

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGSTAURSHIA SIMMONS, NAVID KALATIZADEH, and
BRIAN WHITNEY,

Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

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

Defendants.

Index No. 503285/15

IAS Term, Part Comm-11

Hon. Sylvia G. Ash

NOTICE OF ENTRY

PLEASE TAKE NOTICE that within is a true copy of the Order Granting Final Certification of the Settlement Class, Final Approval of the Class Action Settlement, Service Awards, Attorneys' Fees and Expenses, and Entering Final Judgment issued by the Supreme Court of the State of New York, Kings County, duly entered in the office of the clerk on the 13th Day of July 2018.

Dated: July 16, 2018

WITTELS LAW, P.C./s/ Steven L. Wittels_____Steven L. Wittels
18 Half Mile Road
Armonk, New York
(914) 319-9945*Attorneys for Plaintiffs and the Class*

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

TAURSHIA SIMMONS, NAVID KALATIZADEH,
and BRIAN WHITNEY,

Individually and on Behalf of All Others Similarly
Situating,

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

~~PROPOSED~~ ORDER
GRANTING FINAL
CERTIFICATION OF THE
SETTLEMENT CLASS, FINAL
APPROVAL OF THE CLASS
ACTION SETTLEMENT,
SERVICE AWARDS,
ATTORNEYS' FEES AND
EXPENSES, AND ENTERING
FINAL JUDGMENT

THIS CAUSE is before the Court on Plaintiffs' Unopposed Motion for final certification of the Settlement Class and final approval of the class action settlement, and approving Service Awards, and attorneys' fees and expenses. Having considered the motion, the Settlement Agreement and all exhibits attached thereto, the complete record in this case, and oral argument presented at the Final Approval Hearing, and for good cause shown:

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Settlement Class Certification

1. For purposes of effectuating the settlement described in the Class Action Settlement Agreement (NYCEF 188) ("Settlement Agreement"), the Court reaffirms its prior findings, pursuant to New York Civil Practice Law and Rules ("CPLR") § 901, certifying the following settlement class (the "Class"):

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.

See Order Granting Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. Entered February 22, 2018 (NYCEF 194) ("Preliminary Approval Order"). Ambit is defined as Defendants Ambit Energy Holdings, LLC, Ambit Texas, LLC, Ambit Marketing, LLC, and Ambit New York, LLC. The Class Period is defined as September 5, 2010 through February 22, 2018. Excluded from the Settlement Class are: any Class Member who submits a timely and valid request for exclusion; 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. *See Preliminary Approval Order.* Nothing has occurred since the entry of that Order which causes this Court to alter the findings it made in that Order in support of class certification for settlement purposes. *Id.* at ¶¶ 2-3.

2. The Court also reaffirms its prior decision appointing Steven L. Wittels, J. Burkett McInturff and Tiasha Palikovic of Wittels Law, P.C. and Jeffrey A. Klafter and Seth R. Lesser of Klafter Olsen & Lesser LLP as Class Counsel, and Plaintiffs Taurshia Simmons, Navid Kalatizadeh, and Brian Whitney as Class Representatives. *Id.* at ¶ 5.

Notice to Class Members

3. The Court finds, based on the Affidavit of the Claims Administrator Troy Walitsky dated June 14, 2018 (NYCEF 196) ("Walitsky Aff."), that the Court-approved Settlement Notice and Claim Form ("Notice"), attached as Exhibits A and B to the Walitsky Aff., has been provided to the members of the Class in accordance with the Court's Preliminary

Approval Order. That notice to the Class constituted the best notice practicable under the circumstances as well as valid, due, and sufficient notice to all those entitled thereto and complies fully with the requirements of due process and CPLR §§ 904 and 908.

Final Approval of the Settlement

4. The terms of the Settlement Agreement are incorporated by reference herein.

5. The Court grants final approval of the Settlement set forth in the Settlement Agreement, as modified herein in paragraph 7, finding it fair, reasonable and adequate, and in the best interests of the Class given, *inter alia*, the likelihood that plaintiffs will succeed on the merits; the extent of support from the parties, including the lack of any objections by any Class Members to the Settlement; the judgment of counsel; the presence of good faith bargaining with the assistance of an experienced mediator; and the complexity and nature of the issues of law and fact.

6. The Court further determines that the Settlement is binding on all Class Members other than those who have timely opted out of this action pursuant to paragraph 38 of the Settlement Agreement as reported in the Walitsky Aff., Exhibit C. These opt-outs may not make any claim against or receive any benefit from the Settlement and may not pursue any Released Claims on behalf of those who are bound by this Order and Final Judgment. All Class Members other than those opt-outs described in the Walitsky Affidavit are forever bound by this Order and Final Judgment and are permanently enjoined and barred from asserting, instituting, commencing, or prosecuting any Released Claims, which are set forth in ¶ 10(z) of the Settlement Agreement, in any action or proceeding, either directly, individually, representatively, derivatively, or in any other capacity.

7. The Court directs that payments be made pursuant to the Settlement Agreement to all Class Members who have submitted a timely and valid Claim form pursuant to the Settlement Agreement. Pursuant to the agreement of all Parties, the deadline in paragraph 24 of the Settlement Agreement for Ambit to provide calculations for Eligible Class Members to the Settlement Administrator is extended from ten (10) business days to twenty (20) business days.

Service Awards, Attorneys' Fees and Expenses

8. The Court hereby awards \$7,500 to each of the Named Plaintiffs Taurshia Simmons, Navid Kalatizadeh, and Brian Whitney, and \$2,500 each to Class Members Mitchell Frasier and Rocco J. Feola for their integral roles in the prosecution and settlement of this action, in addition to their respective allocated shares of the Settlement. The Court finds that these Service Awards are warranted to reward them for their respective efforts and time consulting with counsel over the many years this case has been prosecuted and for participating in discovery. These Service Awards shall be paid from the attorneys' fee and expense award set forth in paragraph 9, below.

9. The Court has considered, *inter alia*, the fact that Class Counsel have worked for more than five years without pay or any guarantee of obtaining a recovery for Ambit's current and former New York customers, the risks of this litigation, the significant standing at the bar of Class Counsel for the Plaintiffs and Defendants' counsel, the fact that this fee and expense request was negotiated by the parties with the assistance of an experienced class action mediator (only after the consideration on behalf of the Class had been negotiated), the magnitude and complexity of the litigation, the serious responsibility undertaken, the excellent work done by Class Counsel, the history of this action, that Class Counsel did not have the benefit of any prior judgment, and the considerable amount made available, fee percentages awarded in other

significant multi-million dollar settlements, the multiplier used when conducting a lodestar cross-check, and the lack of any objection by any Class Member to any aspect of the settlement or the requested attorneys' fee and expense award. The Court finds that based on the superior result in this class action, it would have been reasonable and customary for Class Counsel to receive 33.33% of the Maximum Settlement Amount for attorneys' fees and expenses, however, Class Counsel has requested a lesser percentage. Accordingly, the Court hereby determines that Plaintiff Counsel's requested application for an amount representing 28.9% of the Maximum Settlement Amount of \$29.75 million (i.e. \$8.6 million) shall be awarded to Class Counsel for payment of the Service Awards, and their attorneys' fees and expenses (other than Claims Administration Expenses, which under the Settlement Agreement are paid directly by Ambit), and paid pursuant to the terms of the Settlement Agreement ¶ 30.

10. The Court also approves the payment of \$669,489.45 out of the Maximum Settlement Amount to the Court-approved Claims Administrator Angeion Group as Claims Administration Expenses. This payment is for the Claims Administrator's work performed in connection with providing notice to Class Members and work to be performed in connection with the processing of Claims and payments to Class Members who submitted timely and valid Claims. This work is described in the Walitsky Affidavit (NYSCEF 196), which the Court finds is fair and reasonable, especially since Angeion Group was selected by the Parties after bids were obtained from several claims administrators.

Entry of Judgment

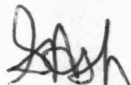
11. The Court hereby dismisses this action with prejudice, with each party to bear their own costs, except as provided in this Order or in the Settlement Agreement.

Reservation of Jurisdiction

12. Without affecting the finality of this Order and Final Judgment, the Court hereby reserves exclusive jurisdiction to consider any matters that may arise concerning the administration, interpretation, consummation, and enforcement of the Settlement.

Dated: June ²⁸, 2018
Brooklyn, New York

SO ORDERED



Hon. Sylvia G. Ash

KINGS COUNTY CLERK
FILED
2018 JUL 13 PM 12:06