

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

MICHAEL TODD (address: 16 Cerone Court, West Orange, New Jersey 07052),

ELIZABETH DONNELLON (507 Eastview Terrace Apt. 10, Abingdon, Maryland 21009), and

JEROME BONICOS (327 Wyckoff Avenue, Waldwick, New Jersey 07463),

Plaintiffs,

v.

ACN, INC. (1000 Progress Place Northeast, Concord, North Carolina 28025),

XOOM ENERGY, LLC (11208 Statesville Rd. Suite 200, Huntersville, North Carolina 28078), and

XOOM ENERGY MARYLAND, LLC,
(211 E Lombard Street, Suite 239, Baltimore, Maryland 21202),

Defendants.

NO. 8:15-CV-154

(ORIGINALLY FILED AS
*ADESINA V. ACN, INC. AND
XOOM ENERGY, LLC*)

CLASS ACTION

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT¹

Plaintiffs Michael Todd, Elizabeth Donnellon, and Jerome Bonicos file this Second Amended Complaint on behalf of themselves and all others similarly situated, by and through

¹ This action was originally commenced as *Adesina v. ACN, Inc. and XOOM Energy, LLC*.

their undersigned attorneys, against Defendants ACN, Inc. (“ACN”), XOOM ENERGY MARYLAND, LLC, (“XOOM MD”), and XOOM Energy, LLC (“XOOM Energy”) (collectively “Defendants” or “XOOM”) and allege as follows upon personal knowledge as to themselves and their own acts and experience and, as to all other matters, upon information and belief based upon, among other things, investigation conducted by their attorneys including interviews with former customers and XOOM sales representatives.

NATURE OF THE CASE

1. Plaintiffs bring this class action individually and on behalf of the Class and Sub-Classes defined below against Defendants to obtain relief, including, among other things, damages and declaratory relief. This class action is brought to remedy violations of law in connection with Defendants’ fraudulent and deceptive bait-and-switch sales practices and use of, among other devices, their variable rate Simpleflex plan.

2. Using standardized marketing and training materials, Defendants sell electric and gas to consumers,² through a network of XOOM independent sales representatives employed by ACN (“independent business owners” or “IBOs”), who are paid on a commission basis. In order to induce such sales, XOOM, directly and through its IBOs, represents to potential customers that, if they switch to XOOM from their local, regulated utilities or other energy suppliers, they will receive a low introductory rate on their energy bills, followed by purportedly competitive, market-based rates and savings on their energy bills. After customers sign up with XOOM, which has total control over the rates charged to Plaintiffs and the members of the Class and

² Upon information and belief, the Maryland Public Service Commission and others are investigating XOOM’s sales practices and that, should the Commission obtain injunctive or other relief, it may overlap with the relief Plaintiffs are seeking through this litigation.

Sub-Classes, unilaterally and without justification, raises the rates charged and customers' utility bills increase unjustifiably. Such practices, in the circumstances described herein, constitute a misleading and deceptive "bait-and-switch" scheme. The scheme is knowingly carried out jointly by Defendants and at Plaintiffs' expense.

3. Defendants' sales pitch is deceptive in that the rates actually charged to consumers are not competitive and bear little relation to prevailing market rates charged by regulated utilities. XOOM's customers across the nation (in the states where it conducts business) have been, and continue to be, scammed out of millions of dollars in exorbitant and unjustified charges which have caused damages to Plaintiffs and the members of the Class and Sub-Classes.

JURISDICTION AND VENUE

4. This is a nationwide class action commenced by Plaintiffs on behalf of themselves and all others similarly situated members of the Class and Sub-Classes defined below. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1), because Plaintiffs and Defendants are of diverse citizenship and the aggregate amount in controversy exceeds \$75,000, exclusive of interest and costs; and pursuant to 28. U.S.C. §1332(d)(2), because the Plaintiffs and the vast majority of the members of the Class and Sub-Class are of diverse citizenship from the Defendants and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs. There are more than 1,000 members of the Class and Sub-Classes.

5. . Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District, a

substantial part of the property that is the subject of this action is situated in this District, and Defendants are subject to personal jurisdiction in this District.

PARTIES

6. Plaintiff Michael Todd is a resident of West Orange, New Jersey. In or around May 2013, "Phil," an ACN IBO, called Plaintiff Todd to discuss XOOM Energy. The IBO promised Plaintiff Todd that that if he switched energy suppliers to XOOM, his energy bills would be consistently cheaper than what he was paying his local utility provider. Subsequently, Plaintiff Todd switched his energy supplier from Public Service Electric & Gas ("PSE&G") to XOOM. After a few months, Plaintiff Todd's energy bills skyrocketed, substantially increasing each month. In fact, the amount that Plaintiff Todd was charged by XOOM for electricity supply was 86% higher in January 2014 and 128% higher in February 2014 than he would have paid PSE&G during the same period.

7. Plaintiff Elizabeth Donnellon is a resident of Abingdon, Maryland. In or around October 2014, an ACN IBO named "Blain" visited Plaintiff Donnellon's home. The IBO showed Plaintiff Donnellon XOOM Energy brochures detailing XOOM's rates and purported savings, and informed Plaintiff Donnellon that XOOM's rates were lower than Plaintiff Donnellon's, and promised her that if she switched to XOOM, her energy bills would be consistently cheaper than if she stayed with Baltimore Gas and Electric ("BGE"). Subsequently, Plaintiff Donnellon switched her energy supplier from BGE to XOOM in or around October 2014. By December 2014, Plaintiff Donnellon's bills began to substantially rise due to the spike in XOOM's rates. XOOM's electric rates were 35% higher than BGE's rates in December 2014, and continued to increase to 70% higher than BGE's rates by February 2015.

8. Plaintiff Jerome Bonicos is a resident of Waldwick, New Jersey. In or around January 2013, an IBO named “William” visited Plaintiff Bonicos’ home. The IBO stated to Plaintiff Bonicos that if he switched to XOOM Energy his energy costs would consistently be 5-10% cheaper than his energy costs with PSEG. Subsequently, Plaintiff Bonicos switched his energy supplier from PSEG to XOOM in or around January 2013. In 2014, Plaintiff Bonicos was charged over \$555 dollars more over the year, a 91% increase, than he would have been charged in 2014 had he stayed with PSEG.

9. Defendant ACN Inc., is believed to be and therefore is alleged to be a North Carolina corporation with its principal place of business in Concord, North Carolina, is a multi-level (i.e. pyramid) marketing company that provides, among other things, energy through XOOM Energy using a network of IBOs whose sales are made through essentially uniform marketing materials and “sales pitches.” Acting as a sales agent for service providers, including Xoom Energy and its respective state subsidiaries, ACN IBOs sell the service. Thereafter, once customers are “signed up,” order fulfillment, billing, and servicing is performed by the branded provider, in this case, Xoom Energy and its state subsidiaries. In this way ACN resells electricity and natural gas through Xoom Energy and its state subsidiaries all of which function as if they were one corporation.

10. Defendant XOOM Energy, LLC, is a Delaware Limited Liability Company formed on March 15, 2011, with its principal place of business in Huntersville, North Carolina. Xoom Energy, LLC, is an unregulated retail electric and nature gas provider which, together with its wholly-owned state subsidiaries, offers electric and gas services in unregulated markets throughout the United States. Xoom partners with ACN to sell energy services through ACN

IBOs and other sales channels in order to maximize XOOM's customer base. XOOM purchases electric power and natural gas from other companies and delivers it to the local utility company on behalf of its customers. XOOM Energy, LLC controls the day-to-day operations of its subsidiaries, which exist to carry out Xoom Energy, LLC's business objectives as "local" utilities and function essentially as agents of Xoom Energy LLC in the various geographic markets where Xoom delivers its energy services.

11. Defendant XOOM Energy Maryland, LLC, is a state subsidiary of XOOM Energy LLC that sells and supplies electricity and natural gas in Maryland.

12. Each of the Defendants engaged in a conspiracy and *de facto* joint venture with one another to carry out the wrongdoing alleged herein pursuant to directions promulgated by Defendant ACN and its senior officers.

FACTUAL ALLEGATIONS

13. Until recently, electricity and natural gas were supplied and distributed by local utility companies. Over the last several years, however, states have begun to modify the regulations in the energy industry in the hope that such modifications would enhance competition between energy providers.

14. In theory, energy deregulation allows consumers to shop around for the best energy rates. However, as Defendants have demonstrated, the deregulation has also provided energy companies with the opportunity to gouge unsuspecting consumers. Specifically, Defendants have exploited deregulated markets by engaging in a "bait-and-switch" sales scheme with potential consumers, by using the false promise of savings in order to deceive consumers into purchasing energy from XOOM.

15. Defendants also engage in a pyramid-marketing scheme: they pay IBOs to encourage family and friends to switch energy providers and, in turn, to get those new customers to become IBOs to get others to switch to XOOM. Commissions are paid to the IBOs at each level of the XOOM pyramid, including shares of the commissions of other IBOs brought into the marketing scheme by them.

16. Upon information and belief, Defendants ACN and Xoom Energy jointly train IBOs through sophisticated and substantively uniform selling scripts and other marketing materials to lure consumers to switch from their local utility companies or other energy suppliers to XOOM, with the false promise that they will receive lower competitive rates resulting in savings on their monthly bills. Defendants' deceptive and inherently dishonest scheme, carried out by IBOs on behalf of the Defendants and other XOOM affiliated companies, falsely promises consumers energy rates and savings which the Defendants knowingly fail to deliver.

17. Additionally, by dividing the labor between themselves in a non-transparent fashion, Defendants sow confusion among consumers about the entity(ies) with which they were or are dealing, and on behalf of whom, various agents were acting, as well as the scope of their authority.

18. In reality, after switching to XOOM as a supplier, consumers' energy bills increase dramatically.

19. Adding to the fraudulent scheme, Defendants make the cancellation process lengthy and difficult for those customers who ultimately realize that they have been overcharged. XOOM takes up to two billing cycles for customers to switch back to their original or another

energy supplier. In fact, there is no justifiable reason for such a long delay, other than Defendants' continuing ability to overcharge those customers.

20. On information and belief, ACN and XOOM advise the IBOs, to whom XOOM and ACN jointly provide training materials and selling "scripts," to falsely represent to potential customers that by switching to XOOM from their local utilities, they will enjoy energy cost savings indefinitely. As one IBO who has been misled by XOOM has explained, "They tell us during the [training] meetings that XOOM Energy is a way for your family and friends to save money on their electricity and gas bills and for you to make quick money." The IBO also stated that, during the sales meetings, XOOM tells IBOs stories about how much customers have saved and never informed IBOs to warn their family and friends and other consumers about price fluctuations or spikes. The principal focus of XOOM and ACN during the training meetings, as well as in their marketing "scripts" provided to IBOs, was to create a uniform marketing methodology stressing increased income for IBOs and energy cost savings for customers.

21. These statements are materially deceptive because, by switching to XOOM, as the Defendants knew, consumers are charged for their energy needs substantially more than the amounts charged by local regulated utilities previously providing such energy.

22. Reasonable consumers, such as Plaintiffs, hearing or reading these statements and others of a substantively similar nature, would believe that switching to XOOM would be financially beneficial to them and that they would enjoy unparalleled energy cost savings.

23. Each of the representations made orally by, or on behalf of, the Defendants and/or their corporate affiliates (e.g. XOOM NJ) were consistent with one another and were derived

from XOOM selling scripts, marketing and training materials believed to have been composed and distributed by Defendant ACN to its co-conspirators and joint venturers.

24. Upon information and belief, the plan to deceive prospective XOOM customers is the product of a scheme carried out jointly and knowingly by all Defendants: ACN sold the energy through its IBOs, XOOM Energy produced the selling scripts pursuant to a strategy developed by ACN, and XOOM NJ and XOOM MD supplied the overpriced energy to customers

25. While entering into oral agreements with Plaintiffs, the IBO's did not identify the distinctions between XOOM and its affiliates and subsidiaries as part of the IBOs' sales representations. Indeed, XOOM marketing materials make no corporate distinctions and as far as prospective customers know, they are doing business with XOOM or XOOM, which names were used interchangeably by Defendants. *See, e.g., XOOM Energy FAQ available at* <http://xoomenergy.com/en/faq> (as of February 24, 2016).³ Thus, based on the marketing materials and representations of the Defendants' IBOs, Plaintiffs reasonably believed they were contracting with XOOM, as well as any state subsidiary referenced in the transaction. Plaintiffs reasonably believed they were dealing with XOOM through the IBOs, its apparent agents or duly authorized representative. Plaintiffs reasonably believed they were contracting with *de facto*, all Defendants.

³ Nor does XOOM's "Who We Are" page make any such distinction, stating: "XOOM Energy offers natural gas and/or electricity plans in the following major US energy markets. California Connecticut Delaware District Of Columbia Illinois Indiana Kentucky Maine Maryland Massachusetts Michigan New Hampshire New Jersey New York Ohio Pennsylvania Rhode Island Texas Virginia." Who We Are, *available at* <http://xoomenergy.com/en/who-we-are> (as of February 24, 2016).

26. Defendants' misrepresentations and omissions caused injury to Plaintiffs and the members of the Class because they were unjustifiably induced to believe that they would receive energy cost savings on their monthly bills when, in actuality, Plaintiffs and Class members were charged substantially more for their energy needs after switching to XOOM. Had Plaintiffs and the Class members known that they would be charged substantially more for their energy supplies by switching to XOOM, they would not have contracted with it and purchased energy from it.

27. Plaintiffs and the members of the Class have sustained economic injury and damages as a result of Defendants' wrongful conflict.

ONLINE CUSTOMER COMPLAINTS

28. Evidencing the impact of Defendants' plan and scheme, numerous XOOM customers from multiple states have lodged complaints online as well with their public utilities commissions. Consumers regularly complain that they were lured by the substantively identical promises of energy cost savings as those to which Plaintiffs were exposed by IBOs and XOOM's representations on its website.

29. Set forth below is a small sample of customer complaints made on the Internet regarding Defendants' fraudulent sales and marketing scheme:

- I too signed up for xoom to help a friend working with ACN. I understand price fluctuations and was fine with that since I was told that it would always be competitive. For months it was, sometimes better but about the same as PSE&G. These last two months have been vastly different. In January we spent \$275 more with xoom. In February we spent OVER \$650 more than we would have with PSE&G. Let me repeat, WE SPENT OVER \$650 MORE WITH XOOM. Is this competitive??? Is this fair market fluctuations?? I do understand MLMs vs pyramids. I am an educated person. I did however trust that by competitive we were at least playing on the same ballfield. I have certainly now been educated. I never dreamed that two months to switch back would potentially cost me over

\$1,000. I would have rather placed that money directly into the hands of the friend I was hoping to help out. Now it will take UP TO 90 DAYS to switch back. That's right folks, I get to pay xoom for another two months. I called to discuss and they said I could sign up for the fixed rate which was quoted to me on March 13 to be 0.7999 per Kwh. Doing a little math, I plugged in my usage last month to that figure..... \$1,391.03 (this doesn't include delivery or the gas portion-only electric. This is more than my whole bill. I am a level-headed person, willing to see all sides. This company is a fraud. They are quite literally taking food out of my children's mouths. They are corrupt and anyone who chooses to receive a penny from them is contributing to the raping of their customers. THESE ARE THE FACTS. MY BILL ISN'T LYING. I can not get out from under them for two more months. It is a crime. Maybe those who are so tired of "effin lazy people" ought not be so blindly loyal that they continue to drink the coolaid. If anyone is seeking a CLASS ACTION SUIT..... COUNT ME IN!!!!

- Over a year with Xoom now. Trying to help out a friend. Triple bills and a year contract that has long since expired. Renewed without our agreement. \$100 to cancel. Ridiculous! Count me in on this lawsuit as well!
- I signed up with Zoom on December of 2014 and ever since I did my light bill just been higher than ever!!! I called to cancelled my services after 4 months and the representative that I spoke with wich was really rude named Julissa stated that I have to pay \$200 to cancel my services. She couldn't explain to my the reason why now im stuck paying two separate light bills for the next to years in wich every month each bill is higher than the other!!! ZOOM dosent really do nothing but charge you sinc ethey are a third party, they down own no power lines and they are not even the suppliers!!! WORST COMPANY EVER!!! Talk about giving your hard earn money away!!! Count me in on the Class Action!!⁴
- The problems re Xoom energy are not about Billing as much as the savings promises. The costs are greater than PGE, SOCAL etc, as you will and DO get charged for both your current company plus Xoom. They need to train their independents better. They target seniors and will not let them out of their contract. DO NOT SIGN UP WITH THIS COMPANY!!! My costs ARE: \$20.00 a month higher on XOOM!
- Wish I didn't sign up with Xoom Energy. They are sold by ACN (pyramid company) to people. I purchased their gas service and was told I'd save a few bucks. Even if I broke even, I would do it for my friend. My first month I got a bill from my regular gas company and another bill from Xoom, both in different amounts but almost doubling my bill. I called Xoom and they told me that they

⁴ <http://www.reviewstalk.com/complaints-reviews/xoom-energy-111031.htm>

supply the gas, but the gas company charges for transportation of the gas and taxes. I asked why my bill was double the normal amount, and from my local gas company it appears that they are charging more for the transportation than what I normally paid for everything. The Xoom rep was polite, but could not explain it and simply said that in Southern CA the gas company charges more she guessed. I cancelled immediately which costs \$25 cancellation fee within the first year, but saved me way more to cancel than continue. So if you are told it will save you money, research it first, even if it is for a friend.

- I've just canceled my contract with Xoom Energy; service was provided in Northern California. Only reason for canceling? My normally \$30/ month spring gas bill for my house (I've lived here for several years, have the bill stubs from previous years to compare with, use same amount of gas consistently month to month, year to year so don't try to tell me that it's due to some weird spike in usage, PGE anomaly, etc) soared to \$100/ month. Advertised savings? Yes. Real, actual, honest savings? NO...
- I totally agree with all of you. I was also tricked by a friend who promised me that he would save me money on my energy bills and immediately within the first 2 months with Xoom Energy my bills have almost doubled. I have not had any good experiences with Xoom energy and was never told that I would be locked into this horrible contract with this rip off of a company for a year. I never had to sign anything and actually never even met with my so called friend in person to sign up for this SCAM service. I was only asked to provide my current account # with my current energy supply which I have never had any problems with. I should have known better seeing how he called repeatedly for days trying to convince me to let him sign me up for the service so he could save me some money because he knew that I was already enduring financial difficulties. In the end I am one pissed off ex friend and completely dissatisfied customer of XOOM energy. Don't sign up for this service because all you are doing is making ACN and all their affiliates money and you will end up losing money. XOOM ENERGY IS A SCAM!!!⁵
- On November 2nd 2013 I signed up with Xoom Energy (electric company). Just 2 days later I decided to cancel my services which was on November 4th 2013. I received an email on November 5th from Xoom Energy stating that, "My services are cancelled and processed". They now have been billing me for not just November 2013, but also December 2013, Jan thru Mar 2014. I had called to resolve this issue and they said they had re-opened my account without my Knowledge or Consent through phone, email or even letter. Now they want almost \$190 in bills and I'm still continuing to pay my original electric company. If this doesn't get resolved immediately, I will be seeking a lawsuit.

⁵ <http://www.complaintsboard.com/complaints/xoom-energy-san-angelo-texas-c581563.html>

- I switched to Xoom Energy as a favor to a "friend" who promised 3 months of savings then said I could cancel anytime after that. I went back and looked at one bill within the first 3 months and I literally saved 2 cents. After the first 3 months that rate jumped to 5x the rate that PSEG was charging and double the rate for electricity.
- Xoom Energy customer service confirmed that we cancelled our service with them on 26-Nov-2014. They still charged us until 3-Jan-2015. Our neighbor signed us on Xoom service 1.5 years ago. They promised to save us money. 2 months ago we were excited about becoming ACN representative to sell Xoom service. We paid \$1200 to become their rep. We wanted to make sure that we were really helping friends and neighbors to save money. We finally sat down and checked our monthly bill. We found out that we actually paid more every month!!!! We right away cancelled everything with ACN and Xoom. Watch out for your neighbors and friends who sell you ACN services. I informed our neighbor about the ripoff and suggested her to inform all of her clients (friends and neighbors). She refuses to do that. I can not believe she can sleep well at night.⁶
- DO NOT SIGN UP FOR XOOM!!! Easy to sign up and take your money. Very difficult to not renew service. Had to call them several times to ensure that my account would not be renewed. I now regret signing up for Xoom Energy. Xoom is a total scam. Takes 3 minutes to sign up, 30 to 60 day to cancel. At least that what they tell you if you ever get through.⁷
- I live in Riverside, CA, 50 mi. east of LA. I recently agreed to go with an alternative supplier for natural gas based on the promise of lowered bills. As a result of this move to Xoom Energy my bills have almost doubled. The reason is that the Gas Company charges for distribution, more than wiping out any savings on the actual gas. Xoom Energy wants \$70 to cancel my contract, so, ok. Buyer beware.⁸
- Stay away from this company. They promise low rates, but after a few months they creep them up. Now I pay 70% more for gas than I did with DTE. It is price gouging. I paid almost \$1000 more last year with them.
- I signed up with Xoom Energy trying to help out someone else earn some money and I got F****D. My bill went from \$494.13 in March 2014 to \$1,274.52 in April 2014. Now it's \$1991.34. What kind of SHIT is that? I was asked if I wanted to be put on the do not call list and I told them no because I want them to

⁶ http://www.ripoffreport.com/reports/specific_search/xoom%20energy

⁷ <http://reviews.gethuman.com/complaints/XOOM-Energy/>

⁸ <http://www.practicalmachinist.com/vb/general/ot-xoom-energy-california-238198/>

call me so I can tell them to come out and and I can wipe that ASS. I will be contacting the Attorney General's Office, the Consumer Protection Agency and anybody else I think that can take these B*****S down without me going to jail. If one of their reps come in contact with me again they will be playing p****y and I will be doing the F*****G. I will try to cut their ass too short to S**T. Let's all get together and hunt them like an animal in the woods and we're hungry. Let's get our money back. Let's take the company down. That my plan.

- I just found out on pge bill that I have zoom energy charges, they charged us for 6 months w highest bills ever. I didn't pay attention on our highes bills cause of newborn baby:(We need to bring criminal charges against Zoom Energy. We have tried for the months to cancel their service they claim it will be taken care of only to receive another bill. We need to find an attorney to bring criminal charges against them!
- Like all others on here I switched thinking I was helping some one!!! Anyone ever tell you they can save you money run!!! I was told the rates would always stay competitive!! Competitive my A\$\$!!!!!! Not only did I change my home but my business to!!! WOW to how much money I lost!!! ACN/Xoom biggest losers out there!! They call themselves champions!!!! They they make FB status' show it's so nice that their bill's are paid without working to hard!!! Guess not when your screwing the people that do work hard!!!!!!
- OMG this is a case of criminal fraud. We need to bring criminal charges against Doom Energy. We have tried for the last year to cancel their service they claim it will be taken care of only to receive another bill. We need to find an attorney to bring criminal charges against them!
- Beware of switching - you will be told how much you will save, but the numbers don't lie - Xoom \$1.39 per therm, PSEG \$0.29 per therm. Can't get away from these crooks fast enough. It's very obviuos that some posters on this mesage board work for ACN (toby, pati0154, squozen, Twells20, Catcar12691) - keep lining your pockets. My bill for Feb and March came to over \$1300! Sickening - run as far away from this ripoff as possible, don't believe it, no matter who tells you that you will save - you won't.
- When I join them I was told I could save money over bge. Went for .10 a kilowatt to .20 a kilowatt Just got a bill for 580.00 for February and 470.00 bill for March I live in a small apartment my bill has never been over 200.00 ever Xoom energy a f@cking scam.
- XOOM is cheating people out of their hard-earned money. There's been no saving for us, quite the contrary. This month, we're being charged \$562.73 just for their "supply charges", not including what Pepco charges us for electricity,

and last month was no better. Yes, it's time for a thorough investigation into how this company operates.

- I EXPERIENCED THE SAME ISSUES. I NEVER SAW SAVINGS AND MY WIFE AND HER DAUGHTER KEPT SAYING BECAUSE OF WINTER THE USAGE IS MORE THAT IS WHY... CLOSED MINDED SUCKERS THEN I SPOKE WITH FEW SUPERVISORS AND INVESTIGATED MYSELF... XOOM CAN RAISE THIER PRICE WITHOUT NOITCE AND THEIR CHARGE IS NOT REGULATED... THAT IS HOW THEY KNOW TO F**K PEOPLE THROUGH ACN AND OTHER BULL****, AND THE PERSON WHO SIGNS UP GETS A CHUNK OF MONEY EACH TIME I PAY A BILL/ AND THE ONE WHO IS SUPPORTING THIS JUST F**K OFF
- We lived in our current residence for 9years. The most our gas & electric bills run around. \$480. Today we found just our ZOOM gas bill was \$500.00. That is \$500.00 we don't have. My husband switched to this company because he felt pressured to do it because a friend asked him to switch. We are devastated that our rates were variable. This company is a scam so the energy sales people made a ton of \$\$\$ on your expense. The phony sales reps are having lavish dinners, get away trips and winning electronics for prizes. The BIG kicker is if you try to change back, it is a 60 day process. We will now endure another 2 months of \$500.00 Xoom bills all by changing our PSEG carrier to Xoom. Major, major mistake. Sad how they are getting away with this! My next letter is to the BBB. I'm going to try to make sure this does not happen to another person.
- ACN rep told us he could define toy save us money on electric bill. Got first bill and this is not true at all I have never had bills this high Further more they converted multiple accounts to Xoom energy without consent. When I tried to get the service canceled they want to charge me \$190 each account. I only wanted to try it with my home and he converted several of my commercial accounts. This is a scam and must be stopped. They will do nothing for us now. IF U ARE THINKING OF JOINING ACN OR XOOM. DONT DO IT. THEY MAKE MONEY FROM U SCREWING OVER YOUR FRIENDS AND FAMILY. PEOPLE THAT TRUST U. IM CURRENTLY FILING A COMPLAINT WITH THE MARYLAND ATTORNY GENERALS OFFICE AND RECONEND. ANYONE WHOSE HAS HAD THE SAME PROBLEM WITH THEM. YOU ARE NOT ALONE . DO NOT LET THEM GET AWAY WITH STEALING OUR HARD EARNED MONEY.
- Same issue here. Being double billed since started with them. Like others I signed up with Xoom Energy trying to help out someone else earn some money. Wish I Never did. Tried to cancel with them a few months ago and I'm sill being charged.

- signed up with ACN for switching my gas bill to Xoom Energy, ACN rep never told me that Xoom energy will charge monthly service fee, the only thing they told me is they can help me to save up to 70% gas bill. Both Gas company and Xoom energy sent me bill at one time, the total charge even higher than my regular bill. I don't accept that and made phone call to Xoom energy, but they told me onone can guarantee that I will be saved money from switch service. Now I have to pay earlier termination fee to cancel XOOM ENERGY service. This is a fraud!!!! Who ever has the same situation like me . please contact me. I am in southern California. I knew somewhere having class action against those company!

Same issue here. Being double billed since started with them. Like others I signed up with Xoom Energy trying to help out someone else earn some money. Wish I Never did. Tried to cancel with them a few months ago and I'm sill being charged.

- ACN rep told us he could define toy save us money on electric bill. Got first bill and this is not true at all I have never had bills this high Further more they converted multiple accounts to Xoom energy without consent. When I tried to get the service canceled they want to charge me \$190 each account. I only wanted to try it with my home and he converted several of my commercial accounts. This is a scam and must be stopped. They will do nothing for us now. IF U ARE THINKING OF JOINING ACN OR XOOM. DONT DO IT. THEY MAKE MONEY FROM U SCREWING OVER YOUR FRIENDS AND FAMILY. PEOPLE THAT TRUST U. IM CURRENTLY FILING A COMPLAINT WITH THE MARYLAND ATTORNY GENERALS OFFICE AND RECONEND. ANYONE WHOSE HAS HAD THE SAME PROBLEM WITH THEM. YOU ARE NOT ALONE . DO NOT LET THEM GET AWAY WITH STEALING OUR HARD EARNED MONEY.⁹
- My business gas bill from XOOM ENERGY is more expensive and have to pay MORE now. I don't want this service anymore and was not told correctly. I got my first bill. My account no: ***** and service agreement ID ***** for my business. I signed up xoom energy because i was told that my gas bill for my restaurant will be a lot cheaper. That is exciting news for business owners especially for restaurants. Now, I am dealing with extra fees and charges because of misinformed and rate for XOOM is more expensive then ****. **** charged me \$121.92 but got that credited back and instead with XOOM service I now have to pay \$144.54. Wow! That is almost \$22 extra per month and if seeing it for 1 year with bizlock 12 plan that is over \$271! With that I can pay 2 MONTHS of extra gas through ****. Unbelievable...

⁹ <http://www.complaintboard.com/xoom-energy-l10637.html>

- Set up a payment plan, was told incorrectly of when I could pay on the plan and regular bill separately - therefore, they set a disconnect date I set up a payment plan with Xoom Energy to pay about \$150 every month for 4 months on the 4th in order to keep my electricity from being disconnected. I specifically asked, "I understand that if I don't pay the amount on the 4th, it will disconnect the following day, but if I need to pay my regular bill a little later than the due date everything will be fine?" To which the customer service rep confirmed. Ultimately, I called on 2/3/2016 to make a larger payment of both the payment plan and regular bill combined (being that the plan was due the following day) and was told that since I didn't make the regular bill payment precisely on 1/19/2016, that a disconnect date had been set for 2/12/2016. Additionally, my payment plan was voided and I would be required to pay the full past due amount of \$629.92 or have no electricity. I stated that I could pay \$400 now and let the customer service rep know that I was misinformed of how I could pay my bills, and after getting with his supervisor, he said that there was nothing that could be done and mentioned that he's sure the rep that set up the payment plan explained it to me correctly. Basically, calling me a liar about how I understood the payment plan. He went back to his supervisor after I was adamant that I was misinformed, but the supervisor didn't budge. Ultimately, I had to scrape up enough to cover the \$629.92 so that I can live with electricity after the 12th. Hopefully I can eat and pay for gas to get to work the rest of the month.
- When I was introduced to Xoom Energy, I was told that my monthly gas bill will go down dramatically. That never happened. After few months of waiting, I was finally received my first XOOM Energy bill. I was surprised on how much more I have to pay. I immediately contacted ***** to see if I was billed correctly and requested them to take a look at my bill. After one step at a time calculation, the result was XOOM Overcharging me on monthly gas prices.
***** and its deregulation... that does not play any role in our bills because the prices for gas is already so cheap here. I signed up for XOOM because the price for my bill would go down, NOT to pay extra every month. I rather save that money and spend it somewhere better.¹⁰

30. These customer complaints reflect the false and misleading course of conduct that Defendants have been and are engaged, resulting in damages to XOOM customers across the nation.

¹⁰ <http://www.bbb.org/charlotte/business-reviews/energy-service-companies/xoom-energy-in-huntersville-nc-284732/complaints>

31. XOOM customers are not the only ones concerned with Defendants' deceptive and misleading sales practices.

32. An ABC 7 Eyewitness News article "Undercover Investigation Reveals Energy Billing Problems" conducted an investigation and interview with a former ACN sales representative regarding Defendants' sales and marketing practices.

"It puts a knot in my stomach the size of a grapefruit," said Robert Spitzers, a former ACN Salesman. Robert Spitzers' sick over a dozen friends and family he unintentionally misled. The former salesman earned commissions off them after promising they'd save if they switched their electric and gas provider to Xoom Energy. "I'm robbing people. I pitching to them that they can save money but it's the exact opposite," adds Spitzers. He even signed up his own mom and dad. Xoom sent them this enrollment confirmation stamped "promo: Save 3 to 5 percent." But, their first month's savings, just 16 cents. "That's not the 3 to 5 percent savings they promised," adds Spitzers. Over the next six months the bill ballooned. Xoom charged them nearly \$1,000 more than if she'd stayed with PSE&G.¹¹

33. ABC News also interviewed 2 ACN salesmen regarding their sales tactics:

7 On Your Side: When you get customers, what do you tell them about (electric and gas) prices? Can people save money?

"Yeah, yeah, yeah, there is a savings," said Vic Patel, ACN Team Coordinator.

7 On Your Side: "You can promise savings?"

Patel: "3 to 5 percent. No, it's there. It's not promising. It's there."

7 On Your Side: "What's the selling point?"

Patrick Dowling: "Savings, 100 percent. Savings. Nobody's gonna (become a customer). 100 percent."

7 On Your Side: "What are the savings?"

Dowling: 3 to 5 percent.

34. A recent article on business ventures in which Donald Trump has been involved recounts the experience of a XOOM client, who signed up for the service after Mr. Trump—who

¹¹ <http://7online.com/archive/9522092/>

was paid over a million dollars in speaking fees by ACN—touted the company on “The Celebrity Apprentice”: Wenling Babbitt, 48, said Trump’s endorsement helped persuade her to join Xoom Energy, an ACN-controlled utility. A neighbor and her son, already on the salesforce, said that she could cut her gas bill if she switched to Xoom and, if she got others to switch, could make money. Then they mentioned the billionaire’s name. Babbitt said she and her husband each spent \$499 to join Xoom, but then her husband noticed the gas bill for their San Diego home had gone up, not down. She said it took a half-dozen calls to get ACN to switch them back to their old utility, and her view on Trump has soured. ACN said that neither it nor XOOM has ever “guaranteed” customers would save money beyond promotional offers lasting at most 90 days. It added that the regulatory probes are mostly old, stretching back to the 1990s.¹²

35. Furthermore, XOOM Energy, LLC is currently being investigated by the Maryland Public Service Commission (“MPSC”). On April 1, 2014, the MPSC requested XOOM Energy to show cause for why it should not have its license suspended relating to allegations of XOOM providing false and misleading information to its variable rate customers.¹³

CIVIL CONSPIRACY, CONCERT OF ACTION, AND APPARENT AUTHORITY

36. Defendants ACN, XOOM, and XOOM-affiliates (including XOOM MD), privately allocated various responsibilities for carrying out the fraudulent scheme alleged herein.

¹² <http://www.theblaze.com/stories/2016/01/28/ap-trumps-name-and-hands-often-behind-the-scenes-of-failing-marketing-schemes/>

¹³ See Public Service Commission of Maryland Case No. 9346, Order No. 86274. Additionally, on December 17, 2014, the MPSC denied XOOM’s response to Order to Show Cause and has commenced further investigations. See Order No. 86768.

37. Upon information and belief, XOOM and ACN developed training materials and content for IBOs.. ACN and XOOM affiliates, relying on materials and representations jointly developed by XOOM and ACN for the purposes of carrying out their scheme, directly utilized IBO sales teams (employed and managed by ACN) to convey these representations to consumers.

38. The resulting “pitch” by IBO agents—the result of efforts by all Defendants, acting pursuant to their conspiracy and joint venture—creates consumer confusion about the entities with which they are dealing. By failing to distinguish, and indeed, holding themselves out as, agents of XOOM and its affiliates and subsidiaries, IBO agents are the agents of both parent and subsidiary entities. Acting with, at minimum, apparent authority to contract for XOOM and its subsidiaries and affiliates, IBO agents have the power to and did bind these entities to the terms offered to consumers. XOOM and its subsidiaries and affiliates are responsible for the material misrepresentations made on Defendants’ behalf, having accepted the benefit knowingly and participated in orchestrating the entire scheme.

39. Moreover, by hiring and training IBOs, ACN knowingly participated in the scheme conceived of, designed, and carried out by XOOM and ACN acting in concert.

40. As evidenced by the conversations cited above, complaints, and news coverage, each Defendant was, at minimum, aware of the overall functioning of the scheme and their individual roles in it. Upon information and belief, the acts of each in furthering their scheme were undertaken knowingly as part of an overarching plan to defraud consumers. The division of labor and acts undertaken by each Defendant in furtherance of the aim of the conspiracy—to mislead, and then bilk customers, were such that an agreement among the Defendants ought to

be inferred in law, even absent an explicit overall agreement among them. Further, any apparent distinction between and among XOOM and its affiliates, including XOOM Maryland and XOOM New Jersey should be disregarded because doing so will avoid fraud and injustice and prevent the Defendants from escaping accountability for their wrongful conduct by hiding behind the corporate veils of ACN subsidiaries.

41. The harm inflicted on Plaintiffs would not have been possible absent the—implicitly or explicitly—knowing participation of each Defendant in providing training, sales force, energy, and services to customers. Thus, the damage (*i.e.* pecuniary harm) caused by the conspiracy was specific to its overall functioning.

42. Each Defendant aided and abetted the wrongdoing of each other, performing at least a portion of the acts described herein.

43. Plaintiff reserves the right to amend the allocation of specific conduct among the Defendants after discovery—information and knowledge of which is solely within the Defendants’ control. However, the circumstances and known acts of each Defendant are sufficient to infer an overall scheme to defraud consumers.

CLASS ACTION ALLEGATIONS

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

- A. All persons who are or have been Simpleflex XOOM Energy customers in
California, Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine,
Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York,

Ohio, Pennsylvania, Rhode Island, Texas, Virginia and any other locations where XOOM markets energy who (1) used XOOM as their electricity supplier, and (2) used XOOM as their natural gas supplier. Excluded from the Class are (a) any Judge or Magistrate presiding over this action and members of their families; (b) the Defendants, and their subsidiaries and affiliates; and (c) all persons who properly execute and file a timely request for exclusion from the Class. (the “Class”);

- B. All persons who are or have been Simpleflex customers of XOOM Energy, New Jersey, LLC. (the “New Jersey Sub-Class”).
- C. All persons who are or have been Simpleflex customers of XOOM Energy, Maryland, LLC. (the “Maryland Sub-Class”).

45. Plaintiffs reserve the right to re-define the Classes (hereinafter referred to as the “Class,” unless otherwise specified) at the conclusion of discovery as to class certification.

46. The exact number of Class members is unknown as such information is in the exclusive control of Defendants. Plaintiffs, however, believe that the Class encompasses thousands of individuals who are geographically dispersed throughout the nation. Therefore, the number of persons who are members of the Class described above are so numerous that joinder of all members in one action is impracticable.

47. Questions of law and fact that are common to the entire Class predominate over individual questions because the actions of Defendants’ complained

of herein were generally applicable to the entire Class. These legal and factual questions include, but are not limited to:

- A. The nature, scope and operations of Defendants' wrongful practices;
- B. The uniformity of the scripts created through Defendants' marketing and training material
- C. Whether Defendants engaged in fraudulent practices as to Class members;
- D. Whether Defendants' conduct amounts to violations of the Maryland Consumer Protection Act;
- E. Whether Defendants' conduct amounts to violations of the New Jersey Consumer Fraud Act;
- F. Whether Defendants breached their contracts with consumers;
- G. Whether Defendants negligently misrepresented the true nature of their energy rates;
- H. Whether Plaintiffs and the Class suffered damages as a result of Defendants' misconduct and, if so, the proper measure of damages.

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

49. Questions of law or fact common to Class members predominate. A class action is superior to other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. While the Class members' aggregate damages are likely to be in the millions of dollars, the individual damages incurred by each Class member are, as a general matter, too small to warrant the expense of individual suits. The likelihood of individual Class members prosecuting separate individual claims is remote, and even if every Class member could afford individual litigation, the court system would be unduly burdened by the individual litigation of such cases. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials on the same factual issues. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. Certification of the Class under Rule 23(b)(3) is proper.

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

COUNT I
VIOLATION OF MARYLAND CONSUMER PROTECTION ACT
(On Behalf of the Maryland Sub-Class)

51. Plaintiff Donnellon re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

52. Plaintiff Donnellon asserts this cause of action on behalf of herself and the other members of the Maryland Sub-Class.

53. This cause of action is brought pursuant to Maryland's Consumer Protection Act, Md. Code, Com. Law § 13-101 *et seq.* ("MCPA").

54. Under the MCPA, Defendants' misleading representations regarding energy cost savings and competitive market rates are unfair, deceptive and unconscionable.

55. In the course of soliciting and promoting XOOM's energy cost savings and competitive market rates to consumers and in entering into agreements with consumers to provide such purported services, Defendants have engaged in unfair and deceptive acts and practices in trade or commerce in violation of Md. Code, Com. Law § 13-101.

56. Defendants violated the MCPA by engaging in fraudulent and deceptive bait-and-switch sales practices by inducing customers directly and/or through IBOs, to switch from their regulated energy suppliers to XOOM with purportedly low promotional rate offers and claimed energy cost savings, and then charging consumers exorbitant non-competitive energy rates following the introductory period.

57. Defendants violated the MCPA by falsely representing that consumers would save money on their energy bills by switching to XOOM.

58. Defendants violated the MCPA by failing to disclose that, on a consistent basis, XOOM's regular rates are substantially higher than its competitors and not competitive in the market.

59. Defendants violated the MCPA by failing to disclose to consumers that after the initial introductory period, XOOM's energy rates increased substantially and exceeded those charged by regulated utilities.

60. Defendants violated the MCPA by failing to adequately inform consumers that XOOM's energy rates generally increase and will rarely, if ever, be lower than competitive market rates.

61. Defendants' acts and practices were false, misleading, deceptive, and unfair to consumers, in violation of the MCPA.

62. Plaintiff and Maryland Sub-Class members relied on Defendants' omissions of material facts and upon misrepresentations delivered through Defendants' marketing materials, and IBOs. Had Defendants disclosed to members of the Maryland Sub-Class in their marketing and sales promotional materials or otherwise that their energy costs would increase after signing up with XOOM, Class members would not have switched to XOOM for their energy supplies.

63. As a direct and proximate result of Defendants' deceptive, fraudulent, and unfair practices, Maryland Sub-Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

64. Plaintiff Donnellon, on behalf of herself and all others similarly situated, demands judgment against Defendants for damages and declaratory relief.

COUNT II
VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT
(On Behalf of the New Jersey Sub-Class)

65. Plaintiffs Todd and Bonicos re-allege and incorporate by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

66. Plaintiffs Todd and Bonicos assert this cause of action on behalf of themselves and the other members of New Jersey Sub-Class.

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

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

69. Under the CFA, Defendants' deceptive representations regarding energy cost savings and competitive market rates to consumers and in entering into agreements with consumers to provide such savings, Defendants have engaged in unfair and deceptive acts in trade or commerce in violation of N.J.S.A. §56.8-2.

70. Defendants violated the CFA by engaging in a fraudulent and deceptive bait-and-switch practices by inducing customers directly and/or through IBOs, to switch from their regulated energy suppliers to XOOM with purportedly low promotional rate offers and claimed energy cost savings, and then charging consumers exorbitant non-competitive energy rates following the introductory period.

71. Defendants violated the CFA by falsely representing that consumers would save money on their energy expenses by switching to XOOM.

72. Defendants violated the CFA by failing to disclose that, on a consistent basis, XOOM's regular rates are substantially higher than its competitors and not competitive in the market.

73. Defendants violated the CFA by failing to disclose to consumers that after the initial introductory period, XOOM's energy rates increased substantially and were higher than those of regulated utilities.

74. Defendants violated the CFA by failing to adequately inform consumers that XOOM's energy rates generally increase and will rarely, if ever, be lower than the competitive market rates of regulated utilities..

75. Defendants' acts and practices as alleged in the foregoing paragraphs were false, misleading, deceptive, and unfair to consumers, in violation of the CFA.

76. Plaintiffs Todd and Bonicos as well as other members of the New Jersey Sub-Class members relied on Defendants' omissions of material facts and misrepresentations delivered through Defendants' marketing materials, and IBOs. Had Defendants disclosed to members of the New Jersey Sub-Class in their marketing and sales promotional materials or otherwise that their energy expenses would increase with XOOM, Class members would not have switched to XOOM for their energy supplies.

77. As a direct and proximate result of Defendants' deceptive, fraudulent, and unfair practices, New Jersey Sub-Class members have suffered ascertainable losses, injury in fact, and/or actual damages in an amount to be determined at trial.

78. Plaintiffs Todd and Bonicos, on behalf of themselves and all others similarly situated, demand judgment against Defendants for damages and declaratory relief.

COUNT III
BREACH OF CONTRACT
(On Behalf of the Classes)

79. Plaintiffs re-allege and incorporate by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

80. Plaintiffs and all members of the Class entered into contracts with XOOM pursuant to which it was to charge them for energy supplied, purportedly at rates lower than those charged by Plaintiffs' local regulated utilities. XOOM breached these contracts by charging Plaintiffs more than they would have been charged by their public utilities.

81. Implicit in such contract was XOOM's duty to act in good faith vis-à-vis its customers and treat them fairly.

82. At all times relevant, Defendants had total control of the energy rates that were charged to its customers and determined unilaterally the prices that would be charged to them.

83. Notwithstanding their duty of good faith and fair dealing with respect to its dealings with consumers, including Plaintiffs and all Class members, Defendants unilaterally charged them excessive prices that were not imposed in good faith or fairly.

84. In so doing, Defendants acted recklessly, maliciously, in bad faith, and without good cause, thereby preventing Plaintiffs and the members of the Class from receiving their reasonably expected contractual terms that were promised to them.

85. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and all Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

86. Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment against Defendants for damages and declaratory relief.

COUNT IV
COMMON LAW FRAUD, INCLUDING FRAUDULENT INDUCEMENT, AND
FRAUDULENT CONCEALMENT
(On Behalf of the Classes)

87. Plaintiffs re-allege and incorporate by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

88. Defendants, either directly and/or through IBOs, made or caused to be made failed to disclose material facts and made false and fraudulent representations of material facts to Plaintiffs and all Class members regarding purported cost savings benefits of switching energy providers from their local regulated utilities to XOOM, and concealed material information regarding XOOM's bait-and-switch scheme to unilaterally raise customers' rates to above-market levels following the so-called introductory period.

89. At the times Defendants made or caused to be made these representations and concealed material facts integral to Defendants' "bait and switch" scheme, Plaintiffs and the members of the Class were unaware of the falsity of these representations, and reasonably believed them to be true and had no knowledge of the material facts that Defendants did not disclose.

90. In making these representations or causing them to be made or failing to disclose material facts, Defendants knew they were false and intended that the Plaintiffs and Class members would rely upon such misrepresentations and failures to disclose material facts.

91. Plaintiffs and all Class members did, in fact, rely upon such misrepresentations and/or Defendants' failure to disclose all material facts and, as a consequence, became customers of XOOM.

92. As a direct and proximate result of Defendants' deceptive, fraudulent, and unfair practices, Plaintiffs and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

93. Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment against Defendants for damages and declaratory relief.

COUNT V
NEGLIGENT MISREPRESENTATION
(On Behalf of the Classes)

94. Plaintiffs re-allege and incorporate by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

95. Under the circumstances alleged, Defendants owed a duty to Plaintiffs and the Class to provide them with accurate information regarding, *inter alia*, the true nature of XOOM's energy rates and lack of energy cost savings.

96. Defendants, directly and/or through IBOs, falsely represented to Plaintiffs and Class members that by switching energy suppliers to XOOM, they would enjoy savings with competitive market rates.

97. Defendants' representations were false, negligent and material.

98. Defendants negligently made these false misrepresentations with the understanding that Plaintiffs and Class members would rely upon them.

99. Plaintiffs and Class members did, in fact, reasonably rely upon Defendants' misrepresentations and concealments of material facts.

100. As a direct and proximate result of Defendants' negligent actions, Plaintiffs and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

101. Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment against Defendants for damages and declaratory relief.

PRAYER FOR RELIEF

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

- A. Appointing Plaintiffs as the representatives of the Class and their counsel as Class counsel;
- B. For economic and compensatory damages on behalf of Plaintiff and all Class members;
- C. For treble damages pursuant to applicable law, and all other actual, general, special, incidental, statutory, punitive, and consequential damages to which Plaintiffs and Class members are entitled;
- D. For injunctive relief, compelling Defendants to cease their unlawful actions;
- E. For reasonable attorneys' fees, reimbursement of all costs for the prosecution of this action, and pre-judgment and post-judgment interest; and
- F. For such other and further relief this Court deems just and appropriate.

DEMAND FOR JURY TRIAL

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

Dated: March 21, 2016

By /s/ Charles J. LaDuca
Charles J. LaDuca
Beatrice Yakubu
(District Bar Number 19399)
Cuneo Gilbert & LaDuca, LLP
8120 Woodmont Avenue, Suite 810
Bethesda, MD 20814
Telephone: (202) 789-3960
Email: byakubu@cuneolaw.com
charles@cuneolaw.com

Taylor Asen
Benjamin D. Elga
Cuneo Gilbert & LaDuca, LLP
16 Court Street, Suite 1012
Brooklyn, NY 11241
Telephone: (202) 789-3960
Facsimile: (202) 789-1813
Email: tasen@cuneolaw.com
belga@cuneolaw.com

Richard D. Greenfield
Greenfield & Goodman LLC
250 Hudson Street, 8th Floor
New York, NY 10013
Telephone: (917) 495-4446
Email: whitehatrdg@earthlink.net

Gary E. Mason
Whitfield Bryson & Mason LLP
900 W. Morgan Street
Raleigh, NC 27603
Telephone: (919) 600-5000
Facsimile: (202) 429-2294
Email: GMason@wbmlp.com

Counsel for Plaintiffs