who has presided, over the action.

In its Preliminary Approval Order, the Court additionally appointed Plaintiff Vincent J. Emilio as Class Representative, and William R. Weinstein, Law Offices of William R. Weinstein, 199 Main Street, 4th Floor, White Plains, NY 10601, (914) 997-2205, and Michael A. Katz, 630 Third Ave., 23rd Floor, New York, NY 10017, (212) 682-6260, as Settlement Class Counsel.

**2. Summary of the Settlement, the Settlement Benefits Potentially Distributable to Class Members and the Judgment and Releases.**

The Settlement Agreement requires Defendant to pay total settlement consideration of \$700,000 (“Settlement Consideration”). Of this amount, \$275,000 will be allocated as “Net Settlement Benefits” for distribution to members of the Class.

A Class member’s potential entitlement to Net Settlement Benefits will be based on the Class member’s allowed claim (“Allowed Claim”), which will be indicated on the Claim Form/Release prepared by the Settlement Administrator for each specific Class member and included with the Settlement Notice. The Allowed Claim for each Class member has been calculated by Settlement Class Counsel based on the transaction data, contracts and other customer account information produced by Defendant during the course of the litigation under a

formula which analyzes when the Class member was an electric customer of Defendant during the Class Period, the Class member's applicable electric supply service contract(s), and the amounts charged by and paid to Defendant for electricity supply under the applicable contract(s) during the Class Period. Specifically, each Class member's Allowed Claim is calculated as follows:

(i) For each Class member to whom Defendant first supplied electricity beginning in or after March, 2000, the Allowed Claim includes the sum of the Class member's monthly payments to Defendant during the Class Period in excess of the electric supply rate per kilowatt hour ("KwH") in effect on the first day of the first monthly billing cycle of each twelve month annual period (the "Renewal Date"), adjusted as appropriate to reflect any new written annual fixed-rate contract(s) between the Class member and Robison resulting in an annual period with a different Renewal Date ("Method 1"). The Allowed Claim determined under Method 1 includes allocable sales taxes, and interest computed at the non-compounded annual rate of 2% ending on October 31, 2011. The Allowed Claim has been reduced for the total underpayment, if any, by the Class member for the electricity supplied by Defendant during the Class Period, as reflected in the Class member's transaction data produced to Plaintiff by Defendant during the course of the prosecution of the Action.

(ii) For each Class member to whom Defendant first supplied electricity beginning prior to March, 2000, the Allowed Claim includes the sum of two components, and is calculated as follows ("Method 2"):

(a) First, with respect to electricity purchased during any monthly billing cycle ending in or after May 2000 and continuing during the Class Period until the first new written annual fixed-rate contract between the Class member and Defendant, the Allowed

Claim includes the greater of: (1) the sum of each monthly payment by the Class member to Defendant in excess of 90% of the cost of electric energy provided by Con Edison under the applicable retail tariff, up to a maximum of \$100; or (2) the amount computed for that Class member for the same period under Method 1, *supra*; and

(b) Second, with respect to electricity purchased during the period beginning with the first new written annual fixed-rate contract between the Class member and Defendant and continuing to the end of the Class Period, the Allowed Claim includes the amount computed for this period under Method 1, *supra*.

(c) The Allowed Claim determined under Method 2 includes allocable sales taxes, and interest computed at the non-compounded annual rate of 2% from the date of each payment amount included in the Allowed Claim until October 31, 2011. The Allowed Claim has been reduced for the total underpayment, if any, by the Class member for the electricity supplied by Defendant during the Class Period, as reflected in the Class member's transaction data produced to Plaintiff by Defendant during the course of the prosecution of the Action.

(iii) For each Class member for whom neither Method 1 or Method 2, *supra*, results in an Allowed Claim but who made one or more payments to Defendant based on any increase in the customer's Kwh fixed-rate for electricity as determined under Method 1 for any billing cycle without a corresponding written annual fixed-rate contract between the Class member and Defendant, the Allowed Claim will be \$20 ("Method 3"). Additionally, if the Allowed Claim for any Class member calculated under Method 1 or Method 2 is less than \$20, the Allowed Claim for that Class member also is \$20.



(iv) In order to fully effect the terms of the Settlement, and subject to the agreement of Defendant (which shall not be withheld unreasonably), Settlement Class Counsel is authorized, up until the time of distribution of the Net Settlement Benefits to the members of the Class, to adjust a Class member's Allowed Claim in a manner consistent with the above-described methods if supported by subsequently obtained documents, data and/or information.

(v) Net Settlement Benefits will be distributed *pro rata* based on the percentage that the total amount of Allowed Claims (as identified for each Class member on the Claim Form sent with the Notice of Settlement) for those Class members properly filing their Claim Form bears to the total Net Settlement Benefits of \$275,000. The total Allowed Claims for all Class members has been calculated as of the date of the Settlement Agreement at \$587,873. Thus, based on this amount, if the total Allowed Claims for all Class members who properly file a Claim Form is less than or equal to \$275,000, each Class member properly filing a claim would be entitled to receive 100% of the Class member's Allowed Claim. Conversely, each Class member properly filing a Claim Form would be entitled to receive approximately 46.8% of the Class member's Allowed Claim if 100% of all possible claims were filed, and proportionately greater than 46.8% to the extent the filing rate for Allowed Claims is less than 100%.

In the event that the total amount of Allowed Claims for those Class members properly filing their Claim Form is less than the total Settlement Net Benefits of \$275,000, the remainder shall be paid on Defendant's behalf to Defendant or to the banking institution designated by Defendant.

**The Judgment and Release.** If the Court approves the Settlement provided for in the Settlement Agreement, a final judgment will be entered (1) approving the proposed Settlement;

(2) dismissing the Amended Class Action Complaint against Robison with prejudice; and (3) granting the application of Settlement Class Counsel for the payment of the settlement administration fees and costs, an award of attorneys' fees and expenses including expert fees, and an award of incentive fees to Plaintiff, in such amounts as the Court deems appropriate.

Additionally, generally under the release prescribed in the Settlement Agreement, Plaintiff and all other members of the Class who have not been excluded therefrom, on behalf of themselves, their respective heirs, executors, attorneys and administrators, successors and/or assigns of any person(s) they represent in any and every capacity whatsoever (collectively the "Releasing Parties"), shall be deemed to have fully, finally, and irrevocably released, relinquished and forever discharged Defendant and any person, firm, trust, corporation, or other entity related to, affiliated with, employed by, or acting as an officer, director, manager, attorney or agent for Defendant (collectively, the "Released Parties"), from all claims asserted or that could have been asserted based on, arising out of, in connection with or relating to the facts alleged in Plaintiff's Amended Complaint for the period beginning on January 28, 1997 and continuing to September 6, 2006 (the "Released Claims"). The Released Parties also release the Releasing Parties regarding the claims asserted in the Action and the Released Claims. Please refer to the Settlement Agreement and its exhibits for the exact language and scope of the releases.

**3. Application of Settlement Class Counsel for Payment of the Settlement Administration Fees and Costs, an Award of Attorneys' Fees and Expenses, and an Award of Incentive Fees to Plaintiffs.**

Settlement Class Counsel, on behalf of all counsel of record for Plaintiffs and the Class, intend to apply to the Court for the payment of the settlement administration fees and costs, an award of attorneys' fees and expenses including expert fees, and an award of incentive fees to

Plaintiff in the amount of \$5,000, to be paid from the \$425,000 balance of the Settlement Consideration remaining after the allocation of the \$275,000 of the Settlement Consideration to the Net Settlement Benefits for distribution to the Class.

The fees and costs of the settlement administration, including the preparation of the related notices and processing of all claims and distributions, are currently estimated at approximately \$35,000-\$40,000.

The incentive fees award to Plaintiff of \$5,000 is being applied for on account of Plaintiff's extensive, active participation in the prosecution of the Action over the past nine years, including sitting for two different depositions by Defendant, the drafting and submission of multiple affidavits in connection with class certification and the other motions filed in the Action, his continuing factual investigation in support of the claims asserted in the Action, and his attendance at several court proceedings.

The expenses incurred by counsel for Plaintiff and the Class since the commencement of the Action in January 2003 presently total more than \$90,000, including the expert fees of the computer database analysis expert utilized extensively by Plaintiff's counsel during the prosecution of the Action and negotiation of the Settlement.

The remainder of the Settlement Consideration, approximately \$295,000-\$300,000, is being sought as compensation for counsel for Plaintiff and the Class in light of the more than 1250 hours of time with a lodestar on a historical basis of more than \$750,000 incurred by Plaintiff's counsel in connection with the commencement, prosecution and successful resolution of the Action over a period of almost nine years. Counsel for Plaintiff and the Class incurred this time and their expenses on behalf of the Class over this period without payment or reimbursement, and without any guarantee of payment or reimbursement.

#### **4. The Fairness Hearing**

The Fairness Hearing will be held on \_\_\_\_\_, 2012 at \_\_\_\_\_m. in Courtroom 105, New York State Supreme Court, Westchester County, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY 10601, regarding the fairness of the proposed Settlement, including: (1) whether to finally approve the proposed Settlement as set forth in the Parties' Settlement Agreement dated November 14, 2011 as fair, reasonable, and adequate; (2) whether a Final Judgment should be entered dismissing the Action against Robison with prejudice; and (3) whether the application of Settlement Class Counsel for the payment of the settlement administration fees and costs, the award of attorneys' fees and expenses including expert fees, and the award of \$5,000 of incentive fees to Plaintiff, should be granted. If the Settlement is approved, eligible Class members who have not previously requested to be excluded from the Class will be entitled to claim Settlement benefits and will be barred from asserting certain legal claims. The Court may adjourn or continue the Fairness Hearing without further notice to Class members.

#### **5. Your Options as a Member of the Class**

You may exercise any of the following options on your own or through an attorney retained by you at your own expense:

**Submit Your Claim Form and Participate in the Settlement Benefits if the Settlement is Approved.** Class members eligible to receive Net Settlement Benefits if the Settlement is approved must submit a properly completed Claim Form/Release to the Settlement Administrator postmarked **no later than \_\_\_\_\_, 2012 (fifteen days before the Settlement Hearing)** to the Settlement Administrator, RG2 Claims Administration LLC, Robison Settlement, 30 South 17th Street, Philadelphia, PA 19103, (866) 742-4955. The Claim Form

must include a copy of government-issued picture identification to verify your identify as the Class member identified on the Claim Form. If the Claim Form is for a business or other entity and not an individual, then proof of the authority to file the Claim Form on behalf of that entity should be included.

**Object to the Settlement:** If you are a Class Member, you also may object in writing to the Settlement. Your written objection should include your name, current address and telephone number, along with a detailed explanation of the reasons for your objection, and any documents on which you base your objection. Objecting to the Settlement does not prevent your right to file a claim for Settlement benefits if the Settlement is approved by the Court. To object, then **no later than \_\_\_\_\_, 2012 (fifteen days prior to the date of the Fairness Hearing)**, you must file your written objection with the Clerk of the New York Supreme Court, Westchester County, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY 10601, and additionally mail copies by first-class mail **postmarked no later than \_\_\_\_\_, 2012 (fifteen days prior to the date of the Fairness Hearing)**, to Settlement Class Counsel and to Robison’s Counsel at the following addresses:

William R. Weinstein, Esq.  
LAW OFFICES OF  
WILLIAM R. WEINSTEIN  
199 Main Street, 4th Floor  
White Plains, NY 10601

William P. Harrington, Esq.  
BLEAKLEY PLATT & SCHMIDT, LLP  
One North Lexington Ave., 7th Floor  
White Plains, NY 10601

SETTLEMENT CLASS COUNSEL

COUNSEL FOR DEFENDANT

**If you wish to attend the Fairness Hearing and voice your objection either personally or through counsel retained by you, you must timely submit a written objection that also includes a statement that it is your intention to appear at the Fairness Hearing.**

**6. How to Get More Information.**

This notice is a summary of certain provisions of the Settlement Agreement and is not intended, and should not be construed, as a complete statement of the Settlement or of the Action. If you would like to review a copy of the Settlement Agreement or other papers filed in the Action, you may do so during normal business hours at the Clerk of the Court of the New York State Supreme Court, Westchester County, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY 10601.

Additional information concerning the Action and the Settlement, including a copy of the Settlement Agreement and its exhibits, the Notice of Proposed Settlement of Class Action and Fairness Hearing and Claim Form/Release, and Plaintiff's Amended Class Action Complaint, are available for your review at the websites of Settlement Class Counsel, [www.wweinsteinlaw.com](http://www.wweinsteinlaw.com) (follow the link for Cases), Defendant, [www.robisonoil.com](http://www.robisonoil.com) (follow the link), and the Settlement Administrator, [www.rg2claims.com](http://www.rg2claims.com).

If you have any questions regarding the proposed Settlement or your Allowed Claim, write to Settlement Class Counsel, William R. Weinstein, at the address listed above, or call him at (914) 997-2205. Questions regarding the submission of Claim Forms should be directed to the Settlement Administrator, RG2, at (866) 742-4955.

**PLEASE DIRECT ALL QUESTIONS REGARDING THE SETTLEMENT, OTHER THAN QUESTIONS REGARDING THE SUBMISSION OF CLAIM FORMS, TO SETTLEMENT CLASS COUNSEL. PLEASE DO NOT CONTACT THE COURT OR DEFENDANT WITH YOUR QUESTIONS, AS THE COURT HAS ORDERED THAT ALL QUESTIONS BE DIRECTED TO SETTLEMENT CLASS COUNSEL.**

Dated: \_\_\_\_\_, 2011

By Order of the Honorable Alan D. Scheinkman,  
New York Supreme Court, Westchester County

**CLAIM FORM/RELEASE**

To: [insert Class Member Info]

Based on the review of the relevant records by Settlement Class Counsel, your Allowed Claim calculated as described in the accompanying Settlement Notice is:

**Allowed Claim:** [insert amount]

As further explained in the accompanying Notice, the amount you ultimately will be entitled to receive if the Settlement is approved by the Court depends on the total amount of Allowed Claims for all Class members who submit properly completed Claim Forms. The amount distributed to you could be less than the Allowed Claim set forth above, and it could be up to the amount of the Allowed Claim, but in no event will it be more than the Allowed Claim.

In order to receive the payment of your share of the Net Settlement Benefits, please make any corrections to your address information above, confirm your agreement to the Settlement Agreement Release by signing below, and mail this Claim Form, to the Settlement Administrator, RG2 Claims Administration LLC, Robison Settlement 30 South 17th Street, Philadelphia, PA 19103, (866) 742-4955. **PLEASE INCLUDE A PHOTOCOPY OF A GOVERNMENT ISSUED PHOTO ID SUCH AS A DRIVER LICENSE OR PASSPORT TO VERIFY YOUR IDENTITY, OR PROOF OF YOUR AUTHORITY TO FILE THE CLAIM FORM ON BEHALF OF A BUSINESS OR OTHER ENTITY.**

**I hereby agree to the terms of the Settlement Agreement Release.**

\_\_\_\_\_ Dated: \_\_\_\_\_, 201\_

[Print Name] \_\_\_\_\_ Social Security No.: \_\_\_\_\_  
or EIN (if applicable): \_\_\_\_\_

**Best Telephone Number to Reach You If Necessary:** \_\_\_\_\_

# **Exhibit C**



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
VINCENT J. EMILIO, on behalf of himself :  
and all others similarly situated, : Index No. 03-01412  
 : (Scheinkman, J.)  
 :  
 : Plaintiff, :  
 :  
 : vs. :  
 :  
 :  
 :  
 : ROBISON OIL CORP. d/b/a ROBISON, :  
 :  
 : Defendant. :  
 :  
-----X

**ORDER AND FINAL JUDGMENT APPROVING SETTLEMENT AND PAYMENT OF  
SETTLEMENT ADMINISTRATION FEES AND COSTS, AND AWARDING  
ATTORNEYS' FEES AND EXPENSES AND INCENTIVE FEES**

WHEREAS:

A. On November 14, 2011, Plaintiff Vincent J. Emilio (“Plaintiff”) applied to the Court pursuant to Civil Practice Law and Rules (“CPLR”) Article 9 for an order preliminarily approving and implementing the settlement of this litigation (the “Action”) in accordance with the settlement agreement dated November 14, 2011 (the “Settlement Agreement”) that, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of this Action (the “Settlement”) between Plaintiff and defendant Robison Oil Corp. d/b/a Robison (“Defendant” or “Robison”), and for a judgment dismissing this Action with prejudice upon the terms and conditions set forth in the Settlement Agreement.

B. In the Order Preliminarily Approving Settlement, dated November \_\_, 2011 (the “Preliminary Approval Order”), this Court, among other things: (i) certified the following class for purposes of the Settlement:

All persons and entities within the State of New York who, for the period beginning on January 28, 1997 and continuing to September 6, 2006 (the “Class Period”), allegedly were wrongfully and deceptively required to pay Robison Oil Corp. d/b/a Robison (“Robison”) amounts in excess of the electric rates required under the terms of their annual fixed-rate electric supply service contracts with Robison (the “Class”).

Excluded from the Class are Robison, its subsidiaries, affiliates, owners, executive officers, directors and employees, and any persons previously requesting exclusion in response to dissemination of the Notice of Pendency of Class Action and any judge presiding, or who has presided, over the action.

(ii) preliminarily approved the Settlement; (iii) scheduled a hearing for \_\_\_\_\_, 2012 to consider whether to approve the Settlement as being fair, reasonable and adequate, to enter final judgment thereon and to consider any application by Settlement Class Counsel for payment of the fees and costs of the Settlement Administrator and the fees of the computer database analysis expert utilized by Settlement Class Counsel in connection with their supervision of the administration of the notice and claims process and distribution of the Net Settlement Benefits to the Class, an award of attorneys’ fees and expenses including expert fees, and an incentive fee award to Plaintiff (the “Fairness Hearing”); (iv) directed that notice of the proposed Settlement and the Fairness Hearing, substantially in the form annexed as Exhibit B to the Settlement Agreement (the “Settlement Notice”), be disseminated to all Class members who could be identified with reasonable effort, along with publication of a summary notice, substantially in the form annexed as Exhibit D to the Settlement Agreement (the “Summary Settlement Notice”), and that the Settlement Notice, the Settlement Agreement with exhibits and Plaintiff’s Amended Class Action Complaint be posted on the websites of Settlement Class Counsel William R. Weinstein, Robison and the Settlement Administrator with a conspicuous link to such information identifying the existence of the Settlement of the Action until fifteen (15) days following the Effective Date of the Settlement; and (v) directed that the Settlement Administrator

mail a copy of a notice in a form agreed to by the Parties to all Robison electric customers who previously were mailed notice of pendency of the class action pursuant to the Court's Amended Order entered July 16, 2010 (the "Notice Order") but who have been determined by Settlement Class Counsel not to have an "Allowed Claim" to notify them that they have been determined by Settlement Class Counsel not to be part of the Class under the Settlement and will not be entitled to share in any benefits under the Settlement, but will not be required under the Settlement to release any claims they may have against Robison..

C. Settlement Class Counsel have submitted an affidavit from the Settlement Administrator appointed in the Preliminary Approval Order attesting that the Settlement Notice and Summary Settlement Notice were disseminated and the required documents posted to the Settlement Administrator's website in accordance with the Court's Preliminary Approval Order, and that the required notice was mailed to all Robison electric customers who previously were mailed notice of pendency of the class action pursuant to the Notice Order, but who have been determined by Settlement Class Counsel not to have an "Allowed Claim," to notify them that they have been determined by Settlement Class Counsel not to be part of the Class under the Settlement and will not be entitled to share in any benefits under the Settlement, but will not be required under the Settlement to release any claims they may have against Robison. Additionally, Settlement Class Counsel William R. Weinstein and Robison each have submitted an affidavit or affirmation attesting that the required documents were posted to their websites in accordance with the Court's Preliminary Approval Order.

D. Annexed as Exhibit 1 hereto is a list of all potential Class members who requested exclusion from the Class in connection with the prior dissemination of the notice of pendency of the class action pursuant to CPLR 904, as directed by the Notice Order.

E. The Court held a Fairness Hearing on \_\_\_\_\_, 2012 and has considered all prior proceedings in the Action, the Settlement Agreement and the exhibits annexed thereto, any submissions made in connection with the proposed Settlement and all proceedings during the Fairness Hearing.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. To the extent not defined herein, this Order and Final Judgment (the “Final Judgment”) incorporates by reference the definitions in the Settlement Agreement, and all terms not otherwise defined herein shall have the same meanings as set forth in the Settlement Agreement.

2. The Court hereby determines that the Settlement Notice and Summary Settlement Notice and website postings complied with the requirements of CPLR 904, 907 and 908 and due process and were the best notice practicable under the circumstances and constituted due and sufficient notice to all persons entitled thereto, including individual notice to all Class members who could be located through reasonable effort. The Settlement Notice and Summary Settlement Notice and website postings provided due and adequate notice of these proceedings, the Settlement, the application of Settlement Class Counsel for the payment of the settlement administration fees and costs, an award of attorneys’ fees and expenses including expert fees, and an award of incentive fees to Plaintiff, and the other matters set forth therein, to all persons entitled to such notice.

3. Due and adequate notice of the proceedings having been given to the Class members, and a full opportunity having been offered to the Class members to object to the proposed Settlement, to participate in the Fairness Hearing thereon, or to request exclusion from

the Class, it is hereby determined that all Class members who have not requested exclusion are bound by this Final Judgment (whether or not any Class member has objected to the Settlement).

4. (a) Those persons identified in Exhibit 1 hereto shall be excluded from the Class and any benefits under the Settlement.

(b) Additionally, all Robison electric customers who previously were mailed notice of pendency of the class action pursuant to the Notice Order, but who have been determined by Settlement Class Counsel not to have an “Allowed Claim” under the Settlement, have been sent notice advising them that they have been determined by Settlement Class Counsel not to be part of the Class under the Settlement and will not be entitled to share in any benefits under the Settlement; these Robison customers but will not be required under the Settlement to release any claims they may have against Robison.

5. Pursuant to CPLR 907 and 908, the Court finds that the Settlement is in all respects fair, reasonable and adequate to each of the Releasing Parties and each Class member, and the Settlement is hereby approved by the Court. In making this determination, the Court has considered, among other things, the benefits conferred on the Class by the Settlement, the risks faced by the Class in establishing liability and damages during a trial of the matter, and the value of the Settlement now in comparison to the likely duration, complexity and further expense of this litigation in the absence of the Settlement and the uncertainty resulting from such delay. The Court further finds that the Settlement has been the product of vigorous arm’s-length negotiations and has been entered into in good faith. The Parties thereto are directed to consummate the Settlement in accordance with the terms and conditions of the Settlement Agreement.

(a) In determining that the Settlement is in all respects fair, reasonable and adequate to each of the Releasing Parties and each member of the Class, and in approving the Settlement, the Court has considered that no [alternatively : X] objections have been raised by Class members to the Settlement.

6. The Amended Complaint against Defendant in this Action is dismissed on the merits and with prejudice, with each party to bear his, her or its own costs, except for the payment of the fees and costs of the settlement administration previously agreed to by the Parties and hereby approved by the Court, and the payment of the attorneys' fees and reimbursement of expenses including expert fees and the award of incentive fees to Plaintiff as otherwise provided for in Paragraph 9 below and in Paragraph 3 of the Settlement Agreement.

7. (a) Upon the Effective Date of the Settlement, Plaintiff and all other members of the Class who have not been excluded therefrom, on behalf of themselves, their respective heirs, executors, attorneys and administrators, successors and/or assigns of any person(s) they represent in any and every capacity whatsoever (collectively the "Releasing Parties"), for good and sufficient consideration, shall be deemed to have fully, finally, and irrevocably released, relinquished and forever discharged Defendant and any owner, parent corporation, direct and indirect subsidiaries and any other person, firm, trust, corporation, or other entity related to, affiliated with, employed by, or acting as an officer, director, manager, attorney or agent for Defendant, including but not limited to Singer Holding Corporation, together with their predecessors, successors and assigns (collectively, the "Released Parties"), from all claims (including known claims, as well as "Unknown Claims" defined below), demands, rights, liabilities and causes of action of every nature and description whatsoever, whether asserted or that could have been asserted by Plaintiff or by any of the Releasing Parties against the Released

Parties, directly, indirectly, representatively, derivatively or in any other capacity, in this Action or any other forum (judicial, administrative, arbitral or other), based on, arising out of, in connection with or relating to the facts alleged in the Amended Complaint for the period beginning on January 28, 1997 and continuing to September 6, 2006, including but not limited to, claims for breach of contract, quasi-contract, violations of New York General Business Law § 349, violations of New York General Obligations Law § 5-903, and violations of any other state or federal statutes, regulations or principles of common law, of any kind, nature and/or description, matured or unmatured, liquidated, or unliquidated, accrued or unaccrued, known or unknown, contingent or non-contingent, whether at law, equity, or otherwise, that exist as of the date of the Settlement Agreement or theretofore existed (the “Released Claims”).

(b) “Unknown Claims” means any and all settled claims which Plaintiff or any Class member or Releasing Party does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, and any claims of the Released Parties which Defendant does not know or suspect to exist in his, her or its favor, which if known by him, her or it might have affected his, her or its decision not to object to the Settlement Agreement or the Settlement.

8. (a) Without further action by anyone, on and after the Effective Date of the Settlement, each of the Released Parties shall be deemed to have, and by operation of law and the Final Judgment shall have, fully, finally and irrevocably released, relinquished and forever discharged Plaintiff, the Class members, Settlement Class Counsel and all other counsel representing Plaintiffs and the Class members in the Action from all claims arising out of, relating to, or in connection with the institution, prosecution, assertion or resolution of the Action and the Released Claims; provided, however, that nothing in the Settlement Agreement or this

Final Judgment shall bar any action or release any claim to enforce the terms of the Settlement Agreement or the Final Judgment.

(b) Defendant and its counsel shall have no responsibility for the administration of the Settlement other than cooperating in good faith with Settlement Class Counsel and the Settlement Administrator as necessary to effect the administration of the Settlement in accordance with the terms of the Settlement Agreement.

9. (a) The application by Settlement Class Counsel on behalf of all counsel representing Plaintiff and Class members in this Action for the award of attorneys' fees and reimbursement of expenses is granted, and said counsel are awarded legal fees of \$\_\_\_\_\_, and expenses including expert fees of \$\_\_\_\_\_. Said fees and expenses shall be allocated among all counsel representing Plaintiff and Class members in this Action by Settlement Class Counsel (William R. Weinstein of Law Offices of William R. Weinstein, and Michael A. Katz) in a manner which, in Settlement Class Counsel's good faith judgment, reflects each Plaintiff's counsel's contribution to the institution, prosecution and resolution of the Action, including the origination of the Action and introduction of the client, as well as time and fees incurred and the work performed. Said awarded fees and expenses may be drawn down from the Settlement Fund and paid to Settlement Class Counsel for further allocation and distribution in accordance with the terms of the Settlement Agreement.

[(1) The Court has considered any objection to the application for the award of attorneys' fees and expenses, and any such objection is overruled.]

(b) The application by Settlement Class Counsel for an award of incentive fees to Plaintiff for his efforts in connection with the prosecution of the Action, [to which no objection was filed,] is granted, and Plaintiff Vincent J. Emilio is awarded incentive fees of



\$5,000 on account of his substantial participation in the Action, to be paid from the Settlement Fund.

(c) The application by Settlement Class Counsel for an award of the balance of the Settlement Administrator's fees and costs in connection with the administration of the Settlement, and the fees of the computer database analysis expert utilized by Settlement Class Counsel in connection with their supervision of the administration of the notice and claims process and distribution of the Net Settlement Benefits to the Class, to be paid from the Settlement Fund, in the amount of \$\_\_\_\_\_, is granted.

10. Neither the Settlement Agreement nor any proceedings taken in accordance with the terms set forth therein shall be construed or deemed to be evidence, or any admission or concession, either (a) on the part of Plaintiff, of the lack of merit of this Action, or (b) on the part of Defendant, of any breach of contract or violation of any statute or regulation or principle of common law or of any liability or wrongdoing or that any person or entity has suffered any damages as a result of any matter that underlies any of the allegations or claims that were or could have been brought with respect to the facts alleged in the Amended Complaint in the Action. Any such evidence, admission or concession is expressly denied and disclaimed by Plaintiff and Defendant.

11. Without in any way affecting the finality of this Final Judgment, this Court shall retain continuing jurisdiction over this Action and the Parties to the Settlement Agreement in order to enter any further orders as may be necessary to effectuate the Settlement Agreement, the Settlement provided for therein, and the provisions of this Final Judgment.

Dated: White Plains, New York

\_\_\_\_\_, 2012

\_\_\_\_\_  
J.S.C.

**EXHIBIT 1**

Persons previously requesting exclusion from the Action captioned *Emilio v. Robison Oil Corp.*

*d/b/a Robison:*

# **Exhibit D**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
VINCENT J. EMILIO, on behalf of himself :  
and all others similarly situated, : Index No. 03-01412  
Plaintiff, : (Scheinkman, J.)  
vs. :  
ROBISON OIL CORP. d/b/a ROBISON, :  
Defendant. :  
-----X

**SUMMARY NOTICE OF PROPOSED CLASS ACTION SETTLEMENT  
AND FAIRNESS HEARING**

TO: ALL PERSONS AND ENTITIES WITHIN THE STATE OF NEW YORK WHO, FOR THE PERIOD BEGINNING ON JANUARY 28, 1997 AND CONTINUING TO SEPTEMBER 6, 2006 (THE “CLASS PERIOD”), ALLEGEDLY WERE WRONGFULLY AND DECEPTIVELY REQUIRED TO PAY ROBISON OIL CORP. D/B/A ROBISON (“ROBISON”) AMOUNTS IN EXCESS OF THE ELECTRIC RATES REQUIRED UNDER THE TERMS OF THEIR ANNUAL FIXED-RATE ELECTRIC SUPPLY SERVICE CONTRACTS WITH ROBISON (THE “CLASS”).

EXCLUDED FROM THE CLASS ARE ROBISON, ITS SUBSIDIARIES, AFFILIATES, OWNERS, EXECUTIVE OFFICERS, DIRECTORS AND EMPLOYEES, AND ANY PERSONS PREVIOUSLY REQUESTING EXCLUSION IN RESPONSE TO DISSEMINATION OF THE NOTICE OF PENDENCY OF CLASS ACTION AND ANY JUDGE PRESIDING, OR WHO HAS PRESIDED, OVER THE ACTION.

This Summary Settlement Notice is given pursuant to an order of the Supreme Court of the State of New York for Westchester County, to inform you of the proposed settlement (the “Settlement”) of the above-captioned class action (the “Action”). The Settlement is between Plaintiff Vincent J. Emilio (“Plaintiff”), individually and on behalf of the Class described above, and Defendant Robison Oil Corp. d/b/a Robison (“Defendant” or “Robison”) (hereinafter, collectively with Plaintiff, the “Parties”).

There will be a hearing (the “Fairness Hearing”) on \_\_\_\_\_, 2012 at \_\_\_\_\_ .m. in Courtroom 105, New York State Supreme Court, Westchester County, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY 10601, on the fairness of the proposed Settlement, including: (1) whether to finally approve the proposed Settlement as set forth in the Parties’ Settlement Agreement dated November 14, 2011 as fair, reasonable, and adequate; (2) whether a Final Judgment should be entered dismissing the Action against Robison with prejudice; and (3) whether the application of Settlement Class Counsel for the payment of the settlement administration fees and costs, an award of attorneys’ fees and expenses including expert fees,

and an award of incentive fees to Plaintiff, should be granted. If the Settlement is approved, eligible Class members who have not previously requested to be excluded from the Class will be entitled to claim Settlement benefits and will be barred from asserting certain legal claims. The Court may adjourn or continue the Fairness Hearing without further notice to Class members.

By Preliminary Approval Order entered November \_\_, 2011, the Court certified the action as a class action for settlement purposes. The Court additionally appointed Plaintiff Vincent J. Emilio as Class Representative, and William R. Weinstein, Law Offices of William R. Weinstein, 199 Main Street, 4th Floor, White Plains, NY 10601, (914) 997-2205, and Michael A. Katz, 630 Third Ave., 23rd Floor, New York, NY 10017, (212) 682-6260, as Settlement Class Counsel.

**IF YOU ARE A MEMBER OF THE CLASS DESCRIBED ABOVE AND DID NOT PREVIOUSLY REQUEST EXCLUSION, YOUR RIGHTS WILL BE AFFECTED AND YOU WILL BE ENTITLED TO FILE A CLAIM FOR SETTLEMENT BENEFITS.** If you have not yet received the full printed Notice of Proposed Settlement of Class Action and Fairness Hearing and Claim Form/Release, you may obtain a copy by contacting the Settlement Administrator: RG2 Claims Administration LLC, Robison Settlement, 30 South 17th Street, Philadelphia, PA 19103, (866) 742-4955. You may also download a copy at the websites of Settlement Class Counsel William R. Weinstein, [www.wweinsteinlaw.com](http://www.wweinsteinlaw.com) (follow the link for Cases) Defendant, [www.robisonoil.com](http://www.robisonoil.com) (follow the link), or the Settlement Administrator, [www.rg2claims.com](http://www.rg2claims.com) (follow the link for Cases).

If you are a Class member, to be eligible to receive your Settlement benefits you must submit a properly completed Claim Form/Release to the Settlement Administrator at the above address postmarked **no later than \_\_\_\_\_, 2012**. Generally the amount of Settlement benefits you will be entitled to receive will depend on the amount of your Allowed Claim as determined for all Class members by Settlement Class Counsel under a formula described in full in the Settlement Agreement, and the number of Class members submitting a properly completed Claim Form/Release. If you are a Class member, you will be bound by the Final Judgment issued by the Court whether or not you make a claim.

If you are a Class Member, you also may object in writing to the Settlement. Your written objection should include your name, current address and telephone number, along with a detailed explanation of the reasons for your objection, and any documents on which you base your objection. Objecting to the Settlement does not prevent your right to file a claim for Settlement benefits if the Settlement is approved by the Court. To object, then **no later than \_\_\_\_\_, 2012 (fifteen days prior to the date of the Fairness Hearing set forth above)**, you must file your written objection with the Clerk of the New York Supreme Court, Westchester County, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY 10601, and additionally mail copies by first-class mail **postmarked no later than \_\_\_\_\_, 2012 (fifteen days prior to the date of the Fairness Hearing)**, to Settlement Class Counsel and to Robison's Counsel at the following addresses:

William R. Weinstein, Esq.

William P. Harrington, Esq.

LAW OFFICES OF  
WILLIAM R. WEINSTEIN  
199 Main Street, 4th Floor  
White Plains, NY 10601

BLEAKLEY PLATT & SCHMIDT, LLP  
One North Lexington Ave., 7th Floor  
White Plains, NY 10601

SETTLEMENT CLASS COUNSEL

COUNSEL FOR DEFENDANT

**If you wish to attend the Fairness Hearing and voice your objection either personally or through counsel retained by you, you must timely submit a written objection that also includes a statement that it is your intention to appear at the Fairness Hearing.**

Additional information concerning the Action and the Settlement, including a copy of the Settlement Agreement and its exhibits, the full printed Notice of Proposed Settlement of Class Action and Fairness Hearing and Claim Form/Release, and Plaintiff's Amended Class Action Complaint, are available for your review at the websites of Settlement Class Counsel, [www.wweinsteinlaw.com](http://www.wweinsteinlaw.com) (follow the link for Cases), Defendant, [www.robisonoil.com](http://www.robisonoil.com) (follow the link), and the Settlement Administrator, [www.rg2claims.com](http://www.rg2claims.com) (follow the link for Cases).

**PLEASE DO NOT CALL OR WRITE THE COURT OR THE CLERK'S OFFICE; THE CLERK'S OFFICE IS NOT PERMITTED TO GIVE LEGAL ADVICE.**

Dated: \_\_\_\_\_, 2011

By Order of the Honorable Alan D. Scheinkman,  
New York Supreme Court, Westchester County