

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) TUESDAY, THE 21ST
JUSTICE GLUSTEIN)
DAY OF NOVEMBER, 2023

B E T W E E N:

STEPHEN GILCHRIST

Plaintiff

- and -



JUST ENERGY GROUP INC.,

PATRICK MCCULLOUGH, JAMES BROWN and ERNST & YOUNG LLP

Defendants

Entered/Issued
NOV 22 2023

Proceeding under the Class Proceedings Act, 1992

**ORDER
(LEAVE TO PROCEED / CERTIFICATION)**

THIS MOTION, made by the Plaintiff for, *inter alia*, an Order (i) granting leave to proceed with a statutory claim for secondary market misrepresentation against the Defendant Just Energy Group Inc. ("**Just Energy**"), pursuant to s. 138.8(1) of the *Securities Act*, R.S.O. 1990, c. S.5 ("**OSA**"), and (ii) certifying this action as a class proceeding pursuant to s. 5 of the *Class Proceedings Act, 1992*, S.O. 1992, c.6 ("**CPA**") as against Just Energy, was heard this day in Toronto, Ontario.

ON READING the materials filed, including the proposed Amended Third Fresh as Amended Statement of Claim attached hereto as **Schedule "A"** ("**Third Amended Claim**"), and

on hearing the submissions of counsel for the Plaintiff and counsel for Just Energy, and Patrick McCullough and James Brown (together, "**Individual Defendants**");

ON BEING ADVISED that Just Energy and the Individual Defendants consent to this Order;

AND ON BEING ADVISED that potential recovery on the Plaintiff's claims in this action, along with the claims asserted in *White v. Just Energy Group Inc. et al.* (United States District Court, Southern District of Texas, Case No. 20-cv-00590) ("**US Action**"), was limited to the proceeds under Just Energy's applicable insurance policies by order of Justice Hailey dated September 2, 2020, (the "**September 2, 2020 Order**") such that the maximum recovery for all plaintiffs in both actions together for all claims is limited to the available insurance;

AND ON BEING ADVISED that The Rosen Law Firm, P.A. ("**US Counsel**"), lawyers for the plaintiff in the US Action, consents to this Order;

NOW THEREFORE:

1. **THIS COURT ORDERS** that Gregory Gutman is hereby added as a Plaintiff in this action.
2. **THIS COURT ORDERS** that, subject to the terms of this Order, this action is hereby discontinued without costs as against the Individual Defendants.

3. **THIS COURT ORDERS** that the title of proceedings in this action shall hereby be amended to the following:

STEPHEN GILCHRIST and GREGORY GUTMAN

Plaintiffs

– and –

JUST ENERGY GROUP INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

4. **THIS COURT ORDERS** that leave is granted to issue the proposed Third Amended Claim in the form attached hereto as **Schedule "A"**.
5. **THIS COURT DECLARES** that except as otherwise stated, this Order incorporates and adopts the definitions set out in the Third Amended Claim.
6. **THIS COURT ORDERS** that the Plaintiffs are granted leave to proceed under s. 138.8(1) of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation) as against Just Energy to commence an action under s. 138.3 of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation) as contained in the Third Amended Claim, subject to the limitations set out in the Class definition below.
7. **THIS COURT ORDERS** that this action is certified as a class proceeding as against Just Energy pursuant to s. 5(1) of the *CPA*.
8. **THIS COURT DECLARES** that the only cause of action certified is misrepresentation pursuant to s. 138.3 of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation). The Plaintiffs shall not be entitled to move for

certification at any time of any of the remaining proposed common issues, including common issues relating to common law negligent misrepresentation and the oppression remedy, identified in the Plaintiff's Notice of Motion (Part XXIII.1 OSA Leave and Certification) dated January 5, 2021.

9. **THIS COURT ORDERS** that the Class is defined as:

All persons and entities, wherever they may reside or may be domiciled, who acquired any Just Energy Securities during the Class Period and retained some or all of them at the close of trading on July 22, 2019, or August 14, 2019, other than Excluded Persons.

In the above definition:

"Class Period" means the period from May 16, 2018 to August 14, 2019 inclusive.

"Excluded Persons" means (i) the Defendants; (ii) Just Energy's and Ernst & Young LLP's past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns; (iii) any member of the Individual Defendants' immediate families; and (iv) any entity in which the Individual Defendants have a controlling interest.

"Securities" means:

- (i) common shares, previously listed for trading on the TSX and NYSE under the symbol "JE"; and
- (ii) 8.50% Series A preferred shares, previously listed for trading on the TSX under the symbol "JE.PR.U" and on the NYSE under the symbol "JE.PR.A".

10. **THIS COURT ORDERS** that the issues set out in **Schedule "B"** hereto are certified as common issues for the Class.

11. **THIS COURT ORDERS** that Stephen Gilchrist and Gregory Gutman are appointed as the representative plaintiffs for the Class Members, and references in this Order to the "Plaintiffs" shall mean Stephen Gilchrist and Gregory Gutman.

12. **THIS COURT ORDERS** that the only claim asserted against Just Energy on behalf of the Class is the statutory right of action under section 138.3(1) of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation).
13. **THIS COURT ORDERS** that the relief sought by the Class against Just Energy is set out in paragraph 2 of the Third Amended Claim.
14. **THIS COURT ORDERS** that Siskinds LLP and Berger Montague (Canada) PC are together appointed as "Class Counsel".
15. **THIS COURT ORDERS** that US Counsel hereby submits and attorns to the jurisdiction of the Ontario Superior Court of Justice for all purposes related to this litigation.
16. **THIS COURT ORDERS** that evidence obtained from Just Energy and the Individual Defendants (and information obtained from that evidence) may be provided to US Counsel, and in respect of such evidence US Counsel shall hereby be bound by Rule 30.1.01 of the *Rules of Civil Procedure* in respect of that evidence and shall be deemed to be a party to this action for the purposes of that Rule.
17. **THIS COURT ORDERS** that the Plaintiffs' Litigation Plan attached hereto as **Schedule "C"** is approved.
18. **THIS COURT ORDERS** that the Class shall be given notice of the certification of this action as a class proceeding, all pursuant to the Press Release attached hereto as **Schedule "D"**, the Notice of Leave and Certification attached hereto as **Schedule "E"**, and the Plan of Notice attached hereto as **Schedule "F"**.
19. **THIS COURT ORDERS** that the costs of disseminating notice shall be paid by, and evenly split between, the Plaintiff and Just Energy.

20. **THIS COURT ORDERS** that, within thirty (30) days after completion of the notice requirements set out above, Class Counsel will file with this Court and serve on the parties an affidavit confirming their compliance with the notice requirements.
21. **THIS COURT ORDERS** that all persons on whose behalf claims have been asserted in the Plaintiff's Amended Second Fresh as Amended Statement of Claim dated August 31, 2020 ("**Second Amended Claim**") and in the Consolidated Amended Complaint dated July 27, 2020 in the US Action but who are not included in the Class defined in paragraph 9 above (including purchasers of Just Energy Securities between November 9, 2017 and May 15, 2018 and between August 15, 2019 and July 7, 2020), may be entitled to compensation under a proposed distribution protocol, to be approved by the Court, as if they were part of the certified class, in the event that there is a settlement or judgment in the action.
22. **THIS COURT ORDERS** that, notwithstanding the discontinuance of this action as against the Individual Defendants, the Individual Defendants will preserve any documents or other evidence relevant to the issues in this Action in their possession, power or control in a manner consistent with the obligations of parties under the *Rules of Civil Procedure*.
23. **THIS COURT ORDERS** that, notwithstanding the discontinuance of this action as against the Individual Defendants, the Individual Defendants will remain subject to documentary discovery and examination for discovery, if necessary, as if they were parties subject to the *Rules of Civil Procedure*. The Individual Defendants undertake to appear as witnesses at trial (if the Plaintiffs advise that they wish to call their evidence) on the same basis that they would if they continued to be parties.

24. **THIS COURT ORDERS** that for the purposes of a proportionate liability determination under s. 138.6 of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation), any liability that may be found to be attributable to one or both of the Individual Defendants will be attributed in full to Just Energy, subject to the limit on recovery for all claims in this action and in the US Action to the proceeds of the Insurance Policies set out in the September 2, 2020 Order, such that the maximum recovery for the Class for any and all claims asserted in both actions is limited to the available insurance.
25. **THIS COURT ORDERS** that there shall be no costs associated with this motion.



THE HONOURABLE JUSTICE GLUSTEIN

SCHEDULE "A"
Third Amended Statement of Claim

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

STEPHEN GILCHRIST and GREGORY GUTMAN

Plaintiffs

- and -

JUST ENERGY GROUP INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**THIRD FRESH AS AMENDED
STATEMENT OF CLAIM**

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyers or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU

WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: September 11, 2019

Issued by: _____
Local Registrar
Address of Court Office:
Superior Court of Justice
393 University Ave., 10th Floor
Toronto, ON M5G 1E6

TO: **FASKEN MARTINEAU DUMOULIN LLP**
Bay Adelaide Centre Box 20
2400-333 Bay St.
Toronto, ON M5H 2T6
Fax: (416) 364-7813

Paul J. Martin (LSO#: 24140B)
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Sarah J. Armstrong (LSO#: 47747G)
sarmstrong@fasken.com
Tel: (416) 868-3452

Lawyers for the Defendant, Just Energy Group Inc.

I. DEFINITIONS

1. In this Third Fresh as Amended Statement of Claim, in addition to the terms that are defined elsewhere herein, the following definitions apply:
 - (a) “**Accounts Receivable**” means money owed to Just Energy by its customers. This figure is also referred to as “Trade and other receivables” in Just Energy’s disclosures;
 - (b) “**Allowance for Doubtful Accounts**” means the amount of Accounts Receivable not expected to be recoverable. This figure is also referred to as “Provision for Doubtful Accounts” and “bad debt expense” in Just Energy’s disclosures;
 - (c) “**August 1, 2019 Material Change Report**” means the material change report released by Just Energy on August 1, 2019;
 - (d) “**August 14, 2019 News Release**” means the news release issued by Just Energy on August 14, 2019;
 - (e) “**Brown**” means James (Jim) Brown, the CFO of Just Energy when each of the Impugned Documents was released;
 - (f) “**CEO**” means Chief Executive Officer;
 - (g) “**CFO**” means Chief Financial Officer;
 - (h) “**Class**” and “**Class Members**” mean all persons and entities, wherever they may reside or may be domiciled, who acquired any Just Energy Securities during the Class Period and retained some or all of them at the close of trading on July 22, 2019, or August 14, 2019, other than Excluded Persons;
 - (i) “**Class Period**” means the period from May 16, 2018 to August 14, 2019 inclusive;
 - (j) “**CJA**” means the *Courts of Justice Act*, RSO 1990, c C-43, as amended;
 - (k) “**Company**” means Just Energy;
 - (l) “**CPA**” means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;
 - (m) “**DC&P**” means Disclosure Controls and Procedures, as defined in section 1.1 of National Instrument 52-109;
 - (n) “**Defendant**” means Just Energy;
 - (o) “**ECL**” means expected credit losses;
 - (p) “**Excluded Persons**” means: (i) Just Energy, the Former Individual Defendants, and EY; (ii) Just Energy’s and EY’s past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns; (iii) any member of the Former Individual

Defendants' immediate families; and (iv) any entity in which the Former Individual Defendants have a controlling interest;

- (q) "EY" means Ernst & Young LLP, a public accounting firm registered with the PCAOB;
- (r) "Former Individual Defendants," and each being a "Former Individual Defendant," means, collectively, McCullough and Brown;
- (s) "FY 2018" means fiscal year ending March 31, 2018;
- (t) "FY 2019" means fiscal year ending March 31, 2019;
- (u) "FY 2020" means fiscal year ending March 31, 2020;
- (v) "ICFR" means Internal Controls over Financial Reporting, as defined in section 1.1 of National Instrument 52-109;
- (w) "IFRS" means International Financial Reporting Standards;
- (x) "Impugned Documents" means the following Just Energy disclosure documents:
 - (i) the Audited Annual Financial Statements and the MD&A for FY 2018, filed on SEDAR on May 16, 2018;
 - (ii) the Former Individual Defendants' Certifications of Annual Filings on Form 52-109F1 with respect to FY 2018, dated and filed on SEDAR on May 31, 2018;
 - (iii) the Interim Financial Statements and the MD&A for Q1 2019, filed on SEDAR on August 8, 2018;
 - (iv) the Former Individual Defendants' Certifications of Interim Filings on Form 52-109F2 with respect to Q1 2019, dated and filed on SEDAR on August 8, 2018;
 - (v) the Interim Financial Statements and the MD&A for Q2 2019, filed on SEDAR on November 7, 2018;
 - (vi) the Former Individual Defendants' Certifications of Interim Filings on Form 52-109F2 with respect to Q2 2019, dated and filed on SEDAR on November 7, 2018;
 - (vii) the Interim Financial Statements and the MD&A for Q3 2019, filed on SEDAR on February 6, 2019;
 - (viii) the Former Individual Defendants' Certifications of Interim Filings on Form 52-109F2 with respect to Q3 2019, dated and filed on SEDAR on February 6, 2019;

- (ix) the Audited Annual Financial Statements and the MD&A for FY 2019, filed on SEDAR on May 15, 2019;
- (x) the Former Individual Defendants' Certifications of Annual Filings on Form 52-109F1 with respect to FY 2019, dated and filed on SEDAR on May 15, 2019; and
- (xi) the July 23, 2019 News Release and the corresponding August 1, 2019 Material Change Report;

in each case, where applicable, any documents incorporated by reference therein;

- (y) "**July 23, 2019 News Release**" means the news release issued by Just Energy on July 23, 2019;
- (z) "**Just Energy**" means the Defendant, Just Energy Group Inc.;
- (aa) "**McCullough**" means Patrick McCullough, the CEO of Just Energy when each of the Impugned Documents was released;
- (bb) "**MD&A**" means management's discussion and analysis, as defined and described in National Instrument 51-102;
- (cc) "**National Instrument 51-102**" means National Instrument 51-102, *Continuous Disclosure Obligations*, as amended;
- (dd) "**National Instrument 52-107**" means National Instrument 52-107, *Acceptable Accounting Principles*, as amended;
- (ee) "**National Instrument 52-108**" means National Instrument 52-108, *Auditor Oversight*;
- (ff) "**National Instrument 52-109**" means National Instrument 52-109, *Certification of Disclosure in Issuers' Annual and Interim Filings*, as amended;
- (gg) "**NYSE**" means the New York Stock Exchange;
- (hh) "**OSA**" means the *Securities Act*, RSO 1990, c S.5, as amended;
- (ii) "**Other Canadian Securities Legislation**" means, collectively, the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; *The Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, CQLR c V-1.1, as amended; *The Securities Act*, 1988, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;

- (jj) “**PCAOB**” means the Public Company Accounting Oversight Board (United States);
- (kk) “**Plaintiffs** ” means Stephen Gilchrist and Gregory Gutman;
- (ll) “**Q1 2019**” means the three-month period ending June 30, 2018;
- (mm) “**Q2 2019**” means the three- and six-month period ending September 30, 2018;
- (nn) “**Q3 2019**” means the three- and nine-month period ending December 31, 2018;
- (oo) “**Q1 2020**” means the three-month period ending June 30, 2019;
- (pp) “**Restatements**” means the restated and refiled financial statements and MD&As for Q3 2019 and FY 2019, which were issued and filed on SEDAR on August 14, 2019;
- (qq) “**Securities**” means:
 - (i) common shares, previously listed for trading on the TSX and NYSE under the symbol “JE”; and
 - (ii) 8.50% Series A preferred shares, previously listed for trading on the TSX under the symbol “JE.PR.U” and on the NYSE under the symbol “JE.PR.A”;
- (rr) “**SEDAR**” means the system for electronic document analysis and retrieval of the Canadian Securities Administrators; and
- (ss) “**TSX**” means the Toronto Stock Exchange.

II. RELIEF SOUGHT

2. The Plaintiffs claim:

- (a) A declaration that the Impugned Documents contained one or more misrepresentations within the meaning of the *OSA* and, if necessary, the Other Canadian Securities Legislation;
- (b) A declaration that Just Energy is vicariously liable for the acts and/or omissions of the Former Individual Defendants and, as may be applicable, of its other officers, directors, employees or agents;
- (c) Damages as against the Defendant in excess of \$100 million;

- (d) An order directing a reference or giving such other directions as may be necessary to determine the issues, if any, not determined at the trial of the common issues;
- (e) Prejudgment and post judgment interest;
- (f) Costs of this action on a substantial indemnity basis or in an amount that provides full indemnity plus, pursuant to section 26(9) of the *CPA*, the costs of notice and of administering the plan of distribution of the recovery in this action plus applicable taxes; and
- (g) Such further and other relief as this Honourable Court may deem just.

III. OVERVIEW

3. Just Energy was an energy retailer operating primarily in the United States, Canada and at all material times, in the United Kingdom (“U.K.”). At all material times through its subsidiaries and affiliates, Just Energy bought electricity and natural gas and resold it to residential and commercial customers. Just Energy’s business depended on the creditworthiness of its customers and its ability to collect revenues derived from sales to them.
4. Just Energy required effective policies, processes and controls to succeed as a business and meet its obligations as a former reporting issuer. Such systems are, among other things, directed at ensuring that its customers were creditworthy, that its revenues from sales were collectible, and that material information affecting the Company was made known to and considered by management in the preparation of Just Energy’s financial statements and other disclosures in accordance with applicable accounting principles and standards as well as securities laws.
5. However, Just Energy – by its own admission after the Class Period – failed to properly develop, maintain and/or operate such systems during the Class Period.
6. Additionally, and as a result of Just Energy’s failure to design, maintain and/or implement proper and effective policies to ensure its disclosures were reliable, Just Energy’s financial statements and other disclosures issued during the Class Period were misstated in violation of the applicable accounting principles and standards.

7. As at the end of the Class Period, Just Energy restated its previously-issued financial statements and MD&As for Q3 2019 and FY 2019.
8. During the Class Period, Just Energy represented that its disclosures contained no misrepresentations. That was false, for the reasons particularized herein.
9. On July 23, 2019, Just Energy alerted investors to operational and collection issues in certain of its operating markets.
10. After the close of trading on August 14, 2019, it issued the Restatements for the Q3 2019 and FY 2019 financial statements and MD&As to correct, among other things, the material overstatement of its Accounts Receivable and material understatement of its Allowance for Doubtful Accounts in Q3 2019 and FY 2019. In the Restatements, Just Energy disclosed that the misstatements were the result of operational deficiencies, including management's failure to effectively operate a control designed to capture expected credit losses in certain markets. It also disclosed that the control failure was a long-standing material weakness in its ICFR.
11. The trading prices or market value of the Securities plummeted following those disclosures.
12. As a result of the misrepresentations alleged herein, the Securities traded at artificially inflated prices during the Class Period. The Class Members suffered damage when the truth was revealed.
13. The Plaintiffs have brought this class proceeding on their own behalf and on behalf of the Class to recover the damages they have incurred as a result of the misrepresentations in the Impugned Documents, to hold the Defendant accountable for its conduct, and to deter others from similar conduct.

IV. THE FACTS

A) The Parties and the Former Defendants

The Plaintiffs

14. The Plaintiff, Gregory Gutman, is a retail investor residing in the State of Texas in the United States of America. He bought common shares of Just Energy during the Class Period and held those shares when Just Energy's misrepresentations were corrected.
15. The Plaintiff, Stephen Gilchrist, is a retail investor residing in the Province of Ontario. He bought common shares of Just Energy during the Class Period and held those shares when Just Energy's misrepresentations were corrected.

The Defendant

16. Just Energy was a publicly traded company incorporated under the *Canada Business Corporations Act*, RSC 1985, c C-44, as amended. Its registered office was in Toronto, Ontario, and it had a head office in Mississauga, Ontario.
17. At all material times, Just Energy's:
 - (a) common shares were listed for trading and traded on the TSX and NYSE under the ticker symbol "JE."; and
 - (b) 8.50% Series A preferred shares were listed for trading on the TSX under the symbol "JE.PR.U" and on the NYSE under the symbol "JE.PR.A".
18. At material times, certain of the Securities also traded on the Alpha exchange in Toronto, the Aequitas NEO Exchange in Toronto, and Canadian and U.S. alternative trading systems, including Omega, CX2 and Nasdaq CXC, among other secondary market trading venues.
19. Just Energy was a constituent issuer of the S&P TSX Small Cap Index, and a constituent issuer of several small utilities-focused indices.

20. At all material times, Just Energy was a reporting issuer in Ontario and all other Provinces and Territories of Canada. Just Energy was also a Registrant with the United States Securities and Exchange Commission.
21. Just Energy elected to become a reporting issuer because publicly tradable securities provided it with a broader ability and greater flexibility to access the capital markets in Ontario and across Canada.
22. Pursuant to Canadian securities laws, Just Energy was required throughout the Class Period to release and file on SEDAR certain documents and information, including:
 - (a) News releases when a material change occurred;
 - (b) Material change reports when a material change occurred;
 - (c) Quarterly interim financial statements prepared in accordance with IFRS;
 - (d) Annual financial statements prepared in accordance with IFRS;
 - (e) MD&As contemporaneously with each of the interim and annual financial statements; and
 - (f) Annual Information Forms to provide material information regarding the company and its business in the context of its historical and possible future development, and which would describe Just Energy's operations and prospects, risks and other external factors that impacted it specifically.
23. In releasing these disclosures, Just Energy was prohibited from making a statement that:
 - (a) was, in a material respect and at the time and in the light of the circumstances under which it was made, misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statement not misleading; and
 - (b) would reasonably be expected to have a significant effect on the market price or value of its securities.

24. Just Energy was also required to present its financial statements in accordance with IFRS. More particularly, its financial statements were required to fairly present, in all material respects, its financial position and financial performance in accordance with IFRS.
25. Among other applicable accounting instruments and policies, the standards in IFRS 9 and 15 ought to have been applied by Just Energy beginning from April 1, 2018, for the reporting of its Accounts Receivable and Allowance for Doubtful Accounts, respectively.
26. IFRS 15 establishes a five-step model for recognizing revenue from contracts with customers, such as Just Energy's contracts for gas and electricity sales. It allows the recognition of revenue when a material performance obligation is met.
27. Just Energy determined that its material performance obligation was the provision of energy to customers, and it recognized revenues from the sale of energy at the time the energy was delivered to/consumed by customers (rather than when the customers paid for the energy).
28. IFRS 9 establishes approaches for recognizing impairment in accounts receivable. It required Just Energy to apply a lifetime ECL model, where any credit losses that are expected in future years must be measured and an allowance recorded at the time of the initial recognition of its receivables.
29. As such, in order to prepare its financial statements in accordance with IFRS, Just Energy was required to follow IFRS 9 for making proper and adequate allowances for expected future credit losses at the time when it recognized revenues.
30. Furthermore, Just Energy was required to design, implement and maintain proper and effective DC&P and ICFR in order to ensure the reliability of its disclosures and financial reports. However, unbeknownst to the Class, it failed to do so.

Former Individual Defendants

31. Patrick McCullough was Just Energy's President and CEO from April 1, 2018 to August 5, 2019, at which point he was replaced by R. Scott Gahn as President and CEO. At all material times, McCullough was also a member of Just Energy's Board of Directors.

McCullough was a director and officer of Just Energy within the meaning of the *OSA* and the Other Canadian Securities Legislation. McCullough is a resident of Houston, Texas.

32. Pursuant to National Instrument 52-109, in his capacity as Just Energy's CEO, McCullough issued certifications with respect to Just Energy's annual filings for FY 2018, its interim disclosure filings for each of Q1 through Q3 2019, and its annual filings for FY 2019. McCullough's CEO certifications, which are Impugned Documents, contained misrepresentations and were false and/or misleading, as particularized below.
33. Additionally, in his capacity as a director of Just Energy, McCullough approved each of the Impugned Documents prior to its release.
34. At all material times, Brown was Just Energy's CFO, and was therefore an officer of Just Energy within the meaning of the *OSA* and the Other Canadian Securities Legislation.
35. Pursuant to National Instrument 52-109, in his capacity as Just Energy's CFO, Brown issued certifications with respect to Just Energy's annual filings for FY 2018, its interim disclosure filings for each of Q1 through Q3 2019, and its annual filings for FY 2019. Brown's CFO certifications, which are Impugned Documents, contained misrepresentations and were false and/or misleading, as particularized below.
36. The Former Individual Defendants knew, from the time that they accepted their positions with Just Energy, that at all material times the Company was a reporting issuer and that they would have direct responsibility for ensuring the accuracy and reliability of its disclosure documents. The Former Individual Defendants were aware of and accepted these obligations, as applicable, in assuming their positions as a director and/or officers of Just Energy.

EY

37. EY is a Canadian accounting firm headquartered in Toronto, Ontario.
38. EY is a member of the global network of Ernst & Young, which is one of the major professional and accounting services firms in the world.

39. At all material times, and since 2011, EY served as Just Energy's auditor. During the Class Period, EY acted as the auditor of Just Energy from its offices in Toronto, Ontario.
40. EY was, by its own election, the auditor of Just Energy and an "expert" of the Company for the purposes of the *OSA* and the Other Canadian Securities Legislation. The *OSA*, the Other Canadian Securities Legislation and National Instruments 51-102, 52-107, 52-108 and 52-109 imposed specific obligations on EY with respect to the discharge of its assurance engagements for Just Energy.
41. Furthermore, in performing its audits and other assurance engagements for Just Energy, EY was governed by and was obligated to comply with the professional standards promulgated by the PCAOB as well as those set out in its engagement agreements with Just Energy.
42. EY accepted and acknowledged the obligations imposed upon it by the laws and national instruments referred to in paragraph 40 above in standing for election at the general annual meeting of shareholders and accepting its appointment by Just Energy's shareholders, including Class Members, as Just Energy's auditor for FY 2019.
43. During the Class Period, EY issued an unqualified auditor's report to Just Energy's shareholders and its Board of Directors on Just Energy's audited financial statements for FY 2018 and the state of its ICFR as of March 31, 2018. Those two reports, dated May 16, 2018, were false and misleading.
44. During the Class Period, EY also issued an unqualified auditor's report to Just Energy's shareholders and its Board of Directors on Just Energy's audited financial statements for FY 2019 and a further report on the state of its ICFR as of March 31, 2019. Those two reports are dated May 15, 2019. As particularized below, EY's FY 2019 audit reports issued during the Class Period contained misrepresentations and was false and/or misleading.
45. Furthermore, on August 14, 2019, in conjunction with the Restatements of Just Energy's Audited Annual Financial Statements for FY 2019, EY issued an auditor's report to the shareholders and Board of Directors of Just Energy. These purportedly audited financial

statements had to be restated one more time on July 8, 2020. EY's report dated August 14, 2019 was false and misleading.

46. Additionally, during the Class Period, EY performed reviews with respect to Just Energy's interim financial statements for Q1 through Q3 2019. In conjunction with its review engagements, EY made presentations to the audit committee and/or Board of Directors of Just Energy regarding its review findings and conclusions before those interim disclosures were issued and released to the public by Just Energy.
47. In FY 2018, FY 2019 and FY 2020, respectively, EY (together with its affiliates, where applicable) earned \$2,458,527, \$2,450,600 and \$5,069,620 from Just Energy.

B) The Misrepresentations

FY 2018 Disclosures – released on May 16, 2018

48. Just Energy's FY 2018 audited annual financial statements and MD&A were released on SEDAR on May 16, 2018.
49. The FY 2018 financial statements and MD&A identified that Just Energy was exposed to customer credit risk in, among other markets, the Texas and U.K. markets, and described that Just Energy purported to manage that risk using "credit review processes".
50. The FY 2018 financial statements disclosed that Just Energy would be reporting under IFRS 9 effective April 1, 2018, and that impairment models and related process controls for determining its Allowance for Doubtful Accounts would be, in effect, implemented and validated in time for the reporting of its Q1 2019 financials:

The transition team has assessed the impact of IFRS 9 on the consolidated financial statements and has determined that the adoption of IFRS 9 will enhance disclosure requirements [...] The Company will continue to revise, refine and validate the impairment models and related process controls leading up to the June 30, 2018 reporting.

51. The FY 2018 MD&A described Just Energy's customer credit risk as material to Just Energy's business and described the efforts taken by Just Energy to manage these risks:

Just Energy has customer credit risk in various markets where bills are sent directly to customers for energy consumption from Just Energy. If a significant number of direct bill customers were to default on their payments, it could have a material adverse effect on the results of operations, cash flow and liquidity of Just Energy.

[...]

Just Energy may face risks if there are deficiencies in its internal control over financial reporting and disclosure controls and procedures [...] Any deficiencies, if uncorrected, could result in Just Energy's financial statements being inaccurate and in future adjustments or restatements of Just Energy's historical financial statements, which could adversely affect the business, financial condition and results of operations of Just Energy.

52. Having described:

- (a) customer credit risks as material to Just Energy's business; and
- (b) the efforts purportedly taken by Just Energy to manage these risks,

it was a misrepresentation to fail to state how a material customer credit risk in Texas and the U.K. had in fact been realized during the reporting period.

53. Further or in the alternative, it was a misrepresentation to fail to state that:

- (a) Just Energy had control deficiencies in its Texas and U.K. customer markets, causing, or that would cause, customer enrollment and non-payment issues if not corrected; and/or
- (b) Just Energy had material weaknesses in its internal controls over financial reporting, which would materially affect its application of IFRS 9 if not remediated.

54. More particularly, the following material facts, individually or collectively, which were not stated, were required to be stated or were necessary to make the foregoing disclosure statements not misleading:

- (a) Just Energy had process control deficiencies in its Texas and U.K. customer markets, which impaired proper determination of the creditworthiness of those customer bases and the proper determination of ECL, therefore resulting in the

understatement of Allowance for Doubtful Accounts and overstatement of Accounts Receivable;

- (b) Just Energy's management failed to design, maintain and/or effectively implement or operate the control processes and systems needed to capture appropriate ECL in the Texas and U.K. customer markets; and/or
- (c) The failure to correct or remediate, as necessary, the foregoing would adversely affect the application of Just Energy's accounting policy for measuring ECL to determine the Allowance for Doubtful Accounts in accordance with IFRS and would result in the understatement of Allowance for Doubtful Accounts and overstatement of Accounts Receivable.

55. In fact, Just Energy's FY 2018 disclosures affirmatively represented that Just Energy's DC&P and ICFR had been designed properly and were effective as of March 31, 2018. Such representations were also false and/or misleading.

56. As Just Energy disclosed on August 14, 2019, at all material times, Just Energy's ICFR suffered from material weaknesses and were ineffective.

57. According to Just Energy's restated MD&A for FY 2019, filed on August 14, 2019:

Management identified operational issues in customer enrolment and non-payment in the Texas residential market ("the Texas residential enrolment and collections impairment"). Management has revisited the allowance for doubtful accounts and determined that additional reserves of \$53.7 million were required at March 31, 2019. Management also identified operational and collection issues in the United Kingdom ("U.K.") market ("the U.K. receivables impairment") and determined that additional reserves of \$57.5 million were required at March 31, 2019. Refer to Note 5 of the Restated Consolidated Financial Statements at March 31, 2019 for the effects of the adjustment described above.

Consequently, the Company's management has concluded that a material weakness in its internal controls over financial reporting existed during the year ended March 31, 2019.

[underline added.]

58. The FY 2018 MD&A also improperly failed to disclose the specific identifiable risks posed by Just Energy's operational breakdowns. Namely, that:
- (a) Just Energy's impairment models and related process controls were ineffective for measuring ECL in the Texas and U.K. customer markets;
 - (b) Just Energy had and/or would have material non-payment issues in the Texas and U.K. customer markets, the latter if the control deficiencies and internal control weaknesses were not corrected or remediated; and/or
 - (c) It was probable that Just Energy's financial statements for reporting periods post-April 1, 2018 could materially misstate Just Energy's Allowance for Doubtful Accounts, Accounts Receivable, net profit and earnings per share in contravention of IFRS.
59. These specific identifiable risks were also material facts, and the failure to disclose them in the FY 2018 MD&A was also a misrepresentation.
60. As a result of the foregoing, Just Energy's FY 2018 financial statements misstated, and they failed to fairly present, its accounts receivable. Because of material misstatements, Just Energy's FY 2018 financial statements were not prepared in accordance with IFRS, and did not fairly present, in all material respects, Just Energy's financial position and performance in accordance with IFRS.

Q1 2019 Disclosures – released on August 8, 2018

61. Just Energy's Q1 2019 interim financial statements and MD&A were released on SEDAR on August 8, 2018.
62. The Q1 2019 interim financial statements and MD&A again identified that Just Energy had customer credit risk in the Texas and U.K. markets, and described the efforts taken by Just Energy to manage that risk.

63. The Q1 2019 interim financial statements described Just Energy's accounting policy for measuring ECL (under IFRS 9) to determine its Allowance for Doubtful Accounts:

Just Energy assesses all information available, including past due status, credit ratings, the existence of third-party insurance and forward-looking macroeconomic factors in the measurement of the ECL [expected credit losses] associated with assets carried at amortized cost. Just Energy measures ECL by considering the risk of default over the contract period and incorporates forward looking information into its measurement.

64. The Q1 2019 interim financial statements disclosed that the Company's Allowance for Doubtful Accounts for the three-month period ended June 30, 2018 was \$20.8 million. The MD&A disclosed that the amount was higher than in the prior comparable quarter because of the growth of revenues within Texas and the U.K., and the establishment of a credit and collections history within the U.K. for the purposes of calculating the Allowance for Doubtful Accounts.

65. The Q1 2019 MD&A incorporated by reference the risk factors disclosure concerning customer credit risk and ICFR from Just Energy's FY 2018 MD&A released on May 16, 2018, referred to in paragraph 51 above.

66. Furthermore, the Q1 2019 MD&A falsely represented that Just Energy's management had designed or caused to be designed appropriate DC&P and ICFR, that Just Energy otherwise had in place proper procedures so that any material information affecting the Company would be elevated for evaluation and communication to management, and that those internal controls were effective as of June 30, 2018.

67. Furthermore, or in the alternative, the Q1 2019 MD&A was false and/or misleading as it failed to disclose that Just Energy's ICFR suffered from material weaknesses as of June 30, 2018.

68. The Q1 2019 financial statements and MD&A contained misrepresentations of the same nature and for the same reasons as pleaded in paragraphs 48-56, above.

69. As a result of the foregoing, Just Energy's Q1 2019 financial statements misstated, and they failed to fairly present, its accounts receivable. Because of material misstatements,

Just Energy's Q1 2019 financial statements were not prepared in accordance with IFRS, and did not fairly present, in all material respects, Just Energy's financial position and performance in accordance with IFRS.

Q2 2019 Disclosures – released on November 7, 2018

70. Just Energy's Q2 2019 interim financial statements and MD&A were released on SEDAR on November 7, 2018.
71. The financial statements and MD&A again identified that Just Energy had customer credit risk in Texas and U.K., and described the efforts taken by Just Energy to manage that risk.
72. The interim financial statements described Just Energy's accounting policy for measuring ECL (under IFRS 9), in the same terms as described in paragraph 63 herein.
73. Just Energy's financial statements disclosed that its Allowance for Doubtful Accounts for the six-month period ended September 30, 2018 was \$45.2 million. The MD&A disclosed, again, that the amount was appreciably higher than in the prior comparable quarter because of the growth of revenues within Texas and the U.K.
74. The Q2 2019 MD&A incorporated by reference the risk factors disclosure concerning customer credit risk and ICFR from Just Energy's FY 2018 MD&A released on May 31, 2018, referred to in paragraph 51 above.
75. Furthermore, the Q2 2019 MD&A falsely represented that Just Energy's management had designed or caused to be designed appropriate DC&P and ICFR, that Just Energy otherwise had in place proper procedures so that any material information affecting the Company would be elevated for evaluation and communication to management, and that those internal controls were effective as of September 30, 2018.
76. Furthermore, or in the alternative, the Q2 2019 MD&A was false and/or misleading as it failed to disclose that Just Energy's ICFR suffered from material weaknesses as of September 30, 2018.
77. The Q2 2019 financial statements and MD&A contained misrepresentations of the same nature and for the same reasons as pleaded in paragraphs 48-56, above.

78. As a result of the foregoing, Just Energy's Q2 2019 financial statements misstated, and they failed to fairly present, its accounts receivable. Because of material misstatements, Just Energy's Q2 2019 financial statements were not prepared in accordance with IFRS, and did not fairly present, in all material respects, Just Energy's financial position and performance in accordance with IFRS.

Q3 2019 Disclosures – released on February 6, 2019

79. Just Energy's Q3 2019 interim financial statements and MD&A were released on February 6, 2019.

80. The financial statements and MD&A again identified that Just Energy had customer credit risk in Texas and U.K., and described the efforts taken by Just Energy to manage that risk.

81. The interim financial statements described Just Energy's accounting policy for measuring ECL (under IFRS 9), in the same terms as described in paragraph 63 above.

82. Just Energy's financial statements disclosed that its Allowance for Doubtful Accounts for the nine-month period ended December 31, 2018 was \$65.4 million. The MD&A disclosed, yet again, that the amount was appreciably higher than in the prior comparable quarter because of the growth of revenues within Texas and the U.K.

83. The Q3 2019 MD&A incorporated by reference the risk factors disclosure concerning customer credit risk and ICFR from Just Energy's FY 2018 MD&A released on May 16, 2018, referred to in paragraph 51 above.

84. Furthermore, the Q3 2019 MD&A falsely represented that Just Energy's management had designed or caused to be designed appropriate DC&P and ICFR, that Just Energy otherwise had in place proper procedures so that any material information affecting the Company would be elevated for evaluation and communication to management, and that those internal controls were effective as of December 31, 2018.

85. Moreover, or in the alternative, the Q3 2019 MD&A was false and/or misleading as it failed to disclose that Just Energy's ICFR suffered from material weaknesses as of December 31, 2018.

86. Furthermore, with respect to Just Energy's ICFR, the Q3 2019 MD&A represented as follows:

During the nine months ended December 31, 2018, there were no changes that materially affected, or are reasonably likely to materially affect, the Company's ICFR.

87. This statement was false and/or misleading. As Just Energy would mention in its originally-issued FY 2019 MD&A, filed on SEDAR on May 15, 2019, in January 2019 Just Energy identified certain control deficiencies in its control environment, processes or systems. As a result, it "designed ["new"] internal controls, including account reconciliations, to remediate the deficiency in design," according to Just Energy. It was accordingly a false and/or misleading statement for Just Energy to fail to disclose in its Q3 2019 disclosures, released on February 6, 2019, the identified internal control deficiency, or that they necessitated the design of "new internal controls".

88. The Q3 2019 financial statements and MD&A contained misrepresentations of the same nature and for the same reasons as pleaded in paragraphs 48-56, above.

89. In addition to the foregoing, Just Energy's failure to manage the growth of its Texas and U.K. operations caused it to experience significant non-payment issues with customers in the Texas and U.K. markets, which, having gone undetected and/or uncorrected, caused the Q3 2019 financial statements and MD&A to be materially misstated.

90. More particularly, in Just Energy's Q3 2019 financial statements:

- (a) Accounts Receivable were overstated by approximately 9.6%; and
- (b) Allowance for Doubtful Accounts (\$65.4 million) was understated by approximately 114%.

91. Similarly, Just Energy's Q3 2019 net profit and earnings per share were materially misstated. The net profit should have been reported as a loss. Indeed, the Company's earnings per share was not positive either. This figure should have been reported as a loss as well.

92. As a result of the foregoing, Just Energy's Q3 2019 financial statements misstated, and they failed to fairly present, its accounts receivable. Because of material misstatements, Just Energy's Q3 2019 financial statements were not prepared in accordance with IFRS, and did not fairly present, in all material respects, Just Energy's financial position and performance in accordance with IFRS.

FY 2019 Disclosures – released on May 15, 2019

93. Just Energy's FY 2019 audited annual financial statements and MD&A were released on May 15, 2019.
94. The financial statements and MD&A again identified that Just Energy had customer credit risk in Texas and U.K., and described the efforts taken by Just Energy to manage that risk.
95. The financial statements described Just Energy's accounting policy for measuring ECL (under IFRS 9), in the same terms as described in paragraph 63 above.
96. Just Energy's financial statements disclosed that its Allowance for Doubtful Accounts for the twelve-month period ended March 31, 2019 was \$81 million. The MD&A disclosed that this amount was appreciably higher than in the prior comparable year primarily as a result of the growth of revenues within Texas and the U.K., and the adoption of the IFRS 9 ECL model.
97. The FY 2019 MD&A included risk factors disclosure describing customer credit risk and ICFR risk, in the same terms as described in paragraph 51 above.
98. The FY 2019 financial statements and MD&A contained misrepresentations of the same nature and for the same reasons as pleaded in paragraphs 48-56, above.
99. In addition to the foregoing, Just Energy's failure to manage the growth of its Texas and U.K. operations caused it to experience significant non-payment issues with customers in the Texas and U.K. markets which, having gone undetected and/or uncorrected, caused the FY 2019 financial statements and MD&A to be materially misstated.
100. More particularly, in Just Energy's FY 2019 financial statements:
- (a) Accounts Receivable were overstated by approximately 14%; and

(b) Allowance for Doubtful Accounts (\$81 million) was understated by approximately 137%.

101. Similarly, Just Energy's FY 2019 net loss and earnings per share were materially misstated. The net loss was, in fact, much greater. Its negative earnings per share were, in fact, worse than represented.

102. In addition, while the FY 2019 MD&A did indicate that the Company's assessment of ICFR conducted in January 2019 had identified a deficiency in the design and operating effectiveness of certain internal controls related to certain account balances in certain markets, this MD&A unequivocally represented that:

(a) upon identification of the deficiency, Just Energy designed internal controls, including account reconciliations, to remediate the deficiency in design;

(b) the internal control deficiency at issue was accordingly remediated;

(c) the "new internal controls" effectively operated for February 28, 2019 and March 31, 2019; and

(d) Just Energy considered the internal control deficiency to be effectively remediated as at March 31, 2019,

all of which was also untrue and/or misleading and hence in themselves were misrepresentations.

103. As a result of the foregoing, Just Energy's FY 2019 financial statements misstated, and they failed to fairly present, its accounts receivable. Because of material misstatements, Just Energy's FY 2019 financial statements were not prepared in accordance with IFRS, and did not fairly present, in all material respects, Just Energy's financial position and performance in accordance with IFRS.

The Former Individual Defendants' False Certifications

104. McCullough, in his role as CEO (up to the point he resigned his position as such in August of 2019), and Brown, in his role as CFO, provided certifications pertaining to Just Energy's financial statements and MD&As issued during the Class Period.

105. The Former Individual Defendants certified that, based on their knowledge and having exercised reasonable diligence, the interim and annual filings issued during the Class Period “did not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by” those Impugned Documents.
106. The Former Individual Defendants further certified that, based on their knowledge and having exercised reasonable diligence, the interim and annual financial statements together with the other financial information included in the interim and annual filings issued during the Class Period “fairly present[ed] in all material respects the financial condition, financial performance and cash flows of the Issuer, as of the date of and for the periods presented in” those Impugned Documents.
107. Furthermore, in the certifications of annual filings with respect to FY 2018 and FY 2019, the Former Individual Defendants additionally certified that: (i) they had properly designed, or caused to be designed, proper DC&P and ICFR; (ii) they had properly evaluated, or caused to be evaluated, the effectiveness of the DC&P and ICFR; and that (iii) the conclusion, as stated in the Impugned Documents for FY 2018 and FY 2019, was that the DC&P and ICFR were effective was based on the aforementioned evaluation.
108. These statements were false and/or misleading, and constituted misrepresentations.
109. The financial statements and MD&As released during the Class Period contained misrepresentations and/or omissions that McCullough and Brown were aware of or of which they ought to have been aware through the exercise of reasonable diligence.
110. Additionally, the financial statements of Just Energy issued during the Class Period failed to fairly present in all material respects the financial condition and financial performance of Just Energy in accordance with IFRS. These financial statements were, in fact, materially misstated.
111. Moreover, unknown to the Class, Just Energy’s DC&P and ICFR suffered from material weaknesses throughout the Class Period, contrary to the statements and representations falsely made in McCullough’s and Brown’s certifications.

C) EY's Reports

The Audited Financial Statements for FY 2018, FY 2019 and Restated FY 2019

112. On May 16, 2018, in conjunction with Just Energy's FY 2018 disclosures, EY issued:
- (a) an audit report that the financial statements presented fairly, in all material respects, the financial position of Just Energy, and its financial performance and cash flows, as of March 31, 2018, in accordance with IFRS; and
 - (b) an audit report representing that Just Energy maintained, in all material respects, effective ICFR, as of March 31, 2018.
113. On May 15, 2019, in conjunction with Just Energy's FY 2019 disclosures, EY issued:
- (a) an audit report that the financial statements presented fairly, in all material respects, the financial position of Just Energy, and its financial performance and cash flows in conformity with IFRS as of March 31, 2019 and 2018; and
 - (b) an audit report representing that Just Energy maintained, in all material respects, effective ICFR, as of March 31, 2019.
114. On August 14, 2019, in conjunction with Just Energy's release of its Restated Audited Financial Statements for FY 2019, EY issued an audit report that the financial statements presented fairly, in all material respects, the financial position of Just Energy and its financial performance and cash flows, as of March 31, 2019 and 2018, in accordance with IFRS.
115. The five EY reports outlined above were false and/or misleading.
116. EY audited, purportedly in accordance with the standards of the PCAOB, the consolidated statements of financial position of Just Energy as at March 31, 2018 and March 31, 2019, and the related consolidated statements of income (loss), comprehensive income (loss), changes in shareholders' equity and cash flows for the year then ended.

117. As for the standards with which it purportedly complied, EY stated as follows:

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion. .

118. Based on its audit, which was purportedly performed in accordance with the PCAOB standards, EY represented, in its audit reports dated May 16, 2018, May 15, 2019 and August 14, 2019, that the financial statements of Just Energy for FY 2018 and FY 2019 fairly presented, in all material respects, the financial position of Just Energy and its financial performance and its cash flows for those years, in conformity with IFRS.

119. The foregoing representations made by EY were false and/or misleading. EY failed to perform its audits in accordance with the standards of the PCAOB. Accordingly, it had no reasonable basis to express the opinion, and to represent to Just Energy's shareholders, that Just Energy's audited financial statements complied with IFRS, which they did not.

120. Additionally, EY audited Just Energy's ICFR also purportedly in accordance with the standards of the PCAOB and based on the criteria established in "Internal Control-Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission (2913 framework) as of year-end FY 2018 and 2019. As for the standards with which it purportedly complied, EY stated as follows:

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

121. The foregoing representations made by EY in its audit reports on the state of Just Energy's ICFR dated May 16, 2018 and May 15, 2019_were false and/or misleading. EY failed to perform its audits in accordance with the standards of the PCAOB. Accordingly, it had no reasonable basis to express the opinion, and to represent to Just Energy's shareholders, that Just Energy's ICFR were effective, which they were not.

The Q3 2019 Interim Financial Statements

122. Just Energy's interim financial statements and MD&As for Q3 2019 were issued on February 6, 2019. Those disclosures were subsequently restated and refiled on August 14, 2019.
123. EY reviewed, purportedly in accordance with the professional standards applicable to it, Just Energy's Q3 2019 disclosures prior to their release.
124. EY provided a presentation and/or report to the audit committee and/or the Board of Directors of Just Energy before the release of the Q3 2019 disclosures. EY's report was the basis of Just Energy's audit committee and/or the Board of Directors' approval of the Q3 2019 disclosures for their release to the public.
125. EY's presentation and/or report issued to the audit committee and/or the Board of Directors of Just Energy contained the statement that the Q3 2019 financial statements complied with IFRS.
126. EY's statement as such were subsequently summarized or quoted in Just Energy's Q3 2019 disclosures on EY's consent in writing which was provided by way of, without limitation, such agreements and consents of EY as were sought and obtained, including EY's applicable engagement letters.

127. The Q3 2019 interim financial statements were, in fact, not compliant with IFRS. They were subsequently restated and refiled on August 14, 2019.
128. Furthermore, as pleaded herein, the Q3 2019 disclosures contained the following false and/or misleading statement regarding the state of Just Energy's internal controls as of the end of Q3 2019:

During the nine months ended December 31, 2018, there were no changes that materially affected, or are reasonably likely to materially affect, the Company's ICFR.

129. As Just Energy's MD&A for FY 2019 issued on May 15, 2019 would later reveal, as early as in January 2019 — prior to the release of the Q3 2019 disclosures but after their effective date — Just Energy had detected control deficiencies adversely affecting its financial reporting. Those control deficiencies necessitated that new control processes and systems be designed. The deficiencies had not been remediated as of the date of the release of the Q3 2019 disclosures, February 6, 2019.
130. EY knew or ought to have known upon reasonable diligence required of it in the circumstances that, contrary to the representation in Just Energy's Q3 2019 disclosures, material internal control weaknesses had been identified, and that the internal controls had in fact been modified by way of the introduction of new control processes and systems.
131. By virtue of its actions and omissions in connection with the review of the Q3 2019 disclosures, EY adopted as its own the false representations made therein that Just Energy's DC&P and ICFR were proper, as particularized herein at paragraphs 86-87, above

D) The Public Corrections

132. The Defendant's misrepresentations alleged herein were: (a) partially corrected on July 23, 2019; and (b) finally corrected on August 14, 2019.

July 23, 2019 News Release & August 1, 2019 Material Change Report

133. The Defendant's misrepresentations particularized herein were partially corrected by way of the July 23, 2019 News Release, which was subsequently made the subject of, and was attached to, the August 1, 2019 Material Change Report.

134. However, the July 23, 2019 News Release failed to disclose the entire truth about Just Energy's problems, and itself contained misrepresentations. More particularly, the July 23, 2019 News Release stated that a strategic review process initiated by Just Energy's Board of Directors in June 2019 had "identified customer enrolment and non-payment issues, primarily in Texas, over the past 12 months" and that investors should expect "an incremental impairment of the Texas residential accounts receivable of approximately \$45 to \$50 million as of June 30, 2019."
135. The July 23, 2019 News Release and the August 1, 2019 Material Change Report were false and/or misleading in that they omitted the following material facts, individually or collectively, which were required to be stated or were necessary to make the other statements contained therein not misleading:
- a) That the enrolment and non-payment issues extended to the U.K. market;
 - b) That Just Energy's control deficiencies and management's failure to effectively operate an internal control designed to capture appropriate ECL from the Texas and U.K. markets resulted in previous financial statements materially understating Allowance for Doubtful Accounts and overstating Accounts Receivable, in violation of IFRS; and
 - c) That the extent of the issues could result in a restatement of Just Energy's financial statements;
- all of which were known to the Defendant or ought to have been known to it upon reasonable diligence.
136. Additionally, the July 23, 2019 News Release quoted Rebecca MacDonald, Just Energy's Executive Chair, as stating: "The enrolment and non-payment issues have been remediated and management is confident in the business and operational controls currently in place. These issues will not have a continuing effect on future cash flows." These representations were false.
137. In fact, the control deficiencies had not been remediated at the time of the dissemination of the July 23, 2019 News Release. As Just Energy's restated MD&A for FY 2019, filed on

August 14, 2019 disclosed, the remediation efforts were underway as of August 14, 2019. Of note, the restated MD&A for FY 2019 stated:

No assurance can be provided at this time that the actions and remediation efforts the Company has taken or will implement will effectively remediate the material weaknesses described above or prevent the incidence of other significant deficiencies or material weaknesses in the Company's internal controls over financial reporting in the future.

138. The trading prices of Just Energy's common shares and 8.50% Series A preferred shares dropped over 26% over the 10 trading days following the issuance of the July 23, 2019 News Release.
139. No investor conference call was held after the July 23, 2019 News Release.
140. On August 5, 2019, McCullough stepped down as CEO and director of Just Energy and was replaced by Gahn. No explanation was given for McCullough's sudden departure.

August 14, 2019 News Release and Restated Financial Statements and Disclosures for Q3 2019 and FY 2019

141. The Defendant's misrepresentations alleged herein were finally corrected on August 14, 2019, as Just Energy released restated financial statements and disclosures for Q3 2019 and FY 2019.
142. On August 14, 2019 (after the TSX and NYSE had closed), Just Energy issued a press release titled "Just Energy Reports Fiscal First Quarter 2020 Results." Among other things, this press release announced the Restatements as follows:

During the quarter, management identified operational issues in customer enrolment and non-payment of accounts receivable in the Texas residential market, resulting in an aggregate adjustment of \$58.6 million. Management also proceeded to identify collection issues in the U.K. market, resulting in an aggregate adjustment of \$74.1 million. As a result, the Company recorded additional allowances for doubtful accounts which are included in the Company's restated third quarter and year-end financial statements for fiscal year 2019, and in the Company's first quarter results for fiscal year 2020, as referenced within each respective management discussion and analysis.

143. Concurrently, Just Energy released and filed on SEDAR restated interim financial statements for Q3 2019 and restated audited annual financial statements for FY 2019.
144. Additionally, the August 14, 2019 News Release contained the following statements and announcements, which were directly or indirectly related to or caused by Just Energy's financial reporting and control environment deficiencies and, ultimately, the Restatements:
- (a) Walter M. Higgins III was appointed to the Board of Directors in order "to strengthen board independence and to provide deep industry expertise to support the ongoing strategic review process," according to Just Energy;
 - (b) "During the first quarter, the Company took actions to significantly increase cash flow including exercising the accordion option associated with its credit facility, repaying and extending the remaining portion of the Company's 6.5% Convertible Bond and taking operational measures to decrease negative cash flows associated with bad debt in Texas. With operational actions taken to reduce Texas bad debt and fourth fiscal quarter 2019 cost reductions beginning to take effect the Company has confidence in its ability to generate positive cash flows from the business" (emphasis added);
 - (c) for the first time in its history, Just Energy was suspending its common share dividend; and
 - (d) Just Energy was reducing its guidance for FY 2020 for: (i) free cash flow by over 36% (from the midpoint) from between \$90-100 million to between \$50-70 million, due specifically to the negative impact arising out of the impairment of Texas bad debt; and (ii) EBITDA by roughly 12% (from the midpoint) from between \$200-220 million to \$180-190 million.
145. On August 15, 2019, Just Energy held an earnings call but did not accept any questions from investors, instead choosing to deliver prepared remarks from the Company's newly appointed CEO, Gahn:

Both of these impairments have been recognized in their entirety and strict remedial actions and policies were swiftly put in place to prevent such operational breakdowns from occurring again,

restoring the operational and financial discipline and integrity that Just Energy is known for.

Perhaps the most important thing I can say today regarding this matter is that, these enrollment and non-payment issues have been remediated. We have soberly assessed our opportunities for collection. We have made the difficult decisions and we have booked the impairments. This means they will not have a continued effect on future cash flows and I along with the entire management team and board are confident in the business and operational controls in place going forward.

146. Gahn did not elaborate on the nature of the “operational breakdowns” or why they had not been identified or disclosed earlier.

Restatement of the Q3 2019 Disclosures

147. On August 14, 2019, Just Energy restated its Q3 2019 financial statements and MD&A due to “an error relating to the understatement of the allowance for doubtful accounts of \$74.6 million,” stating, among other things, that:

- (a) trade and other receivables would be reduced by \$74.6 million;
- (b) the provision for doubtful accounts should have been \$140 million (rather than \$65.4 as initially represented);
- (c) the total expected lifetime credit loss should have been \$183.3 million (rather than \$108.6 million as initially represented);
- (d) the restatement was due to “collection issues” and “non-payment” in the Texas and U.K. residential markets; and
- (e) these understatements were “material.”

Restatement of the FY 2019 Disclosures

148. On August 14, 2019, Just Energy restated its FY 2019 financial statements and MD&A due to “an error relating to the understatement of the allowance for doubtful accounts of \$111.2 million,” stating, among other things, that:

- (a) trade and other receivables would be reduced by \$111.2 million;
- (b) the provision for doubtful accounts should have been \$192.2 million (rather than \$81.0 as initially recorded);
- (c) the total expected lifetime credit loss should have been \$182.4 million (rather than \$71.2 million as initially recorded);
- (d) the restatement was due to “collection issues” and “non-payment” in the Texas and U.K. residential markets; and
- (e) these understatements were “material.”

149. Concurrently, EY issued an audit report, dated partially August 14, 2019, which stated that Just Energy’s ICFR suffered from material weaknesses, and therefore the Company had failed to maintain effective ICFR as of the end of FY 2019.

150. Following the August 14, 2019 correction, the price of Just Energy’s Securities fell over the next 10 trading days, as follows:

- (a) common shares, approximately - 62%; and,
- (b) 8.50% Series A preferred shares, approximately - 36%.

E) The Second Restatement

151. On July 8, 2020, Just Energy released its financial statements and disclosures for FY 2020 which contained restatements of previously-issued financial disclosures for FY 2018, Q1 2019 and FY 2019.

152. In these disclosures, Just Energy and its auditors EY concluded that, as of March 31, 2020, Just Energy’s ICFR suffered from material weaknesses and it was ineffective as a result of:

- (a) “design of the controls over reconciliation and estimation procedures in Commodity suppliers’ payables and accruals and cost of goods sold”; and

- (b) “an aggregation of deficiencies within the financial statement close process impacting the control activities and monitoring components of the COSO framework.”

F) Relationship Between the Misrepresentations and the Price of Just Energy’s Securities

153. The Impugned Documents, each of which contained one or more of the misrepresentations alleged herein, were released to the public and filed with SEDAR, and thereby became immediately available to and were reproduced for inspection by Class Members, the public, financial analysts, professional investors and the financial press through the internet and other media.
154. The price at which Just Energy’s shares traded throughout the Class Period incorporated the publicly available financial information about Just Energy, which financial information was given credibility by the misrepresentations.
155. Just Energy’s Securities traded on the TSX, or the TSX and NYSE, which are efficient and automated markets.
156. The Impugned Documents had an immediate and direct impact on the trading price of Just Energy shares without regard to whether any particular investor relied on those documents directly in making a decision to invest.
157. The Defendant knew and intended that each investor who purchased Just Energy’s shares during the Class Period would rely on the Impugned Documents and accompanying certifications, whether directly or indirectly, which they did to their detriment.

V. RIGHTS OF ACTION

158. The Plaintiffs adopt, repeat and rely on the factual pleadings above and assert the following rights of action against the Defendant.

A) Statutory Misrepresentation under Part XXIII.1 of the OSA

159. On his own behalf and on behalf of the Class Members, the Plaintiffs assert the right of action found in section 138.3(1) of Part XXIII.1 of the *OSA* (and, if necessary, the equivalent sections of the Other Canadian Securities Legislation) against Just Energy for all of the Impugned Documents.
160. Each of the Impugned Documents is a “document” within the meaning of Part XXIII.1 of the *OSA*.
161. At all material times, Just Energy was a “reporting issuer” and a “responsible issuer” within the meaning of Part XXIII.1 of the *OSA*. It released the Impugned Documents, which contained one or more of the misrepresentations particularized herein, any one of which is a misrepresentation for the purposes of the *OSA*.
162. EY was an expert within the meaning of Part XXIII.1 of the *OSA*.
163. EY issued audit reports on Just Energy’s ICFR and its audited annual financial statements for FY 2018, FY 2019 and the restated FY 2019, which contained misrepresentations. Just Energy’s audited financial statements for FY 2018, FY 2019 and the restated FY 2019 included, summarized or quoted from EY’s audit reports. EY consented in writing to the use of its audit report in Just Energy’s audited financial statements.
164. EY reviewed the Q3 2019 disclosures prior to their release, which included, summarized or quoted from EY’s reports, opinions or presentations, which contained the statements that the financial statements for Q3 2019 complied with IFRS.
165. EY’s reports and opinions had been provided and expressed in EY’s communications and interactions with Just Energy’s audit committee and/or Board of Directors including, without limitation, in EY’s review findings report provided, and/or presentations made, to the audit committee and/or the Board of Directors in connection with the approval and public release of the Q3 2019 disclosures.

166. EY consented in writing to the use of its report, statement or opinion in the Q3 2019 disclosures on by way of such agreements or consents that were sought and obtained from EY, including by way of EY's applicable engagement letters.
167. The Plaintiffs and the other Class Members who purchased Securities in the secondary market after a misrepresentation was made and before it was corrected on July 23, 2019 and/or August 14, 2019 are entitled to damages assessed in accordance with section 138.5 of the *OSA*.

B) Vicarious Liability

168. Just Energy is vicariously liable for the acts and/or omissions of the Former Individual Defendants and, as may be applicable, of its other officers, directors, employees or agents.
169. The acts or omissions particularized and alleged herein to have been done by Just Energy were authorized, ordered and done by the Former Individual Defendants and other agents, employees and representatives of Just Energy, while engaged in the management, direction, control and transaction of the business and affairs of Just Energy.
170. By virtue of the relationship between Just Energy and the Former Individual Defendants, such acts and omissions are, therefore, not only the acts and omissions of the Former Individual Defendants but are also the acts and omissions of Just Energy.

VI. DAMAGES

171. The Plaintiffs and the Class Members suffered damage as a result of the Defendant's conduct and the misrepresentations they made in the Impugned Documents.
172. As a result of the Defendant's conduct and their misrepresentations, the Class Members acquired Securities at artificially inflated prices. Had the Defendant not made those misrepresentations, during the Class Period, the Securities would have traded at prices that reflected their true value. Accordingly, had the Defendant not made the misrepresentations, the Plaintiffs and the Class Members would not have suffered damage.

173. The Plaintiffs and the Class Members suffered damage as a result of the decline in the market price or value of the Securities, as applicable, as the Defendant's misrepresentations were corrected on July 23, 2019 and August 14, 2019.

VII. REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

174. The Plaintiffs plead that this action has a real and substantial connection with Ontario because, among other things:

- (a) at all material times, Just Energy's registered office is in Toronto, Ontario;
- (b) at all material times, Just Energy has a head office in Mississauga, Ontario;
- (c) at all material times, Just Energy was a reporting issuer under the *OSA* and the Securities traded on the TSX, the Alpha Exchange and Aequis NEO Exchange, each of which are in Toronto, Ontario;
- (d) the Impugned Documents were disseminated from Toronto, Ontario;
- (e) the misrepresentations alleged herein were disseminated to Class Members resident in Ontario;
- (f) EY is headquartered in Toronto, Ontario;
- (g) EY audited and performed other assurance engagements for Just Energy from its offices at Toronto, Ontario;
- (h) EY issued its audit reports from Toronto, Ontario;
- (i) a substantial proportion of the Class Members reside in Ontario; and
- (j) a substantial portion of the Class' damages was sustained by Class Members in Ontario.

VIII. SERVICE OUTSIDE OF ONTARIO

175. The Plaintiffs may serve this Third Fresh as Amended Statement of Claim outside of Ontario without leave in accordance with rule 17.02 of the *Rules of Civil Procedure*, because this claim is:
- (a) a claim in respect of personal property in Ontario (rule 17.02(a));
 - (b) a claim in respect of a tort committed in Ontario (rule 17.02(g)); and
 - (c) a claim against a person or entity carrying on business in Ontario (rule 17.02(p)).

IX. RELEVANT LEGISLATION AND PLACE OF TRIAL

176. The Plaintiffs plead and rely on the *CJA*, the *CPA*, the *OSA*, the Other Canadian Securities Legislation and securities regulatory instruments, and the *Canada Business Corporations Act*.
177. The Plaintiffs propose that this action be tried in the City of Toronto, in the Province of Ontario, as a proceeding under the *CPA*.

September 11, 2019

AMENDED: August 18, 2020

AMENDED: •, 2023

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Lawyers for the Plaintiffs

Stephen Gilchrist and
Gregory Gutman
Plaintiffs

Just Energy Group Inc.
Defendant

and

Court File No.: CV-19-627174-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**THIRD FRESH
AS AMENDED STATEMENT OF CLAIM**

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SCHEDULE "B"
Common Issues

Statutory Claim for Secondary Market Misrepresentation

- (a) Did any of the Impugned Documents contain one or more misrepresentations?
- (b) If the answer to (a) is yes, which Impugned Documents contained what misrepresentations?
- (c) If the answer to (a) is yes, is Just Energy liable to some or all of the Class Members for damages? If so, to whom is Just Energy liable?
- (d) If the answer to (c) is yes, what are the per share damages?

Other Matters

- (e) Can some or all of the damages of the Class or the compensation payable to the Class be calculated in the aggregate pursuant to section 24 of the *CPA*?
- (f) If the answer to (e) is yes, in what amount?
- (g) Is Just Energy vicariously liable for the acts and/or omissions of its officers, directors and employees?
- (h) Should Just Energy pay for the costs of administering the recovery? If so, how much?

SCHEDULE "C"
Litigation Plan

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

STEPHEN GILCHRIST

Plaintiff

- and -

JUST ENERGY GROUP INC.,
PATRICK MCCULLOUGH, JAMES BROWN and ERNST & YOUNG LLP

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**PLAINTIFFS' LITIGATION PLAN
(AS OF AUGUST 2023)**

DEFINED TERMS

1. Capitalized terms that are not defined in this litigation plan ("**Plan**") have the meanings attributed to them in the proposed Amended Third Fresh as Amended Statement of Claim ("**Claim**").

CONTINUATION OF LITIGATION AGAINST JUST ENERGY

2. There is a pending settlement of the claims against Ernst & Young LLP ("**EY**"), subject to Court approval. The Plaintiff proposes to discontinue the claims against Patrick McCullough ("**McCullough**") and James Brown ("**Brown**"), subject to Court approval. If the Court approves the settlement with Ernst & Young LLP and approves the discontinuance of the claims against McCullough and Brown, this class action ("**Action**") will proceed solely against Just Energy.

CLASS COUNSEL AND US COUNSEL

3. The Plaintiff has retained Berger Montague (Canada) PC and Siskinds LLP (“**Class Counsel**”) to prosecute this Action. Class Counsel will be assisted by The Rosen Law Firm, P.A. (“**US Counsel**”), which is counsel to the lead plaintiff Gregory Gutman (“**US Plaintiff**”) in the parallel US class action, *White v. Just Energy Group Inc. et al.* (United States District Court, Southern District of Texas, Case No. 20-cv-00590) (“**US Action**”). The US Plaintiff and US Counsel have agreed to advance certain of the claims asserted in the US Action through this Action, which will be jointly prosecuted by Class Counsel and US Counsel for the benefit of the Class Members. Approval is being sought from the Court for the appointment of the US Plaintiff as a representative plaintiff in this Action. References in this Plan to the “**Plaintiffs**” means Stephen Gilchrist and Gregory Gutman.
4. Class Counsel, with the assistance of US Counsel, have the experience, resources and expertise to prosecute the Action to resolution.

PLAINTIFFS’ EXPERTS

5. Class Counsel has the expertise and experience to identify and retain appropriate experts, as may be needed. For example, the Plaintiff’s motion for leave to proceed and certification includes an expert report from Stuart Harden dated December 18, 2020.

COMPOSITION OF THE CLASS

6. The Plaintiffs seek to represent the proposed Class, defined as:

All persons and entities, wherever they may reside or may be domiciled, who acquired any Just Energy Securities during the Class Period and retained some or all of them at the close of trading on July 22, 2019, or August 14, 2019, other than Excluded Persons;

In the above definition:

“Class Period” means the period from May 16, 2018 to August 14, 2019;

“Excluded Persons” means (i) Just Energy, the Former Individual Defendants, and EY; (ii) Just Energy’s and EY’s past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns; (iii) any member of the Former Individual Defendants’ immediate families; and (iv) any entity in which the Former Individual Defendants have a controlling interest; and

“Securities” means:

- (iii) common shares, previously listed for trading on the TSX and NYSE under the symbol “JE”; and
- (iv) 8.50% Series A preferred shares, previously listed for trading on the TSX under the symbol “JE.PR.U” and on the NYSE under the symbol “JE.PR.A”.

REPORTING AND COMMUNICATION

7. Class Counsel have posted information about the nature and status of the Action on the Siskinds LLP website, <https://www.siskinds.com/class-action/just-energy/>, and on the Berger Montague (Canada) PC website at <https://bergermontague.ca/cases/just-energy-group/> (“Websites”).
8. Class Counsel will cause the information on the Websites to be updated in order to advise Class Members of material events and outcomes in the prosecution of the Action, including any material interlocutory events and outcomes. Copies of important, publicly available Court documents, Court decisions, notices, documentation and other information relating to the Action are and will continue to be accessible from the Websites.
9. The Websites also permit Class Members to submit inquiries to Class Counsel, which are sent directly to a designated member of the Class Counsel team, who will promptly respond.

DOCUMENT MANAGEMENT

10. Class Counsel will use data management systems to organize, code, and manage the documents produced by Just Energy, EY (pursuant to the terms of the proposed settlement), and McCullough and Brown (pursuant to the terms of the proposed consent leave and certification order), and all relevant documents in the Plaintiffs' possession, power or control. The agreement of counsel for Just Energy, EY, McCullough and Brown will be sought to facilitate the electronic exchange of documents. Once the volume of documents to be produced in the Action is determined, Class Counsel may retain the services of a third-party document management firm to assist with document management.

LITIGATION SCHEDULE

11. The Plaintiffs and Just Energy have agreed on the terms of a consent order ("**Consent Leave and Certification Order**"), which, among other things, (i) grants leave to assert the cause of action for misrepresentation in secondary market disclosure (documents released by responsible issuer), as set forth in Part XXIII.1, s 138.3(1) of the Ontario *Securities Act*, RSO 1990, c S.5 ("**OSA**") (and, if necessary, the concordant provisions of the Other Canadian Securities Legislation), and (ii) certifies the Action as a class proceeding pursuant to s 5 of the *Class Proceedings Act, 1992*, SO 1992, c 6 ("**CPA**").
12. Following the issuance of the Consent Leave and Certification Order, the Plaintiffs will seek the delivery of Just Energy's Statement of Defence, deliver any Reply, and then negotiate a Discovery Plan with Just Energy for the exchange of relevant documents and for examinations-for-discovery. If necessary, the Plaintiffs will ask the Court to set a litigation schedule for the remaining steps in the Action.

NOTICE OF LEAVE AND CERTIFICATION

13. The Plaintiffs propose that a press release (“**Press Release**”) and a notice of leave and certification (“**Notice**”) be circulated to advise Class Members, among other things, that:
 - a. the Court has granted the Plaintiffs leave to proceed with a statutory secondary market claim;
 - b. the Court certified the Action as a class proceeding; and
 - c. if the common issues are resolved in favour of the Class Members, they may be required to register, file a claim and submit documentation to a designated person in order to be entitled to any compensation.
14. The Plaintiffs propose that there will be no procedure for opting-out of the Action as Class Members cannot pursue a claim outside this Action and the US Action in relation to the matters raised in this Action and the US Action, pursuant to the Order of Justice Hainey dated September 2, 2020.
15. The Plaintiffs propose that the Press Release and the Notice, each in a form to be approved by the Court, be distributed and published in the following manner:
 - a. Class Counsel will post the Notice, in English and French, on the Websites;
 - b. Class Counsel will send the Notice, in English and French, by email to anyone who registered with Class Counsel to receive updates on the status of the action, to the extent that Class Counsel has their email address (and by regular mail if an email address is not available); and

c. US Counsel will send the Notice, in English and French, by email to anyone who registered with US Counsel to receive updates on the status of the action, to the extent that US Counsel has their email address (and by regular mail if an email address is not available); and

d. the Press Release, in English and French, will be disseminated through Canada Newswire.

16. The costs of disseminating the Press Release and the Notice in the above manner will be evenly split between the Plaintiff and Just Energy.

EXCHANGE OF PLEADINGS

17. Following the issuance of the Consent Leave and Certification Order, the Plaintiffs will file the Claim.

18. Just Energy shall deliver its Statement of Defence on a date to be agreed between the Parties.

19. The Plaintiffs shall deliver their Reply, if any, on a date to be agreed between the Parties.

DISCOVERY

20. The Plaintiffs will seek to reach an agreement with Just Energy no later than one hundred and twenty (120) days following the close of pleadings regarding the creation of a discovery plan, in accordance with Rule 29.1.03 of the *Rules* or by such other date as agreed by the parties. The discovery plan will be updated thereafter, as may be required, in accordance with Rule 29.1.04.

TRIAL OR SUMMARY JUDGMENT ON THE COMMON ISSUES

21. The Plaintiffs and Just Energy will seek the early appointment of a trial judge and undertake discussions to streamline the trial such that it may be conducted efficiently and expeditiously.
22. The Plaintiffs will ask the Court to hear the merits case no later than as early as possible after the completion of the examinations for discovery and the production of information required by undertakings and any motions and appeals therefrom, taking into account the Court's schedule and that of counsel for all Parties and the Parties and witnesses.
23. The Plaintiffs and Just Energy will address issues of trial management in advance of the trial to ensure the orderly and efficient determination of any remaining common issues.
24. If appropriate, the Plaintiffs and Just Energy will seek summary judgment on one or more of the common issues.

DAMAGES

25. Part XXIII.1 of the *OSA* provides specific directions for the calculation of damages payable under those provisions. The Plaintiffs will ask the Court at the common issues trial to determine the formula by which the damages of the Class Members are to be calculated.
26. To the extent possible, the Plaintiffs will ask the trial judge to apply sections 23 and 24 of the *CPA* to the assessment of damages.
27. The Plaintiffs will also seek an order under s 26 of the *CPA* that Just Energy pay into court, or some other appropriate depository, the total amount of Just Energy's liability to the Class.

NOTICE OF THE RESOLUTION OF THE COMMON ISSUES

28. Following the trial of the common issues, the Court will be asked to:
 - a. settle the form and content of the notice of resolution of the common issues (“**Common Issues Notice**”);
 - b. order that the Common Issues Notice be distributed to Class Members;
 - c. determine the most efficient method of distribution of the damages, under sections 23, 24 and 26 of the *CPA*, if possible; and, if required, prescribe the information required from Class Members in order to make a claim under Part XXIII.1 of the *OSA*; and
 - d. if necessary, set a date by which each Class Member will be required to file a claim.

29. If the common issues, or some of them, are resolved in favour of the Plaintiffs, the Plaintiffs propose that the Common Issues Notice advise Class Members, among other things:
 - a. that the Plaintiffs were successful on the common issues, or some of them;
 - b. of the amount of damages awarded, if any, and the method of distribution or claims procedure as determined by the Court;
 - c. that damages for each Class Member under Part XXIII.1 of the *OSA* will be calculated based on their trading particulars;
 - d. that each Class Member will have the opportunity to review and, if necessary, provide information to correct the calculation of their damages under Part XXIII.1 of the *OSA* by accessing personal transaction particulars through the Websites, or through a website hosted by a third party to be appointed by the Court for that purpose; and

e. that their rights against Just Energy in relation to the matters set out in the Claim will be deemed to have been finally adjudicated whether they submit a claim or not.

30. The Plaintiffs will ask the Court to order that the Common Issues Notice be distributed substantially in accordance with the procedure set out in paragraph 15 above.

PROCESS IF INDIVIDUAL ISSUES REQUIRE DETERMINATION

31. The proposed process for the determination of individual issues set out in paragraphs 32 to 44 below represents the Plaintiffs' current intentions, and may be subject to change based on further submissions of counsel or as ordered by the Court.

32. If the Court, at the common issues trial, determines that damages cannot be determined on an aggregate basis, then the Plaintiffs will ask the Court to appoint a referee ("**Referee**"), with such rights, powers and duties as the Court directs, to receive and evaluate claims (including submissions and evidence) with respect to any outstanding individual issues and the assessment of damages, pursuant to section 25 of the *CPA*.

33. In order to simplify these determinations, the Referee will, wherever practical, utilize:

- a. a paperless, electronic state-of-the-art web-based technology system which will include a secure database that is incorporated into the Website, or incorporated into a website hosted by a third party to be appointed by the Court for that purpose;
- b. standardized forms and filing procedures for evidence and submissions; and
- c. summary methods of introducing documentary evidence.

34. The types of evidence required for such determinations shall be specified in a protocol to be approved by the Court and will depend on the individual issues requiring determination.

35. The Court will be asked to set a deadline by which Class Members must file their submissions and evidence with the Referee.
36. Any person who does not file a claim with the Referee before the deadline will not be entitled to recover any damages without leave of the Court.
37. If any claimant disagrees with the Referee's decision relating to the determination of issues of liability and the claim is for an amount exceeding \$200,000, they may appeal to the Ontario Superior Court of Justice in respect of such liability issues only within a time period fixed by the Court.
38. Except as provided in paragraph 36, the Referee's decisions will be final and there shall be no right of appeal from the Referee's decisions.

Small Claims (Under \$35,000)

39. The Referee's determination of claims of less than \$35,000 requiring individual determination shall proceed in writing. Class Members with claims of less than \$35,000 wishing to proceed with such claims will be required to file affidavit evidence setting out their evidence with respect to the individual issues remaining to be proven. Just Energy may cross-examine an affiant on their affidavit by written interrogatories (in accordance with Rule 35 of the *Rules*) should they wish to challenge the evidence. The Referee will then make a decision with respect to the Class Member's claim on the basis of the affidavit evidence and the answers to the written interrogatories.

Simplified Procedure Claims (\$35,000-\$200,000)

40. Class Members with claims worth between \$35,000 and \$200,000 wishing to proceed with such claims shall proceed by analogy with the simplified procedure set out in Rule 76 of the *Rules*.
41. Such Class Members will be required to file:
 - a. an affidavit of documents prepared in accordance with Rule 76.03 of the *Rules*; and
 - b. affidavit evidence relating to the individual issues remaining to be proven.
42. Each party will be permitted to engage in up to two hours of oral examination for discovery, but the examination will not exceed a total of two hours of examination.
43. The Referee may make decisions on the claims of the Class Member based on the record or may, in her or his discretion, conduct a summary trial of such claims in accordance with Rule 76.12 of the *Rules*.

Full Claims (Over \$200,000)

44. Class Members with claims in excess of \$200,000 wishing to proceed with such claims will be required to:
 - a. serve on Just Energy an affidavit of documents prepared in accordance with Rule 30.03 of the *Rules*; and
 - b. attend for an oral examination for discovery (in accordance with Rule 34 of the *Rules*) or provide answers to written interrogatories (in accordance with Rule 35 of the *Rules*), as Just Energy may elect.

45. The Referee may, in his or her discretion, decide the individual issues based on the documentary and discovery evidence, or conduct a trial of such claims.

CLASS COUNSEL'S FEES AND THE COSTS OF ADMINISTRATION

46. The Plaintiffs will ask the Court to approve an agreement respecting fees and disbursements with Class Counsel. To the extent that the approved fees of Class Counsel, disbursements and applicable taxes are not completely paid by the costs recovered from Just Energy, the unpaid balance shall be a first charge on the total recovery and paid before any distribution to the Class Members.
47. The Plaintiffs will ask the Court to order that Just Energy pays all administration costs, including the costs of all notices associated with the process and the fees and disbursements of a third-party administrator (if appointed by the Court) and the Referee as these costs are incurred. Absent that Court order, the Plaintiffs will seek an order that these costs be paid out of the total recovery after payment of Class Counsel's fees and disbursements but before any distribution to the Class Members.

FURTHER ORDERS CONCERNING THIS PLAN

48. This Plan may be amended from time to time by directions given at case conferences or by further order of the Court.

EFFECT OF THIS PLAN

49. This Plan shall be binding on all Class Members whether or not they make a claim under the Plan.

SCHEDULE "D"
Press Release

Just Energy Group Inc.
Canadian Securities Class Action

Notice of Leave to Proceed and Certification

TORONTO – November 21, 2023 – Law firms Berger Montague (Canada) PC and Siskinds LLP today announce that the Ontario Superior Court of Justice has granted leave to proceed with a statutory secondary market claim under the Ontario *Securities Act* against Just Energy Group Inc., and certified the action styled as *Stephen Gilchrist v. Just Energy Group Inc.*, bearing Court File No. CV-19-627174-00CP as a class proceeding under the Ontario *Class Proceedings Act, 1992* on consent.

The action has been certified on behalf of a class comprising all persons and entities, wherever they may reside or may be domiciled, who acquired any Just Energy common shares (previously listed, TSX/NYSE: “JE”) or preferred shares (previously listed, TSX: “JE.PR.U”; and NYSE: “JE.PR.A”) between May 16, 2018 and August 14, 2019, and retained some or all of those shares at the close of trading on July 22, 2019 or August 14, 2019, other than certain defined “excluded persons”.

Berger Montague (Canada) PC and Siskinds LLP are Canadian counsel for the Plaintiffs and class members. They are working with The Rosen Law Firm, P.A. on the action.

For more information about the action, and to review the Court’s leave and certification order, and a detailed notice of leave and certification, please visit Class Counsel’s websites at <https://bergermontague.ca/cases/just-energy-group/> and www.siskinds.com/class-action/just-energy/.

Questions for the Class Members’ lawyers may be directed to:

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SCHEDULE "E"
Notice of Leave and Certification

Read this notice carefully as it may affect your legal rights

JUST ENERGY GROUP INC.
CANADIAN SECURITIES CLASS ACTION
NOTICE OF LEAVE AND CERTIFICATION

This Notice is directed to:

All persons and entities, wherever they may reside or may be domiciled, who acquired any Securities of Just Energy Group Inc. (“Just Energy”) during the Class Period and retained some or all of them at the close of trading on July 22, 2019 or August 14, 2019, other than Excluded Persons (“Class” or “Class Members”).

In the above definition:

“Class Period” means the period from May 16, 2018 to August 14, 2019, inclusive;

“Excluded Persons” means (i) the Defendants; (ii) Just Energy’s and Ernst & Young LLP’s past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns; (iii) any member of the Individual Defendants’ immediate families; and (iv) any entity in which the Individual Defendants have a controlling interest; and

“Securities” means:

- (i) common shares, previously listed for trading on the TSX and NYSE under the symbol “JE”; and
- (ii) 8.50% Series A preferred shares, previously listed for trading on the TSX under the symbol “JE.PR.U” and on the NYSE under the symbol “JE.PR.A”.

The Action

On November 21, 2023, the Ontario Superior Court of Justice granted leave to proceed with a statutory secondary market claim under the Ontario *Securities Act* against Just Energy, and certified the action styled as *Stephen Gilchrist v. Just Energy Group Inc.* bearing Court File No. CV-19- 627174-00CP (“Action”) as a class proceeding under the Ontario *Class Proceedings Act, 1992*.

Stephen Gilchrist and Gregory Gutman have been appointed as the representative plaintiffs for the Class.

The only claims being pursued in the Action against Just Energy are misrepresentation claims under the secondary market liability provisions of the Ontario *Securities Act* (and, if necessary, the

equivalent provisions of the securities legislation of the other Canadian provinces and territories). The claims for common law negligent misrepresentation and the oppression remedy are not being pursued.

Certification is a procedural matter that defines the form of the class action. The merits of the claims in the Action, or the allegations of fact on which the claims are based, have not been finally determined by the Court. Just Energy disputes the claims asserted against it.

Settlement with EY and Discontinuance Against McCullough and Brown

On October 31, 2023, the Ontario Superior Court of Justice approved the settlement agreement entered between the Plaintiff and Ernst & Young LLP (“EY”), without costs, requiring EY to pay the all-inclusive sum of \$1,500,000. The settlement with EY is intended to streamline the Action without compromising any recovery that might be obtained for the Class. EY remains subject to discovery in the Action as though it is still a party to the Action. The remaining defendants at the time were Just Energy, McCullough and Brown.

On November 21, 2023 the Ontario Superior Court of Justice granted permission to the Plaintiffs to discontinue the Action as against the individual defendants, McCullough and Brown, without costs. The discontinuance of the Action as against these individuals is intended to streamline the Action without compromising any recovery that might be obtained for the Class. McCullough and Brown remain subject to discovery in the Action as though they are still parties to the Action. The remaining defendant is Just Energy.

The US Action

Class Counsel will be assisted in the prosecution of the Action by The Rosen Law Firm, P.A. (“US Counsel”), which is counsel to the lead plaintiff Gregory Gutman (“US Plaintiff”) in the parallel US class action, *White v. Just Energy Group Inc. et al.* (United States District Court, Southern District of Texas, Case No. 20-cv-00590) (“US Action”). The US Plaintiff has been appointed as a representative plaintiff for the Class in the Action.

No Opt-Outs

By order dated September 2, 2020, the Ontario Superior Court of Justice approved an arrangement pursuant to the *Canada Business Corporations Act* with respect to the affairs of Just Energy. Under that court order, with the exception of the Action and the parallel US Action, no equity claims may be commenced or continued against Just Energy or its officers and directors with respect to the matters raised in the Action and the US Action. In addition, under the court order, the potential recovery in the Action and the US Action is limited to the proceeds of Just Energy’s responsive insurance policies.

As such, the Action and the US Action are the only source of potential recovery for Class Members in respect of the claims in those actions. In the circumstances, Class Members do not have the ability to opt out of the Action.

Class Members will therefore automatically be included in the Action. If a settlement or any recovery or benefits are achieved for the Class and approved by the Court, investors will be notified about how to ask for the portion to which they are entitled. Investors will be legally bound by all orders and judgments of the Court, and they will not be able to sue Just Energy on their own regarding the legal claims made in this case. Investors will **NOT** be required to pay any costs in the event that the Action is unsuccessful.

Questions

For more information about the Action, and to review the Court's leave and certification order, please visit Class Counsel's websites at <https://bergermontague.ca/cases/just-energy-group/> and www.siskinds.com/class-action/just-energy/.

Questions for the Class Members' lawyers may be directed to:

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*The publication of this notice was authorized by the Ontario Superior Court of Justice. Questions about this notice should **NOT** be directed to the Court.*

SCHEDULE "F"
Plan of Notice

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

STEPHEN GILCHRIST

Plaintiff

- and -

JUST ENERGY GROUP INC.,
PATRICK MCCULLOUGH, JAMES BROWN and ERNST & YOUNG LLP

Defendants

Proceeding under the *Class Proceedings Act, 1992*

PLAN OF NOTICE

1. The press release, substantially in the form attached as Schedule “D” to the leave and certification Order (“**Press Release**”), shall be disseminated as follows:
 - (a) Berger Montague (Canada) PC and Siskinds LLP (“**Class Counsel**”) shall disseminate the Press Release, in English and French, through Canada Newswire.
2. The notice of leave and certification, substantially in the form attached as Schedule “E” to the leave and certification Order (“**Notice**”), shall be disseminated as follows:
 - (a) Class Counsel shall send the Notice, in English and French, by email to anyone who registered with Class Counsel to receive updates on the status of the action, to the extent that Class Counsel has their email address (and by regular mail if an email address is not available);
 - (b) The Rosen Law Firm, P.A. (“**US Counsel**”) shall send the Notice, in English and French, by email to anyone who registered with US Counsel to receive updates on the status of the action, to the extent that US Counsel has their email address (and by regular mail if an email address is not available); and
 - (c) Class Counsel shall post the Notice, in English and French, on its websites at <https://www.siskinds.com/class-action/just-energy/> and <https://bergermontague.ca/cases/just-energy-group/>.

STEPHEN GILCHRIST
Plaintiff

and

**JUST ENERGY GROUP INC., PATRICK MCCULLOUGH,
JAMES BROWN, and ERNST & YOUNG LLP**
Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT TORONTO**

ORDER

(Leave to Proceed and Certification)

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