

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

KEVIN GAUS, individually and on)
behalf of all others similarly situated,)

Plaintiffs,)

vs.)

UNION ELECTRIC COMPANY, d/b/a)
AMERENUE,)

Serve:)
Kenneth Schmidt)
Registered Agent)
500 East Independence Dr.)
Union MO 63084)

AMEREN SERVICES COMPANY,)

Serve:)
Kenneth Schmidt)
Registered Agent)
500 East Independence Dr.)
Union MO 63084)

and)

AMEREN CORPORATION,)

Serve:)
Kenneth Schmidt)
Registered Agent)
500 East Independence Dr.)
Union MO 63084)

Defendants.)

Case No. 1022-0000158

Div.

JURY TRIAL DEMANDED

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COMPLAINT
FOR INDIVIDUAL AND CLASS ACTION RELIEF

COMES NOW Plaintiff Kevin Gaus pursuant to Rule 52.08 of the Missouri Rules of Civil Procedure and Section 407.025, RSMo., on his own behalf and on behalf of all others similarly situated, (referred to herein jointly as "Plaintiffs"), and for their petition

against defendants Union Electric Co., d/b/a AmerenUE, Ameren Services Company and Ameren Corporation, state as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff and Class Action Representative Kevin Gaus is a resident and citizen of the City of St. Louis, State of Missouri.

2. Defendant Unions Electric Company, d/b/a AmerenUE (hereinafter referred to as “Ameren UE”) is a Missouri corporation licensed and registered to do business in the State of Missouri. Defendant AmerenUE is a subsidiary of Ameren Corporation and is a utility company that is in the business of providing electric power and related services to central and eastern Missouri, including the greater St. Louis area, with its headquarters and principal place of business in the City of St. Louis at 1901 Chouteau Ave., St. Louis MO 63103.

3. Defendant Ameren Services Company is a Missouri corporation licensed and registered to do business in the State of Missouri. Defendant Ameren Services Company is a subsidiary of Defendant Ameren Corporation and Defendant AmerenUE and is in the business of providing administrative support services and other services, with its headquarters and principal place of business in the City of St. Louis at 1901 Chouteau Ave., St. Louis MO 63103.

4. Defendant Ameren Corporation is a Missouri corporation licensed and registered to do business in the State of Missouri. Defendant Ameren Corporation is a public utility holding company and is in the business of providing electric power and related services to central and eastern Missouri, including the greater St. Louis area, with

its headquarters and principal place of business in the City of St. Louis at 1901 Chouteau Ave., St. Louis MO 63103.

5. For the reasons stated in more detail below, this case is properly brought as a Class Action, with a plaintiffs' class, represented by a class action representative, against the named defendants.

6. Venue is proper in the City of St. Louis because many of the causes of action alleged accrued in the City of St. Louis, including the cause of action of Plaintiff Kevin Gaus. Jurisdiction is proper before the Circuit Court because the Class Action damages alleged are in excess of \$25,000.

THE NAMED PARTIES AND THEIR INDIVIDUAL TRANSACTIONS

COUNT I – MISSOURI MERCHANDISING PRACTICES ACT

7. This section relates to the transactions between Plaintiff Kevin Gaus, as purchaser, and Defendants as sellers and providers of electric power, and Plaintiff's cause of action thereto. Defendants operate a program known as the "Pure Power" program, under which customers can choose to pay additional amounts on their monthly bill, purportedly to help support the purchase of renewable energy by Defendants and/or the development of renewable energy resources. P.U.R.E. is an acronym for "People Using Renewable Energy." Customers can choose either to pay an extra 1.5 cents per kilowatt-hour on electricity purchases or to pay a premium in \$15 increments, or "blocks."

8. In fact, Pure Power customers aren't actually purchasing renewable energy, but Renewable Energy Certificates ("REC's") which help subsidize clean energy projects. On information and belief, Defendants purchase REC's through a third-party

administrator of the Pure Power program, 3Degrees Inc., a corporation located in San Francisco, California.

9. Defendants have represented that, of every \$15.00 spent by customers on the Pure Power program, only \$1.00 goes to administrative costs. Customers who specifically ask what percentage of amounts paid under the program actually go to the purchase of renewable power, including Plaintiff Kevin Gaus, are told that only a small percentage is used for costs or fees.

10. In reliance on Defendants' representations, Plaintiff Kevin Gaus joined the Pure Power program and paid an extra 1.5 cents per kilowatt-hour on electricity purchases for his home.

11. In fact, on information and belief, while Defendants may retain approximately \$1.00 of every \$15.00, less than half of the remaining \$14 that is paid to 3Degrees is used to purchase RECs. The remainder is used for 3Degrees' administrative costs, marketing costs, and profit.

12. Defendants' representations set forth above are deceptive, a misrepresentation, and conceal, suppress, or omit material facts regarding the Pure Power Program and the benefit received by participants in the program. Defendants' representations are therefore in violation of the Missouri Merchandising Practices Act, R.S.Mo. Section 407.020 et seq.

13. Defendants' representations and material omissions occurred in connection with the sale or advertisement of merchandise in trade or commerce, namely the sale and advertisement of electric power for use by consumers and businesses.

14. Defendants' representations and material omissions resulted in an ascertainable loss of money.

15. Plaintiff was participating in the Pure Power Program for primarily personal, family, or household purposes.

16. As a direct and proximate result of Defendants' representations and material omissions, Plaintiff was damaged by paying for a benefit which he did not receive.

WHEREFORE, Plaintiff prays for judgment against Defendants, for his costs expended herein, and for such other and further Orders as the Court may deem proper in the premises.

COUNT II – FRAUDULENT MISREPRESENTATION

17. Plaintiff incorporates paragraphs 1 through 16, the same as if fully set forth herein.

18. Defendants made material representations and omissions of material fact by alleging that only \$1.00 of every \$15.00 spent by customers went to administrative or other costs. The failure to inform clients that less than half of the remaining amount went to the actual purchase of renewable energy was a material omission of fact. Defendants made other material representations and omissions of material fact for the purpose of suggesting that participants in the program were actually purchasing renewable power, including the name of the program which stands for "People Using Renewable Energy."

19. Defendants' representations and material omissions were false and material. Defendants were aware of this falsity.

20. Defendants intended that their above representations and material omissions should be acted on by Plaintiff in the manner reasonably contemplated, i.e. that Plaintiff would rely on said representations and material omissions by participating in the program in the belief either that they were obtaining renewable energy for their own use, and/or that the vast majority of amounts spent to participate in the program went to the purchase of renewable energy or renewable energy certificates.

21. Plaintiff was ignorant of the falsity of the representation and of the material omissions.

22. Plaintiff relied on the representations being true and had a right to rely thereon.

23. As a direct and proximate result Plaintiff was damaged.

WHEREFORE, Plaintiff prays for judgment against Defendants, for his costs expended herein, and for such other and further Orders as the Court may deem proper in the premises.

COUNT III – NEGLIGENT MISREPRESENTATION

24. Plaintiff incorporates paragraphs 1 through 23, the same as if fully set forth herein.

25. Defendants supplied the information described above and made the above material omissions in the course of their business.

26. Because of Defendants' failure to exercise reasonable care, the information provided to plaintiff was false.

27. The information was intentionally provided by defendants for the guidance of a limited group of persons in a particular business transaction.

28. Plaintiff justifiably relied on the information provided by defendants.

29. Due to plaintiff's reliance on the information, plaintiff suffered a pecuniary loss and has been damaged.

WHEREFORE, Plaintiff prays for judgment against Defendants, for his costs expended herein, and for such other and further Orders as the Court may deem proper in the premises.

CLASS ACTION ALLEGATIONS

30. Plaintiff incorporates paragraphs 1 through 29, the same as if fully set forth herein.

31. Plaintiff proposes to represent a Plaintiffs' Class consisting of all persons and other entities that paid additional amounts as participants under the Pure Power Program. Plaintiff's proposed class would each bring causes of action under the three counts set forth above.

32. On information and belief, the proposed Plaintiffs' Class consists of approximately 6,000 residents and businesses who are customers of Defendants and participants in the Pure Power program. The members of the Plaintiffs' Class are so numerous that it is impractical to bring all of them before the Court in this action. Moreover, the amount of damages suffered by many members of the Plaintiffs' Class is so small as to make suit for its recovery by each individual Plaintiffs' Class member economically unfeasible. Furthermore, piecemeal adjudication of this dispute would create a risk of inconsistent or varying adjudications with respect to individual members of the class.

33. Plaintiff is similarly situated to the members of the Plaintiffs' Class and will fairly insure adequate representation of all of the Plaintiffs' Class members.

34. There are common questions of law and fact applicable to the claims asserted on behalf of the Plaintiffs' Class. Those questions include the following:

- a. Whether Defendants made misleading and deceptive statements and material omissions of fact, including through advertising or as a matter of policy when responding to questions from customers;
- b. What method by which damages should be calculated for amounts paid by participants in the program; including what proportion of amounts paid under the program was not actually spent by Defendants on renewable energy;

35. Proposed lead counsel for the proposed Plaintiffs' Class, Dowd & Dowd P.C., are experienced and knowledgeable civil litigators, have pursued fraud and MMPA claims in the past, and will fairly and adequately represent the interests of the proposed Plaintiffs' Class.

36. The claims of the class representative, Plaintiff Kevin Gaus, are typical of the claims or defenses of the class, which relate solely to the representations and omissions of Defendants and the actual amounts spent by Defendants on purchasing renewable power or renewable power certificates. The questions of law and fact common to the members of the proposed Plaintiffs' Class therefore predominate over any questions of fact affecting any individual member of the proposed Plaintiffs' Class, and a class action is superior to other available methods for the fair and efficient resolution of this controversy. No unusual difficulties are anticipated in the management of this case as a class action.

37. This action is maintainable as a plaintiffs' class action pursuant to Rule 52.08 of the Missouri Rules of Civil Procedure and pursuant to Section 407.025.2, RSMo.

WHEREFORE, Plaintiff Kevin Gaus, individually and on behalf of each member of the proposed Plaintiffs' Class, prays the Court grant the following relief:

- a. Enter an order certifying this action as a plaintiffs' class action, and appointing the named Plaintiff, individually, as representative of the Plaintiffs' Class;
- b. Enter an order appointing Dowd & Dowd, P.C. as class counsel for the Plaintiffs' Class;
- c. Enter judgment in favor of Plaintiff and the members of the Plaintiffs' Class and against Defendants, for actual damages in an amount in excess of \$25,000;
- d. Enter judgment awarding class counsel reasonable attorneys' fees and all expenses of this action to be paid by the named Defendants, jointly and severally, and to require the named Defendants to pay the costs and expenses of class notice and claim administration; and
- e. Award plaintiffs' prejudgment interest, post-judgment interest, costs and any further and additional relief as to which they may be entitled.

DOWD & DOWD, P.C.

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