

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

KENNETH WALTON GEORGE, DENNIS)	Case No.: 8:06-CV-00373-RBH
REED BOWEN, CLYDE FREEMAN,)	
GEORGE MOYERS, JIM MATTHEWS,)	
and HENRY MILLER, on their own behalf and)	
on behalf of a class of persons similarly situated,)	
)	
Plaintiffs,)	
)	MOTION FOR RELIEF
vs.)	REGARDING IMPROPER CLASS
)	COMMUNICATIONS AND TO
DUKE ENERGY RETIREMENT CASH)	SHOW CAUSE WHY DUKE
BALANCE PLAN and DUKE ENERGY)	ENERGY CORPORATION
CORPORATION,)	SHOULD NOT BE HELD IN
)	CONTEMPT OF COURT
Defendants.)	
)	

TO: Robert O. King, Esquire, David B. Johnson, Esquire and Erin E. Kelly, Esquire, Attorneys for Defendants:

Plaintiffs, individually and as class representatives, move this Honorable Court for an Order granting relief regarding Defendant Duke Energy Corporation’s (a) engaging in improper, direct contact with certain named Plaintiffs and with absent class members; (b) improperly soliciting from certain named Plaintiffs and absent class members Waivers and Releases of their rights in this class action; and (c) improperly seeking what amounts to coerced settlements, based on unilateral, misleading, and coercive “offers,” which lack any consideration for the rights and remedies the class members are asked to release.

Plaintiffs move that this Court strike down and rule invalid the language of Defendant Duke Energy’s “Waiver and Release” which purports to eliminate the rights and remedies of class members in this class action and purports to terminate rights to retirement benefits accrued

under ERISA.

Plaintiffs move that this Court strike down and rule invalid the language of the Duke Energy “Waiver and Release” that purports to gag plaintiffs and class members from making any derogatory or disparaging statements about Duke Energy, to the extent such provision may be used to preclude full participation in this class action and submission of truthful affidavits or testimony, irrespective of whether such participation casts Duke Energy in a negative light.

Plaintiffs move that this Court order Defendant Duke Energy Corporation to appear and show cause why it should not be held in contempt of court for violation of this Court’s order approving the substance and form of Class Notice and setting forth the mechanism for an orderly notice and opt-out procedure protecting the rights of the Plaintiffs and absent class members.

Plaintiffs move this Court for an Order directing dissemination of a joint, court-approved communication to all class members, at Duke Energy’s expense, advising that class members are not required to opt out or release rights in the class litigation in order to participate in any Duke severance or VOP offer.

Plaintiffs move for an expedited, evidentiary hearing because Defendant Duke Energy’s unilateral communications have impacted the sanctity of the on-going notice and opt-out process sanctioned by this Court and irreparable harm may otherwise result. Duke Energy has held mandatory, in-person meetings with Plaintiffs (who are direct clients of Class Counsel) and absent class members and has already disseminated its solicitation for releases mandating responses by Plaintiffs and absent class members between February 3 and February 24, 2009, which “offer” period falls within the time period during which class members were to be making a decision on opt-out based on the Court-approved class notice.

This Motion is made and based on the Memorandum in support filed herewith, the Declaration of Jim Matthews and such other matters as this Court may properly consider. The Plaintiffs have not consulted with Defendants pursuant to Local Rule 7.02, other than as noted in the Memorandum filed herewith, because the Defendant Duke Energy's conduct requires expedited relief that cannot be resolved by agreement of the parties but solely by Court intervention since the Court's class notice and opt-out process have been impacted. In addition, consultation appears futile because Duke Energy's litigation counsel at Sidley Austin has not even responded to Plaintiffs' inquiry concerning their knowledge of the improper contacts and solicitation.

Respectfully submitted this 29th day of January, 2010.

/s/Cheryl F. Perkins

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