

**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,
and AMBIT NEW YORK, LLC, JERE W.
THOMPSON, and CHRIS CHAMBLESS,

Defendants.

Index No. 503285/2015

CLASS ACTION SETTLEMENT AGREEMENT

1. Subject to the approval of the Court, this Settlement Agreement (the "Settlement Agreement" or "Agreement") is entered into by and between: (i) Plaintiffs Taurshia Simmons, Navid Kalatizadeh, and Brian Whitney ("Plaintiffs" or "Named Plaintiffs"), acting individually and on behalf of the Settlement Class (as defined herein); and (ii) Defendants Ambit Energy Holdings, LLC, Ambit Texas, LLC, Ambit Marketing, LLC, Ambit New York, LLC (collectively "Ambit"), Jere W. Thompson, and Chris Chambless (together with Ambit, collectively "Defendants"), as of December 8, 2017. Plaintiffs and Defendants are referred to herein as the "Parties" and each as a "Party."

I. RECITALS

2. Beginning September 5, 2013, Plaintiffs, on behalf of themselves and a proposed class, brought claims alleging Defendants violated various New York consumer protection statutes and New York's common law of unjust enrichment. Plaintiffs' claims have been vigorously litigated for more than four years, first in the United States District Court for the Southern District

of New York, and then, following the grant of a motion to dismiss, in the United States District Court for the District of New Jersey and the Supreme Court of the State of New York, Kings County (the “Court”), now styled as *Simmons, et al. v. Ambit Energy Holdings, LLC, et al.*, Index No. 503285/2015 (the “Litigation”).

3. Defendants deny Plaintiffs’ allegations and assert numerous defenses to Plaintiffs’ claims.

4. The parties to this Settlement Agreement, after having (i) litigated the Plaintiffs’ claims for over four years; (ii) engaged in substantial discovery, including written discovery, the production of more than 79,000 pages of documents by Defendants and numerous interviews with Plaintiffs, Class Members, and potential witnesses; (iii) prepared and exchanged, in connection with a mediation described below, numerous comprehensive reports on liability and damages issues; (iv) conducted extensive motion practice in state and federal court, including multiple court hearings; (v) undertaken preparations for proceedings on class certification, summary judgment, trial, and appeals; and (vi) engaged in numerous arms-length settlement negotiations (many with the assistance of a noted third-party mediator) over the course of more than nine months, have now reached an agreement providing for a resolution of Plaintiffs’ and the Class Members’ claims.

5. Plaintiffs and Class Counsel have reviewed and analyzed the documents produced by Defendants and those obtained via their own investigation; consulted with experts; considered and researched Defendants’ defenses; and examined and considered the benefits to be provided to Class Members under this Settlement Agreement.

6. The Parties recognize and acknowledge the benefits of settling this dispute. Plaintiffs believe that the claims asserted in the Litigation have merit and that the evidence developed to date supports their claims. Plaintiffs’ counsel has conducted an extensive investigation into the facts and the law regarding the claims in this case. Despite their belief in the strengths of their claims, Plaintiffs

are mindful of the risks they face in proving their claims, and possible defenses to the claims in the Litigation. Plaintiffs further recognize and acknowledge the expense and length of time that proceedings necessary to prosecute this matter through class certification, trial, post-trial proceedings, and appeals would take. Counsel for Plaintiffs have taken into account the uncertain outcome and risks of the litigation, the difficulties and delays inherent in such litigation and the likelihood of protracted appeals, and Ambit's ability to pay. Plaintiffs and Counsel for Plaintiffs believe that the terms and conditions of the settlement set forth in this Settlement Agreement confer substantial benefits upon the Settlement Class and are fair, adequate, reasonable, and in the best interests of the Plaintiffs and each member of the Settlement Class.

7. Defendants maintain that no law has been violated, they have done nothing wrong, and they have several meritorious defenses to the claims asserted in the Litigation. Nevertheless, Defendants recognize the risks and uncertainties inherent in litigation, the significant expense associated with defending a proposed class action, the costs of any appeals, and the disruption to their business operations arising out of burdensome and protracted litigation. Accordingly, Defendants believe that the Settlement set forth in this Settlement Agreement is likewise in their best interests.

8. Defendants expressly deny any and all liability and/or wrongdoing with respect to any and all of the claims alleged in this Litigation and any similar proceedings and enter into this Settlement Agreement solely to compromise a disputed claim. Accordingly, any references to the alleged business practices of Defendants in this Settlement, this Agreement, or related Court hearings and processes shall raise no inference respecting the propriety of those business practices or any other business practices of Defendants.

9. The Parties understand, acknowledge, and agree that this Settlement Agreement constitutes the compromise of disputed claims and that it is their mutual desire and intention that Plaintiffs' and the Settlement Class's claims be settled and dismissed, on the merits and with

prejudice, and that the Released Claims (defined below) be finally and fully settled and dismissed, subject to and according to the terms and conditions contained in this Settlement Agreement.

NOW, THEREFORE, in consideration of the agreements and releases set forth herein and other good and valuable consideration, and intending to be legally bound, the Parties agree that the Litigation be settled, compromised, and dismissed on the merits and with prejudice, without costs to the Parties except as provided herein, subject to the approval of the Court, on the following terms and conditions.

II. SETTLEMENT TERMS

A. Definitions

10. The following defined terms shall have the meaning ascribed to them below:

a. “Administration and Notice Expenses” means reasonable and necessary costs incurred and fees charged by the Claims Administrator to perform the tasks set forth in Exhibit C attached hereto, including the: (1) preparation, mailing, and emailing of the Settlement Notice; (2) receipt and processing of claims submitted by Class Members for compensation under this Settlement, including the costs of administering a settlement website for the review of the Settlement Notice and submission of Claim Forms; (3) preparation of status reports to the Parties and the Court; (4) distribution of settlement payments to Eligible Class Members; and (5) receipt and processing of requests for exclusion from the Settlement Class submitted by Class Members. Ambit will pay the Administration and Notice Expenses, which will count towards the Maximum Settlement Amount.

b. “Claims Administrator” means the entity jointly chosen by the Parties and appointed by the Court to perform the role of Claims Administrator and the related tasks set forth in Exhibit C.

c. “Claim Deadline” means the last date on which a Claim Form may be submitted. The Claim Deadline will be one hundred and five (105) days after the Preliminary Approval Date, but if such date falls on a weekend or federal holiday, then the Claim Deadline shall be the next day that is not a weekend or federal holiday.

d. “Claim Form” means the form, substantially in the form attached hereto as Exhibit B, whether in electronic or hard copy, that will be completed by Class Members and submitted to the Claims Administrator in order to receive settlement benefits. The Claim Form may be submitted by Class Members to the Claims Administrator on or before the Claim Deadline by mail or online submission.

e. “Class Counsel” means Steven L. Wittels, J. Burkett McInturff, and Tiasha Palikovic of Wittels Law, P.C.; and Jeffrey A. Klafter, Seth R. Lesser, and Fran L. Rudich of Klafter Olsen & Lesser LLP.

f. “Class Counsel Fee and Expense Award” means the monetary amount, including costs and expenses, awarded by the Court in recognition of the significant work conducted by Class Counsel in the prosecution of the Litigation and the risks of not receiving any attorneys’ fees or reimbursement of expenses. Class Counsel will seek Court approval of a Fee and Expense Award in an amount not to exceed \$8,600,000 for all Class Counsel, collectively. Service Awards, as also may be awarded by the Court, shall be paid from the Class Counsel Fee and Expense Award.

g. “Class Member” means a member of the Settlement Class who does not properly and timely elect to be excluded from the Settlement Class as provided herein.

h. “Class Period” means from September 5, 2010 through the Preliminary Approval Date.

i. “Court” means the Supreme Court of the State of New York, Kings County.

j. “Defendants” means, collectively, Ambit Energy Holdings, LLC, Ambit Texas, LLC, Ambit Marketing, LLC, Ambit New York, LLC, Jere W. Thompson, and Chris Chambless.

k. “Effective Date” means the date on which all of the following conditions are satisfied: (i) execution of this Settlement Agreement by the Named Plaintiffs and Defendants; (ii) no party has availed itself of the right to withdraw from, rescind, or terminate the Agreement pursuant to paragraphs 40 or 46 hereof; (iii) the Court’s entry of the Final Approval Order approving the Settlement embodied in the Settlement Agreement; (iv) entry of a judgment dismissing the Litigation with prejudice and against Plaintiffs and as to the Settlement Class and each of its members and without costs; and (v) the passage of the earliest date on which: (a) the time for taking an appeal from the Final Approval Order and judgment has expired, with no appeal being filed; or (b) if an appeal is taken, the highest court to which such appeal may be taken affirms the Final Approval Order and judgment or dismisses the appeal without, in either case, any material modification of the Final Approval Order that is unsatisfactory to the Parties; provided, however, a modification or reversal on appeal of any amount of the Class Counsel Fee and Expense Award or the Service Awards is not material and shall not prevent this Agreement from becoming final and effective if all other aspects of the Final Approval Order and judgment have been affirmed.

l. “Eligible Class Member” means a Class Member who has submitted a timely and valid Claim Form in accordance with the requirements set forth in this Agreement.

m. “Final Approval Hearing” means the hearing to be held by the Court, on notice to the Settlement Class, to consider final approval of the Settlement and Class Counsel’s motion for Service Awards and approval of attorneys’ fees and reimbursement of costs and expenses; however, the Parties agree that the form of the final approval order that shall be presented by the

Parties to the Court shall include a statement that that the findings and order provisions related to the award of attorneys' fees, costs, expenses, and the Service Awards are separate and apart from the findings and order provisions relating to the approval of the Settlement Agreement, that the approval of the Settlement Agreement is in no way contingent on the award of attorneys' fees, costs, expenses, or the Service Awards, and that the appeal of findings or order provisions related to the award of attorneys' fees, costs, expenses, or the Service Awards shall in no way affect the finality of the approval of the Settlement Agreement or the judgment to be entered pursuant to the terms of the Settlement Agreement. The Parties will ask the Court to schedule a Final Approval Hearing not more than one hundred and five (105) days from the Preliminary Approval Date.

n. "Final Approval Order" means the Court's order granting final approval to the Settlement.

o. "Guaranteed Savings Plan Recalculation Class Members" shall have the meaning set forth in paragraph 22.

p. "Litigation" means *Simmons et al. v. Ambit Energy Holdings, LLC et al.*, Index No. 503285/2015, in Supreme Court of the State of New York, Kings County.

q. "Maximum Guaranteed Savings Plan Recalculation Amount" means the sum of \$3,250,000.

r. "Maximum Roll-off Amount" means the sum of \$26,500,000.

s. "Maximum Settlement Amount" means the sum of \$29,750,000.

t. "Named Plaintiffs" means Plaintiffs Taurshia Simmons, Navid Kalatizadeh, and Brian Whitney.

u. "Net Settlement Amount" means the amount available to pay Class Members for valid claims which shall be the Maximum Settlement Amount less the Class Counsel Fee

and Expense Award and less the Administration and Notice Expenses, which amount shall be allocated on a pro rata basis between the Maximum Roll-off Amount and the Maximum Guaranteed Savings Plan Recalculation Amount.

v. “Preliminary Approval Date” means the date on which the Court enters the Preliminary Approval Order.

w. “Preliminary Approval Order” means the Order granting preliminary approval of the Settlement, conditionally certifying the Settlement Class for the purposes set forth in this Settlement Agreement, and approving the form and manner of the Settlement Notice.

x. Pre-February 1, 2012 Ambit Roll-off Class Members shall have the meaning set forth in paragraph 18.

y. Post-February 1, 2012 Ambit Roll-off Class Members shall have the meaning set forth in paragraph 19.

z. “Released Claims” means and includes any and all manner of actions, causes of action, suits, accounts, claims, demands, controversies, judgments, obligations, injuries, damages, and liabilities of any nature whatsoever, whenever or however incurred, including claims for costs, fees, expenses, penalties, and attorney’s fees, whether class or individual, whether or not now known, suspected, or claimed, that Plaintiffs, the Class Members, or any Class Member ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in another capacity against any of the Released Persons, whether in law or equity or otherwise, arising out of or relating to any conduct, act, or omission of any of the Released Persons concerning any of the conduct alleged or that could have been alleged in the Litigation or similar conduct, wherever it may have occurred, or that relates to or arises out of the rates charged to customers in connection with the Guaranteed Savings Plan or the Select Variable Plan through the date of entry of the Final Approval Order. The Released

Claims specifically exclude claims against Ambit Energy Holdings, LLC, Ambit New York, LLC, and Ambit Northeast, LLC based solely on those entities' Budget Billing program pursuant to N.Y. G.B.L. §§ 349, 349-d(3), Md. Code Com. Law § 13-303, and the common law as currently alleged in the pending action *Lazarek et al. v. Ambit Energy Holdings, LLC et al.*, United States District Court for the Western District of New York, 15-civ-06361 (FPG) and pursuant to N.J.S.A. §§ 56:8-1, *et seq.* and the common law as currently alleged in the pending action *Little, et al. v. Ambit Energy Holdings, LLC, et al.*, United States District Court for the District of New Jersey, No. 16 Civ. 880 (PGS) (LHG), and the exclusion is limited to those claims specifically described and set forth in the *Lazarek* and *Little* actions.

aa. “Released Persons” means Defendants and each of their current and former parents, subsidiaries, affiliates, predecessors, successors, and assigns, and each of their respective, current, and former officers, directors, partners, owners, employees, agents, attorneys, and insurers.

bb. “Service Awards” means the monetary amount awarded by the Court in recognition of the assistance provided by the Named Plaintiffs Taurshia Simmons, Navid Kalatizadeh, Brian Whitney, and Class Members Mitchell Frasier and Rocco J. Feola, in the prosecution and settlement of the Litigation. Class Counsel will seek Court approval of Service Awards in an amount not to exceed \$7,500 for each Named Plaintiff and in an amount not to exceed \$2,500 each for Mitchell Frasier and Rocco J. Feola. The Service Awards shall be paid from the Class Counsel Fee and Expense Award.

cc. “Settlement” means the settlement of the Litigation embodied in this Settlement Agreement.

dd. “Settlement Agreement” means this Class Action Settlement Agreement and all exhibits attached to and incorporated by reference.

ee. “Settlement Class” means for purposes of the Settlement and this Agreement:

All persons who received services in the State of New York who were enrolled as a residential or small business/commercial customer of Ambit and were (i) on any of Ambit’s Guaranteed Savings Plans and were rolled during the Class Period from Ambit’s Guaranteed Savings Plan to any of Ambit’s New York Select Variable Plans, or (ii) on any of Ambit’s Guaranteed Savings Plans during the Class Period for at least 12 consecutive months.

Excluded from the Settlement Class are: any Class Member who submits a timely and valid request for exclusion; and Defendants, any entities in which any Defendant has a controlling interest, and any of their parents, subsidiaries, affiliates, officers, directors, and employees and members of each such person’s immediate family; the presiding judge(s) in this case and her(their) immediate family; and any person who has previously released claims against Defendants.

ff. “Settlement Notice” is the notice to the Settlement Class that describes the Settlement and the Agreement that will be mailed and emailed to Class Members and included on the Claims Administrator’s website, in substantially the form attached hereto as Exhibit A, and for which form and manner of service is approved by the Court.

B. Stipulation to Certification of the Settlement Class

11. The Parties stipulate that the requirements are satisfied and that the Settlement Class may be conditionally certified as a class action pursuant to CPLR § 901 *et seq.* subject to Court approval and for settlement purposes only in accordance with the terms of this Settlement Agreement and without prejudice to Defendants’ right to contest class certification in the event that this Settlement Agreement fails to become effective or is not fully implemented in accordance with its terms. If the Effective Date does not occur or this Agreement fails to be fully implemented, Defendants reserve all rights to object to any subsequent motion to certify a class in this Litigation, and no representation or concession made in connection with the Settlement or this Settlement Agreement shall be considered law of the case or an admission by any Party or to have any kind of preclusive effect against any Party or to give rise to any form of estoppel or waiver by any Party in this Litigation.

The Parties reserve all rights to object to any motion in any other proceeding, including a motion to certify a class or appoint class counsel, and no representation, concession, or stipulation made in connection with the Settlement or this Agreement shall be considered an admission by any Party or to have any kind of preclusive effect against any Party or to give rise to any form of estoppel or waiver by any Party in any other proceeding.

C. Class Counsel

12. The Parties agree, subject to Court approval, that Class Counsel shall be appointed counsel for the Settlement Class, for settlement purposes only in accordance with the terms of this Agreement and without prejudice to Defendants' right to contest the appointment in the event that this Agreement fails to become effective or is not fully implemented in accordance with its terms.

D. Settlement and Claims Administration

13. Subject to oversight and regular reporting to Class Counsel and Defendants' Counsel, the Claims Administrator will be responsible for all aspects of claims administration, including those tasks listed in Exhibit C.

14. Administration and Notice Expenses will be paid by Ambit and count toward the Maximum Settlement Amount.

15. The Parties agree to reasonably cooperate with the Claims Administrator and assist it in administering the Settlement.

16. No later than ten (10) business days prior to the Final Approval Hearing the Claims Administrator shall certify to the Court completion of the tasks listed in Exhibit C that can be accomplished prior to the Final Approval Hearing.

E. Benefits Available to Settlement Class Members

17. Eligible Class Members shall be entitled to a Settlement Payment as follows:

18. Pre-February 1, 2012 Ambit Roll-off Class Members: Each Eligible Class Member with a date of enrollment as Ambit's customer and who was on any of Ambit's Guaranteed Savings Plans before February 1, 2012 that were later rolled to any of Ambit's New York Select Variable Plans shall have a claim that is equal to 77.5% of the amount he or she paid on the New York Select Variable Plan that he or she would not have paid had he or she remained on the Guaranteed Savings Plan during that same time, after application of any refund due to such customer under the terms of the Guaranteed Savings Plan and any applicable offsets, re-bills, or credits.

By way of example, if a Class Member was enrolled as an Ambit customer and was on the Guaranteed Savings Plan on January 1, 2011, and was rolled to the New York Select Variable Plan on January 1, 2012, and paid Ambit \$200 dollars more while on the New York Select Variable Plan than that same Class Member would have paid if on the Guaranteed Savings Plan during that same time period, that Class Member's claim shall be calculated as: $\$200 \times .775 = \155

19. Post-February 1, 2012 Ambit Roll-off Class Members: Each Eligible Class Member with a date of enrollment as Ambit's customer and who was on any of Ambit's Guaranteed Savings Plans on or after February 1, 2012 that were later rolled to any of Ambit's New York Select Variable Plans shall have a claim that is equal to 50% of the amount he or she paid on the New York Select Variable Plan that he or she would not have paid had he or she remained on the Guaranteed Savings Plan during that time, after application of any refund due to such customer under the terms of the Guaranteed Savings Plan and any applicable offsets, re-bills, or credits.

By way of example, if a Class Member was a enrolled as an Ambit customer and was on the Guaranteed Savings Plan on February 15, 2012, and was rolled to the New York Select Variable Plan on December 15, 2012 and paid Ambit \$200 dollars more while on the New York Select Variable Plan than the same Class Member would have paid if on the Guaranteed Savings Plan during the same time period, that Class Member's claim shall be calculated as: $\$200 \times .50 = \100

20. Defendants will perform the claim calculations described in paragraphs 18 and 19 as follows:

Claim Amount = Total Ambit Amount – Net Incumbent Amount, multiplied by either 77.5% or 50% as indicated above

For purposes of this calculation, the following definitions for the included terms apply:

- 1) Total Ambit Amount = Ambit supply charges + adjustments (if any) – free energy credits (as applicable) – billing fee credits
- 2) Net Incumbent Amount = Calculated Incumbent supply charges* – 1% of calculated Incumbent supply charges

*The Incumbent supply charges shall be determined in accordance with the methodology used in the document bates-numbered Ambit_Simmons_0043095-96.

21. Ambit shall pay the Claims Administrator the amount necessary to satisfy the claims of the Pre- and Post-February 1, 2012 Ambit Roll-off Class Members who submit valid and timely claim forms, up to the Maximum Roll-off Amount less the pro rata amount of the Class Counsel Fee and Expense Award and Administration and Notice Expenses. If the valid and timely claims do not exceed this net amount, Class Members' claims will be paid in full. If the valid and timely claims exceed this net amount, Class Members' payments for these claims will be reduced pro rata.

22. Guaranteed Savings Plan Recalculation Class Members. For each Eligible Class Member, Ambit will recalculate all Guaranteed Savings Plan calculations previously performed on the Class Member's account during the Class Period. To the extent the recalculation shows the Class Member has a net amount due to the Class Member over the time the Class Member was on the Guaranteed Savings Plan during the Class Period, the Guaranteed Savings Plan Recalculation Class Member shall have a claim that is equal to that amount. If the recalculation shows the Class Member does not have a net amount due to the Class Member over the time the Class Member was on the Guaranteed Savings Plan during the Class Period, the Guaranteed Savings Plan Class Member shall receive no payment other than payment, if any, he or she may be entitled to pursuant

to paragraphs 18 or 19, above. Defendants will perform the Guaranteed Savings Plan recalculation as follows:

Net Ambit Guaranteed Savings Plan Charges – (Comparable Utility Charge Amount x .99¹) = Class Member claim amount.

For purposes of this recalculation, the following definitions for the included terms apply:

- 1) “Net Ambit Guaranteed Savings Plan Charges” means Ambit’s charges to the Class Member during the applicable period the Class Member was on the Guaranteed Savings Plan, less all refunds, offsets, re-bills, or credits, including but not limited to those obtained by the Class Member making a complaint to the New York Public Service Commission, provided to the Class Member during or related to the applicable period the Class Member was on the Guaranteed Savings Plan. For purposes of determining the Net Ambit Guaranteed Savings Plan Charges, Ambit will consider any checks Ambit previously issued in connection with the Class Members’ participation in the Guaranteed Savings Plan that were not cashed to have been previously paid if such funds were escheated to the state of New York.
- 2) “Comparable Utility Charge Amount” means Ambit’s calculation of what the Class Member’s incumbent utility provider would have charged during the applicable period the Class Member was on the Guaranteed Savings Plan.

¹ The Guaranteed Savings Plan was advertised to save at least 1% from the immediately-prior utility provider.

23. Ambit shall pay the Claims Administrator the amount necessary to satisfy the claims of the Guaranteed Savings Plan Recalculation Class Members who submit valid and timely claim forms, up to the Maximum Guaranteed Savings Plan Recalculation Amount less the pro rata amount of the Class Counsel Fee and Expense Award and the Administration and Notice Expenses. If the valid and timely claims exceed this net amount, Class Members' payments for these claims will be reduced pro rata.

F. Settlement Payments

24. Within thirty (30) days after the Claim Deadline, the Claims Administrator shall provide to Ambit a list of Eligible Class Members that is current as of that date. Not later than ten (10) business days after receiving the list of Eligible Class Members, Ambit shall provide to the Claims Administrator for Eligible Class Members on that list the calculation of claims amounts for: (i) the Pre-February 1, 2012 Ambit Roll-off Class Members, (ii) the Post-February 1, 2012 Ambit Roll-off Class Members, and (iii) the Guaranteed Savings Plan Recalculation Class Members. At the same time, Ambit shall provide the Claims Administrator and Class Counsel with a spreadsheet of the calculations for verification. The Parties will work in good faith to resolve any disagreements regarding the accuracy of the calculations. Absent agreement, the Parties will first engage the services of mediator David Geronemus (at Ambit's expense) in an effort to resolve any dispute concerning the calculations, and if such efforts with the mediator are unsuccessful, the Parties may submit any dispute concerning the calculations to the Court for resolution. After the final list of Eligible Class Members and Ambit's claims calculations have been provided and verified, the Claims Administrator shall provide to Ambit a final list of Eligible Class Members' claims (the "Final Claims Payment Information").

25. Within ten (10) business days of receiving the Final Claims Payment Information, or the Effective Date, whichever is later, Ambit shall pay or cause to be paid to the Claims

Administrator all amounts to be paid to Eligible Class Members pursuant to the Final Claims Payment Information, up to the Maximum Roll-off Amount, the Maximum Guaranteed Savings Plan Recalculation Amount, and the Maximum Settlement Amount, as applicable, less the applicable portion of the Class Counsel Fee and Expense Award and less the applicable portion of the Administration and Notice Expenses for each of those maximum amounts (the “Final Net Settlement Amount”). The Claims Administrator shall mail the settlement payments to Class Members by first class mail to the address listed on each Eligible Class Member’s Claim Form within thirty (30) days after receipt of the Final Net Settlement Amount from Defendants.

26. It is agreed that a given Class Member may receive or have received both electric and natural gas supply service or may have received either electric or natural gas supply at more than one time or more than one location. Under these circumstances, Class Members may receive a payment for: (i) both electric and gas supply at the same location; or (ii) electric or gas supply at more than one location, however, a separate Claim Form must be completed for each service address. No more than one payment will be paid per Claim Form. If a Class Member has both electric and gas supply at the same service address, he/she need only submit one Claim Form.

27. Settlement Payments will be made on a “claims made” basis, and Ambit will fund valid and timely claims only up to the Maximum Settlement Amount.

28. Class Members who are mailed payments shall have ninety (90) days from the date of mailing of the checks within which to cash those checks. Upon the expiration of the ninety (90)-day period, any check not cashed will become void, and the Eligible Class Member shall not be entitled to any payment. The voiding of any such check by the passage of time as described in this paragraph shall not serve to invalidate any other provisions of this Agreement as to any Class Member, including the release given in paragraphs 33-34 hereof.

G. Other Payments by Defendants

29. Defendants agree not to object to Court approval of the Service Awards provided the Service Awards do not exceed the amounts set forth in the "Service Award" definition above.

30. Defendants agree not to object to the Class Counsel Fee and Expense Award provided it does not exceed the amount set forth in the "Class Counsel Fee and Expense Award" definition above. This request is subject to approval by the Court, and the final amount awarded by the Court as the Class Counsel Fee and Expense Award (which includes the Service Awards) will be paid by Ambit up to the maximum amount set forth in the "Class Counsel Fee and Expense Award" definition. Ambit agrees to pay or cause to be paid the Class Counsel Fee and Expense Award (up to the maximum amount per this Agreement) to the Wittels Law firm escrow account by wire transfer within ten (10) business days of the latest of the following: (1) the Effective Date; (2) the date that the time for taking an appeal from the order awarding the fees and expenses has expired, with no appeal being filed; or (3) if an appeal is taken from the order awarding the fees and expenses, the highest court to which such appeal may be taken affirms the order awarding the fees and expenses. Notwithstanding anything contained in this Agreement that might be construed to the contrary, it is understood by the Parties and Class Counsel that attorneys' fees, costs, and expenses and Service Awards, in the amount awarded by the Court up to \$8.6 million, and Administration and Notice Expenses, which count towards the Maximum Settlement Amount, are the only such fees, costs, and expenses that Defendants will pay in connection with this Settlement.

31. The procedure for and the allowance or disallowance of any application for attorneys' fees and expenses and the Service Awards are matters separate and apart from the approval of the Settlement and shall be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of this Settlement Agreement and the Settlement and set forth in an order separate from the Final Approval Order. The Court's failure to

approve, in whole or in part, any award of attorney fees and costs to Class Counsel, including any Service Award, or any appellate court's reversal or modification of any such award, shall not affect or delay the validity or finality of the Settlement, the Final Approval Order, or the judgment, nor shall such non-approval be grounds for rescission of the Settlement Agreement, as such matters are not the subject of any agreement among the Parties other than as set forth above and are not considered material to this Agreement and shall not affect any other rights or obligations under the Agreement. In the event the Court declines to approve, in whole or in part, the payment of attorney fees, litigation costs, and expenses to Class Counsel in the amount sought by Class Counsel or the payment of any Service Award, the remaining provisions of this Settlement Agreement shall remain in full force and effect.

H. Full and Final Settlement

32. The Parties agree that this Litigation is being voluntarily settled after assistance from an experienced mediator and consultation with experienced legal counsel and that the terms of this Settlement Agreement were negotiated at arm's length and in good faith. The Parties intend the Settlement and Settlement Agreement to be a final and complete resolution of this Litigation and the Released Claims. To effectuate that purpose, the Parties agree to reasonably cooperate with one another and use their best efforts to obtain preliminary and final Court approval of the Settlement and this Settlement Agreement and the judgment of final dismissal with prejudice of the Litigation. The Parties further agree not to encourage any member of the Settlement Class to oppose or obstruct the Settlement or to opt out of the Settlement.

I. Release

33. Upon the Effective Date and without any further action by the Court or by any Party to this Settlement Agreement, Plaintiffs and all of the Class Members and all of their administrators, executors, personal representatives, heirs, agents, attorneys, assigns, predecessors, and successors (collectively, the "Releasers"), for good and sufficient consideration, the receipt and adequacy of which

is acknowledged, shall be deemed to, and shall, in fact, have remised, released, and forever discharged any and all of the Released Claims, which they, or any of them, had or has against the Released Persons. After the Effective Date, the Releasors shall not seek, and are hereafter barred and enjoined from seeking, to recover from any Released Persons based, in whole or in part, upon any of the Released Claims.

34. Releasors also expressly waive and release upon the Effective Date any and all rights and benefits conferred by any provision, statute, regulation, rule, or principal of law or equity of any state or applicable jurisdiction that provides that a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor. The Releasors acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention to release fully, finally, and forever all Released Claims, and in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

III. PROCEDURES FOR EFFECTUATING SETTLEMENT

A. Preliminary Approval

35. Promptly after the execution of this Settlement Agreement, Plaintiffs will move the Court for an order preliminarily approving this Settlement Agreement and requesting that the Court:

- a. preliminarily approve the Settlement as fair and reasonable to the Settlement Class;
- b. conditionally certify the Settlement Class for settlement purposes only;
- c. appoint Plaintiffs as representatives of the Settlement Class and Plaintiffs' Counsel as Class Counsel for the Settlement Class, respectively;

- d. approve the form and content and manner of service of the Settlement Notice to the Settlement Class as set forth in this Agreement and direct that notice be sent to the Settlement Class pursuant to the terms of Settlement Agreement;
- e. find that such notice constitutes the best notice practicable under the circumstances;
- f. schedule dates by which the Parties and Class Members are to comply with their requirements and obligations under the Settlement Agreement; and
- g. set a hearing date for the Final Approval Hearing, which shall be no later than one hundred and five (105) days after the Preliminary Approval Date and shall be included in the Settlement Notice, and at which Plaintiffs shall obtain entry of an order and final judgment as to Defendants:
 - i. approving the Settlement as fair, reasonable, and adequate and directing the consummation of the Settlement according to its terms;
 - ii. directing that the Litigation be dismissed with prejudice and, except as provided herein, without costs;
 - iii. reserving exclusive and continuing jurisdiction over the Settlement, including administration and consummation of the Settlement, to the Court; and
 - iv. approving the release of the Released Claims as specified herein as binding and effective as to all Class Members and permanently barring and enjoining such Class Members from asserting any Released Claims.

In connection with the motion for Preliminary Approval, Plaintiffs will submit to the Court, among other things, a proposed Order Granting Preliminary Approval. Plaintiffs will provide Defendants the opportunity to review the motion for Preliminary Approval and proposed Order

Granting Preliminary Approval at least five (5) business days before filing the motion, and agree to reasonably address comments by Defendants to such documents.

B. Denial of Preliminary Approval

36. Plaintiffs, Class Counsel, and Defendants will cooperate and take all reasonable actions to obtain a Preliminary Approval Order. If the Court declines to enter such an order, Plaintiffs and Defendants will use all reasonable efforts that are consistent with this Settlement Agreement to cure any issues identified by the Court. If, despite such efforts, the Court does not enter the Preliminary Approval Order the case will proceed as if no settlement had been reached.

C. Potential Opt Outs and Objectors

37. Subject to an order of the Court so providing, the Parties agree that:

1. Opt Outs

38. Any Class Member, other than the Named Plaintiffs, Mitchell Frazier, and Rocco J. Feola, may elect to be excluded from this Settlement and from the Settlement Class by opting out of the Settlement Class. Any member of the Settlement Class who desires to be excluded from the Settlement Class must give written notice to the Claims Administrator of the election to be excluded. Any request for exclusion must be in writing, signed by the recipient of the Settlement Notice and potential member of the Settlement Class, including the requester's full name and current address. The last day to opt out of the Settlement Class will be seventy-five (75) days after the Preliminary Approval Date, subject to Court approval and inclusion in the Settlement Notice (the "Opt Out Deadline"). Any member of the Settlement Class who timely and properly opts out of the Settlement Class pursuant to the terms of this Agreement will not be bound by the terms of this Settlement Agreement, including any releases contained herein, and will not receive any payments provided for in this Settlement Agreement.

39. The Named Plaintiffs affirmatively support this Settlement and agree not to opt out of the Settlement.

40. No later than three (3) days after the Opt-Out Deadline, the Claims Administrator shall provide Class Counsel and Defendants' Counsel with the percentage of the number of members of the Settlement Class that have opted out of the Settlement Class (the "Opt-Out Percentage"). If fifteen (15) percent or more of the number of members of the Settlement Class exercise the right to opt out of the Settlement Class, Defendants shall, in their sole discretion, have the right to rescind this Settlement Agreement by written notice to Class Counsel within ten (10) days after receiving the Opt-Out Percentage from the Claims Administrator.

2. Objections

41. Any Class Member who wishes to object to the Settlement must file a written objection with the Court, and serve copies on Class Counsel and counsel for Defendants, as set forth in the Settlement Notice. The last day for Class Members to object to the Settlement will be seventy-five (75) days after the Preliminary Approval Date. Any objections not raised properly and timely will be waived, and any Class Member who fails to timely file and serve a valid written objection shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by any means, including but not limited to an appeal. To be valid, any objection must be set forth in writing and contain all of the following:

- a. Reference at the beginning to *Simmons et al. v. Ambit Energy Holdings, LLC et al.*, Index No. 503285/2015, in Supreme Court of the State of New York, Kings County;
- b. The objector's full name, address, and telephone number;
- c. A written statement of all grounds for the objection, accompanied by any legal support for such objection;
- d. Copies of any papers, briefs, or other documents upon which the objection is based;
- e. A list of all persons who will be called to testify in support of the objection, if any;

- f. A statement of whether the objector intends to appear at the Final Approval Hearing, and, if the objector intends to appear at the Final Approval Hearing through counsel, a statement identifying all attorneys representing the objector who will appear at the Final Approval Hearing;
- g. A statement of his, her, or its membership in the Settlement Class, including all information required by the Claim Form; and
- h. A detailed list of any other objections submitted by the Settlement Class Member, or his, her, or its counsel, to any class action submitted in any court, whether state or federal, in the United States in the previous five (5) years, or a statement that the Settlement Class Member, and his, her, or its counsel, have not objected to any class action submitted in any court, whether state or federal, in the United States in the previous five (5) years.

42. The Named Plaintiffs affirmatively support this Settlement and agree not to object to the Settlement.

43. None of the Named Plaintiffs, Class Counsel, Defendants, or their counsel shall in any way encourage any Class Member to object to this Settlement.

C. Final Approval of the Settlement

44. This Settlement Agreement and the Settlement embodied herein are subject to final approval by the Court. If the Settlement is finally approved, the Court will enter a judgment dismissing all claims against Defendants with prejudice. Named Plaintiffs waive any right to appeal or collaterally attack a Final Approval Order entered by the Court. Plaintiffs will seek to obtain from the Court, as a condition of settlement, a Final Approval Order in a form to be agreed upon by the Parties. The Final Approval Order will, among other things, (a) finally certify the Settlement Class; (b) enter judgment in accordance with this Settlement Agreement; (c) approve

the Settlement as fair, adequate, reasonable, and binding on all Class Members who have not timely opted out pursuant to paragraph 38; (d) dismiss the Litigation with prejudice; (e) enter an order permanently enjoining all Class Members who do not opt out from pursuing and/or seeking to reopen claims that have been released by this Settlement Agreement; (f) authorize payments to all Class Members who submit timely and valid claims; and (g) incorporate the terms of this Settlement Agreement.

45. Plaintiffs shall file their motion in support of the request for a Final Approval Order and for approval of attorneys' fees and reimbursement of costs and expenses for Class Counsel and the Service Awards no later than twenty-one (21) days prior to the date set for the Final Approval Hearing.

D. Effect of Failure to Grant Final Approval.

46. Plaintiffs and Defendants will cooperate and take all reasonable actions to obtain a Final Approval Order. If the Agreement is not approved or if it is materially modified by the Court or upon appeal or remand, any Party may rescind this Agreement in its entirety by written notice to counsel for the other Parties filed and served within ten (10) business days of the event triggering the right to rescind. If no Party timely elects to rescind, then the Parties shall remain bound to the Settlement as so modified. For purposes of this paragraph, a "material modification" is one that significantly affects the rights or obligations of one or more of the Parties. Without limiting the foregoing and by way of illustration only, (a) any change to the scope of the Release set forth in this Agreement; or (b) any increase in the cost of the Settlement to be borne by Defendants shall be deemed to be a material modification. No order or action of the Court pertaining to attorneys' fees, costs, expenses, or Service Awards shall be considered to constitute a material modification so long as such order, action, or modification does not increase the cost of Settlement to be borne by Defendants and does not require that Defendants do anything not specifically set forth herein. Any

dispute as to the materiality of any modification or proposed modification of this Agreement shall be resolved by the Court.

47. If the Agreement is not approved, or if any Party chooses to rescind pursuant to paragraph 46, Plaintiffs and Defendants will use all reasonable efforts to cure any issues identified by the Court. The Parties jointly agree to attempt to renegotiate the Settlement and seek Court approval of the renegotiated settlement. If, despite such efforts, the Court does not approve the Agreement, the case will proceed as if no settlement had been reached and each Party shall return to his, her, or its respective status as of the date of execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed and any related orders had not been entered, preserving all of their respective claims and defenses.

48. Defendants will not oppose Plaintiffs' appeal of any denial of their application for Service Awards, and attorneys' fees, and costs and expenses as requested pursuant to the terms of this Settlement Agreement.

E. Termination of Agreement

49. This Agreement shall terminate: (a) automatically if the Court fails to approve the Agreement; (b) at the timely election of any Party, in the event of any proposed material modification of this Agreement as a condition to approval of the Settlement; (c) at the timely election of Defendants, in the event of fifteen (15) percent or more of the number of members of the Settlement Class opting out of the Settlement Class; or (d) prior to approval of this Agreement by the Court, upon the mutual agreement of the Parties in writing by and through their respective counsel.

IV. MISCELLANEOUS PROVISIONS

50. Costs. Except as otherwise provided in this Settlement Agreement, each Party shall bear its own costs, attorneys' fees, and expenses.

51. Entire Agreement. This Settlement Agreement, together with the Exhibits hereto, constitutes the entire agreement between the Parties with respect to the subject matter of the Settlement and supersedes all prior negotiations, communications, memoranda, and agreements between the Parties. No Party is entering into this Agreement in reliance upon any representations, warranties, or inducements other than those contained in this Agreement.

52. Amendments. This Settlement Agreement may be modified or amended only by an order of the Court or a writing signed by Class Counsel and counsel for Defendants.

53. Extensions of Time. The Parties may jointly request that the Court allow reasonable extensions of time to carry out any of the provisions of the Settlement Agreement without formally amending this Settlement Agreement.

54. Plaintiffs' Authority. Class Counsel represent and warrant that they are authorized to take all appropriate actions required or permitted to be taken by or on behalf of the Named Plaintiffs and, subsequent to an appropriate Court Order, the Settlement Class or Class Members in order to effectuate the terms of this Settlement Agreement and are also authorized to enter into appropriate modifications or amendments to this Agreement on behalf of the Named Plaintiffs and, subsequent to an appropriate Court Order, the Settlement Class or Class Members.

55. Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall be deemed to be one and the same instrument. The Parties agree that a copy of the executed counterparts may be filed with the Court in connection with the motion to approve the Settlement, either in portable document format or some other suitable electronic form, as an exhibit to Plaintiffs' motions for preliminary and final approval without the need to collate and file a copy with original signatures.

56. Binding Nature. This Settlement Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the Named Plaintiffs, Class Members and Defendants.

57. Construing the Agreement. This Settlement Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been initially drafted by counsel for only one of the Parties. It is recognized that this Settlement Agreement is the result of arm's-length negotiations between the Parties and it is acknowledged that all Parties have contributed substantially to the preparation of this Settlement Agreement, accordingly, the doctrine of *contra proferentum* shall not apply in construing this Settlement Agreement, nor shall any other such similar doctrine apply. Each Party acknowledges that it has been and is being fully advised by competent legal counsel of the Party's own choice and fully understands the terms and conditions of this Agreement, and the meaning and import thereof, and that such Party's execution of this Agreement is with the advice of such Party's counsel and of such Party's own free will. Each Party represents and warrants that it has sufficient information regarding the Litigation, the Settlement, and the other Parties to reach an informed decision and has, independently and without relying on other Parties, and based on such information as it has deemed appropriate, made its own decision to enter into this Agreement and was not fraudulently or otherwise wrongfully induced to enter into this Agreement.

58. Taxes. The Plaintiffs, Eligible Class Members, Claims Administrator, and Class Counsel receiving funds pursuant to this Agreement shall be solely responsible for filing all information and other tax returns necessary or making any tax payments related to funds received pursuant to this Settlement Agreement. Defendants make no representations regarding, and shall not be responsible for, the tax consequences of any payments made pursuant to this Agreement.

59. Public Statements. Any press release or other written public statement, including electronic public statements, published or authorized by Plaintiffs or their representatives, including Class Counsel, shall be sent to Defendants' counsel at least three (3) business days prior to release. Statements in response to a press inquiry shall not be subject to the foregoing pre-notification requirement.

60. Choice of Law. This Settlement Agreement shall be governed by and interpreted in accordance with the substantive common law of the State of New York, exclusive of choice of law principles.

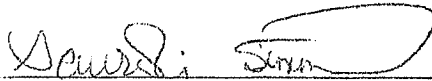
61. Jurisdiction. After entry of the Preliminary Approval Order, the Parties submit to the exclusive jurisdiction of the Supreme Court of the State of New York, Kings County for the purpose of enforcing this Settlement Agreement or implementing any part of the Settlement embodied in this Settlement Agreement.

62. No Admissions or Concessions. Neither this Agreement nor any proceedings connected with it shall be deemed or construed to be an admission from or concession by any Party or any Released Person of any wrongdoing or liability or lack thereof or evidence of any violation by any Defendant of any federal or state statute or law or lack thereof either in the Litigation or in any other proceeding, and evidence thereof shall not be discoverable or used, directly or indirectly, in any way, except in a proceeding to interpret or enforce this Agreement. This Agreement represents the settlement of disputed claims and does not constitute, nor shall it be construed as, an admission of the correctness or infirmity of any position asserted by any Party, or an admission of liability or of any wrongdoing by any Party or lack thereof, or as an admission or concession regarding any strengths or weaknesses of the Plaintiffs' or putative classes' claims or Defendants' defenses. Defendants specifically deny any wrongdoing or liability by any of the Released Persons.

63. Headings. The captions and headings employed in this Settlement Agreement are for convenience only, are not a part of the Settlement Agreement, and shall not be used in construing or interpreting the Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement, as of the date and year first above written.

Dated: December 11, 2017



Taurshia Simmons
Individually and on behalf
of the Class

Dated: December __, 2017

Navid Kalatizadeh
Individually and on behalf
of the Class

Dated: December __, 2017

Briar Whitney
Individually and on behalf
of the Class

Dated: December __, 2017

Steven L. Wittels
Wittels Law, P.C.
18 Half Mile Road
Armonk, New York 10504

Dated: December __, 2017

Jeffrey A. Klafter
Klafter Olsen & Lesser LLP
Two International Drive, Suite 350
Rye Brook, NY 10573


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Dated: December __, 2017

Taurshia Simmons
Individually and on behalf
of the Class

Dated: December 26, 2017



Navid Kalatizadeh
Individually and on behalf
of the Class

Dated: December __, 2017

Brian Whitney
Individually and on behalf
of the Class

Dated: December __, 2017

Steven L. Wittels
Wittels Law, P.C.
18 Half Mile Road
Armonk, New York 10504

Dated: December __, 2017

Jeffrey A. Klafter
Klafter Olsen & Lesser LLP
Two International Drive, Suite 350
Rye Brook, NY 10573

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Individually and on behalf
of the Class

Dated: December __, 2017

Navid Kalatizadeh
Individually and on behalf
of the Class

Dated: December 11, 2017



Brian Whitney
Individually and on behalf
of the Class

Dated: December __, 2017

Steven L. Wittels
Wittels Law, P.C.
18 Half Mile Road
Armonk, New York 10504

Dated: December __, 2017

Jeffrey A. Klafter
Klafter Olsen & Lesser LLP
Two International Drive, Suite 350
Rye Brook, NY 10573

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Individually and on behalf
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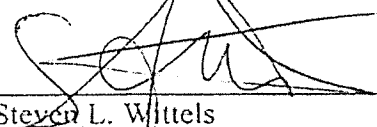
Dated: December __, 2017

Navid Kalatizadeh
Individually and on behalf
of the Class

Dated: December __, 2017

Brian Whitney
Individually and on behalf
of the Class

Dated: December 12, 2017



Steven L. Wittels
Wittels Law, P.C.
18 Half Mile Road
Armonk, New York 10504

Dated: December __, 2017

Jeffrey A. Klafter
Klafter Olsen & Lesser LLP
Two International Drive, Suite 350
Rye Brook, NY 10573

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Individually and on behalf
of the Class

Dated: December __, 2017

Navid Kalatizadeh
Individually and on behalf
of the Class

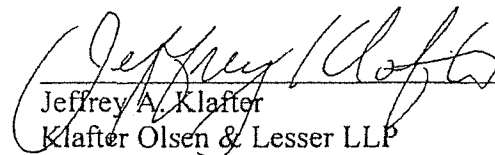
Dated: December __, 2017

Brian Whitney
Individually and on behalf
of the Class

Dated: December __, 2017


Steven L. Wittels
Wittels Law, P.C.
18 Half Mile Road
Armonk, New York 10504

Dated: December 13, 2017




Jeffrey A. Klaffer
Klaffer Olsen & Lesser LLP
Two International Drive, Suite 350
Rye Brook, NY 10573

Dated: December 11, 2017




Ambit Energy Holdings, LLC
By: Jere W. Thompson Jr.
Chief Executive Officer

Dated: December 11, 2017




Ambit Texas, LLC
By: Jere W. Thompson Jr.
Chief Executive Officer

Dated: December 11, 2017



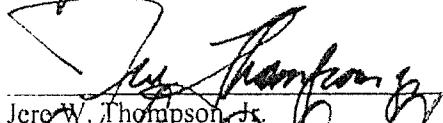
Ambit Marketing, LLC
By: Jere W. Thompson Jr.
Chief Executive Officer

Dated: December 11, 2017




Ambit New York, LLC
By: Jere W. Thompson Jr.
Chief Executive Officer

Dated: December 11, 2017



Jere W. Thompson, Jr.

Dated: December 18, 2017



Chris Chambliss

EXHIBIT A

CLAIMANT CODE: <<CLAIMANTID>>

If you purchased electricity or natural gas from Ambit Energy in New York, you may be entitled to a cash payment from a class action settlement.

A court authorized this Notice. It is not a solicitation from a lawyer or claims filing service. You are not being sued. This Notice is to advise you of your legal rights.

This Notice is to inform you of a proposed settlement of a class action lawsuit pending against various Ambit entities and principals. As discussed in further detail below, this class action lawsuit is brought on behalf of all persons who received services in the State of New York who were enrolled as an electric and/or gas customer of Ambit on a Guaranteed Savings Plan. The proposed class action settlement provides for Ambit to pay: (1) up to \$26.5 million to pay the claims of Guaranteed Savings Plan customers who were rolled to a New York Select Variable Plan; and (2) up to \$3.25 million to pay the claims of Guaranteed Savings Plan customers for whom Ambit did not provide the full savings guaranteed.

Ambit's records indicate that you may be entitled to a share of the proposed settlement. This Notice explains your legal rights and options, as well as the deadlines to exercise them. **Read this Notice carefully, as your legal rights may be affected whether or not you respond.**

YOUR RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	This is the only way you can get a payment. <u>The Claim Form must be submitted by [DATE].</u> Submit the enclosed Claim Form or complete an online Claim Form at www.xxxx.com by using the "CLAIMANT CODE" in the upper left-hand corner of this Notice. You can also download a Claim Form to submit by mail at www.xxxx.com or receive one by calling 1-888-XXX-XXXX.
EXCLUDE YOURSELF	Get no payment. If you ask to be excluded you will not be a part of the lawsuit or settlement. You will not receive any benefits from this settlement and you keep any rights to sue Ambit separately about the same legal claims in this lawsuit.
OBJECT	Notify the Court if you have any objections to the settlement.
DO NOTHING	Get no payment. Release claims against Ambit.

These rights and options – and the deadlines to follow – are explained in this Notice.

QUESTIONS? CALL 877-XXX-XXXX

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BASIC INFORMATION

1. What is this Notice?

This Notice describes the cash benefits available from a proposed settlement of a class action lawsuit, and your options. The company's records show that sometime between September 5, 2010 and [PAD] you may have purchased your electric or gas on a Guaranteed Savings Plan from Ambit Energy Holdings, LLC, Ambit Texas, LLC, Ambit Marketing, LLC, or Ambit New York, LLC (these entities are referred to collectively in this Notice as "Ambit").

If the Court approves the settlement and it becomes final, an administrator appointed by the Court will make the payments that the settlement provides.

This Notice explains the lawsuit, the settlement, your legal rights, what payments may be available to you, who is eligible for these payments, and how to get them.

2. What is this lawsuit about?

The class action lawsuit was brought on behalf of Ambit customers in New York and alleges that the company overcharged customers for gas and electricity by rolling them off a Guaranteed Savings Plan onto Ambit's New York Select Variable Plan without proper authorization. The lawsuit also claims that Ambit did not provide the full amount of savings represented under its Guaranteed Savings Plan. Ambit denies any wrongdoing. The Court has not made any decisions as to the merits of the allegations.

3. Why is this a class action?

In a class action, one or more individuals or entities, called class representatives, sue on behalf of others who have similar claims. In this class action, Plaintiffs brought a lawsuit in New York on behalf of Ambit's energy customers who they believe have similar claims (the "Class Members"). The case is brought as a class action as it is more efficient to pursue all Class Members' claims in one lawsuit. One court will resolve issues for all Class Members, except those who exclude themselves from the settlement.

4. Why is there a settlement?

After more than four years of litigation and extensive negotiations, the parties have agreed to a settlement. The court did not decide in favor of either party, and Ambit denies any liability. A settlement avoids the uncertainty, risks and delay of litigation, and the Class Members have the opportunity to receive monetary benefits. Both the Class Representatives and their attorneys believe that the settlement is fair and in the best interests of the Class. The settlement is subject to Court approval.

WHO IS INCLUDED IN THE SETTLEMENT?

5. How do I know if I am part of the settlement?

Class Members who may be entitled to receive a cash payment under the settlement include persons who received services in the State of New York who were enrolled as a customer of Ambit and were on any of Ambit's Guaranteed Savings Plans at any time during the period September 5, 2010 through and including [PAD]. A more specific class definition is set forth in the Settlement Agreement at ¶10(ee), available at www.xxxxxx.com.

According to Ambit's records, you may be a Class Member entitled to receive a payment from the settlement. If you are not sure if you are a Class Member, you can ask for free help by contacting Class Counsel through the contact information provided below or by visiting the website or calling the number for the Claims Administrator provided in this Notice.

THE SETTLEMENT BENEFITS – WHAT YOU GET

6. What does the settlement provide?

The settlement provides a formula for calculating claims of Ambit customers who were rolled off of Ambit's Guaranteed Savings Plan to its New York Select Variable Plan (the "Roll-Off Claims"). The amount of your claim depends on when you enrolled with Ambit, the length of time you were a customer, your usage, your charges, how many customers submit claims, the amount of settlement administration costs, and attorneys' fees and expenses approved by the Court.

If you properly submit a valid Claim Form (which is enclosed with this notice) by [claim deadline], you will be entitled to receive a payment as follows:

If you enrolled as an Ambit customer prior to February 1, 2012:

If you submit a valid Claim Form, you will have a claim that is equal to 77.5% of the amount you paid on the New York Select Variable Plan that is above the amount you would have paid if you remained on the Guaranteed Savings Plan during that same time.

By way of example, if you were enrolled as an Ambit customer on the Guaranteed Savings Plan on January 1, 2011, and were rolled to the New York Select Variable Plan on January 1, 2012, and paid Ambit \$200 dollars more while on the New York Select Variable Plan than you would have paid if on the Guaranteed Savings Plan during that same time period, your claim will be calculated as: $\$200 \times .775 = \155

If you enrolled as an Ambit customer on or after February 1, 2012:

If you submit a valid Claim Form, you will have a claim that is equal to 50% of the amount you paid on the New York Select Variable Plan that is above the amount you would have paid if you remained on the Guaranteed Savings Plan during that same time.

By way of example, if you were enrolled as an Ambit customer on the Guaranteed Savings Plan on February 15, 2012, and were rolled to the New York Select Variable Plan on December 15, 2012, and paid Ambit \$200 dollars more while on the New York Select Variable Plan than you would have paid if on the Guaranteed Savings Plan during that same time period, your claim will be calculated as: $\$200 \times .50 = \100

The difference in the Roll-off Claim formulas is based on a Court ruling that persons who became Ambit customers on or after February 1, 2012 were given contracts that unambiguously disclosed that customers would be rolled to the New York Select Variable Plan, and therefore, persons who enrolled with Ambit after February 1, 2012 have weaker Roll-off Claims than persons who enrolled with Ambit before February 1, 2012.

QUESTIONS? CALL 877-XXX-XXXX

Ambit has agreed to pay Roll-Off Claims submitted by Eligible Class Members who submit timely and valid claim forms in an amount up to \$26.5 million, less an allocated portion of settlement administration costs and Court-awarded attorneys' fees and expenses. If the total amount of Roll-Off Claims is less than \$26.5 million, you will receive the total amount of your Roll-Off Claim (if any). If the total amount of Roll-Off Claims exceeds \$26.5 million, you will receive a pro rata portion of your Roll-Off Claim (if any).

You may also receive a Guaranteed Savings Plan recalculation:

If you properly and timely submit a valid Claim Form and were on a Guaranteed Savings Plan (whether or not you were rolled off a Guaranteed Savings Plan to a New York Select Variable Plan), Ambit will recalculate any Guaranteed Savings Plan calculations that Ambit previously performed for you during the Class Period.

If the recalculation shows that Ambit owes you any money related to the time you were on the Guaranteed Savings Plan during the period from September 5, 2010 through and including [PAID], you will have a claim that is equal to that amount. The calculation may show that Ambit does not owe you any money, in which case you will not receive a payment for this aspect of the settlement. Ambit has agreed to pay amounts owed based on recalculations up to \$3.25 million, less an allocated portion of settlement administration costs and Court-awarded attorneys' fees and expenses. If the total amount of claims is less than \$3.25 million, you will receive the total amount of your claim (if any). If the total amount of claims exceeds \$3.25 million, you will receive a pro rata portion of your claim (if any).

HOW TO GET A PAYMENT – SUBMIT A CLAIM FORM

7. How do I get a payment?

To qualify for a payment, you must timely submit the Claim Form enclosed with this Notice. You can also submit an online Claim Form at www.xxxx.com by using the CLAIMANT CODE on the front of this Notice. You can also download a Claim Form at www.xxxx.com to submit by mail or receive one by calling 1-888-XXX-XXXX.

You must submit your Claim Form online or by mail so that it is postmarked before [INSERT END OF CLAIM PERIOD].

Failure to submit a Claim Form, or submission of an incomplete or untimely Claim Form, will render you ineligible to receive any payment under the settlement. Payments will only be sent out if the Court approves the settlement and it becomes final.

8. What happens if I don't send in a Claim Form?

If you don't send in a Claim Form and don't exclude yourself from the settlement as described in the next section below, you will still be bound by all the terms of the settlement, including releasing claims as described below, but you will not receive any payment from the settlement.

9. What am I giving up to get a payment or stay in the settlement?

Unless you exclude yourself from the settlement, you are staying in the settlement, and that means that if the Court approves the settlement and it becomes final, you cannot sue, continue to sue, or be part of any other lawsuit against Ambit about the issues released as part of the settlement. The settlement provides that there will be a general and broad release of all claims by Settlement Class members against Ambit Energy Holdings, LLC, Ambit Texas, LLC, Ambit Marketing, LLC, Ambit New York, LLC, Jere W. Thompson, and Chris Chambless, and each of their current and former parents, subsidiaries, affiliates, predecessors, successors, and assigns, and each of their respective, current, and former officers, directors, partners, owners, employees, agents, attorneys, and insurers, with a limited exception. The Released Claims and the limited exception are further described in ¶ 10(z) of the Settlement Agreement, available at [website].

Unless you exclude yourself from the settlement, all of the Court's orders will apply to you and legally bind you.

EXCLUDING YOURSELF FROM THE SETTLEMENT

10. What does excluding myself from the settlement mean?

If you don't want to be a part of this lawsuit or settlement, then you may exclude yourself (i.e. opt-out) from the settlement. To exclude yourself from the settlement, you must submit a statement to the Claims Administrator with your name, address, and phone number effectively stating "I, [insert name], wish to opt-out of the "Ambit Energy/New York" class action settlement, and not receive any of the monetary benefits provided by the settlement or be bound by the Judgment in the case." Your opt-out statement must be signed and returned to the Claims Administrator at the following address so that it is postmarked or received on or before [INSERT OPT OUT DEADLINE]:

[Claims Administrator]

If you choose to opt out of the settlement: (1) you will not get any settlement payment; and (2) you cannot object to the settlement. By opting out, you will not be legally bound by the settlement, and may still pursue your own claims against Ambit at your own expense if they are still timely under the applicable statute of limitations.

OBJECTING TO THE SETTLEMENT

11. How can an objection be made?

If you do not like the settlement, you may object to the settlement. You may not object to the settlement if you exclude yourself from the lawsuit by opting out or if you are not a Class Member. The Court will consider your views, but the settlement may still be approved in spite of your objections.

To object, you must file a written objection with the Clerk of the Court, and must also serve your written objection on the lawyers representing the Class and Ambit at the addresses below. Your objection must be filed with the Court and mailed so that it is received no later than [INSERT OBJECTION DEADLINE]. Your objection must contain the following information: (a) Reference at the beginning to *Simmons et al. v. Ambit Energy Holdings, LLC et al.*, Index No.

503285/2015, in Supreme Court of the State of New York, Kings County; (b) Your full name, address, and telephone number; (c) A written statement of all grounds for the objection, accompanied by any legal support for such objection; (d) Copies of any papers, briefs, or other documents upon which your objection is based; (e) A list of all persons who will be called to testify in support of the objection, if any; (f) A statement of whether you intend to appear at the Final Approval Hearing, and, if you intend to appear at the Final Approval Hearing through counsel, the identity of all attorneys representing you who will appear; (g) A statement of your membership in the Settlement Class, including all information required by the Claim Form; and (h) A detailed list of any other objections you or your counsel has submitted to any class actions in any court, whether state or federal, in the United States in the previous five (5) years, or a statement that you and your counsel have not objected to any other class action settlement in any court in the United States in the previous five (5) years.

If you wish to object to the settlement and you do not serve a written objection containing all of the information listed above, you will not be permitted to object to the settlement and will be foreclosed from seeking any review of the settlement by any means, including but not limited to an appeal. Members of the Settlement Class who do not timely make their objections in this manner will be deemed to have waived all objections and shall not be entitled to be heard at the Fairness Hearing.

You have the right to retain a lawyer at your own expense to file your objection. If your lawyer intends to appear at the Fairness Hearing, your lawyer must file and serve a notice of appearance with the Clerk of the Court.

COURT	CLASS COUNSEL	
Clerk of the Court Supreme Court, Kings County Supreme Court Complex 360 Adams Street Brooklyn, New York 11201	Steven L. Wittels Wittels Law, P.C. 18 Half Mile Road Armonk, New York	Jeffrey A. Klafter Klafter Olsen & Lesser LLP 2 International Drive, Suite 350 10504 Rye Brook, NY 10573
	AMBIT'S COUNSEL	
	Nicole L. Williams Thompson & Knight LLP 1722 Routh Street, Suite 1500 Dallas, TX 75201	

THE LAWYERS REPRESENTING YOU

12. Who is Class Counsel?

The Court has appointed the following lawyers to represent you and the Class: Steven L. Wittels, J. Burkett McInturff, and Tiasha Palikovic of Wittels Law, P.C. and Jeffrey A. Klafter, Seth R. Lesser, Fran L. Rudich of Klafter Olsen & Lesser LLP.

You are not personally responsible for payment of attorneys' fees or expenses for Class Counsel.

Class Counsel have worked for more than four years without pay or any guarantee of obtaining a recovery for Ambit's current and former New York customers as described in this settlement notice. In a class action, it is customary for the attorneys representing the class to request a legal fee and reimbursement of expenses. Thus, Class Counsel will ask the Court for reimbursement of

reasonable litigation costs and a legal fee in an amount up to 28.9% of the maximum settlement amount of \$29.75 million (*i.e.*, in an amount not to exceed \$8.6 million). In class actions like this one, it is often customary for attorneys to receive a legal fee of 33%, which is more than the fee requested by Class Counsel here. Class Counsel will also ask the Court to authorize service awards in the amount of \$7,500 each to the three Class Representatives and \$2,500 each to two other former Ambit customers who assisted in the prosecution of this action by, among other things, providing affidavits filed with the Court. These amounts are in recognition of these individuals' significant contributions in bringing this action and providing important information used to achieve the settlement. To the extent the Court awards these service awards, they will be paid out of the award of attorneys' fees to Class Counsel.

THE FAIRNESS HEARING

13. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing on the fairness and adequacy of the proposed settlement and its terms, and to consider Class Counsel's request for an award of attorneys' fees and expenses and service awards on _____, 2018 at _____ [a.m./p.m.] before the Honorable Sylvia G. Ash, of the Supreme Court of New York, Kings County, 360 Adams Street, Brooklyn, New York 11201. *You do not have to appear at this Fairness Hearing.* At or after the hearing, the Court will decide whether to approve the settlement, and the requests for awards, fees, expenses, and costs. We do not know how long a decision by the Court will take to be made.

GETTING MORE INFORMATION

14. How do I get more information about the settlement?

You can contact the Claims Administrator xxxx at (800)-xxx-xxxx; or you may visit the website at www._____ where you will find the full Settlement Agreement, Claim Form, answers to frequently asked questions about the settlement, and certain litigation documents.

You can also contact Class Counsel listed above. You can also request to see the court file for *Simmons et al. v. Ambit Energy Holdings, LLC et al.*, Index No. 503285/2015, during regular business hours in the Clerk's Office at 360 Adams Street Brooklyn, NY 11201.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR AMBIT ENERGY WITH INQUIRIES ABOUT THE SETTLEMENT

EXHIBIT B

**Submit the Claim Form on the Next Page to Be Eligible to
Receive a Cash Payment from a Class Action Settlement
Related to Your Ambit Electricity or Gas Bill**

TO BE ELIGIBLE TO RECEIVE A PAYMENT, YOU MUST RETURN THIS CLAIM FORM SO THAT IT IS SUBMITTED ONLINE, OR POST-MARKED NO LATER THAN [DATE].

YOU MUST SUBMIT A SEPARATE CLAIM FORM FOR EACH NEW YORK ADDRESS AT WHICH YOU RECEIVED ELECTRICITY OR GAS FROM AMBIT.

Instructions

Please read the full Notice provided with this Claim Form (also available at www.XXXXX.com) carefully before filling out this Claim Form.

File your claim online at www.XXXXX.com

Or fill out the form on the next page and mail it to:

AMBIT ENERGY/NEW YORK LITIGATION
c/o XXXX XXXXXXXX, Claims Administrator
PO Box XXXX
City, ST XXXXX-XXXX

Your claim will not be processed if your Claim Form has not been signed and dated.

Make a copy of your completed Claim Form for your records.

Your claim must be postmarked by:
XX/XX/201X

CLAIM FORM

Simmons v. Ambit Energy Holdings, LLC

In the Supreme Court of the State of New York

Index No. 503285/2015

You must return this page to receive any payment.

LIT

PART 1: CLAIMANT INFORMATION

Claimant Code:

Provide the Claimant Code located in the upper left corner on the front of this notice or contact the Claims Administrator at (800)XXX-XXXX for your Claimant Code

Claimant Name: _____
First Name Last Name

Current Street Address: _____

City: _____ State: _____ Zip Code: _____

Account Holder Name (if different): _____

Service Street Address (if different): _____

City: _____ State: _____ Zip Code: _____

Phone Number: (_____) _____ - _____

Email Address: _____

Ambit Account Number (if unavailable, leave blank): A _____

PART 2 SIGNATURE

I wish to participate in the class action settlement in *Simmons, et al. v. Ambit Energy Holdings, LLC, et al.*, Index No. 503285/2015, in the Supreme Court for the State of New York, Kings County (the "Action"). I declare under penalty of perjury that the information contained in this claim form is true and correct to the best of my knowledge and belief and that on or before [PAD]. I enrolled as a customer of Ambit Energy in New York. I further acknowledge that submission of this claim form waives any and all rights I might otherwise have to opt out of the settlement of the Action and bring a lawsuit individually.

Signature: _____ Date (mm/dd/yy): ____/____/____

Exhibit C

The Claims Administrator shall perform the following tasks:

1. Creating and maintaining a database of names, addresses, e-mail addresses, and other contact and identifying information of the Settlement Class in accordance with information provided by Ambit in a usable electronic format. For purposes of notice and claim calculation, each unique utility account number maintained by Ambit will be considered a distinct Class Member.

2. Establishing a toll-free telephone number that Class Members can call to request an additional copy of the Settlement Notice and/or Claim Form and be sent to them by mail or email and obtain additional information regarding the Settlement. This shall be accomplished before mailing the Settlement Notice and Claim Form.

3. Developing and maintaining a webpage to provide:
- a. a copy of the Settlement Notice.
 - b. select pleadings from the Litigation (to be agreed upon by the Parties);
 - c. the Preliminary Approval Order;
 - d. contact information for the Claims Administrator and Class Counsel; and
 - e. a method for electronically requesting and submitting Claim Forms.

This shall be accomplished before mailing the Settlement Notice and Claim Form.

4. Printing, mailing, and emailing (when email addresses are available) the Settlement Notice and Claim Form.

5. Printing and mailing or emailing the Settlement Notice and Claim Form, to those Class Members who request it.

6. Compiling address information for re-sending any notices returned as undeliverable.

7. Compiling a list of Class Members who submit properly completed and timely Claim Forms, either by mail, email, or via the website, and verifying the accuracy and completeness and timeliness of the Claim Forms.

8. Notifying any Class Member who submits a Claim Form that is not properly completed so the Class Member has an opportunity to cure the defect within fourteen (14) days of such notification.

9. Distributing the Settlement Payment to Class Members who submit valid and timely Claim Forms and are eligible to receive a Settlement Payment.

10. Processing valid and timely requests for exclusion from the Settlement. Within three (3) days after the Opt-Out Deadline, the Claims Administrator shall provide counsel a list of all members of the Settlement Class who submitted valid and timely requests for exclusion from the Settlement.

11. Within seven (7) business days after Preliminary Approval, Ambit will provide the Claims Administrator with a list, in electronic form, of Class Members who can reasonably be identified in Ambit's records (the "Class List"). The Class List shall, to the extent available, contain the following data fields: first name, last name, last known address, address at which Ambit electricity or gas service was provided (if different), last known email address, last known phone number, service location ID, and Ambit account number (or other unique customer identifier).

12. At the time of providing the Class List, Ambit shall certify that the Class List represents the most current and up to date address that Ambit has for Class Members.

13. Within twenty-one (21) days of the date on which Ambit provides the Class List, the Claims Administrator shall mail, via First Class United States mail, the Settlement Notice and Claim Form to each Class Member as reflected on the Class List.

14. The Claims Administrator shall also email the Settlement Notice and Claim Form to each email address on the Class List.

15. Before the Claims Administrator's initial mailing of the Settlement Notice, the Claims Administrator shall run the Class List through the United States Postal Service ("USPS") National Change of Address ("NCOA") database and update any addresses where appropriate.

16. In advance of the Claims Administrator's mailing of the Settlement Notice, counsel for the Parties shall negotiate in good faith: (i) a list of frequently asked questions and answers ("FAQs") to be used by the Claims Administrator in responding to inquiries from Class Members; and (ii) the Claims Administrator's recorded message to callers.

17. Prior to the Claims Administrator's initial mailing of the Settlement Notice, the Claims Administrator shall also set up and operate a case-specific call center, including automated interactive voice response ("IVR") and voice-mail technology, to provide telephone support for the administration of the settlement, to address questions from and otherwise provide information to Class Members regarding the Settlement.

18. If in responding to a Class Member inquiry the Claims Administrator determines that it cannot respond to a Class Member's inquiry because the inquiry falls outside of the scope of the FAQs, then the Claims Administrator shall contact counsel for the Plaintiffs who shall either provide guidance to the Claims Administrator or contact the Class Member directly.

19. For Settlement Notices and Claim Forms returned as undeliverable by the post office, the Claims Administrator shall complete a standard skip trace in an effort to ascertain the current address of the particular Class Member in question and, if such address is ascertained, the Claims Administrator will re-send the Settlement Notice. For those Class Members who are re-sent the Settlement Notice and Claim Form within thirty (30) days of the Claim Deadline, the Claim Deadline shall be extended another twenty (20) days from the date of re-mailing.

20. In the event that a Settlement Notice is returned to the Claims Administrator with a forwarding address for the recipient, the Claims Administrator shall re-mail the Settlement Notice to that address, and the forwarding address will be deemed the address for that Class Member.

21. Defendants' Counsel and Class Counsel have the right to make reasonable inquiries and receive information from the Claims Administrator related to the claims administration process. Class Counsel and counsel for Defendants shall have the ability to communicate with the Claims Administrator without the need to include each other in each of those communications. Disputes regarding claims administration, if any, shall be resolved by the Court. This includes without limitation any disputes over whether a particular Class Member has submitted a valid and timely Claim Form.