

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MICHAEL URBINO and BRIAN WHITNEY,
on behalf of themselves and all others,
similarly situated

Plaintiffs,

v.

AMBIT ENERGY HOLDINGS, LLC, AMBIT
TEXAS, LLC, AMBIT NORTHEAST, LLC
and, AMBIT NEW YORK, LLC,

Defendants.

Civ. No. 14-cv-5184 (MAS) (DEA)

**PLAINTIFFS DEMAND
A TRIAL BY JURY**

**FIRST AMENDED CLASS
ACTION COMPLAINT**

FIRST AMENDED CLASS ACTION COMPLAINT

1. This is a class action on behalf of Plaintiffs and a class of all similarly situated consumers against Defendants Ambit Energy Holdings, LLC, Ambit Texas, LLC, Ambit Northeast, LLC, and Ambit New York, LLC, all d/b/a Ambit Energy (collectively, “Defendants” or “Ambit”).¹ Plaintiffs Michael Urbino and Brian Whitney (“Plaintiffs”), individually and on behalf of the proposed class defined below, allege as follows upon personal knowledge as to their actions and upon information and belief based upon investigation of their attorneys as to all other facts alleged in this First Amended Class Action Complaint.

¹ Ambit Energy” or “Ambit” is how this giant private company holds itself out to the general public. See Ambit, <http://ww2.ambitenergy.com> (last visited December 1, 2014). Upon information and belief, all of the corporate defendants in this Complaint are controlled and operated by Defendant Ambit Energy Holdings, LLC from its Dallas, Texas headquarters.

NATURE OF THE ACTION

2. Plaintiffs bring this action to obtain, *inter alia*, damages and declaratory relief to remedy violations of law in connection with Ambit Energy's deceptive marketing and billing practices, which are detailed in the paragraphs below.

Ambit's Volatile Variable Energy Rates

3. Ambit has taken advantage of deregulation in the retail residential gas and electricity markets in New Jersey, New York, and other states by luring consumers into switching energy suppliers based on offers of "low rates" and "consistent savings." While Ambit's marketing boasts purported "substantial savings" and "low competitive rates," the energy company fails to adequately inform consumers who switch that they can see their energy rates skyrocket. Ambit's rates can spike dramatically because unlike the majority of its competitors, Ambit does not offer its energy at a fixed monthly rate. Instead, like the risky adjustable-rate mortgages that contributed to the financial crisis, Ambit's variable energy rates can fluctuate rapidly and have no ceiling. Yet Ambit conceals this financial risk with an extensive marketing campaign that bombards consumers with promises of consistency and savings while failing to warn consumers of the factors affecting Ambit's variable energy rates and that those factors can drastically turn.

4. In fact, unlike the fixed rate plans offered by other third party energy suppliers, the energy company's variable rate plans limit Ambit's exposure to fluctuating energy prices by shifting the risk of those volatile commodity prices onto consumers. Ambit, however, fails to provide consumers with this key information when it trumpets how consumers who switch will save on their monthly energy bills.

5. In particular Ambit's marketing campaign i) fails to adequately inform consumers that with a variable rate plan the consumers' energy costs can spike at any time, causing substantially increased monthly energy bills; and ii) fails to clearly and conspicuously describe what factors might cause consumers' energy costs to rise. Ambit's omissions violate both New Jersey's and New York's consumer fraud laws, as well as New York's Energy Services Companies Consumers Bill of Rights (the "ESCO Bill of Rights"), which mandates that all ESCO contracts *and* all ESCO marketing materials clearly and conspicuously describe all variable charges included as part of an energy plan.

The Automatic Default Policy for New York Consumers

6. Since as early as 2008, Ambit has offered its New York consumers a supposedly sure thing: guaranteed savings compared to what their existing utility charges. Ambit calls this offer the "Guaranteed Savings Plan." Under this Plan, Ambit promises that its customers' 12-month energy costs will be at least 1% percent less than what the customers' existing utility would have charged, or Ambit will make up the difference.

7. Beginning in January 2012 in New York, however, and without warning, Ambit unilaterally amended its consumer contract and implemented a new policy that eliminated the guarantee entirely. Under this new policy, Ambit created a more expensive, volatile variable rate plan called the New York Select Variable Plan and began automatically shifting existing customers signed up for the Guaranteed Savings Plan into the New York Select Variable Plan.

8. This new automatic default policy took customers like the Plaintiff Mr. Whitney by surprise because as current participants in the Guaranteed Savings Plan Ambit had promised them that they could remain on the plan and keep the promised guaranteed savings as long as they stayed with Ambit. After Ambit instituted its automatic default policy, the only way

customers could avoid being defaulted into the new more expensive New York Select Variable Plan was if they actively notified Ambit of their intention to stay in the Guaranteed Plan.

9. The New York Select Variable Plan is “select,” however, only insofar as Ambit uses it to select New York Guaranteed Plan customers for higher energy rates. New customers cannot sign up for the New York Select Variable Plan directly with Ambit, and Ambit neither advertises nor offers the New York Select Variable Plan in its marketing materials or on its website. Ambit’s automatic default policy is the only way a customer becomes a member of the New York Select Variable Plan.

10. Unfortunately for New York customers, Ambit failed to adequately notify its existing customers of the new policy. Thus, like Plaintiff Whitney, tens of thousands (if not more) of Ambit’s New York customers found themselves unwittingly defaulted into the highly volatile and more expensive New York Select Variable Plan.

11. Ambit’s failure to adequately disclose to Plaintiff Whitney that he would be automatically defaulted into the more costly New York Select Variable Plan is a deceptive act that violates New York’s consumer fraud law, N.Y. Gen. Bus. Law § 349.

12. Further, Ambit’s unilateral amendment of its Terms of Service to add the automatic default policy also violates New York’s ESCO Bill of Rights, N.Y. Gen. Bus. Law § 349-d(6), which mandates that energy customers must affirmatively consent in writing to material changes in their energy plans. Ambit never obtained such written consent from Plaintiff Whitney (or any other New York Guaranteed Savings Plan customers) before switching them into the higher costing New York Select Variable Plan.

13. As a result of being automatically defaulted, Plaintiff Whitney lost the 1% savings guarantee and the rates he was charged under the New York Select Variable Plan were higher

than they would have been under the Guaranteed Savings Plan. After defaulting Plaintiff Whitney into the New York Select Variable Plan, Ambit overcharged him for gas and electricity by approximately \$500 from October 2013 through April 2014.²

14. Ambit's automatic default policy also violates the disclosure requirements of N.Y. G.B.L. § 349-d(7), because neither Ambit's consumer contract, its Terms of Service, nor the company's marketing materials clearly and conspicuously identify all variable charges included as part of the New York Select Variable Plan. Indeed, Ambit's marketing materials don't even mention the New York Select Variable Plan. Moreover, the various incarnations of Ambit's Terms of Service fail to identify a single variable charge actually contained in the New York Select Variable Plan.

15. In sum, Ambit's deceptive enrollment and energy plan practices run afoul of New Jersey, New York, and other states' laws in multiple ways, including:

- a. Touting consistency and low prices while failing to adequately inform consumers that with a variable rate plan the consumers' energy costs can spike at any time;
- b. Failing to clearly and conspicuously describe what factors might cause consumers' energy costs to rise;
- c. Implementing a policy that automatically defaults New York customers enrolled in the Guaranteed Savings Plan into the more expensive New York Select Variable Plan;
- d. Failing to adequately disclose to New York Guaranteed Savings Plan customers that they will be automatically defaulted into the more costly New York Select Variable Plan;
- e. Violating N.Y. G.B.L. § 349-d(6) by unilaterally amending the Terms of Service to automatically default Guaranteed Savings Plan customers into the more expensive New York Select Variable Plan;

² Ambit defaults electric customers into the "New York Select Variable Plan" and natural gas customers onto the "New York Select Variable Natural Gas Plan." The different plan names, legally insignificant for purposes of this Complaint, are referred to collectively herein as the "New York Select Variable Plan."

- f. Violating N.Y. G.B.L. § 349-d(7) by failing to clearly and conspicuously identify the variable charges in the New York Select Variable Plan; and
- g. Violating N.Y. G.B.L. § 349-d(3) which explicitly prohibits independent energy companies from engaging in deceptive acts or practices in the marketing of energy services.

16. With this class action, Plaintiffs and the Class seek to level the playing field and make sure that companies like Ambit engage in fair and upright business practices. Plaintiffs therefore seek equitable relief in addition to monetary damages. Plaintiffs ask that the Court declare Defendants' business practices impermissible, enjoin Defendants from continuing their dishonest practices, require that Defendants return all misappropriated monies, and compensate Plaintiffs and the Class for all damages suffered as a result of Defendants' deceptive acts.

PARTIES

17. Plaintiff Michael Urbino is a resident of West Orange, New Jersey, in Essex County. Plaintiff has been an Ambit customer since early 2012.

18. As a result of the unfair and deceptive conduct described in this Complaint, Plaintiff Urbino has incurred excessive charges for electricity.

19. Plaintiff Brian Whitney is a resident of Glenn Falls, New York. Plaintiff Whitney has been an Ambit customer since January 2011.

20. As a result of the unfair and deceptive conduct described in this Complaint, Plaintiff Whitney has incurred excessive charges for gas and electricity.

21. Defendant Ambit Energy Holdings, LLC is a Texas citizen and is headquartered at 1801 North Lamar Street, Suite 200, Dallas, Texas 75202. Defendant Ambit Energy Holdings, LLC is a residential and commercial independent energy provider and is the primary actor responsible for the deceptive conduct described in this Complaint. The President of Ambit

Energy, Holdings, LLC (as well as the other Ambit Defendants) is Jere W. Thompson, Jr., whose office is located in the holding company's Dallas corporate headquarters.

22. At all relevant times, Defendant Ambit Energy Holdings, LLC, individually and through the various Defendant Texas-based entities that serve as its operating companies and/or departments, marketed, sold, and supplied electricity and natural gas to more than a million consumers in the follow following fourteen states and territories: California, Connecticut, Delaware, the District of Columbia, Illinois, Maryland, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, and Texas.

23. Defendant Ambit Energy Holdings, LLC and the various Defendant Texas-based entities do business as Ambit Energy, which is a trademark owned by Defendant Ambit Energy Holdings, LLC's sole member, Ambit Holdings, LLC. *See* attached Exhibit A, Federal Trademark Registration No. 3,443,624, incorporated herein by reference, stating that "Ambit Energy" is for "distribution of energy, namely providing electrical energy and natural gas to residential and commercial users."

24. The logo for "Ambit Energy" that appears on the Ambit website and on the mailers and other marketing material directed towards consumers is registered to Defendant Ambit Energy Holdings, LLC. *See* attached Federal Trademark Registration No. 4,077,883, Exhibit B, incorporated herein by reference.

25. The customer service telephone number listed on the Ambit website and on the other marketing material directed at consumers is for a Plano, Texas call center, which upon information and belief is owned and operated by Defendant Ambit Energy Holdings, LLC.

26. Defendant Ambit Texas, LLC is a Texas citizen whose sole member is Ambit Energy, L.P., and whose President and CEO is Jere W. Thompson. Ambit Texas, LLC is the

successor in interest to Ambit Energy, L.P. (also a Texas citizen) and is located at 1801 North Lamar Street, Suite 200, Dallas, Texas 75202.

27. Defendant Ambit Northeast, LLC (“Ambit Northeast”), is a wholly owned subsidiary of Defendant Ambit Holdings, LLC and is registered with the Secretary of State of New Jersey as a New Jersey LLC. Ambit Northeast is listed by the State of New Jersey Board of Public Utilities as an alternative energy supplier to New Jersey utilities like PSE&G. Ambit Northeast’s headquarters are at 1801 North Lamar Street, Suite 200, Dallas, Texas 75202. Ambit Northeast contracts with Ambit customers in the Northeast and the Midwest.

28. Defendant Ambit New York, LLC (“Ambit New York”) is a New York limited liability company and is a wholly owned subsidiary of Defendant Ambit Energy Holdings, LLC. Like the other Texas-based Ambit entities named as Defendants in this action, Ambit New York, LLC is headquartered in the same Dallas office as the other Defendants and is run by the same executive team. The location of Ambit New York, LLC’s registered agent is also Suite 200 at 1801 N. Lamar Street in Dallas.

29. Collectively, Defendants Ambit Energy Holdings, LLC, Ambit Texas, LLC, Ambit Northeast, LLC, and Ambit New York, LLC do business as “Ambit Energy” and are referred to herein as “Defendants,” “Ambit,” or “Ambit Energy.”

JURISDICTION AND VENUE

30. This is a proposed class action covering New Jersey, California, Connecticut, Delaware, Illinois, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, Texas, Virginia and Washington, DC. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2) because the claims of the Class defined below exceeds

the sum or value of \$5,000,000, the Class has more than 100 members, and diversity of citizenship exists between at least one member of the Class and Defendants.

31. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred here, a substantial part of the property that is the subject of this action is situated here, and Defendants regularly transact business in this District and are subject to personal jurisdiction in this District.

FACTUAL BACKGROUND

32. In the late 1990s, a number of states, including New Jersey, deregulated their markets for the supply of gas and electricity. Enacted in 1999, the New Jersey Electric Discount and Energy Competition Act ("NJ Energy Act") fundamentally changed the market for residential and commercial gas and electricity. Essentially, the NJ Energy Act separated the cost of generating and supplying energy from the cost of delivering it to the end user. Administered by the New Jersey Board of Public Utilities, the NJ Energy Act abolished and updated certain regulations and allowed consumers to choose a third party energy service company or "ESCO" to supply their gas and/or electricity.

33. In enacting the NJ Energy Act, the New Jersey legislature noted that the law was designed to "[l]ower the current high cost of energy, and improve the quality and choices of service, for all of [New Jersey's] residential, business and institutional consumers" as well as to "[p]lace greater reliance on competitive markets, where such markets exist, to deliver energy services to consumers in greater variety and at lower cost than traditional, bundled public utility service."³

³ See Electric Discount and Energy Comp. Act, P.L. 1999, sec. 2(a)(1)-(2), eff. Jan. 25, 1999 (http://www.njleg.state.nj.us/9899/Bills/s0500/7_i1.pdf) (last visited December 1, 2014)).

34. Like other ESCOs, Ambit Energy utilizes the delivery systems of existing utilities like PSE&G, but charges its own rate to supply the energy.

35. Ambit Energy is also a multi-level marketing (“MLM”) program that is promoted through a direct sales channel of more than 250,000 salespeople. Through its MLM program Ambit has become the world’s largest direct seller of energy and the 14th largest overall direct selling company in the world.

36. According to Defendant Ambit Energy Holdings, LLC’s website, “Ambit” is “the fastest-growing company in the retail energy sector today.” In 2010, Inc. Magazine named Ambit the fastest growing private company in America, and in August 2014 Ambit announced that Inc. Magazine had named it to the list of the 500 fastest growing companies in the United States for the fifth consecutive year.

37. Since its founding in 2006, Ambit has expanded far beyond its Dallas, Texas headquarters. With revenue in 2013 surpassing \$1 billion, Ambit dominates the northeast, selling natural gas and electricity to consumers in New York, New Jersey, Pennsylvania, Connecticut, New Hampshire, Rhode Island, and Massachusetts.

38. Ambit’s success, however, comes at the expense of consumers and upright commercial practices. Using deceptive and unconscionable business tactics, Defendants have taken advantage of deregulation and the resulting lack of oversight to sweep up customers eager to lower their energy costs.

39. Ambit’s scheme involves inducing consumers, who are unaware of Ambit’s volatile energy rates, to join Ambit on the basis that switching will lower their rates. In reality, however, Ambit knows that it shifts the risk of energy spikes onto consumers, a material fact that Defendants do not disclose.

40. Ambit consistently and repeatedly represents its rates as both “low” and “consistent” with statements on the holding company’s website and in Ambit’s marketing materials such as the following:

“Our residential Customers enjoy substantial savings on their energy bills, and can take advantage of our attractive Travel Rewards program.”

“A lot of people only know Ambit by our low, competitive rates.”

“While we’re proud to give our Customers the consistent savings they deserve, those who really know Ambit understand low rates are only part of the story.”

“Exceptional Value and Life-Changing Rewards.”

41. Likewise, in materials provided by the energy company to Ambit’s “widespread network of Independent Consultants” paid to push Ambit Energy on unwary customers, Ambit touts its “Great savings!” and “competitive rates.”

42. These statements are misleading because they highlight that Ambit Energy will save consumers money on their utility bills but fail to inform consumers that a spike in wholesale energy rates (which Ambit does not control, and whose risk Ambit passes on to consumers) can dramatically increase their energy costs.

43. These statements are also material in that price is the most important consideration for any reasonable consumer of commodities such as gas and electricity. No reasonable consumer who knows the truth about the Ambit Energy’s volatile rates would choose Ambit Energy as a supplier.

44. These misstatements and omissions caused Plaintiffs’ injuries because they believed that they would be charged less for electricity than they were actually charged by Ambit. Plaintiffs would not have enrolled in Ambit Energy’s service but for Defendants’

deceptive marketing and business practices. Had Plaintiffs been aware that Ambit intended to limit its exposure by shifting the risk of the volatile wholesale energy rates onto consumers, and that the rates they would be charged by Ambit were substantially higher than the rates they were paying their previous electricity supplier, they would not have enrolled with Ambit Energy.

45. Ambit knows that its rates can spike and its consumers will be deprived of any purported “low prices” and “savings” because unlike the majority of its competitors Ambit charges a variable rate. Further, because Ambit is simply a re-seller of wholesale energy (it doesn’t produce energy), in order to supply energy Ambit enters into contracts with energy producers. These contracts allocate the risk of energy market fluctuations to Ambit – which Defendants then pass on to consumers without disclosing that this financial risk is being transferred.

46. Together with Plaintiffs, consumers in all states where Ambit sells energy were victimized by Ambit’s volatile variable rates. Numerous complaints about Defendants’ deceptive and misleading practices have been raised on websites that relate the experience of Ambit customers, including the following examples:⁴

- *I signed up for Ambit Gas & Electric through a friend who is one of their consultants. The prices seemed ok at first but then during March 2014, I received a bill charging me 1.02504 per therm for Gas when PSEG was charging .294066 per therm. When inquiring about the difference I was basically told that's what the price was at the time and there's nothing they can do. I requested to have the service cancelled and received confirmation that both Gas and Electric would be cancelled w/in 2 billing cycles. . . . Whatever \$ you save initially with this company you will end up paying back and then some! Lesson learned. Do not sign up with this company, it's a complete rip off/bait & switch. You'll end up paying the price for it eventually!*

Aneta of North Brunswick, NJ on May 21, 2014

⁴ All quotations were accessed on December 1, 2014 on the following website: <http://www.consumeraffairs.com/utilities/ambit.html>.

- *Prices almost doubled with Ambit. I'm canceling. I was told I would get 3 percent back lower than my old company. No such thing. They are liars!*

Carroll of Jersey City, NJ on May 19, 2014

- *A friend told us how good Ambit was and their prices for gas and electric were lower until recently. The bill we received today, the gas was .7685, 20 cents higher than National Grid, The electric was .16957 more than double NG. I called Ambit, they said we were on a variable rate, we were told no such thing when we signed up. How can any company be so dishonest as to steal from the elderly and disabled. My husband is elderly and disabled, my son is disabled, we live on Social Security, Ambit doesn't care. We set our heat at 55 nights and 63 days to get thru the winter to keep bills down. I called Ambit today and told them I was going back to National Grid, I can't stand being robbed by companies that lie to their customers.*

Georgia of Hudson Falls, NY on May 12, 2014

- *I used to be Ambit rep. It was the most embarrassing experience in business I ever had. I signed up people and their rates went up by 50 percent. They were calling me frantically and many of these people with my friends and close relatives. I would advise anybody to stay away as far as possible even when speaking to them on the phone. They don't seem honest at all.*

Sam of Lakewood, NJ on May 9, 2014

- *I signed up with Ambit a while ago because I thought it was a good market and something my kids could learn about selling and business. Being busy with my own business I didn't have time to concentrate on it and wasn't really paying attention. Thank God I didn't sell Ambit to anyone or get my kids involved. My personal electric rates went up 70%. I did this to save money off BGE - not spend more. These guys cost me over \$2k with all of the entry fees, web maintenance fees and extra cost for electric. My advice, stay away. If you are looking for lower electric bills, look somewhere else. If you are looking to make money, start a real business where you are responsible for your reputation and not these guys.*

David of Woodstock, MD on May 2, 2014

- *I have been with Ambit Energy since 2012 for gas and longer for my electric. My average bill in the peak winter months has about \$195 to \$230. Without warning my February bill came in at a whopping \$464. I tried desperately to contact someone and was constantly told due to high volume they could not answer the phone and to try again later. Well before you know it, my March bill rolls in at a whopping \$427. My house is by no means large and if I was still with NJNG my bill would have been \$195. They went from \$.45 a Therms to \$1.71!!! Is this even legal. When I asked why they did not warn me, they said it was not their policy.*

And like an earlier complaint in this thread, I am stuck with them for 60 days. I can't even heat my home!!! I think we should all get together and fight this. They should not be able to get away with this!!!

Cathy of Howell, NJ on April 3, 2014

47. These complaints reflect the false and misleading course of conduct that Ambit Energy has engaged in and the resulting damages to consumers across the nation.

The Experience of the Named Plaintiff Michael Urbino

48. In early 2012, Plaintiff Urbino switched from PSE&G to Ambit Energy based on Defendants' representations of "substantial savings" based on "low, competitive rates."

49. In early February of 2014, Plaintiff Urbino received his January 2014 energy bill for the period December 30, 2013 through January 29, 2014. The kilowatt hour ("kWh") price for Ambit Energy is higher than the kWh price that Plaintiff would have been charged by PSE&G. In fact, the amount that Plaintiff Urbino was charged by Ambit for the electricity during the month of January was over 60 percent higher than he would have paid PSE&G during the same period.

The Experience of the Named Plaintiff Brian Whitney

50. Plaintiff Whitney switched his gas and electric accounts to Ambit's Guaranteed Savings Plan in January 2011 based on Defendants' representations that he would save money with Ambit and that at minimum Ambit's rates were guaranteed to be at least 1% lower than Plaintiff Whitney's local utility, National Grid.

51. At some point in 2011, however, Ambit implemented a policy designed to increase the energy rates of its current Guaranteed Savings Plan customers. Despite Ambit's pledge that consumers who switch to Ambit are guaranteed "the peace of mind of knowing that [they] will save at least 1% annually," Ambit created the more costly New York Select Variable Plan and started requiring that consumers take action once every 12 months to hold on to their

guarantee. Ambit's new policy requires customers to actively renew their participation in the Guaranteed Savings Plan on or before the anniversary that they joined Ambit or be automatically defaulted into the New York Select Variable Plan.

52. The New York Select Variable Plan has no purpose other than to allow Ambit to dishonor its promise of guaranteed savings. Indeed, the only customers who end up in the new plan are those the Company automatically defaults out of the Guaranteed Savings Plan.

53. When Ambit added the automatic default policy to its Terms of Service on or about January 31, 2012, the Company failed to adequately notify Plaintiff Whitney and other Guaranteed Savings Plan customers they were subject to the new default policy. Ambit's customers were given no reason to suspect that they would automatically become participants in the New York Select Variable Plan if they did not act.

54. Ambit's default policy is unlawful, as Ambit did not obtain its existing customers' express consent to this material change in the terms of their contracts as required by N.Y. G.B.L. § 349-d(6).

55. Further, N.Y. G.B.L. § 349-d(7) requires that "[i]n every contract for energy services and in all marketing materials provided to prospective purchasers of such contracts, all variable charges shall be clearly and conspicuously identified." Defendant Ambit's various incarnations of its Terms of Service since at least January 31, 2012, as well as the marketing materials used by Ambit, violate the statute in not clearly and conspicuously setting forth all variable charges in the New York Select Variable Plan.

56. The first time Ambit mentions the existence of the New York Select Variable Plan is in its January 31, 2012 Terms of Service. But this one-line mention of a "plan," as well as

subsequent similar references in later versions of the Terms of Service, all fail to identify a single variable charge, and state only as follows:

New York Select Variable Plans:

New York Select Variable for electric and New York Select Variable Natural Gas plans are competitive month-to-month variable rate plans.

57. This *de minimus* disclosure is not only a violation of N.Y. G.B.L. § 349-d(7), but it also contradicts Ambit's "ESCO Consumer Bill of Rights," which states that Ambit customers are entitled to clear disclosure of the terms and conditions of their agreement with Ambit including "price and all variable changes [sic] or fees." Through its conduct, Ambit has violated its consumers' Bill of Rights and N.Y. G.B.L. § 349-d, New York's consumer protection law for ESCO customers.

58. In addition to failing to identify the variable charges in the Variable Plan, the Terms of Service's limited, one-line reference to the Plan (as of January 2012) is deceptively inconspicuous. The reference to the Plan is in the same small print as the Terms of Service's other terms, and is buried without any highlights in the three-page form contract. No special boxes, colors, or font sizes set off the limited description of the New York Select Variable Plan. Further, the marketing materials created by Ambit make no mention of the New York Select Variable Plan at all.

59. During the approximately 6 months he was in the New York Select Variable Plan, Plaintiff Whitney paid Ambit approximately \$500 more than he would have been charged by National Grid. Thus, by moving him without statutorily required written consent or adequate notice into the higher costing New York Select Variable Plan, Ambit cheated Plaintiff Whitney out of both money and the 1% savings he was guaranteed as a participant in the Guaranteed Savings Plan.

Class Allegations

60. Plaintiffs bring this suit as a class action on behalf of themselves and all others similarly situated (the “Class”) pursuant to Fed. R. Civ. P. 23. Plaintiffs seek to represent the following Classes:

- a. All persons who are or have been customers of Ambit Energy in New Jersey, California, Connecticut, Delaware, Illinois, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, Texas, Virginia and Washington, DC (the “Multistate Class”);
- b. All persons who are or have been customers of Ambit Energy in New Jersey (the “New Jersey Class”); and
- c. All persons who were Ambit customers as of January 31, 2012 and who were automatically enrolled in the New York Select Variable Plan thereafter (the “New York Automatic Default Class”).

61. Plaintiffs reserve the right to re-define the Classes (hereinafter referred to as the “Class,” unless otherwise specified) prior to moving for class certification.

62. Plaintiffs do not know the exact size or identities of the proposed Class, since such information is in the exclusive control of Defendants. Plaintiffs, however, believe that the Class encompasses thousands of individuals who are geographically dispersed throughout the nation. Therefore, the number of persons who are members of the Class described above are so numerous that joinder of all members in one action is impracticable.

63. Questions of law and fact that are common to the entire Class predominate over individual questions because the actions of Defendants complained of herein were generally applicable to the entire Class. These legal and factual questions include, but are not limited to:

- a. The nature, scope, and operations of Defendants’ wrongful practices;
- b. Whether Defendants’ conduct amounts to a violation of the New Jersey Consumer Fraud Act;

- c. Whether Defendants' conduct amounts to violations of New York's consumer protection laws;
- d. Whether Defendants breached the covenant of good faith and fair dealing with Class Members;
- e. Whether Defendants have been unjustly enriched as a result of their misconduct; and
- f. Whether Plaintiffs and the Class suffered damages as a result of Defendants' misconduct and, if so, the proper measure of damages.

64. Plaintiffs' claims are typical of the members of the Class because Plaintiffs and all Class Members were injured by the same wrongful practices of Defendants as described in this Complaint. Plaintiffs' claims arise from the same practices and course of conduct that gives rise to the claims of the Class Members, and are based on the same legal theories. Plaintiffs have no interests that are contrary to or in conflict with those of the Class they seek to represent.

65. Questions of law or fact common to Class Members predominate and a class action is superior to other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class Members is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by Class Members are likely to be in the millions of dollars, the individual damages incurred by each Class Member resulting from Defendants' wrongful conduct are, as a general matter, too small to warrant the expense of individual suits. The likelihood of individual Class Members' prosecuting separate claims is remote and, even if every Class Member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would

magnify the delay and expense to all parties and to the court system resulting from multiple trials on the same factual issues. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action and certification of the Class under Rule 23(b)(3) is proper.

66. Relief concerning Plaintiffs' rights under the laws herein alleged and with respect to the Class would be proper. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with regard to Class Members as a whole and certification of the Class under Rule 23(b)(2) proper.

FIRST COUNT
(VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT ("CFA"), N.J.S.A. §
56.8-1, ET. SEQ.)

(On Behalf of the New Jersey Class)

67. Plaintiff Michael Urbino incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

68. Plaintiff Urbino asserts this cause of action on behalf of himself and the other members of the New Jersey Class.

69. This cause of action is brought pursuant to New Jersey's Consumer Fraud Act, N.J.S.A. §56.8-1, *et seq.* ("CFA").

70. The CFA declares unlawful all unfair and deceptive acts or practices in or affecting commerce.

71. Under the CFA, Defendants' misleading representations regarding energy costs savings are unfair, deceptive, and unconscionable.

72. Defendants violated the CFA by engaging in fraudulent and deceptive sales practices of inducing customers to switch from their energy suppliers to Ambit Energy with the promise of energy cost savings and consistent market rates.

73. Defendants violated the CFA by failing to disclose to consumers that they would shift the risk of its volatile commodity prices onto consumers causing significant spikes in energy rates resulting in exorbitant energy costs to consumers. Defendants also violated the CFA by failing to clearly and conspicuously describe what factors might cause consumers' energy costs to rise.

74. The acts and practices of Defendants' as set forth above, have directly, foreseeably, and proximately caused ascertainable damages and injury to Plaintiff Urbino and the members of the New Jersey Class, including but not limited to having been compelled to pay amounts in excess of the rates charged by their local public utilities during the class period.

75. Plaintiff Urbino and the members of the New Jersey Class relied on Defendants' misrepresentations and omissions. Had Defendants disclosed in their marketing and sales materials to consumers that they would shift the risk of wholesale energy volatile rate spikes onto customers, Plaintiff Urbino and the New Jersey Class members would not have switched to Ambit. Likewise, had Defendants clearly and conspicuously described what factors might cause consumers' energy costs to rise, Plaintiff Urbino and the New Jersey Class members would have known the risks they were taking and would not have switched to Ambit.

76. Defendants' actions constitute acts, uses, or employment of unconscionable commercial practices, deception, fraud, false pretenses, false promises, misrepresentations, or the knowing concealment, suppression or omission of material facts with the intent that others rely

upon such concealment, suppression, or omission, in connection with the sale or advertisement of merchandise or real estate in violation of the CFA.

77. As a result of Defendants' unlawful acts or practices, Plaintiff Urbino and the members of the New Jersey Class have been injured in amounts to be proven at trial, and Defendants should be ordered to pay, as damages to Plaintiff Urbino and the members of the New Jersey Class, the ascertainable losses suffered, and such amounts should be trebled pursuant to the terms of the CFA, plus prejudgment interest and attorneys' fees and costs. Further, Defendants should be enjoined from continuing to violate the law, as well as ordered to provide the other relief set forth below.

SECOND COUNT
VIOLATION OF NEW YORK GENERAL BUSINESS LAW §349-d(6)

(On Behalf of the New York Automatic Default Class)

78. Plaintiff Brian Whitney incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

79. Plaintiff Whitney brings this claim under New York General Business Law §349-d(6) on his own behalf and on behalf of each member of the New York Automatic Default Class.

80. N.Y.G.B.L. §349-d(6) provides that “[n]o material change shall be made in the terms or duration of any contract for the provision of energy services by an ESCO without the express consent of the customer.”

81. In or around January 31, 2012, Defendants amended the Terms of Service to add the New York Select Variable Plan and to require customers to elect to stay in the Guaranteed Savings Plan or otherwise be defaulted into the New York Select Variable Plan. This amendment is a material change to its Terms of Service.

82. Plaintiff and Ambit's other customers enrolled in the Guaranteed Savings Plan did not give their express consent to these changes.

83. Through the conduct described above, Defendants have violated N.Y. G.B.L. § 349-d(6) and caused injury to Plaintiff Whitney and the New York Automatic Default Class.

84. N.Y. G.B.L. §349-d(10) provides that "any person who has been injured by reason of any violation of this section may bring an action in his or her own name to enjoin such unlawful act or practice, an action to recover his or her actual damages or five hundred dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to ten thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff."

85. Further, N.Y.G.B.L. §349-d(8) provides that "[a]ny contract for energy services which does not comply with the applicable provisions of this section shall be void and unenforceable as contrary to public policy. Any waiver by a buyer of energy services of the provisions of this section shall be deemed void and unenforceable by the ESCO as contrary to public policy."

86. As a direct and proximate result of Defendants' conduct, Plaintiff Whitney and the New York Automatic Default Class have suffered injury and monetary damages in an amount to be determined at the trial of this action but not less than \$500 for each violation, such damages to be trebled, plus attorneys' fees.

87. Plaintiff and the other members of the New York Automatic Default Class further seek an order enjoining these Defendants from undertaking any further unlawful conduct. Pursuant to N.Y. G.B.L. § 349-d(10), this Court has the power to award such relief.

THIRD COUNT
VIOLATION OF NEW YORK GENERAL BUSINESS LAW §349-d(7)

(On Behalf of the New York Automatic Default Class)

88. Plaintiff Whitney incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

89. Plaintiff Whitney brings this claim under N.Y. G.B.L. § 349-d(7) on his own behalf and on behalf of each member of the New York Automatic Default Class.

90. Defendants' amended Terms of Service fail to identify a single variable charge in the New York Select Variable Plan. Moreover, the limited one-sentence reference to the Plan in the Terms of Service since January 30, 2012 is not conspicuous. The reference is in the same small print as the Terms of Service's other terms and is buried in Ambit's form contract.

91. Further, Defendants' marketing materials make no reference at all to even the existence of the New York Select Variable Plan.

92. Through their conduct described above, the Defendants have violated N.Y. G.B.L. § 349-d(7) and caused in injury to Plaintiff Whitney and the other customers enrolled in the New York Select Variable Plan.

93. As a direct and proximate result of these Defendants' conduct, Plaintiff Whitney and the members of the New York Automatic Default Class have suffered injury and monetary damages in an amount to be determined at the trial of this action but not less than \$500 for each violation, such damages to be trebled, plus attorneys' fees.

94. Plaintiff Whitney and the members of the New York Automatic Default Class further seek an order enjoining Defendants from undertaking any further unlawful conduct. Pursuant to N.Y. G.B.L. § 349-d(10), this Court has the power to award such relief.

FOURTH COUNT
VIOLATION OF NEW YORK GENERAL BUSINESS LAW §349-d(3)

(On Behalf of the New York Automatic Default Class)

95. Plaintiff Whitney incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

96. Plaintiff Whitney brings this claim under N.Y. G.B.L. § 349-d(3) on his own behalf and on behalf of each member of the New York Automatic Default Class.

97. N.Y. G.B.L. §349-d(3) provides that “[n]o person who sells or offers for sale any energy services for, or on behalf of, an ESCO shall engage in any deceptive acts or practices in the marketing of energy services.”

98. Defendants sell and offer for sale energy services for and on behalf of an ESCO.

99. The Defendants have engaged in, and continue to engage in, deceptive acts and practices in violation of N.Y. G.B.L. § 349-d(3) by:

- a. Implementing a policy that automatically defaults customers enrolled in the Guaranteed Savings Plan into the more expensive New York Select Variable Plan unless the customer takes certain steps to remain in the Guaranteed Savings Plan;
- b. Failing to adequately disclose to its Guaranteed Savings Plan customers that they will be automatically defaulted into the more costly New York Select Variable Plan; and
- c. Failing to disclose that the rates charged under the New York Select Variable Plan are higher than the rates a customer’s existing utility charges.

100. The aforementioned acts are willful, unfair, unconscionable, deceptive, and contrary to the public policy of New York, which aims to protect consumers.

101. As a direct and proximate result of the Defendants’ unlawful deceptive acts and practices, Plaintiff Whitney and the members of the New York Automatic Default Class have

suffered injury and monetary damages in an amount to be determined at the trial of this action but not less than \$500 for each violation, such damages to be trebled, plus attorneys' fees.

102. Plaintiff Whitney and the members of the New York Automatic Default Class further seek an order enjoining these Defendants from undertaking any further unlawful conduct. Pursuant to N.Y. G.B.L. § 349-d(10), this Court has the power to award such relief.

FIFTH COUNT
VIOLATIONS OF NEW YORK'S GENERAL BUSINESS LAW, SECTIONS 349-350
(CONSUMER PROTECTION LAWS)

(On Behalf of the New York Automatic Default Class)

103. Plaintiff Whitney incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

104. Plaintiff Whitney asserts this cause of action on behalf of himself and the other members of the New York Automatic Default Class.

105. This cause of action is brought pursuant to New York General Business Laws §§ 349 and 350.

106. Sections 349 and 350 of the N.Y. G.B.L state, in relevant part:

New York General Business- Article 22-A- §349 Deceptive Acts and Practices Unlawful

§349. Deceptive acts and practices unlawful. (a) Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.

New York General Business- Article 22-A- §350 False Advertising Unlawful

§350. False advertising unlawful. False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.

107. Defendants have engaged in, and continue to engage in, deceptive acts and practices and false advertising by:

- a. Implementing a policy that automatically defaults customers enrolled in the Guaranteed Savings Plan into the more expensive New York Select Variable Plan unless the customer takes certain steps to remain in the Guaranteed Savings Plan;
- b. Failing to adequately disclose to its Guaranteed Savings Plan customers that they will be automatically defaulted into the more costly New York Select Variable Plan; and
- c. Failing to disclose that the rates charged under the New York Select Variable Plan are higher than the rates a customer's existing utility charges.

108. The aforementioned acts are willful, unfair, unconscionable, deceptive, and contrary to the public policy of New York, which aims to protect consumers.

109. As a direct and proximate result of the Defendants' unlawful deceptive acts and practices, Plaintiff Whitney and the members of the New York Automatic Default Class have suffered injury and monetary damages in an amount to be determined at the trial of this action but not less than \$50 for each violation, discretionary treble damages up to \$1000, plus attorneys' fee and costs. Defendants should also be enjoined from continuing to violate the law, as well as ordered to provide the other relief set forth below.

SIXTH COUNT
(BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING)

(On Behalf of the Multistate Class)

110. Plaintiffs Michael Urbino incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

111. Defendants have a duty of good faith and fair dealing with respect to their dealings with consumers, including Plaintiff Urbino and the members of the Multistate Class.

112. There is an implied duty of good faith and fair dealing in every contract, and Defendants had an implied duty to insure that their marketing materials and other representations regarding electricity rates were not false and misleading with respect to energy consumers.

113. Plaintiff Urbino and the members of the Multistate Class negotiated their service agreements with Defendants from a position of unequal bargaining power.

114. When a contract contains an unspecified price term such as in the Ambit agreement, the seller does not have unlimited discretion to set the prices. Rather, under the covenant of good faith and fair dealing, the seller must set the prices reasonably and in good faith.

115. By virtue of their contractual relationship, Defendants had an implied duty to Plaintiff Urbino and the members of the Multistate Class to take reasonable steps to ensure that all sums that they collected or attempted to collect under the service agreements were legally due.

116. Defendants breached the covenant of good faith and fair dealing by engaging in deceptive and misleading representations of energy costs savings, and shifting undisclosed risks of price spikes to consumers, resulting in customers being charged excessive energy rates.

117. In so doing, Defendants acted recklessly, maliciously, in bad faith, and without good cause, thereby preventing Plaintiff Urbino and the members of the Multistate Class from receiving their reasonably expected benefits under the services agreements.

118. Under the covenant of good faith and fair dealing, the court should read in the applicable price properly paid by the Multistate Class for Ambit's services as a reasonable rate, which is the rate charged by the Multistate Class Members' local public utilities during the class period. All monies paid above this reasonable amount should be restored to the Multistate Class as damages.

119. Plaintiff Urbino and the members of the Multistate Class relied to their detriment upon misleading assertions and conduct of Defendants' and such reliance may be presumed based on the Defendants' unlawful conduct.

120. As a direct and proximate result of the aforementioned wrongful conduct committed by Defendants, Plaintiff Urbino and the members of the Multistate Class have suffered and will continue to suffer damages and economic loss in an amount to be proven at trial. Plaintiff Urbino and the members of the Multistate Class are entitled to damages and injunctive and declaratory relief as claimed below.

SEVENTH COUNT
(UNJUST ENRICHMENT)

(On Behalf of the Multistate Class)

121. Plaintiff Michael Urbino incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

122. Plaintiff Urbino and the members of the Multistate Class conferred a tangible economic benefit upon Defendants by contracting with Defendants for energy. Plaintiff Urbino and the members of the Multistate Class would not have contracted with Defendants for energy had they known that Defendants had engaged in a misleading marketing scheme.

123. Failing to require Defendants to provide remuneration under these circumstances would result in Defendants being unjustly enriched at the expense of Plaintiff Urbino and the members of the Multistate Class.

124. Defendants' retention of the benefit conferred upon them by Plaintiff Urbino and the members of the Multistate Class would be unjust and inequitable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this case be certified and maintained as a class action and for judgment to be entered upon Defendants as follows:

- A. For economic and compensatory damages on behalf of Plaintiffs and all Class Members;
- B. For actual damages sustained;
- C. For all statutory damages, including treble damages, as applicable;
- D. For punitive damages, as otherwise applicable;
- E. For declaratory relief, declaring that Defendants' actions are unlawful;
- F. For injunctive relief, compelling Defendants to cease their unlawful actions;
- G. For pre-judgment and post-judgment interest;
- H. For reasonable attorneys' fees, and reimbursement of all costs for the prosecution of this action, and
- I. For such other and further relief as this Court deems just and appropriate.

DEMAND FOR TRIAL BY JURY

Plaintiffs respectfully demand a trial by jury on all issues within the instant action so triable.

Dated: December 1, 2014

By: **/s/Jonathan Minkove**
Jonathan Minkove, Esq.
Lawrence J. Friscia, Esq.
Friscia & Associates, LLC
45 Academy Street
Suite 401
Newark, New Jersey 07102
Tel: (973) 500-8024
Facsimile: (888) 809-3747
e-mail: jon.minkove@friscialaw.com
lawrence.friscia@friscialaw.com

Charles J. LaDuca, Esq.*
Beatrice Yakubu, Esq.*
Cuneo Gilbert & LaDuca, LLP
8120 Woodmont Avenue
Suite 810
Bethesda, MD 20814
Tel: (240) 483-4292
Facsimile: (202) 789-1813
e-mail: charles@cuneolaw.com
byakubu@cuneolaw.com

Michael J. Flannery, Esq.*
Cuneo Gilbert & LaDuca, LLP
300 North Tucker Boulevard
Suite 801
St. Louis, MO 63101
Phone: (314) 226-1015
Facsimile: (202) 789-1813
e-mail: mflannery@cuneolaw.com

Seth R. Lesser, Esq.
Fran L. Rudich, Esq.**
Klafter Olsen & Lesser, LLP
Two International Drive, Suite 350
Rye Brook, NY 10573
Phone: (914) 934-9200
Facsimile: (914) 934-9220
e-mail: seth@klafterolsen.com
fran@klafterolsen.com

Steven L. Wittels, Esq.
J. Burkett McInturff, Esq.**
Wittels Law, P.C.
18 Half Mile Road
Armonk, NY 10504
Phone: (914) 319-9945
Facsimile: (914) 273-2563
e-mail: slw@wittelslaw.com
jbm@wittelslaw.com

Attorneys for Plaintiffs

*Admitted Pro Hac Vice

**To apply for admission Pro Hac Vice

Exhibit A



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AMBIT ENERGY

Word Mark	AMBIT ENERGY
Goods and Services	IC 039. US 100 105. G & S: DISTRIBUTION OF ENERGY, NAMELY, PROVIDING ELECTRICAL ENERGY AND NATURAL GAS TO RESIDENTIAL AND COMMERCIAL USERS. FIRST USE: 20060900. FIRST USE IN COMMERCE: 20060900
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77108474
Filing Date	February 15, 2007
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	March 25, 2008
Registration Number	3443624
Registration Date	June 10, 2008
Owner	(REGISTRANT) Ambit Energy, L.P. Ambit Systems, Inc., a Texas corporation LIMITED PARTNERSHIP TEXAS Ste. 200 1801 N. Lamar Street Dallas TEXAS 75202 (LAST LISTED OWNER) AMBIT HOLDINGS, L.L.C. LIMITED LIABILITY COMPANY TEXAS

1801 N. LAMAR STREET SUITE 200 DALLAS TEXAS 75202

Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record George R. Schultz
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Type of Mark Register SERVICE MARK
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Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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Word Mark AAAAAAAAAAAAAA **AMBIT ENERGY**
Goods and Services IC 039. US 100 105. G & S: Distribution of energy, namely, providing electrical energy and natural gas to residential and commercial users. FIRST USE: 20100600. FIRST USE IN COMMERCE: 20100600
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 26.01.07 - Circles with a decorative border, including scalloped, ruffled and zig-zag edges
 26.01.08 - Circles having letters or numerals as a border; Circles having punctuation as a border; Letters, numerals or punctuation forming or bordering the perimeter of a circle
 26.01.17 - Circles, two concentric; Concentric circles, two; Two concentric circles
Serial Number 85138291
Filing Date September 25, 2010
Current Basis 1A
Original Filing Basis 1B
Published for Opposition July 19, 2011
Registration Number 4077883
Registration Date December 27, 2011
Owner
 (REGISTRANT) Ambit Energy Holdings, LLC LIMITED LIABILITY COMPANY TEXAS 1801 N. Lamar Street, Suite 200 Dallas TEXAS 75202

(LAST LISTED OWNER) AMBIT HOLDINGS, L.L.C. LIMITED LIABILITY COMPANY TEXAS
 1801 N. LAMAR STREET SUITE 200 DALLAS TEXAS 75202

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record George R. Schultz

Prior Registrations 3389005;3443624;3786848

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Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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