

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

**TAURSHIA SIMMONS, NAVID KALATIZADEH,
and BRIAN WHITNEY,**

**Individually and on Behalf of All Others Similarly
Situated,**

Plaintiffs,

v.

**AMBIT ENERGY HOLDINGS, LLC, AMBIT TEXAS,
LLC, AMBIT MARKETING, LLC, AMBIT NEW
YORK, LLC, JERE W. THOMPSON, and CHRIS
CHAMBLESS,**

Defendants.

SUMMONS

Index No.

**Date Index Number Purchased
March 23, 2015**

JURY TRIAL DEMANDED

TO THE ABOVE NAMED DEFENDANTS:

PLEASE TAKE NOTICE THAT YOU ARE SUMMONED to answer the Complaint in this action and to serve a copy of your answering documents on the Plaintiffs' attorney at the address indicated below within twenty (20) days after service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer, a judgment will be entered against you by default for the relief demanded in the Complaint.

Dated: March 23, 2015
Armonk, New York

WITTELS LAW, P.C.

By: /s/ Steven L. Wittels
Steven L. Wittels
J. Burkett McInturff
Tiasha Palikovic

18 HALF MILE ROAD
ARMONK, NEW YORK 10504
Telephone: (914) 319-9945
Facsimile: (914) 273-2563
slw@wittelslaw.com
jbm@wittelslaw.com
tpalikovic@wittelslaw.com

Attorneys for Plaintiffs and the Class

Seth R. Lesser
Fran L. Rudich
KLAFTER OLSEN & LESSER, LLP
Two International Drive, Suite 350
Rye Brook, NY 10573
Telephone: (914) 934-9200
Facsimile: (914) 934-9220
seth@klafterolsen.com
fran@klafterolsen.com

Charles J. LaDuca
Beatrice Yakubu
CUNEO GILBERT & LADUCA, LLP
8120 Woodmont Avenue
Suite 810
Bethesda, MD 20814
Telephone: (240) 483-4292
Facsimile: (202) 789-1813
charles@cuneolaw.com
byakubu@cuneolaw.com
Co-Counsel for Plaintiffs and the Class

Defendants' Address:

1801 N. Lamar Street, Suite 200
Dallas, Texas 75202

Venue: Plaintiffs designate Kings County as the place of trial because Plaintiff Kalatizadeh resides in this county, Defendants do business in this county, and Ambit New York, LLC is licensed to do business in the State of New York. Further, substantial acts in furtherance of the alleged improper conduct occurred within this county.

WITTELS LAW, P.C.
Steven L. Wittels
J. Burkett McInturff
Tiasha Palikovic
18 HALF MILE ROAD
ARMONK, NEW YORK 10504
Telephone: (914) 319-9945
Facsimile: (914) 273-2563
slw@wittelslaw.com
jbm@wittelslaw.com
tpalikovic@wittelslaw.com

Attorneys for Plaintiffs and the Class

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

**TAURSHIA SIMMONS, NAVID KALATIZADEH,
and BRIAN WHITNEY,**

**Individually and on Behalf of All Others Similarly
Situated,**

Plaintiffs,

v.

**AMBIT ENERGY HOLDINGS, LLC, AMBIT TEXAS,
LLC, AMBIT MARKETING, LLC, AMBIT NEW
YORK, LLC, JERE W. THOMPSON, and CHRIS
CHAMBLESS,**

Defendants.

***CONSOLIDATED CLASS
ACTION COMPLAINT***

Index No.

JURY TRIAL DEMANDED

Plaintiffs Taurshia Simmons, Navid Kalatizadeh, and Brian Whitney (“Plaintiffs”), by their attorneys Wittels Law, P.C, bring this action in their individual capacity, and on behalf of a class of persons defined below, against Defendants Ambit Energy Holdings, LLC, Ambit Texas, LLC, Ambit Marketing, LLC, Ambit New York, LLC, Jere W. Thompson, and Chris Chambless, and hereby allege the following with knowledge as to their own acts, and upon information and belief as to all other acts:

OVERVIEW OF DEFENDANT AMBIT’S DECEPTIVE PRACTICES

1. Seizing on the nation’s push to deregulate retail energy markets and provide consumers with alternatives to traditional utilities like Con Edison, independent energy companies like Defendant Ambit Energy¹ (called “ESCOs”) have grown rapidly.

2. Founded in 2006 by Defendants Jere W. Thompson and Chris Chambless, Ambit Energy has quickly grown into one of the nation’s largest independent energy suppliers. Based in Dallas, Defendant Ambit Energy now serves over 1 million electric and natural gas customers, 94% of whom are residential customers like Plaintiffs. While claiming on its website that customers “are choosing Ambit Energy as the best choice in energy today,” the fast-growing venture neglects to mention that by choosing Ambit, customers will end up increasing rather than decreasing their energy costs each year.

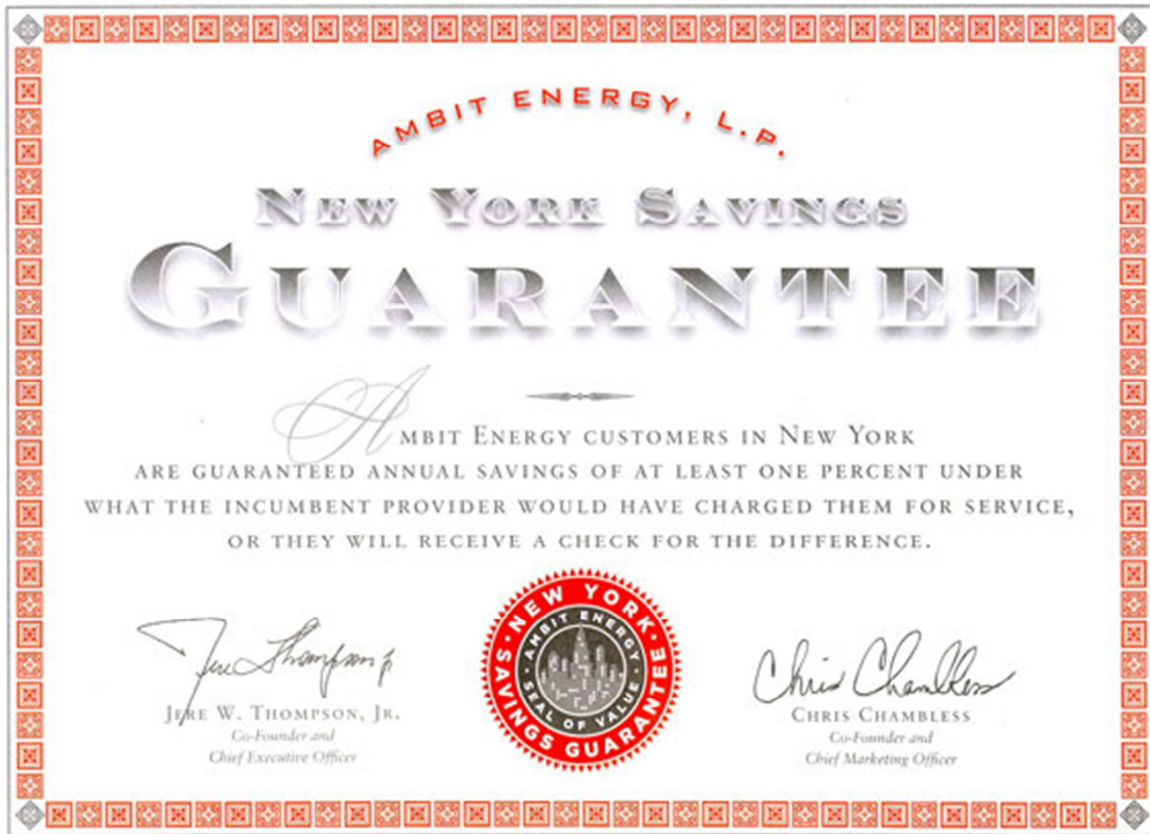
3. **The Illusory “1% Savings Guarantee”** – Ambit markets itself as a less-expensive alternative to existing utilities, telling potential customers to “stop paying too much for electricity.” Ambit offers its New York consumers a supposedly sure thing: guaranteed

¹ “Ambit Energy” or “Ambit” is how this giant private company holds itself out to the general public. Ambit, *available at* <http://ww2.ambitenergy.com>. Upon information and belief, all of the corporate defendants in this Complaint are controlled and operated by the individual Defendant co-founders Thompson and Chambless, who in turn use Defendant Ambit Energy Holdings, LLC to direct their operations. All Defendants are hereafter collectively referred to as Defendant “Ambit Energy,” Defendant “Ambit” or the “Company,” unless otherwise specified.

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% less than what the customers’ existing utility (the “incumbent provider”) would have charged, or Ambit will make up the difference. Ambit bills the savings as the “1% Savings Guarantee.”

4. In violation of the guarantee, Ambit fails to honor its promise of at least a 1% savings to those customers who switch over. Instead, the Company overstates what the incumbent provider would have charged, thus depriving customers of their full 1% (or more) savings. Because of Ambit’s lack of transparency and failure to provide customers with the necessary information to calculate their incumbent provider’s energy supply rates, customers have no feasible way to check if the amount Ambit claims the incumbent would have charged is accurate. Thus, customers don’t realize that their new ESCO is violating its 1% Savings Guarantee.

5. To add insult to the broken promise, the Company fails to inform customers that they will need to wait a year or more for their refund checks, which Defendants hold onto for their own use. The Company’s co-founders Defendants Jere W. Thompson and Chris Chambless made New York consumers the written guarantee on the following page but make no mention of the fact that Ambit will miscalculate the 1% savings owed and excessively delay sending refund checks:



6. **The Automatic Default Policy** – Beginning in January 2012, and without warning, Defendant Ambit implemented a new policy that eliminated the supposed benefits of the 1% Savings Guarantee. Under this new policy, Ambit created a more expensive plan called the New York Select Variable Plan and began automatically shifting customers signed up for the Guaranteed Savings Plan into the New York Select Variable Plan (hereafter the “Variable Plan”). Prior to 2012, customers like Plaintiffs who were enrolled in the Guaranteed Savings Plan were promised they could remain on the plan and keep their 1% Savings Guarantee as long as they stayed with Ambit. After the Company instituted its automatic default policy, however, the only way customers could avoid being defaulted into the new more expensive Variable Plan was if they actively notified Ambit of their intention to stay in the Guaranteed Savings Plan. Unfortunately, the Company failed to give its Guaranteed Savings Plan customers adequate notice of this new default policy. Thus, like Plaintiffs, tens of thousands (if not more) of Ambit’s

customers found themselves automatically defaulted into the higher costing Variable Plan.

7. The New York Select Variable Plan is “select” only insofar as Ambit uses it to select Guaranteed Savings Plan customers for higher energy rates. New customers cannot sign up for the Variable Plan directly with Ambit, and Ambit neither advertises nor offers the 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 Variable Plan.

8. While Ambit amended its customer service agreement (hereafter the “Terms of Service”) in or around January 2012 to memorialize the new opt-in procedure that Guaranteed Savings Plan customers needed to follow in order to keep their guarantee, Ambit didn’t even wait until the amendment became effective before switching consumers into the Variable Plan. A month earlier, in December 2011, Ambit decided to switch Plaintiff Mr. Kalatizadeh without warning from the Guaranteed Savings Plan into the Variable Plan.² Ambit’s failure to adequately disclose to Plaintiffs and the Class that they would be automatically defaulted into the more costly Variable Plan is a deceptive act and practice that violates New York’s consumer protection statute, N.Y. Gen. Bus. Law § 349.

9. Further, Defendant Ambit’s unilateral amendment of its Terms of Service violates New York’s Energy Services Company Consumers 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 Plaintiffs or any other Guaranteed Savings Plan customers before switching them into the higher costing Variable Plan.

² Upon information and belief, Ambit also decided to switch thousands of other customers before even publishing its new automatic default policy.

10. As a result of being automatically defaulted, Plaintiffs lost their 1% Savings Guarantee and due to the higher rates charged under the Variable Plan, customers paid Ambit more than they would have under the Guaranteed Savings Plan. After defaulting Plaintiff Ms. Simmons into the Variable Plan, the Company overcharged her for electricity by approximately \$100 from March 2012 through November 2012. Plaintiffs Mr. Kalatizadeh and Mr. Whitney suffered even greater overcharges due to the fact that they were both electricity and gas customers.³ Ambit overcharged Mr. Whitney for gas and electricity by approximately \$500 from October 2013 through April 2014, and Mr. Kalatizadeh by even more during the approximately twenty months he was on the Variable Plan.

11. Defendant Ambit's automatic default policy also violates the statutorily mandated disclosure requirements of N.Y. G.B.L. § 349-d(7), because neither Ambit's Terms of Service nor its 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 Variable Plan. Moreover, the various incarnations of Ambit's Terms of Service fail to identify a single variable charge actually contained in the Variable Plan.

12. The Ambit Energy Defendants' deceptive enrollment and energy plan practices run afoul of New York State law in multiple ways, including:

- a. Failing to provide a savings of "at least one percent" to the Guaranteed Savings Plan customers;
- b. Misrepresenting the amount that customers' incumbent providers would have charged, thereby depriving customers of their full 1% (or more) savings;
- c. Unreasonably withholding refund checks promised to its Guaranteed Savings Plan customers;

³ 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."

- d. 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;
- e. Failing to adequately disclose to Guaranteed Savings Plan customers that they will be automatically defaulted into the more costly New York Select Variable Plan;
- f. Omitting from the marketing materials and Terms of Service that the rates charged under the New York Select Variable Plan are higher than the rates a customer's existing incumbent utility charges;
- g. 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;
- h. 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
- i. 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;

13. Plaintiffs bring this action on behalf of themselves and a Class of Ambit customers similarly harmed and described below. Plaintiffs seek a refund of overcharges, actual damages for each class member, injunctive and declaratory relief, and attorneys' fees and costs.

14. Only through a class action can New York's customers remedy Ambit's ongoing wrongdoing. Because the monetary damages suffered by each consumer are small compared to the much higher cost a single customer would incur in trying to challenge Ambit's unlawful practices, it makes no financial sense for an individual customer to bring his or her own lawsuit. Further, many customers don't even realize they are victims of Ambit's deceptive conduct.

15. 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

16. **Plaintiff Taurshia Simmons** is a citizen of New York and resides in the Bronx, New York. Plaintiff Simmons was a customer of Defendant Ambit Energy from approximately March 13, 2008 to November 7, 2012.

17. **Plaintiff Navid Kalatizadeh** is a citizen of New York and resides in Brooklyn, New York. Mr. Kalatizadeh and his wife Shirley Kalatizadeh were Ambit customers from approximately December 29, 2010 to October 25, 2013.

18. **Plaintiff Brian Whitney** is a resident of Glenn Falls, New York. Plaintiff Whitney was an Ambit customer from approximately January 3, 2011 to April 29, 2014.

19. Ambit's website tells the story of how **Defendants Jere W. Thompson** and **Chris Chambless** formed their energy enterprise in 2006 after "a friendly chat about energy deregulation over turkey sandwiches" (<http://ww2.ambitenergy.com/about-ambit-energy>):

Those men – Jere Thompson, Jr. and Chris Chambless – were both excited about the opportunity they saw. . . . Their new venture would provide affordable electricity and gas. . . . The co-founders went to work immediately, and a few weeks later, Jere and Chris set up shop in a large, renovated warehouse in the historic West End district of downtown Dallas.

20. Since 2006, Jere and Chris' energy operation has been known to the public as "Ambit," which the two founders have operated through a tangled web of interrelated Ambit-labeled energy companies. All of the Ambit affiliated and subsidiary companies are based out of the same downtown Dallas address, 1801 N. Lamar Street, Suite 200, including the Defendant Ambit companies responsible for the wrongful acts alleged in this Second Amended Complaint.

21. **Defendant Jere W. Thompson** is the Co-Founder, Chief Executive Officer, Secretary, and Treasurer of **Defendant Ambit Energy Holdings, LLC, Defendant Ambit Texas, LLC, Defendant Ambit Marketing, LLC, and Defendant Ambit New York, LLC.** Mr. Thompson is a citizen of the State of Texas.

22. **Defendant Chris Chambless** is the Co-Founder and Chief Marketing Officer of **Defendant Ambit Energy Holdings, LLC, Defendant Ambit Texas, LLC, Defendant Ambit Marketing, LLC, and Defendant Ambit New York, LLC.** **Defendant Chris Chambless** is also a Texas citizen. The Ambit website states that Defendant Chambless “leads [Ambit’s] effort to acquire residential and small business customers in deregulated electricity and gas markets across the United States.”

23. Like its founding fathers, **Defendant Ambit Energy Holdings, LLC** is a Texas citizen, and headquartered at the downtown Dallas location. Upon information and belief, **Defendant Ambit Energy Holdings, LLC** is the primary actor responsible for the deceptive “Guaranteed Savings” program, the unlawful automatic default policy, and the unlawful marketing described in this Complaint.

24. The last listed owner of the Trademark “AMBIT ENERGY” is **Defendant Ambit Energy Holdings, LLC’s** sole member, Ambit Holdings, LLC. *See* Federal Trademark Registration No. No. 3,443,624 (stating that “AMBIT ENERGY” is for “distribution of energy, namely providing electrical energy and natural gas to residential and commercial users.”).

25. The customer service telephone number listed on Plaintiffs energy bills 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 Energy Holdings, LLC** is also responsible for the deceptive and delayed Guaranteed Savings Plan refunds at issue in this action. The delayed “savings letter” Ambit sent Plaintiff Simmons states that the savings calculations were done by “Your Ambit Energy Customer Care Team” and provides the Plano, Texas call center’s telephone number as the way to reach the “Customer Care Team.” Upon information and belief, the members of the “Ambit Energy Customer Care Team” are employees of **Defendant Ambit Energy Holdings, LLC.**

27. The check also features an Ambit logo which is registered to **Defendant Ambit Energy Holdings, LLC**. See Federal Trademark Registration No. No. 4,077,883. Further, the check is issued by the Bank of Texas, gives a Plano Texas address for “Ambit Energy,” and is signed by Laurie Rodriguez, a Texas-licensed Certified Public Accountant who is listed on **Defendant Ambit Energy Holdings, LLC’s** website as “the Chief Financial Officer of Ambit Energy.”

28. 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 Plaintiffs and hundreds of thousands of other New York consumers in the service territories of various incumbent energy suppliers in New York State. These suppliers include Con Edison, National Grid, New York State Electric and Gas, Rochester Gas and Electric, Orange & Rockland, Central Hudson and National Fuel Gas.

29. One of **Defendant Ambit Energy Holdings, LLC’s** departments is **Defendant Ambit Texas, LLC**, a limited liability company organized in the State of Texas and based at the same downtown North Lamar Street address in Dallas. Plaintiff Ms. Simmons’ initial contract with Ambit was with a Texas limited partnership called *Ambit Energy L.P.* On or about August 15, 2011, *Ambit Energy L.P.* merged with and into **Defendant Ambit Texas, LLC**, which is a Texas citizen likewise based out of the same North Lamar Street address.

30. **Defendant Ambit Marketing, LLC** is another company operated by Defendant **Ambit Energy Holdings, LLC**. This Ambit Marketing Defendant is likewise a Texas limited liability company, and also headquartered at the North Lamar Street address in Dallas. Like many of the other Defendant companies, Defendant Jere W. Thompson is Ambit Marketing, LLC’s registered agent.

31. Individually and in concert, **Defendants Ambit Energy Holdings, LLC, Ambit**

Texas, LLC, Ambit Marketing LLC, Jere W. Thompson and Chris Chambless market Ambit's energy supply services to potential customers in New York and other states through a direct sales channel of more than 250,000 salespeople Ambit calls "Independent Consultants." These salespeople have helped make Ambit the world's largest direct seller of energy and the 14th largest overall direct selling company in the world.

32. All three named Plaintiffs, Ms. Simmons, Mr. Kalatizadeh and Mr. Whitney were enrolled in the Guaranteed Savings Plan by an Ambit Independent Consultant. Upon information and belief, **Defendant Ambit Marketing, LLC** prepares marketing for Ambit's Independent Consultants who then use these materials to lure in prospective energy customers like Plaintiffs.⁴

33. At some point in 2010, **Defendant Ambit New York, LLC** (another company operated by **Defendant Ambit Energy Holdings, LLC**) was substituted as the contracting party in place of *Ambit Energy L.P* in Ambit's Terms of Service. **Defendant Ambit New York, LLC** is a New York limited liability company and is a wholly owned subsidiary of **Defendant Ambit Energy Holdings, LLC**.

JURISDICTION AND VENUE

I. Subject Matter Jurisdiction

34. This Court has jurisdiction over Defendants pursuant to New York CPLR § 301. Plaintiffs are residents of the state of New York and Defendant Ambit New York, LLC is a citizen of New York. Further, Defendants maintain that the Supreme Courts in New York have jurisdiction to hear this dispute in light of the Order and Decision of Hon. Jesse M. Furman remanding this previously filed action to state court. *Simmons v. Ambit Energy Holdings, Inc. et*

⁴ In order to become an Independent Consultant, Ambit requires each consultant to agree to **Defendant Ambit Marketing, LLC's** "Independent Consultant Application and Agreement" which forbids Independent Consultants from using any marketing materials without **Ambit Marketing, LLC's** express written permission. The Agreement also provides that Independent Consultants can purchase marketing materials formulated by **Defendant Ambit Marketing, LLC**.

al., No. 13 Civ.6240 (S.D.N.Y. Sept. 30, 2014) (ECF No. 71).

II. Personal Jurisdiction

35. This Court has general personal jurisdiction over **Defendants Ambit Energy Holdings, LLC, Ambit Marketing, LLC, Ambit Texas, LLC, Ambit New York, LLC, Jere W. Thompson, and Chris Chambless** because they do business in New York through continuous, permanent, and substantial activity in New York.

36. This Court has specific personal jurisdiction over **Defendants Ambit Energy Holdings, LLC, Ambit Marketing, LLC, Ambit Texas, LLC, Jere W. Thompson, and Chris Chambless** because each Defendant maintains sufficient contacts in this jurisdiction, including the advertising, marketing, distribution and sale of natural gas and electricity to New York consumers.

37. **Defendant Ambit Texas, LLC** is the successor in interest to *Ambit Energy, LP* which is the entity that was first permitted to sell and distribute energy under the name “Ambit Energy” to New York consumers. *Ambit Energy, LP*, along with Defendants Thompson and Chambless also marketed directly to New York consumers, and issued New York consumers the savings guarantee described earlier in this Complaint.

38. **Defendant Ambit Energy Holdings, LLC** maintains an interactive website that advertises the Guaranteed Savings Plan for New Yorkers. *Ambit*, *available at*: <http://ww2.ambitenergy.com/rates-and-plans/service-areas/new-york-energy-providers>). **Ambit Energy Holdings, LLC** also states on its website that it “works with the leading transmission and distribution companies in New York to deliver power and superior service.” *Id.* The website then lists the various New York utilities with which Ambit Energy Holdings does business. *Id.* In addition, New York customers are able to enroll in the Guaranteed Savings Plan through the website. *See id* (click “Check Rates in your area” for enrollment).

39. **Defendant Ambit Energy Holdings, LLC’s** significant and ongoing contacts

with New York are graphically revealed by the photograph below, which was taken at the corner of 7th Avenue and 43rd Street:



40. **Defendant Ambit Energy Holdings, LLC** also launched a billboard campaign in New York that prominently features the Ambit logo next to the text “Thanks, New York.” A photo of Ambit’s billboard in Rochester is below:



41. This Court also has personal jurisdiction over **Defendant Ambit Energy Holdings, LLC** because **Defendant Ambit New York, LLC** is its mere department in this state.

42. This Court has specific personal jurisdiction over **Defendant Ambit Marketing, LLC**, as this Ambit marketing department contracts with Independent Consultants to sell Ambit's energy in this jurisdiction. The marketing arm also formulates and distributes marketing materials that are targeted at New York consumers and sold to Independent Consultants in this jurisdiction.

43. The Court further has personal jurisdiction over **Defendants Jere W. Thompson** and **Chris Chambless** because they routinely conduct business in this jurisdiction and direct the Defendants' marketing and sales activities aimed at New York consumers. For example, the published 1% Savings Guarantee that Defendant Ambit issues to New Yorkers prominently shows that it is directed exclusively at New York consumers and is co-signed by both **Defendants Thompson and Chambless**. Moreover, as the Co-Founders make clear in their declarations submitted in the previously filed *Simmons* action on November 12, 2013, both Thompson and Chambless have repeatedly traveled to New York in their respective roles with the various Ambit entities. *See* Declaration of Chris Chambless dated November 7, 2013 (ECF No. 25); *see also* Declaration of Jere Thompson dated November 8, 2013 (ECF No. 26). During these trips, Thompson and Chambless marketed Ambit's energy services, spoke about the Guaranteed Savings Plan, and met with current and potential Ambit partners. In an article entitled "The Ambit Empire State" in InBusiness Magazine, an Independent Consultant glowingly accounts how he "became convinced that that Ambit was the right company" because "[n]ot long after he joined the business, he had the opportunity to sit next to Ambit Energy CEO Jere Thompson at a dinner in Flushing."

44. **Defendant Ambit Energy Holdings, LLC's** website also contains several press

releases where the Co-Founders issue statements demonstrating their significant contacts with New York state. For example, in a February 1, 2007 press release announcing Ambit's regulatory approval to expand from Texas into New York, Thompson and Chambless offered the following statements:

Thompson – “Consistent with our efforts to become the finest and most respected retail electric provider in the country, Ambit Energy has been pursuing opportunities in the New York market for the past four months.”

Chambless – “We look forward to educating the residents of New York City about the benefits of Ambit Energy service and our incredible business opportunity.”

45. Plaintiffs' claims arise directly from **Defendants Thompson and Chambless'** activity in New York. When Ambit announced that it had expanded into New York's National Grid Territory, Chambless stated in a May 2009 press release:

The reason for our success is simple We are the only ESCO in the New York market that guarantees customers a savings. We look forward to providing these savings to an additional 1.6 million gas customers.

46. In announcing yet another New York expansion, Defendant Thompson similarly referred to Ambit's Guaranteed Savings Plan in an October 2009 press release, stating:

We look forward to expanding our presence in New York and are proud to say that we can now offer almost every customer in the state a lower cost option compared to the incumbent provider,” said Ambit Energy CEO and co-founder Jere W. Thompson, Jr. “The New York markets continue to prove themselves as very receptive to the benefits of competition in the energy industry.

47. Defendant Thompson and Chambless' involvement in Ambit's New York activities is so significant that when Ambit completed its expansion into the New York market, both individual defendants issued statements in an August 17, 2011 press release:

Thompson – “We are pleased to offer service to the citizens of New York state . . . and reach a milestone for our company of complete expansion in the state[.]”

Chambless – “[complete expansion in New York] supports our continued corporate expansion efforts to reach our goal of 1 million customers and \$1 billion in annual revenue in 2012.”

III. Venue

48. Venue is proper properly placed in Kings County. Plaintiff Kalatizadeh resides in this county, Defendants do business in this county, and Ambit New York, LLC is licensed to do business in the State of New York. Further, substantial acts in furtherance of the alleged improper conduct occurred within this county.

49. Assignment to the commercial division is warranted as this is a complex commercial class action seeking damages that readily exceed \$150,000.

FACTUAL ALLEGATIONS

I. The Deregulation of New York's Energy Markets

50. In 1996, New York deregulated the sale of retail gas and electricity. As a result of deregulation, New York consumers could purchase natural gas and/or electricity through third-party suppliers while continuing to receive delivery of the energy from their existing public utilities. These third-party energy suppliers are known as Energy Service Companies ("ESCOs"). Since New York opened its retail gas and electric markets to competition, more than a million New York consumers have switched to an ESCO.

51. ESCOs are subject to minimal regulation by New York's utility regulator, the New York State Public Service Commission (the "PSC"). ESCOs like Ambit do not have to file their rates with the PSC, or the method by which those rates are set.

52. If a customer switches to an ESCO, the customer will then have their energy "supplied" by the ESCO, but still "delivered" by their existing utility (in New York City, typically Con Ed). The customer's existing utility continues to bill the customer for both the energy supply and delivery costs. The only difference to the customer is which company sets the price for the customer's energy supply.

53. After a customer switches to an ESCO, the customer's energy supply charge [based either on a customer's kilowatt hour (electricity) or therm (gas) usage] is calculated using

the supply rate charged by the ESCO and not the customer's former utility. The supply rate charged is itemized on the customer's bill as the number of kilowatt hours ("kWh") or therms multiplied by the rate. For example, if a customer uses 145 kWh at a rate of 10.0¢ per kWh, the customer will be billed \$14.50 (145 x \$.10) for their energy supply.

II. Ambit's Rapid Expansion

54. According to its website, Defendant Ambit Energy Holdings, LLC is "the fastest-growing company in the retail energy sector today." In 2010, Inc. Magazine named Ambit the fastest growing private company in America.

55. Since its founding in 2006 by Defendants Thompson and Chambless, Ambit has expanded far beyond its Dallas, Texas headquarters. With revenue in 2013 surpassing \$1 billion from customers in twelve states, Ambit dominates the northeast, selling natural gas and electricity to consumers in New York, New Jersey, Pennsylvania, Connecticut, Rhode Island, and Massachusetts.

56. Defendants' success comes at the expense of consumers. Using deceptive and unconscionable business tactics, the Ambit Defendants have taken advantage of New York's deregulation and the resulting lack of oversight to sweep up New York customers eager to lower their energy costs.

III. Ambit's Illusory and Delayed 1% Savings Guarantee

57. In early 2008, Plaintiff Ms. Simmons was approached by one of Ambit Marketing, LLC's Independent Consultants, given Ambit marketing materials, and led to believe that by switching to Ambit she would be charged at least 1% less than what Con Ed (Plaintiff Simmons' incumbent utility) was charging her, or Ambit would send her a check for the difference. Defendants never lived up to their promise, however, and failed to deliver the full 1% or more savings. Further, when Ambit does finally provide a partial refund, it arrives up to a year or more after it is owed.

58. (i) ***Ambit's Shortchanging.*** Ambit overstates the amount customers' incumbent providers would have charged during the year. By thus jiggering the numbers, Ambit has been able to shortchange customers of their full 1% savings. Neither Ambit's bills nor any other company information enables customers to calculate what their true 1% savings should be. Instead, Ambit shrouds the entire "savings" process in mystery, waiting a year or more before even letting customers know they are entitled to a refund. When the refund checks finally arrive, customers are left with no option but to take Ambit's word for it that the refund calculation is accurate.

59. In Plaintiff Simmons' case, her refund for the year period ending March 2012 showed up 16 months later – *in July 2013.*⁵ With the refund check came a short statement from Ambit listing what her incumbent provider (Con Ed) would have charged from March 2011 to March 2012 for her energy supply had she not switched to Ambit. What Plaintiff didn't know until recently, however, is that her refund is approximately \$50 less for the year than it should be. And the only way Plaintiff found out about the shortfall is because her Counsel's investigation discovered Ambit's erroneous calculations. Deprived of any information to herself ascertain or challenge Ambit's representation as to what her incumbent would have charged, Plaintiff Ms Simmons and upon information and belief, all Class members are left in the dark as to the true savings Ambit owes them.

60. (ii) ***The Delayed Refunds.*** Ambit further fails to disclose to prospective customers is that those who switch to Ambit will have to wait a year or more before Ambit sends them their refund checks.

61. Plaintiff Ms. Simmons had to wait 16 months before Ambit sent her refund check

⁵ Ambit calculates its 1% Savings Guarantee based on the one year period that begins and ends with the anniversary date the customer switched to Ambit. For Plaintiff Simmons that date is March 13. Plaintiff Kalatizadeah's anniversary date is December 29, and Plaintiff Whitney's anniversary date is January 3.

for the one-year electricity service period ending March 2012. During the 16-month wait, Ambit deprived Ms. Simmons of the use of her refund money, failed to pay her any interest, and used Plaintiff's money for its own purposes.

62. Similarly, on or around December 29, 2010, Plaintiff Kalatizadeh was told by an Independent Consultant that if his family switched to Ambit, they would be guaranteed to save on both their gas and electric bills as compared to what they would have been charged by their incumbent utility. Like Plaintiff Simmons, Plaintiff Kalatizadeh was never told that Ambit would not timely issue the refund check. Indeed, Mr. Kalatizadeh was dismayed when for the one-year gas service period ending in December 2011, Ambit made him wait *two years* for a his refund check.

63. Ambit claims that each month it “compiles the rate published by the applicable incumbent utility for the same usage period that the Customer receives energy from Ambit Energy.” Thus, Ambit has no legitimate reason to withhold from customers the data they need to check the accuracy of their purported savings or to delay making prompt 1% refunds to its customers as soon as their 12-month period of service is over.

IV. Ambit's Deceptive Automatic Default Policy

64. At some point in 2011, 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 Variable Plan.

65. The New York Select Variable Plan has no purpose other than to allow Ambit to

dishonor its 1% Savings Guarantee. Indeed, the only customers who end up in the Plan are those the Company automatically defaults out of the Guaranteed Savings Plan.

66. When Ambit added the automatic default policy to its Terms of Service on or about January 31, 2012, the Company failed to adequately notify Plaintiffs and other Guaranteed Savings Plan customers they were subject to the new default policy. In fact, Ambit's current website – as of the date this Consolidated Complaint is filed, March 23, 2015 – still markets the Guaranteed Savings Plan without adequately informing consumers about its automatic default policy. Remarkably, Ambit fails to even mention that customers will be required to opt in to the Guaranteed Savings Plan every year.

67. A recent experience of an Ambit Guaranteed Savings Plan customer in New York is emblematic of Ambit's ongoing deceptive practice of automatically defaulting customers into the higher costing variable plan, as she stated on the ConsumerAffairs.com website on February 25, 2015:

I could not understand why my National Grid bill was so high. . . \$800.00 for one month. I called and they told me that my carrier was Ambit. I had signed up in 2011. I had forgotten this since the bill shows no changes. They informed me that Ambit was charging me 14.1 per kilowatt while National Grid would have only charged me 6.7 per kilowatt, amounting in \$307.00 more on my bill. **I called Ambit about this and they told me that because I did not fill out a paper renewing me on the savings plan, that they automatically put me on to the variable rate plan. Now what person in their right mind would want to pay more when signing up for a plan that is supposed to save you money? I asked them if they could take off the charge and they said no.** They could not renew me or cancel me without the renewal paper. . . does that make no sense to anyone but me??

I am a single mother and a teacher. I cannot afford this bill. I had to go onto the budget plan and have it spread out over 10 months adding \$81.00 to my monthly bill and I will now probably get another high bill for next month. I cannot believe a company would take such advantage of honest hard working middle-class Americans or anyone for that matter. What kind of a world are we becoming? I am so upset. What should I do?

Available at: <http://www.consumeraffairs.com/utilities/ambit.html> (emphasis added).

68. In another of its deceptive practices, Ambit didn't wait until issuing the January 31, 2012 Terms of Service before implementing its policy of automatically defaulting customers on their anniversary. For example, Plaintiff Kalatizadeh's Ambit anniversary is December 29. Under the January 31, 2012 Terms of Service, Ambit would have had to wait until December 29, 2012 to automatically default him onto the Variable Plan. But because Ambit began implementing its automatic default policy in 2011 before amending its Terms of Service, when December 29, 2011 arrived, Ambit decided to put Mr. Kalatizadeh on its Variable Plans for both gas and electricity. The Terms of Service applicable to Mr. Kalatizadeh for 2011, however, does not set out any terms requiring Guaranteed Savings Plan customers to opt-in in order to remain on the plan.

69. By omitting a description of this material change to the Guaranteed Savings Plan in its marketing and sales materials, Ambit Energy Holdings, LLC, its Chief Marketing Officer Chris Chambless, and Ambit Marketing, LLC lull consumers into thinking that once they have signed up for the Guaranteed Savings Plan they will be on the plan as long as they are customers. Ambit's customers are given no reason to suspect that they will automatically become participants in the New York Select Variable Plan if they do not act.

70. Ambit's default policy harmed customers like Plaintiffs who were enrolled in the Guaranteed Savings Plan prior to January 31, 2012, as Ambit did not obtain their express consent to this material change in the terms of their contracts as required by N.Y. G.B.L. § 349-d(6).

71. 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, Ambit Marketing, LLC, and Chambless, violate the statute in not clearly and conspicuously setting forth all variable charges in the New York Select Variable Plan.

72. 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.

73. 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.

74. 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 Defendants Ambit Energy Holdings, LLC, Ambit Marketing, LLC, and Chambless make no mention of the Variable Plan at all.

75. During the approximately eight months she was in the New York Select Variable Plan, Ms. Simmons paid Ambit approximately \$100 more than she would have been charged by Con Ed. During the approximately 6 months he was in the New York Select Variable Plan, Mr. Whitney paid Ambit approximately \$500 more than he would have been charged by National Grid. Similarly, while the exact amount of the overcharge Mr. Kalatizadeah suffered is

unknown, it is believed to be in excess of \$100 because he was on the Variable Plan for approximately 20 months.

76. By moving all three named Plaintiffs without statutorily required written consent or adequate notice into the higher costing New York Select Variable Plan, Ambit cheated Plaintiffs out of both money and the 1% savings they were guaranteed as participants in the Guaranteed Savings Plan.

CLASS ACTION ALLEGATIONS

77. Plaintiffs sue on their own behalf and on behalf of a Class for damages and injunctive relief under CPLR § 901 *et seq.*

78. The Class, preliminarily defined as two subclasses, is as follows:

- a. All Ambit customers who were enrolled in the Guaranteed Savings Plan and who purchased natural gas or electricity for residential use in New York at any time from September 5, 2007 and thereafter (the “1% Savings Guarantee Subclass”); and
- b. All Ambit customers who were automatically enrolled in the New York Select Variable Plan who purchased natural gas or electricity for residential use in New York at any time from September 5, 2007 and thereafter (the “New York Select Variable Plan Subclass”).

79. Excluded from the Subclasses are the officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, and their legal representatives, heirs, successors or assigns and any entity in which they have or have had a controlling interest. Also excluded are all federal, state and local government entities; and any judge, justice or judicial officer presiding over this action and the members of their immediate families and judicial staff.

80. Plaintiffs do not know the exact size of the Subclasses (hereafter collectively the “Class” unless otherwise specified), since such information is in the exclusive control of Defendants. Plaintiffs believe, however, that based on the number of Ambit customers, the Class encompass hundreds of thousands of individuals whose identities can be readily ascertained from

Defendants' records. Plaintiffs also believe that both the 1% Savings Guarantee Subclass and the New York Select Variable Plan Subclass each have hundreds of thousands of members. Accordingly, the members of the Class are so numerous that the joinder of all such persons is impracticable.

81. Plaintiffs are adequate class representatives. Their claims are typical of the claims of the Class and do not conflict with the interests of any other members of the Class. Plaintiffs and the other members of the Class were subject to the same or similar conduct. Further, Plaintiffs and the Class sustained substantially the same injuries and damages arising out of Defendants' conduct.

82. Plaintiffs will fairly and adequately protect the interests of all Class members. Plaintiffs have retained competent and experienced class action attorneys to represent her interests and those of the Class.

83. Questions of law and fact are common to the Class and predominate over any questions affecting only individual Class members, and a class action will generate common answers to the questions below, which are apt to drive the resolution of this action:

- a. Whether Defendants' conduct violates New York General Business Law §349-d;
- b. Whether Defendants' conduct violates New York General Business Law §349;
- c. Whether Defendants were unjustly enriched as a result of their conduct;
- d. Whether the Class members have been injured by Defendants' conduct;
- e. Whether, and to what extent, equitable relief should be imposed on Defendants to prevent them from continuing their unlawful practices; and
- f. The extent of class-wide injury and the measure of damages for those injuries.

84. A class action is superior to all other available methods for resolving this controversy because i) the prosecution of separate actions by Class members will create a risk of

adjudications with respect to individual Class members that will, as a practical matter, be dispositive of the interests of the other Class members not parties to this action, or substantially impair or impede their ability to protect their interests; ii) the prosecution of separate actions by Class members will create a risk of inconsistent or varying adjudications with respect to individual Class members, which will establish incompatible standards for Defendants' conduct; iii) Defendants have acted or refused to act on grounds generally applicable to all Class members; and iv) questions of law and fact common to the Class predominate over any questions affecting only individual Class members.

85. Accordingly, this action satisfies the requirements set forth under CPLR §§ 901 and 902 *et seq.*

CAUSES OF ACTION

COUNT I

NEW YORK GENERAL BUSINESS LAW § 349-d(6)

(ON BEHALF OF THE NEW YORK SELECT VARIABLE PLAN SUBCLASS)

86. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

87. Plaintiffs bring this claim under New York General Business Law §349-d(6) on their own behalf and on behalf of each member of the New York Select Variable Plan Subclass who was an Ambit customer on or after January 10, 2011, the operative date of §349-d.

88. 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.”

89. In or around January 31, 2012, Defendant Ambit Energy Holdings, LLC, Ambit New York, LLC, Jere W. Thompson, and Chris Chambless 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 Variable Plan. This amendment is a material change to its Terms of Service.

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

91. Through the conduct described above, Defendants Ambit Energy Holdings, LLC, Ambit New York, LLC, Jere W. Thompson, and Chris Chambless have violated N.Y. G.B.L. § 349-d(6) and caused injury to Plaintiff and the New York Select Variable Plan Subclass.

92. 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 The court may award reasonable attorney's fees to a prevailing plaintiff."

93. As a direct and proximate result of these Defendants' conduct, Plaintiffs and the New York Select Variable Plan Subclass have suffered injury and monetary damages in an amount to be determined at the trial of this action. Plaintiffs do not seek to recover on their own behalf or on behalf of the members of the New York Select Variable Plan Subclass any penalties or minimum measures of recovery provided by N.Y. G.B.L. §349-d.

94. Plaintiffs and the other members of the New York Select Variable Plan Subclass 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.

COUNT II

NEW YORK GENERAL BUSINESS LAW § 349-d(7)

(ON BEHALF OF THE NEW YORK SELECT VARIABLE PLAN SUBCLASS)

95. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

96. Plaintiffs bring this claim under N.Y. G.B.L. § 349-d(7) on their own behalf and on behalf of each member of the New York Select Variable Plan Subclass.

97. N.Y. G.B.L. § 349-d(7) provides 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.”

98. Defendants Ambit Energy Holdings, LLC, Ambit New York, LLC, Jere W. Thompson, and Chris Chambless’ 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.

99. Further, the marketing materials created by Ambit Energy Holdings, LLC, Ambit Marketing, LLC, and Chris Chambless make no reference at all to even the existence of the New York Select Variable Plan.

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

101. As a direct and proximate result of these Defendants’ conduct, Plaintiffs and the New York Select Variable Plan Subclass have suffered injury and monetary damages in an amount to be determined at the trial of this action. Plaintiffs do not seek to recover on their own behalf or on behalf of the members of the New York Select Variable Plan Subclass any penalties or minimum measures of recovery provided by N.Y. G.B.L. §349-d.

102. Plaintiffs and the other members of the New York Select Variable Plan Subclass 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.

COUNT III

NEW YORK GENERAL BUSINESS LAW § 349-d(3)

(ON BEHALF OF ALL SUBCLASSES)

103. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

104. Plaintiffs bring this claim under N.Y. G.B.L. § 349-d(3) on their own behalf and on behalf of each member of the Class.

105. 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.”

106. Defendants Ambit Energy Holdings, LLC, Ambit New York, LLC, Ambit Texas, LLC, Ambit Marketing, LLC, Jere W. Thompson, and Chris Chambless sell and offer for sale energy services for and on behalf of an ESCO.

107. These 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. Failing to honor their annual savings guarantee of at least 1% as compared to what customers’ incumbent providers would have charged;
- b. Misrepresenting the amount that customers’ incumbent providers would have charged, thereby depriving customers of their full 1% (or more) savings;
- c. Unreasonably withholding refund checks promised to its Guaranteed Savings Plan customers;
- d. Failing to adequately disclose that Ambit withholds the refund checks promised to its Guaranteed Savings Plan customers;
- e. 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;

- f. 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
- g. 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 these Defendants' unlawful deceptive acts and practices, Plaintiffs and the Class have suffered injury and monetary damages in an amount to be determined at the trial of this action. Plaintiffs do not seek to recover on their own behalf or on behalf of the members of the Class any penalties or minimum measures of recovery provided by N.Y. G.B.L. §349-d.

110. Plaintiffs and the other members of the 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.

COUNT IV

NEW YORK GENERAL BUSINESS LAW § 349

(ON BEHALF OF ALL SUBCLASSES)

111. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

112. Plaintiffs bring this claim under N.Y. G.B.L. §349 on their own behalf and on behalf of each member of the Class.

113. N.Y. G.B.L. §349 prohibits “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state.”

114. The acts of Ambit Energy Holdings, LLC, Ambit New York, LLC, Ambit Texas, LLC, Ambit Marketing, LLC, Jere W. Thompson, and Chris Chambless described herein are consumer-oriented in that they are directed at members of the consuming public.

115. These Defendants have engaged in, and continue to engage in, deceptive acts and practices in violation of N.Y. G.B.L. §349 by:

- a. Failing to honor their annual savings guarantee of at least 1% as compared to what customers' incumbent providers would have charged;
- b. Misrepresenting the amount that customers' incumbent providers would have charged, thereby depriving customers of their full 1% (or more) savings;
- c. Unreasonably withholding refund checks promised to its Guaranteed Savings Plan customers;
- d. Failing to adequately disclose that Ambit withholds the refund checks promised to its Guaranteed Savings Plan customers;
- e. 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;
- f. 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
- g. 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.

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

117. As a direct and proximate result of these Defendants' unlawful deceptive acts and practices, Plaintiffs and the Class have suffered injury and monetary damages in an amount to be determined at the trial of this action. Plaintiffs do not seek to recover on their own behalf or on behalf of the members of the Class any penalties or minimum measures of recovery provided by N.Y. G.B.L. §349.

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

COUNT V

UNJUST ENRICHMENT

(ON BEHALF OF ALL SUBCLASSES)

119. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

120. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Class.

121. As a result of their deceptive, unlawful, and unfair conduct, Defendants Ambit Energy Holdings, LLC, Ambit New York, LLC, Ambit Texas, LLC, Ambit Marketing, LLC, Jere W. Thompson, and Chris Chambless have been enriched by (i) withholding refunds owed to customers, and (ii) defaulting Guaranteed Savings Plan customers into the more costly New York Select Variable Plan.

122. By reason of these Defendants' wrongful conduct, these Defendants have benefited from receipt of these improper funds, and under principles of equity and good conscience, these Defendants should not be permitted to keep this money.

123. As a result of these Defendants' collection of excessive energy charges and failure to make timely refunds, it would be unjust and/or inequitable for these Defendants to retain the benefits of its conduct without restitution to Plaintiffs and the Class of the monies paid to these

Defendants. Accordingly, these Defendants must account to Plaintiff and the Class for their unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Taurshia Simmons, Navid Kalatizadeh, and Brian Whitney respectfully request that the Court:

- (a) Issue an order certifying the Classes defined above, appointing the Plaintiffs as Class representatives, and designating the undersigned firm as Class Counsel;
- (b) Find that Defendants have committed the violations of law alleged herein;
- (c) Determine that Ambit Energy Holdings, LLC, Ambit New York, LLC, Ambit Texas, LLC, Ambit Marketing, LLC, Jere W. Thompson, and Chris Chambless have been unjustly enriched as a result of their wrongful conduct, and enter an appropriate order awarding restitution and monetary damages to the Class;
- (d) Render an award of compensatory damages, the amount of which is to be determined at trial;
- (e) Issue an injunction or other appropriate equitable relief requiring Defendants to refrain from engaging in the deceptive practices alleged herein;
- (f) Enter judgment including interest, costs, reasonable attorneys' fees, costs, and expenses; and
- (g) Grant all such other relief as the Court deems appropriate.

Dated: March 23, 2015
Armonk, New York

WITTELS LAW, P.C.

By: /s/ Steven L. Wittels
Steven L. Wittels
J. Burkett McInturff
Tiasha Palikovic

18 HALF MILE ROAD
ARMONK, NEW YORK 10504
Telephone: (914) 319-9945
Facsimile: (914) 273-2563
slw@wittelslaw.com
jbm@wittelslaw.com
tpalikovic@wittelslaw.com

Attorneys for Plaintiffs and the Class

Seth R. Lesser
Fran L. Rudich
KLAFTER OLSEN & LESSER, LLP
Two International Drive, Suite 350
Rye Brook, NY 10573
Telephone: (914) 934-9200
Facsimile: (914) 934-9220
seth@klafterolsen.com
fran@klafterolsen.com

Charles J. LaDuca
Beatrice Yakubu
CUNEO GILBERT & LADUCA, LLP
8120 Woodmont Avenue
Suite 810
Bethesda, MD 20814
Telephone: (240) 483-4292
Facsimile: (202) 789-1813
charles@cuneolaw.com
byakubu@cuneolaw.com

Co-Counsel for Plaintiffs and the Class