

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS**

.....X  
GREG WALKER, DAWNMARIE  
AMBROSINO, EILEEN ABEL, ZACHARY  
NADLER, BRETT BUTLER, and HELENA  
COSTAKIS, Individually and on Behalf of All  
Others Similarly Situated,

Index No.:

**SUMMONS**

Plaintiffs,

Plaintiffs designate Dutchess County  
as the place of trial

-against-

CENTRAL HUDSON GAS & ELECTRIC  
CORP.,

The basis of venue is  
Where the Defendant's principal place of  
residence and business is located.

Defendant.

.....X

**To the above-named Defendant:**

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action, and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within (20) twenty days after the service of summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within (30) thirty days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
January 6, 2023

Yours, etc.,  
**LOWEY DANNENBERG, P.C.**

**Defendant Info:**

Central Hudson Gas & Electric Corp.  
284 South Avenue  
Poughkeepsie, NY 12601

By: /s/ Andrea Farah  
Andrea Farah  
Jennifer Tembeck  
Alesandra Greco  
44 South Broadway, Suite 1100  
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*Attorneys for Plaintiffs and the Proposed  
Class*

**PLEASE FORWARD TO YOUR INSURANCE COMPANY**



Hudson's misconduct.

2. Central Hudson is New York State's natural gas and electric corporation headquartered in Poughkeepsie, New York. From August 2021 to present day, Central Hudson has engaged in deceptive and improper billing practices affecting consumers who reasonably expected their electricity bills to coincide with market rates, New York State revenue taxes, their average electrical energy consumption, and other factors, as represented to them by Central Hudson in the agreements between them and the Company. In reality, however, the electricity and gas bills that Central Hudson issued to consumers grossly deviated from commodity market prices and did not coincide with changes in the market price for electricity. In addition to the billing issues, Central Hudson engaged in a slew of other deceptive and improper practices, including among other things, failure to read consumers' meters, unlawfully withdrawing funds from their personal bank accounts, and billing consumers exorbitant amounts for electricity and gas they did not receive or consume. These pervasive issues have caused New York consumers financial hardship putting them in financial predicaments by no fault of their own.

3. To be sure, the excessive fees Central Hudson charged its customers were not due to "cold weather," "increased global demand," or the "events in Eastern Europe," as Central Hudson would like consumers to believe. Instead, as the New York regulators recently revealed, the widespread billing issues were directly attributable to "Central Hudson's negligence, lack of appropriate training, lack of proper system testing, misuse of resources, and an overall lack of readiness." The origin of it all was Central Hudson's hasty release of a new billing systems that Central Hudson knew was riddled with bugs and defects — even prior to its release — that could cripple Central Hudson's ability to accurately assess, bill, and service consumers' accounts. Worse, Central Hudson did not bother to adequately train and educate its own staff on how to

handle issues arising in connection with complex billing, leaving its own employees without proper support and resources to face hundreds and thousands of angry customers.

4. These facts — which Central Hudson desperately sought to conceal — erupted in a public scandal precipitated by local representatives, and non-governmental and governmental organizations who were made aware of the increasing number of consumer complaints filed against Central Hudson since August 2021. Ultimately, the New York Office of Investigations and Enforcement of the New York State Department (“OIE”) instituted an investigation that concluded in a 62-page Investigation Report (“Investigation Report”)<sup>1</sup> detailing Central Hudson’s culpability in releasing a flawed billing system that did not remotely meet Central Hudson’s own billing needs and scolding Central Hudson for its lack of transparency with both regulators and consumers alike.

5. Plaintiffs allege that Central Hudson’s conduct, as set forth in detail below, violates section 349 of the New York General Business Law (“Sec. 349”), constitutes breach of contract, breach of implied covenant of good faith and fair dealing, unjust enrichment, and negligence. Via this lawsuit, Plaintiffs seek actual damages and refunds, punitive damages, treble damages, injunctive relief, attorneys’ fees, and the cost of this suit.

## **II. PARTIES**

6. Plaintiff Greg Walker is a resident of Kingston, New York and purchased gas and electrical services from Central Hudson. During the Class Period, Mr. Walker received a residential service bill for \$1,113.68 for the billing period of January 19, 2022 through February 18, 2022. This rate was more than double Mr. Walker’s normal rate which averages around \$550. Central Hudson has yet to provide a justification for this billing spike. Further, in March of 2022, Mr. Walker completely shut off the power in his residence. His residential service bill, however,

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<sup>1</sup> The New York State Department Of Public Service Investigation Report is attached hereto as Exhibit A.

remained stagnant and Mr. Walker was billed \$525 for the time period of March 18, 2022 to April 19, 2022. Mr. Walker completely turned off all electricity and unplugged all appliances at his residence. Nonetheless, Central Hudson's residential services bills did not account for this change.

7. Plaintiff DawnMarie Ambrosino is a resident of Montgomery, New York. The utility bill for her home skyrocketed to \$6,080.31 for the time period of August 4, 2021 through April 4, 2022. Since the new billing system was implemented, DawnMarie received a bill for \$2,677.85, without justification, on March 11, 2022 and that amount was reversed on April 6, 2022 without justification as well.

8. Plaintiff Eileen Abel is a resident of Coxsackie, New York. Ms. Abel was improperly billed \$1,224 for April 2022 and May 2022, which was \$1,000 more than her normal bill of \$217.49. Central Hudson provided no justification for the spike in her billing and Ms. Abel has consistently used solar panels to power her home for several months. She has yet to be credited back this amount and Central Hudson has not provided a response.

9. Plaintiff Zachary Nadler owns a vacation home in West Hurley, New York and sporadically stays at his home due to its current renovations. Mr. Nadler took pains to make his home as energy efficient as possible by removing his electric baseboards and during the winter, setting energy efficient heat pumps on energy saver mode at the lowest possible level to prevent any freezing in the house. Kitchen appliances were not installed until February 2022 and there were no lights installed in the house until at least March 2022. The only items that were using electricity on a regular basis were two humidifiers in his basement. From March 2021 through July 2021, the most expensive bill Mr. Nadler received was for \$239.98 in April 2021. His billing rates drastically increased after Central Hudson implemented their new billing system in August 2021. Mr. Nadler's billing statement for the time period of November 3, 2021 through May 6, 2022

totaled \$3,084.98, which averages to \$514 monthly. When Mr. Nadler contacted Central Hudson about this bill, Central Hudson confirmed that the consumption was accurate and the bill should be paid in full. Mr. Nadler contacted Central Hudson again in July 2022 and spoke to a representative who looked at his account and said he was overcharged due to the changes in Central Hudson's billing system. He was then instructed not to pay anything towards his bill.

10. Plaintiff Brett Butler owns a home in Wappingers Falls, NY that is serviced by Central Hudson. After four months of not receiving bills from Central Hudson, Plaintiff Butler was charged \$1,646.39, \$926.62, \$658.27, \$361.13 and \$1,251 on November 14, 2022. When Plaintiff Butler attempted to access the histories of these bills, he was unable to do so and has yet to be provided with a justification for this onslaught of bills as well as an accurate assessment of his meter. In fact, on November 29, 2021, Plaintiff Butler was charged \$389.32 for 2,096 kilowatts of usage and on December 29, 2021, Plaintiff Butler was charged \$358.41 for 2,186 kilowatts of usage. After contacting representatives from Central Hudson several times, a representative informed him Central Hudson was having difficulty with its billing system. Plaintiff Butler contacted Central Hudson numerous times and demanded an explanation for the billing to no avail.

11. Plaintiff Helena Costakis lives in a 1,500 square foot home in Lake Katrine, New York. Her home has one high efficiency air conditioner and no electric heat. Prior to the billing software change in August 2021, Plaintiff Costakis was charged as low as \$142.63 per month. However, once the billing system was implemented, her electrical bills soared and for the month of March 2022, she was charged \$1,019.89. Other bills after the billing system was implemented were hundreds of dollars more than her average bills of \$365. For instance, Plaintiff Costakis was billed for \$665 for October 2021. To alleviate the significant charges, Plaintiff Costakis spent thousands of dollars financing solar energy for her home, which was turned on in November 2022.

12. Defendant Central Hudson is a regulated transmission and distribution utility that provides electrical and natural gas services to its customers throughout New York State's Mid-Hudson River Valley. Central Hudson is a subsidiary of Fortis, Inc. and is headquartered in Poughkeepsie, New York.

### **III. JURISDICTION AND VENUE**

13. This Court has personal jurisdiction over Defendant because Defendant is incorporated in New York, headquartered in Poughkeepsie, New York and transacts with consumers in the State of New York. Defendant's conduct was intentionally directed at and had the effect of causing injury to persons residing in New York. Additionally, the Customer Agreement between Central Hudson and its consumers specifically provides that "[e]ach Party agrees that any legal action or proceeding arising under or relating to this Agreement shall be brought in a court of the State of New York. Each Party hereby agrees to consent to the personal jurisdiction of the courts of the State of New York in any legal action or proceeding concerning this Agreement or the transactions contemplated hereby."

14. Jurisdiction and venue are proper in this Court pursuant to CPLR 327.

### **IV. FACTUAL ALLEGATIONS**

#### **A. Central Hudson's Deceptive Billing Practices**

15. Central Hudson is a New York State natural gas and electric corporation formed in 1926 wholly owned by Fortis, Inc., a Canadian gas and utility company. Central Hudson is headquartered in Poughkeepsie, New York and provides electricity and gas to roughly 400,000 residential and commercial consumers throughout New York State. This includes providing electricity to 310,000 customers in eight Hudson Valley counties on both sides of the Hudson River, starting 25 miles north of New York City and extending to 10 miles south of Albany. Central Hudson is considered an Energy Service Company (ESCO) and is partially regulated by the State

of New York Public Service Commission (PSC), which regulates all state's electric and gas utilities.

16. Before September 2021, Central Hudson used a Customer Information System (CIS) that encompassed most of its core business processes, including customer billing. In August 2021, Central Hudson implemented a new billing system to replace its old 40-year-old legacy system to accommodate the increasing choices consumers have for energy supply. The upgrade included the Company's billing system and the financial assistance portal it uses with local county department of social services for the receipt of financial assistance payments for its low-income customers. The new system, which cost Central Hudson over 88 million dollars, was intended to handle complex billing scenarios.

17. The new billing and financial assistance portal went live on or around September 1, 2021. As was later reported in the Investigation Report published by the OIE (*see infra*, Sec. II.B.), the billing system was riddled with Company missteps. At the time the system went public, it was not only not capable of handling complex scenarios, it contained "hundreds of programming errors and defects that resulted in billing overcharges and delays for thousands of customers." *See* Ex. A. at 1. The billing system has caused consumers nothing but financial hardship, emotional stress, and the persistent anxiety of whether they will ever have enough money to pay their Central Hudson bills.

18. Shortly after the implementation of the billing system, Central Hudson's residential, small business, and commercial customers began to experience significant billing issues. In a public statement issued by Central Hudson, the Company admitted that in connection with the transition, the Company "ha[s] encountered challenges that [the Company was] actively

working on to resolve as quickly as possible.”<sup>2</sup> At that time, Central Hudson disclosed that these “challenges” impacted at least 11,000 Central Hudson consumers who received bills for unpredictable amounts, received several bills per month with different amounts due, estimated billing issues, inaccurate billing, including over-billing and under-billing, a lack of billing altogether, and uncharacteristically high bills. In some cases, the new billing system has led to a higher-than-normal automatic withdrawals from customers’ accounts without notice, causing overdrafts on customers’ personal bank accounts. As of December 5, 2022, consumers filed a grand total of 4,300 public comments on the New York State Department of Public Service’s website.<sup>3</sup> The common denominator among most of them was consumers’ inability to reach Central Hudson’s representatives able to explain and remedy their issues, their monetary hardships, and their emotional angst that the Company has bestowed upon them.

19. The variety of issues reported by the Central Hudson customers is endless. Complaints lodged with the PSC’s website included reports of customers being enrolled in a budget plan without notice or consent. Many reported having been promised an adjustment on their next utility bill to rectify billing errors, but the adjustment never came. Others reported being billed on estimated use only, as opposed to actual use. Some customers gave specific examples of the drastic difference between the estimated and actual usage (i.e. actual was less than 800 kWh, estimated was 5500 kWh). Some were billed based on the consumption of the previous occupants

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<sup>2</sup> Paul Kirby, *Public Service Commission launches Central Hudson audit on top of ice storm, billing probes*, DAILY FREEMAN, <https://www.dailyfreeman.com/2022/03/16/public-service-commission-launches-central-hudson-audit-on-top-of-ice-storm-billing-probes/> (last accessed on December 21, 2022).

<sup>3</sup> See *In the Matter of Staff’s Investigation into Central Hudson’s Customer Information System Implementation and Resulting Billing Errors*, NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE, Related Matter/Case No. 21-M-0541, available at <https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=22-00666> (last accessed on December 5, 2022).

of their residence. Still others reported continued enrollment in Central Hudson's autopay program even after they had opted out. Reports of bills delayed up to 7 months resulted in sudden large bills being due in one billing cycle. Some reported having received 2 different bills for the same billing cycle, each with different due dates for payment. Others reported having had a credit on their account which disappeared with no explanation.

20. Another frequently reported error had to do with solar panel use and billing. Many customers reported never having received solar panel credits owed to them by Central Hudson. Some reported being billed for a solar panel subscription fee after being erroneously enrolled into the program, while others reported being told that they had successfully enrolled in the solar program, but still have not been enrolled after five billing cycles. Another complaint was that Central Hudson failed to bill the enrolled customers' solar providers. Several customers, such as Plaintiff Costakis, experienced so much frustration from Central Hudson, they decided to invest in solar panels for their own homes.

21. In response to these issues, on December 29, 2021, State Senator Michelle Hinchey publicly shared stories of homeowners, renters and small businesses who were shocked when they received outrageous bills, sometimes for thousands of dollars. Some examples Hinchey used included Greene County residents who saw their Central Hudson bill spike from \$70 to \$350 in the span of one month, and a small business in New Paltz that saw its bill jump from \$32 to over \$5,000 after installing renewable energy on-site. Thousands of other consumers have filed formal complaints against Central Hudson for their billing rate increases, lack of receiving proper billing, infrequent meter readings resulting in an inaccurate pro-rated fee being applied across several

months, and much more.<sup>4</sup>

22. On March 3, 2022, Ulster County Executive Patrick Ryan wrote a letter to the PSC, urging the PSC to initiate an investigation of Central Hudson on behalf of his constituents.<sup>5</sup> In his detailed letter, Ryan stated:

Over the course of the past six months, both our office and office of Ulster County Human Rights Commissioner have fielded an unprecedented volume of serious complaints from constituents expressing concerns about ***unreliable billing practices and mounting, untenable costs for their utilities***. We have also heard from both Senator Michelle Hinchey and Assemblymember Kevin Cahill, each of whom have also been inundated by residents ***struggling to decipher the information being provided, or in many cases not being provided, by the company***. Residents have detailed a multitude of negative experiences including ***not being billed for multiple months, erroneous and/or extremely over-estimated bills, automatic withdrawals or large sums without notice, unsubstantiated charges, and more***.<sup>6</sup>

23. Further, he wrote, “[s]uch investigation should include, but not be limited to, a thorough examination of their billing systems, issues related to replacement of their IT systems, and the company’s overall effort to communicate with its customers prior to bill surges and during these ongoing billing issues.”

24. On March 16, 2022, the PSC announced three investigations related to Central Hudson, one of which concerned customer billing and customer service issues related to the new billing system. As part of the investigation, the PSC allowed consumers to formally lodge complaints against Central Hudson. Within 48 hours, over 1,000 formal complaints were filed by

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<sup>4</sup> Brian Hubert, *Central Hudson faulted by Hinchey for billing processes*, HUDSON VALLEY ONE, available at <https://hudsonvalleyone.com/2021/12/22/central-hudson-faulted-by-hinchey-for-billing-processes/> (last accessed on Dec. 21, 2022).

<sup>5</sup> Ulster County Executive Letter from Patrick K. Ryan, County Executive, to the New York State PSC, dated March 3, 2022, *available at* <https://ulstercountyny.gov/news/executive/acting-ulster-county-executive-and-state-senator-call-central-hudson-shareholders-not>.

<sup>6</sup> Unless otherwise noted, all emphasis is added.

Central Hudson consumers on PSC's website, detailing how Central Hudson has disrupted the financial lives of consumers as well as their monthly budgeting.

25. On May 17, 2022, Ulster County Executive Pat Ryan, State Sen. Michelle Hinchey and Assemblyman Kevin Cahill sent a follow-up letter to the PSC,<sup>7</sup> which they called on to take further action against Central Hudson after discovering further issues raised by customers recently. Assemblyman Cahill stated that in the months following the Company's new error-fraught billing and customer service system around August of 2021:

[O]ur offices have received thousands of calls and emails, detailing a range of problems including, but not limited to, customers receiving multiple bills per month with different amounts due, problems with estimated billing, inaccurate bills, missing bills for months at a time, budget billing issues, and staggeringly high bills paid for by auto-billing that caused overdrafts without justification.

26. Central Hudson's billing issues are so profound that the Company was unable to file its Collections Activity Reports ("CARs") in DPS case 91-M-0744, which are required to be submitted on a monthly basis. Central Hudson's inability to file such reports evidences that the Company was unable to use the new billing system to properly bill and report such bills to the New York regulators, and apparently to its customers, who are still waiting to receive accurate or timely bills.

### **B. The Investigation Report**

27. On April 5, 2022, the OIE commenced an investigation into Central Hudson's billing practices. In the months that followed, the OIE reviewed over 4,700 documents containing hundreds of thousands of pages of information and interviewed senior management of the

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<sup>7</sup> Letter from Patrick Ryan and Kevin Cahill to author (May 17, 2022), *available at* <https://ulstercountyny.gov/sites/default/files/Elected%20officials%20letter%20to%20PSC%20May%2017%2C%202022.pdf>.

Company with knowledge of the various aspects of the billing issue. *See* Ex. A at 2.

28. In December 2021, the OIE issued its Investigative Report, in which it attributed the billing issues to “Central Hudson’s negligence, lack of appropriate training, lack of proper system testing, misuse of resources, and an overall lack of readiness.” *Id.* at 4. The Investigative Report detailed the galore of issues experienced by Central Hudson customers. These included: (i) over 8 thousand customers who were overcharged, including nearly 1,000 of those that were double billed; (ii) nearly 5 thousand customers who did not receive their bills for over 3 months; and (iii) customers’ who had considerable amount of money erroneously withdrawn from their bank accounts, including sums as high as \$30,534.27, totaling over sixteen million dollars (\$16,000,000) in automatic withdrawals by Central Hudson. *Id.* at 14-17.

29. The OIE Investigative Report further revealed that Central Hudson was well aware of many of the defects that the billing system contained even prior to it going live on September 1, 2021. According to the Investigative Report, Central Hudson kept track of “bugs” which it categorized as “critical,” “major,” and “minor.” *Id.* at 25. Despite its knowledge of the existence of several “critical” bugs, which Central Hudson knew would prevent cutover to the new system, Central Hudson “hastily proceeded with the launch.” *Id.* As the OIE concluded, the premature launch was the direct result of “poor planning, inadequate training, and undue pressure to launch the system prior to Company readiness.” *Id.*

30. As the root causes of Central Hudson’s problems, the OIE identified inadequate training, where the Company employees did not receive any training whatsoever to address complex billing issues, net metering, or managing retail choice suppliers. *Id.* at 27. As additional root causes, the OIE also pointed to: (i) inadequate testing, observing that Central Hudson was aware of several risks associated with the lack of testing, yet allowed the billing system to launch

without first addressing them appropriately; (ii) inadequate staffing; and (iii) lack of communication between project team and customer service representatives.

31. The OIE scolded Central Hudson for its lack of candor with customers and public, observing that a website that Central Hudson established to address customers' billing and energy concerns was mainly dedicated to blaming "energy supply prices," "cold weather," "increased global demand," "International events in eastern Europe," an inability to control supply prices and offer fixed-rate options due to PSC orders, cancelled pipeline projects as a result of New York State and New England policy issues, and "the closing of Indian Point." As the OIE observed, at no point did Central Hudson advise customers of the critical defects plaguing the Company's billing system that caused errors resulting in inaccurate and delayed billing.

### **C. Central Hudson's Practices Violate Consumers' Statutory and Common Law Rights**

32. Central Hudson's practices violated Plaintiffs' and Class Members' statutory rights proscribed in several laws and regulations that specifically prohibit the conduct that Central Hudson engaged in. The Company's unlawful acts also violated Central Hudson's own agreements with consumers, in which Central Hudson guarantees to assess, bill, and service individuals' accounts according to and consistent with the various laws and regulations that apply to it.

#### **i. HEFPA Regulation**

33. In 2002, the New York State Legislature enacted the Energy Consumers Protection Act which amended the previously enacted Home Energy Fair Practices Act (HEFPA) and established a state policy to ensure timely and efficient delivery of gas and electric service to residential customers. According to HEFPA, "[a]ll charges made or demanded by any gas or electric corporation ... shall be just and reasonable and not more than allowed by law or by order of the commission. Every unjust or unreasonable charge made or demanded for gas or electricity

... is prohibited.” *Id.* at § 11.14. Moreover, HEFPA has clear boundaries on when, how, and why a utility company can correct their customers’ bills, especially when there’s evidence of neglect upon the utility company’s actions. *Id.*

34. According to Section 11.13 of HEFPA, Central Hudson is obligated to take reasonable actions to obtain actual meter reading, including making an appointment with the customer, offering the customer the opportunity to phone in a meter reading, or providing a card to the customer on which he or she may record the reading. *Id.* Only when Central Hudson is not able to do so, it is permitted to estimate consumers’ consumption between actual readings in a manner that is done in “accordance with a procedure approved by the commission.” *Id.* at § 11.13.

35. HEFPA further obliges Central Hudson to provide residential customers with bills that meet certain requirements, including a requirement that the charges for service are presented in clear and understandable manner and that the bills contain information about, among other things, dates of the present and previous meter readings, estimated or actual amount consumed between readings, and charges or credits which are adjustments to the base charges imposed by the distribution utility’s tariff for the rate classification of that customer. *Id.* at § 11.16 (a)-(d).

36. In cases consumers have complaints, HEFPA mandates that Central Hudson “allow[s] complaints to be accepted and processed in a simple manner and form” and that it “promptly investigate[s] any complaints in a fair manner and report the results to the complainant.” *Id.* at § 11.20. In addition, HEFPA provides for detailed procedures and rules relating to consumers’ submission of complaints to the PSC. More specifically, in cases where consumers submit complaints to PSC, Central Hudson is notified of the complaint and required to submit information regarding the merits of the complaint. *Id.* at § 12.1(c).

## ii. Central Hudson's Own Operating Procedures Manual

37. The Central Hudson's Electric Retail Access Operating Procedures Manual ("Operating Manual") provides a set of procedures and guidelines to ensure the "safe and reliable" operation of Central Hudson's electric system. *Id.* at 5. Among other things, it contains detailed rules and practices governing credit requirements, customer relationship, invoicing and other significant aspects relating to the relationship between the Company and its customers. *Id.*

38. According to Section II. J. of the Operating Manual, Central Hudson is obligated to "perform meter readings according to established reading cycles and current practices, and provide relevant meter reading information to customers. . . ." *Id.* at 11. The metered information is to be used for "billing customers and for scheduling deliveries." *Id.* Consistent with these promises, Central Hudson's FAQ web page provides that residential accounts are "billed on a monthly schedule while meters are read every other month." In the months between bills, Central Hudson commits to provide an estimated usage bill based on actual meter readings.<sup>8</sup> Central Hudson's "Rights and Responsibilities" echoes these commitments, stating that Central Hudson "does everything possible to bill [consumer's] account accurately."<sup>9</sup>

39. As to Central Hudson's invoicing practices, the Operating Manual provides that all questions concerning invoices should be directed to the Company's Supervisor of Customer Accounting. *See* Operating Manual at 16. The Operating Manual further assures that all inquiries will be acknowledged in writing or by electronic transmission within five (5) calendar days after receipt of the inquiry and that the Company will respond to the inquiry, in writing, within twenty

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<sup>8</sup> *See* FAQs, CENTRAL HUDSON GAS & ELECTRIC CORP., available at <https://www.cenhud.com/en/faqs/> (last visited December 21, 2022).

<sup>9</sup> *See* Your Rights and Responsibilities – Business & Non-Residential Customers, CENTRAL HUDSON GAS & ELECTRIC CORP., available at <https://www.cenhud.com/en/customer-service/your-rights-responsibilities/rights-and-responsibilities---business-customers/> (last visited December 21, 2022).

(20) calendar days. *Id.*

40. The Operating Manual incorporates a sample “Direct Customer Operating Agreement” (“Customer Agreement”) which governs the relationship between Central Hudson and its residential and commercial customers. *See* Operating Manual at 34. Provision VII of the Customer Agreement provides that “Central Hudson will provide to the Customer, metered usage data, and any subsequent changes, corrections or adjustments to previously supplied data. Central Hudson will make available, upon request, a class load profile for the Customer’s service class.” *Id.* at 36.

## V. CLASS ACTION ALLEGATIONS

41. This action is properly maintainable as a Class Action under Article 9 of the NY CPLR. The action is brought on behalf of Plaintiffs and class consisting of similarly situated consumers who have been incorrectly billed for gas and electricity by Central Hudson since August 2021 to Present (the “Class”).

42. Excluded from the Class are: (1) any Judge or Magistrate presiding over this action and any members of their families; (2) Defendant, Defendant’s subsidiaries, parents, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest and their current or former employees, officers, and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiffs’ counsel and Defendant’s counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

43. **Numerosity:** The members of the Class are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. While Plaintiffs are informed and believe that there are likely thousands of members of the Class, the precise number

of Class members is unknown to Plaintiffs. Class members may be identified through objective means, including Central Hudson's own records. Class members may be notified of the pendency of this action by recognized, court-approved notice dissemination methods, which may include U.S. mail, electronic mail, internet postings, and/or published notice.

44. **Commonality and Predominance:** This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

- a. Whether Defendant engaged in over-billing, under-billing or a lack of billing altogether;
- b. Whether Defendant's billing software caused higher-than-normal automatic withdrawals from customers' accounts without warning and untimely billing;
- c. Whether Defendant violated New York GBL § 349 in connection with its malfunctioning billing software;
- d. Whether Defendant violated New York GBL § 349 by misrepresenting to Plaintiffs and the Class the charges owed as a result of its faulty billing software;
- e. Whether Defendant breached its contracts with consumers through the use of its billing practices not based on the factors specified in the customer agreements;
- f. Whether Defendant breached the covenant of good faith and fair dealing by billing consumers through improper billing methods in bad faith, or in an unreasonable manner inconsistent with reasonable consumer expectations;
- g. Whether Defendant unjustly enriched itself and received a benefit at the expense of Plaintiffs;
- h. Whether Defendant acted negligently via its billing software in failing to implement

reasonable safeguards to prevent plaintiffs from sustaining billing errors; and

- i. Whether Plaintiffs and Class members are entitled to actual, statutory, punitive, or other forms of damages, and other monetary relief.

45. **Typicality:** Plaintiffs' claims are typical of claims of all Class members because, like other Class members, Plaintiffs were harmed by Central Hudson's billing software practices.

46. **Adequacy of Representation:** Plaintiffs are adequate Class representatives because they are a member of the Class and their interests do not conflict with the interests of other Class members that they seek to represent. Plaintiffs are committed to pursuing this matter for the Class with the Class's collective best interest in mind. Plaintiffs have retained counsel competent and experienced in complex class action litigation of this type and Plaintiffs intend to prosecute this action vigorously. Plaintiffs, and their counsel, will fairly and adequately protect the Class's interests.

47. **Predominance and Superiority:** As described above, common issues of law or fact predominate over individual issues. Resolution of those common issues in Plaintiffs' case will also resolve them for the Class' claims. In addition, a class action is superior to any other available means for the fair and efficient adjudication of this controversy and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for members of the Class to individually seek redress for Defendant's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action

device presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervisions by a single court,

48. Plaintiffs reserve the right to revise the foregoing class allegations and definitions based on facts learned and legal developments following additional investigation, discovery or otherwise.

## **VI. CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF Violation of New York's Uniform Deceptive Trade Practices Act (Gen. Bus. Law § 349, *et seq.*)**

49. Plaintiffs re-allege and incorporate the preceding allegations of this complaint with the same force and effect as if fully restated herein.

50. GBL § 349 provides: “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.” GBL § 349(a).

51. As consumers of Central Hudson, Plaintiffs and Class members are “person[s]” within the meaning of GBL § 349.

52. Plaintiffs are authorized to bring a private action under New York's Uniform Deceptive Trade Practices Act, Gen. Bus. Law. § 349(h).

53. Defendant conducted business, trade, or commerce in New York State by providing gas and electrical services to Plaintiffs and Class members within the meaning of GBL § 349.

54. This Count is brought for Central Hudson's deceptive conduct, including their unlawful and deceptive acts relating to its billing software as alleged herein.

55. Central Hudson engaged in unlawful deceptive acts and practices in the conduct of business, trade, or commerce and the furnishing of services purchased by Plaintiffs and Class members in violation of § 349, including but not limited to the following:

- a. Defendant omitted, suppressed, and concealed that it has failed to remedy its improper billing since at least August 2021.
- b. Defendant engaged in deceptive, unfair and unlawful acts by engaging in unpredictable under-billing, over-billing, a lack of billing altogether, and higher-than-normal automatic withdrawals from customers' accounts without warning, sometimes triggering overdraft fees in customers' banking accounts.
- c. Defendant omitted, suppressed, and concealed that it has engaged in unlawful business practices and has failed to remedy its improper practices.

56. Defendant has engaged in, and systematically engages in, deceptive acts and practices in violation of N.Y. Gen Bus. Law § 349 by failing to correct its billing software errors, which are continuously harming Plaintiffs and Class members.

57. Central Hudson willfully engaged in such acts and practices and knew or acted in reckless disregard for whether it violated GBL § 349.

58. Central Hudson willfully, knowingly, and/or negligently failed to adopt and implement reasonable standards and practices to investigate and rectify customer claims of improper billing.

59. Defendant's representations and omissions in connection with its billing practices were material because Central Hudson customers, including Plaintiffs, would not have used Central Hudson's gas and electrical services had they known that Central Hudson would erroneously charge them for exorbitantly high consumption, bill unpredictably, and withdraw automatic payments from customers without their consent.

60. Plaintiffs and Class members relied on Defendant's deceptive representations and omissions when they entered into a contract with Defendant for its electrical and/or gas services.

61. Plaintiffs and Class members had no way of knowing Defendant would implement a new billing software that would significantly impact their billing and payment practices.

62. As a direct and proximate result of Defendant's unlawful deceptive acts and practices, Plaintiff and Class members entered into agreements to purchase electricity and/or gas services from Central Hudson and suffered and continue to suffer an ascertainable loss of monies based on the difference in the amounts they were charged versus the amounts they would have been charged based on proper billing practices.

63. The above unfair and deceptive acts and practices by Defendants are willful, unfair, unconscionable, deceptive, and contrary to the public policy of New York, which aims to protect consumers. These acts caused substantial injury to consumers that Plaintiff and Class members could not reasonably avoid. This substantial injury outweighed any benefits to consumers or to competition.

64. As a direct and proximate result of Defendant's unlawful deceptive acts and practices, Plaintiffs and the Class have suffered injury and monetary damages in an amount to be determined at the trial of this action but not less than \$50 for each violation, such damages to be trebled, plus attorney's fees.

65. Plaintiffs and the other members of the Class further seek equitable relief against Defendant. Pursuant to N.Y. GBL § 349, this Court has the power to award such relief, including but not limited to, an order declaring Defendant's practices as alleged herein to be unlawful, an order enjoining Defendant from undertaking any further unlawful conduct, and an order directing Defendant to refund to Plaintiffs and the Class all amounts wrongfully assessed, collected, or withheld.

**SECOND CLAIM FOR RELIEF**  
**Breach of Contract**

66. Plaintiffs re-allege and incorporate the preceding allegations of this Complaint with the same force and effect as if fully restated herein.

67. Plaintiffs and Class members executed a valid and enforceable contract with Central Hudson pursuant to by agreeing to Central Hudson's contractual terms to supply electrical and/or gas services.

68. Pursuant to the Agreement, Defendant agreed to charge a variable rate for electricity based on electricity costs, market-related factors, applicable taxes, fees, charges or other assessments, and costs, expenses, and margins. Additionally, Defendant agreed to: (i) provide customers notice with respect to material changes in their billing statements, (ii) perform meter readings according to established reading cycles and current practices; (iii) provide relevant meter reading information to customers; (iv) bill its customers on a monthly schedule while meters are read every other month; (v) acknowledge in writing on by electronic transmission, receipts of customer inquiries within 5 days of receipt.

69. Pursuant to the Agreement, Plaintiffs and Class members paid for electricity charged by Defendant.

70. However, Central Hudson failed to perform its obligations under the Agreement by charging rates for services that were not accurately quantified by pricing components set forth in the parties' contract and failing to notify customers concerning material changes in their billing statements.

71. Central Hudson breached its Agreement with Plaintiffs and Class Members by failing to: (i) provide customers with adequate notice with respect to material changes in their billing statements; (ii) perform meter readings to customers within the agreed-upon time frame;

(iii) provide accurate meter reading to customers; (iv) bill its customers on a regular basis; and (v) respond to customer inquiries within the agreed-upon time frame.

72. Plaintiffs and Class members were injured as a result because they were improperly billed, and they paid charges for electricity and/or gas that were higher than they would have been had Defendant billed them accurately for the actual electricity and/or gas usage and consumption.

73. By reason of the foregoing, Defendant is liable to Plaintiffs and Class members for the damages they have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial.

**THIRD CLAIM FOR RELIEF**  
**Breach of Implied Covenant of Good Faith & Fair Dealing**

74. Plaintiffs repeat and re-allege the allegations contained in the paragraphs above as if fully set forth herein.

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

76. Under the contract, Defendant had unilateral discretion to set the variable rate for electricity based on market conditions and other factors, such as the amount of profit Defendant hoped to earn from the sale of electricity in a customer's utility area.

77. Plaintiffs reasonably expected that their utility bills and meter readings would, notwithstanding Defendant's profit goals, reflect the market and wholesale prices for electricity and that Defendant would charge them for the amount of energy actually consumed. Without these reasonable expectations, Plaintiff and other Class Members would not have agreed to buy electricity from Defendant.

78. Plaintiffs reasonably expected Central Hudson to promptly acknowledge customer

inquiries and concerns about their billing statements. Without Central Hudson's assurances, Plaintiffs and other Class Members would not have agreed to buy electricity from Defendant.

79. Instead, Plaintiffs and other Class Members were fleeced with emotional stress and monetary hardships as Central Hudson continues to embrace its hundreds of programming errors and defects that are directly attributable to Central Hudson's negligence, lack of appropriate training, and lack of proper system testing.

80. Defendant breached the implied covenant of good faith and fair dealing by arbitrarily and unreasonably utilizing improper billing practices, which frustrated Plaintiff and other Class member's reasonable expectations that their invoices would correlate with the actual energy and/or gas usage and consumption.

**FOURTH CLAIM FOR RELIEF**  
**Unjust Enrichment**

81. Plaintiffs repeat and re-allege the allegations contained in the paragraphs above as if fully set forth herein.

82. By engaging in the conduct described above, Defendant has unjustly enriched itself and received a benefit beyond what was contemplated in the contract, at the expense of Plaintiffs and the Class.

83. It would be unjust and inequitable for Defendant to retain the payments Plaintiffs and Class members made for excessive electricity charges.

84. Central Hudson's negligence and its lack of candor regarding its programs only exacerbated the impact of the Company's filings, resulting in several months of undue hardship for its customers, its employees, and the public at large.

85. As a result of Defendant's collection of excessive energy charges, it would be unjust and/or inequitable for Defendant to retain the benefits of its conduct without restitution to Plaintiffs

and the Class of the monies paid to Defendant. Accordingly, Defendant must account to Plaintiffs and the Class for its unjust enrichment, the amount of which shall be determined at trial.

**FIFTH CLAIM FOR RELIEF**  
**Negligence**

86. Plaintiffs repeat and re-allege the allegations contained in the paragraphs above as if fully set forth herein.

87. Central Hudson owed a duty to its customers to bill them properly for the actual amount of utilities consumed implement reasonable safeguards in preventing Plaintiffs and Class members from being subject to excessively large fees and other improper billing practices.

88. Central Hudson breached its duty of care by failing to identify its improper billing system and failing to redress its improper billing methods once they were discovered, which they were obligated to due under the Agreement.

89. Central Hudson breached its duty of care by failing to fullfill its obligations arising from the applicable law and regulation, including the failing to timely read customers' meters, assessing incorrect amounts of gas and electricity consumption, and withdrawing funds from customers' bank accounts that Central Hudson was not owed or authorized to withdraw. Thus, Central Hudson proximately damaged Plaintiff and Class members in an amount to be determined at trial.

**SIXTH CLAIM FOR RELIEF**  
**Declaratory Relief**

90. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs in this Complaint.

91. Plaintiffs contend that Defendant has failed/is failing to comply with applicable laws prohibiting deceptive acts in the conduct of its business in violation of New York Gen. Bus.

Law §§ 349 and 349(h); and New York common law claims of breach of contract, breach of implied covenant of good faith and fair dealing, unjust enrichment, and negligence.

92. A judicial declaration is necessary and appropriate at this time in order that each of the parties may know their respective rights and duties and act accordingly.

**VII. RELIEF REQUESTED**

WHEREFORE, Plaintiffs on behalf of themselves and the proposed Class, respectfully request that the Court enter an Order:

- A. Certifying this case as a Class action on behalf of the Class defined above, appointing Plaintiffs as representatives of the Class, and appointing their counsel as Class Counsel;
- B. Declaring that Defendant’s actions, as set out above, violate New York Gen. Bus. Law § 349 cited herein;
- C. Declaring that Defendant’s actions, as set out above, constitute a breach of contract;
- D. Declaring that Defendant’s actions, as set out above, constitute a breach of implied covenant of good faith & fair dealing;
- E. Declaring that Defendant’s actions, as set out above, constitute negligence.
- F. Issue an injunction or other appropriate equitable relief requiring Defendant to refrain from engaging in the deceptive practices alleged herein;
- G. Providing a declaration that Defendant owns, maintains and/or operates its business in a manner that is inconsistent with New York Gen. Bus. Law §§ 349 and 349(h) as well as New York common law claims of breach of contract, breach of implied covenant of good faith and fair dealing, unjust enrichment, and negligence;
- H. Awarding against Defendant damages that Plaintiffs and Class Members have suffered as a result of Defendant’s actions;
- I. Awarding attorney’s fees, costs, and expenses, as provided by law or equity; and

J. Awarding Plaintiffs and the Class such other and further relief as this Court deems just and proper.

**VIII. DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury for all issues so triable.

Dated: January 6, 2023

**LOWEY DANNENBERG, P.C.**

By: /s/ Andrea Farah

Andrea Farah

Jennifer Tembeck

Alessandra Greco

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*Attorneys for Plaintiffs and the Proposed Class*

**VERIFICATION**

**STATE OF NEW YORK** )

**COUNTY OF WESTCHESTER** ) **ss.:**

**ANDREA FARAH**, an attorney duly licensed to practice law in the Courts of the State of New York, and an attorney with the firm of LOWEY DANNENBERG, P.C., the attorneys of record for the Plaintiffs in the within action, affirms and states as follows:

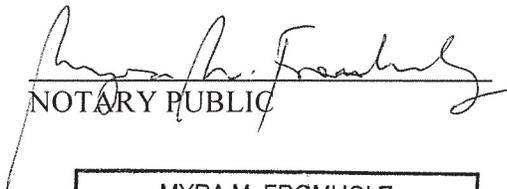
Affiant is the attorney for the Plaintiffs and as such is fully familiar with the facts of this matter. Affiant has read the foregoing Verified Complaint and knows the contents thereof to be true to Affiant's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters Affiant believes them to be true.

This Verification is made by the Affiant pursuant to CPLR 3020(d)(3) as the Plaintiffs named herein are not located in the County in which Affiant maintains office.

Dated: January 5, 2023  
White Plains, New York

  
\_\_\_\_\_  
Andrea Farah

Sworn to and subscribed before me  
this 5th day of January, 2023.

  
\_\_\_\_\_  
NOTARY PUBLIC

MYRA M. FROMHOLZ  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01FR6293341  
Qualified in Rockland County  
Commission Expires December 9, 2025