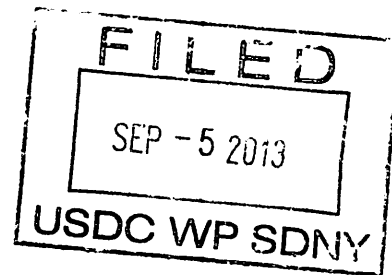


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Attorneys for Plaintiff and the Class

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

TAURSHIA SIMMONS,

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

Plaintiffs,

v.

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

Defendants.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

13 CV 6240

JUDGE FURMAN

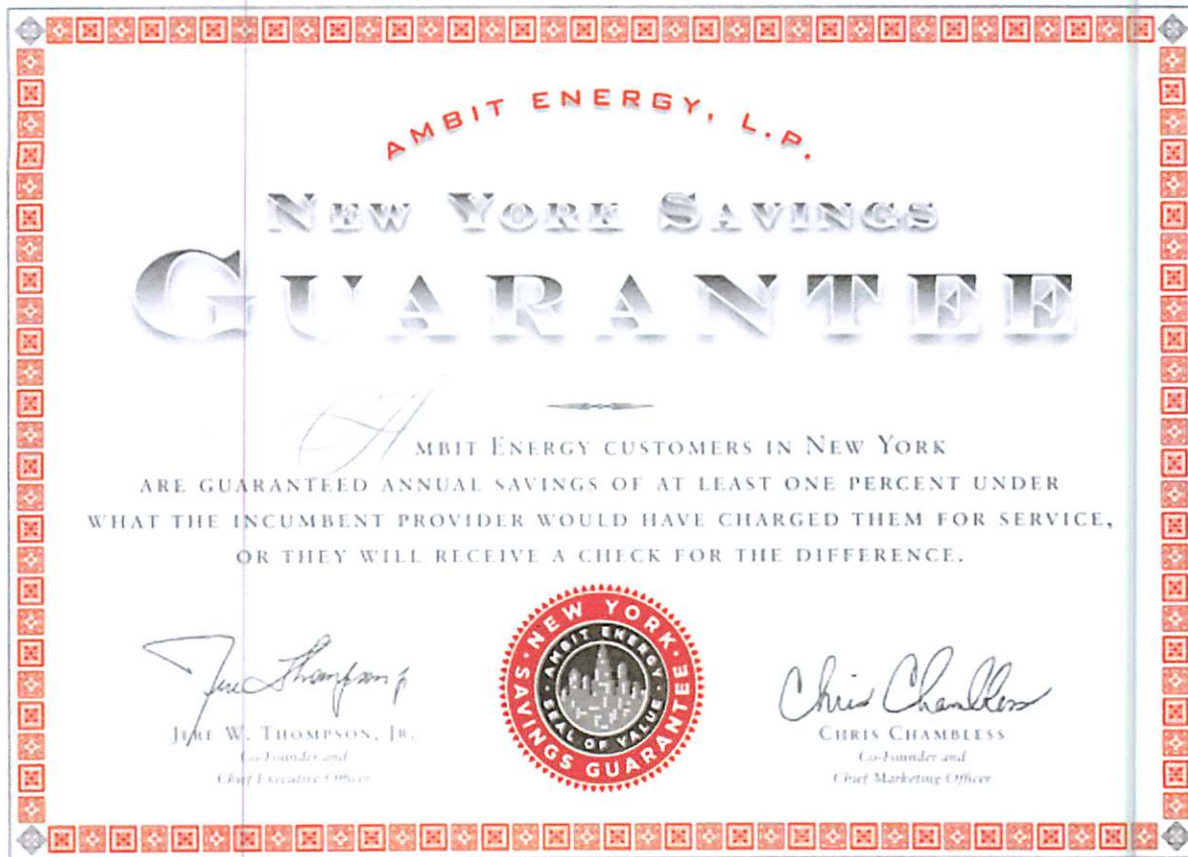
Plaintiff Taurshia Simmons (“Plaintiff”), by her attorneys the Law Offices of Steven L. Wittels, P.C., brings this action in her individual capacity, and on behalf of a class of persons defined below, against Defendants Ambit Energy Holdings, LLC, Ambit Texas, LLC, Ambit New York, LLC, Jere W. Thompson, and Chris Chambless (collectively “Defendant,” “Ambit Energy,” or “Ambit”) and hereby alleges the following with knowledge as to her own acts, and upon information and belief as to all other acts:

OVERVIEW OF DEFENDANT AMBIT’S DECEPTIVE PRACTICES

1. Seizing on the nation’s push to deregulate retail energy markets and provide consumers with alternatives to utilities like Consolidated Edison (“Con Ed”) in New York and PSE&G in New Jersey, independent energy companies like Defendant Ambit Energy have grown rapidly. As one of the nation’s largest independent energy providers, Defendant Ambit Energy now serves over 1 million gas and electric customers, 94% of whom are residential customers like Plaintiff Simmons. While claiming on its website that customers “are choosing Ambit Energy as the best choice in energy today,” the fast-growing venture neglects to mention that by choosing Ambit, customers will end up increasing rather than decreasing their energy costs each year.

2. **The Delayed “1% Savings Guarantee”** – Defendant Ambit markets itself as a less-expensive alternative to existing utilities, telling potential customers to “stop paying too much for electricity.” Ambit offers New York consumers a supposedly sure thing: guaranteed savings compared to what their existing utility charges. Defendant calls this offer the “Guaranteed Savings Plan.” Under the Plan, Ambit promises that its customers’ 12-month energy costs will be at least 1% less than what the customers’ existing utility (the “incumbent provider”) would have charged, or Ambit will make up the difference. Ambit bills the savings as the “1% Savings Guarantee,” but fails to inform customers that they will need to wait a year or more for their 1% refunds which the Company holds onto for its own use. Defendant presents

New York consumers with the guarantee on the following page that makes no mention of the delayed refund checks:



3. **The Automatic Default Policy** – Beginning in January 2012, the Company implemented a new policy that further diminished the supposed benefits of the 1% Savings Guarantee. Under this new policy, Defendant Ambit created a new, much more expensive plan called the New York Select Variable Plan and began automatically shifting customers signed up for the Guaranteed Savings Plan into the New York Select Variable Plan (hereafter the “Variable Plan”). Prior to January 2012, customers like Plaintiff Ms. Simmons who were enrolled in the Guaranteed Savings Plan (hereafter the “Guaranteed Plan”) were promised they could remain on the plan and keep their 1% Savings Guarantee as long as they stayed with Ambit. After January 2012, the only way customers could avoid being defaulted into the new more expensive Variable Plan was if they actively notified the Company of their intention to stay in the Guaranteed Plan.

Unfortunately, the Company failed to give its Guaranteed Savings Plan customers adequate notice of the new default policy. Thus, like Plaintiff, tens of thousands (if not more) of Ambit's New York customers found themselves automatically defaulted into the higher costing Variable Plan.

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

5. In order to implement its new policy, the Company amended its customer service agreement (hereafter the "Terms of Service") in or around January 2012 to include the new opt-in procedure that Guaranteed Savings Plan customers needed to follow in order to keep their 1% Savings Guarantee. This unilateral amendment violates New York's Energy Services Company Consumers Bill of Rights, N.Y. Gen. Bus. Law § 349-d(6), which mandates that energy customers must affirmatively consent in writing to material changes in their energy plans. The Company never obtained the written consent of Plaintiff or other similarly situated Ambit customers before unilaterally amending the Terms of Service and switching them into the higher costing New York Select Variable Plan. For Plaintiff Ms. Simmons, the automatic renewal into the more expensive plan occurred in March 2012 without her knowledge or consent. As a result of the higher rates charged under the Variable Plan, Plaintiff was overcharged by approximately \$100 from March 2012 through November 2012, when she terminated her Ambit service.

6. Defendant Ambit's default policy also violates the disclosure requirements of N.Y. G.B.L. § 349-d(7), because neither Ambit's new Terms of Service nor its marketing materials clearly and conspicuously identify all variable charges included as part of the New York Select

Variable Plan.¹ In fact, the new Terms of Service doesn't identify a single variable charge in the Variable Plan.

7. Defendant Ambit's deceptive enrollment and energy plan practices run afoul of New York State law in multiple ways, including the following:

- a. Implementing a policy that automatically defaults customers enrolled in the Guaranteed Savings Plan into the more expensive New York Select Variable Plan unless the customer takes certain steps to remain in the Guaranteed Savings Plan;
- b. Failing to adequately disclose to its Guaranteed Savings Plan customers that they will be automatically defaulted into the more costly New York Select Variable Plan;
- c. Omitting from its marketing materials and Terms of Service that the rates charged under the New York Select Variable Plan are higher than the rates a customer's existing utility charges;
- d. Unreasonably withholding refund checks it promises to its Guaranteed Savings Plan customers;
- e. Failing to adequately disclose that Ambit withholds the refund checks promised to its Guaranteed Savings Plan customers;
- f. Violating N.Y. G.B.L. § 349-d(3) which explicitly prohibits independent energy companies from engaging in deceptive acts or practices in the marketing of energy services;
- g. Violating N.Y. G.B.L. § 349-d(6) by unilaterally amending its Terms of Service to automatically default its Guaranteed Savings Plan customers into the more expensive New York Select Variable Plan; and
- h. Violating N.Y. G.B.L. § 349-d(7) by failing to clearly and conspicuously identify the variable charges in the New York Select Variable Plan.

8. Plaintiff Ms. Simmons brings this action on behalf of herself and the Class of New York Ambit customers defined below. Plaintiff seeks, *inter alia*, a refund of overcharges, statutory damages, treble damages up to ten thousand dollars for each class member, injunctive

¹ Ambit defaults electric customers into the "New York Select Variable Plan," and transfers its gas customers onto the "New York Select Variable Natural Gas Plan." The different plan names, insignificant for purposes of this Complaint, are described collectively hereafter as the "New York Select Variable Plan."

and declaratory relief, and attorneys' fees and costs.

9. Only through a class action can the Company's customers remedy Ambit's ongoing wrongdoing. Because the monetary damages owed each customer by the Company are small compared to the much higher cost a single customer would incur in trying to challenge Ambit's unlawful practices, it makes no financial sense for an individual customer to bring his or her own lawsuit. Further, many customers don't even realize they are victims of Ambit's deceptive conduct. With this class action, Plaintiff and the Class seek to level the playing field and make sure that companies like Ambit engage in fair and upright business practices. Plaintiff therefore requests that the Court declare Ambit's business practices impermissible, enjoin Ambit from continuing its dishonest practices, require that Ambit return all misappropriated monies, and compensate Plaintiff and the Class for all damages suffered as a result of Ambit's deceptive acts.

PARTIES

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

11. Plaintiff's initial contract with Defendants was with a Texas corporation called Ambit Energy L.P. On or about August 15, 2011, Ambit Energy L.P. merged with and into **Defendant Ambit Texas, LLC**, which is also a Texas corporation.

12. At some point in 2010, **Defendant Ambit New York, LLC** was substituted for Ambit Energy L.P in Ambit's Terms of Service. **Defendant Ambit New York, LLC** is a New York corporation, and is the wholly owned subsidiary of **Defendant Ambit Energy Holdings, LLC**.

13. All three corporate Defendants – **Ambit Texas, LLC; Ambit Energy Holdings, LLC; and Ambit New York, LLC** – are headquartered at 1801 N. Lamar Street, Suite 200,

Dallas, Texas and their principal place of business is in Texas.

14. Defendant **Jere Thompson** is Ambit's Co-Founder and Chief Executive Officer.

15. Defendant **Chris Chambless** is Ambit's Co-Founder and Chief Marketing Officer. Defendant Chambless "leads [Ambit's] effort to acquire residential and small business customers in deregulated electricity and gas markets across the United States."

16. At all relevant times, Defendant Ambit marketed, sold, and distributed natural gas and electricity to Plaintiff and hundreds of thousands of other New York consumers in the service territories of various incumbent energy suppliers in New York State, including Con Edison, National Grid, New York State Electric and Gas, Rochester Gas and Electric, Orange & Rockland, Central Hudson and National Fuel Gas.

JURISDICTION AND VENUE

17. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1332 (the "Class Action Fairness Act").

18. This action meets the prerequisites of the Class Action Fairness Act, because the claims of the Class defined below exceeds the sum or value of \$5,000,000.00, the Class has more than 100 members, and diversity of citizenship exists between at least one member of the Class and Defendants.

19. This Court has personal jurisdiction over Defendants because they maintain sufficient contacts in this jurisdiction, including the advertising, marketing, distribution and sale of natural gas and electricity to New York consumers. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(1) & (2). Substantial acts in furtherance of the alleged improper conduct occurred within this District and Plaintiff resides within this District.

FACTUAL ALLEGATIONS

I. The Deregulation of New York's Energy Markets

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

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

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

23. After a customer switches to an ESCO, the customer's energy supply charge [based either on a customer's kilowatt hour (electricity) or therm (gas) usage] is calculated using the supply rate charged by the ESCO and not the customer's former utility. The supply rate charged is itemized on the customer's bill as the number of kilowatt hours ("kWh") or therms multiplied by the rate. For example, if a customer uses 145 kWh at a rate of 10.0¢ per kWh, the customer will be billed \$14.50 (145 x \$.10) for their energy supply.

II. Ambit's Rapid Expansion

24. According to its website, Defendant Ambit is “the fastest-growing company in the retail energy sector today.” In 2010, Inc. Magazine named Ambit the fastest growing private company in America.

25. Since its founding in 2006, Ambit has expanded far beyond its Dallas, Texas headquarters. With revenue in 2013 already surpassing \$1 billion from customers in ten states, Ambit dominates the northeast, selling natural gas and electricity to consumers in New York, New Jersey, Connecticut, Pennsylvania and Massachusetts.

26. Defendant Ambit has taken advantage of New York's deregulation and the resulting lack of oversight by adopting deceptive and unconscionable business tactics.

III. Ambit's Delayed 1% Savings Guarantee

27. In early 2008, Ms. Simmons was approached by an Ambit salesperson, given Ambit marketing materials, and led to believe that by switching to Ambit she would be charged at least 1% less than what Con Ed (Plaintiff's existing utility) was charging her, or Ambit would send her a check for the difference. What Ambit doesn't tell prospective customers, however, is that customers will have to wait a year or more before Ambit sends them their refund checks.

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

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

IV. Ambit's Deceptive Automatic Default Policy

30. On or about January 31, 2012, Ambit unilaterally amended its Terms of Service to implement a policy designed to increase the energy rates of its current Guaranteed Savings Plan customers. Despite Ambit's pledge that consumers who switch to Ambit are guaranteed "the peace of mind of knowing that [they] will save at least 1% annually," Ambit created the more costly New York Select Variable Plan and started requiring that consumers take action once every 12 months to hold on to their guarantee. Ambit's new policy requires customers to actively renew their participation in the Guaranteed Savings Plan on the anniversary that they joined Ambit or be automatically defaulted into the Variable Plan.

31. The New York Select Variable Plan has no purpose other than to allow Ambit to dishonor its 1% Savings Guarantee. Indeed, the only customers who end up in the Plan are those the Company automatically defaults out of the Guaranteed Plan.

32. When Ambit added the automatic default policy to its Terms of Service in early 2012, the Company failed to adequately notify Ms. Simmons and other Guaranteed Plan customers they were subject to the new default policy. Indeed, Ambit's website still markets its electricity plan as "[E]lectricity for your home with a guaranteed 1% savings" and does not even mention that customers will be required to opt-in to the Guaranteed Savings Plan every year.

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

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

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

36. The first time Ambit mentions the existence of the New York Select Variable Plan is in its January 31, 2012 Terms of Service. But this one-line mention of a “plan,” as well as subsequent similar references in later versions of the Terms of Service, all fail to identify a single variable charge, and state only as follows:

New York Select Variable Plans:

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

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

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

39. During the approximately eight months she was in the New York Select Variable Plan, Ms. Simmons paid Ambit approximately \$100 more than she would have been charged by Con Ed. Thus, by moving her without permission or adequate notice into the higher costing New York Select Variable Plan, Ambit cheated her out of both the \$100 and the 1% savings she was guaranteed as a participant in the Guaranteed Savings Plan.

CLASS ACTION ALLEGATIONS

40. Plaintiff Ms. Simmons sues on her own behalf and on behalf of a Class for damages and injunctive relief under Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure.

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

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

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

43. Plaintiff Ms. Simmons does not know the exact size of the Subclasses (hereafter collectively the “Class” unless otherwise specified), since such information is in the exclusive control of Defendants. Plaintiff believes, however, that based on the number of Ambit customers, the Class encompass hundreds of thousands of individuals whose identities can be

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

44. Plaintiff is an adequate class representative. Her claims are typical of the claims of the Class and do not conflict with the interests of any other members of the Class. Plaintiff and the other members of the Class were subject to the same or similar conduct. Further, Plaintiff and the Class sustained substantially the same injuries and damages arising out of Defendants' conduct.

45. Plaintiff Ms. Simmons will fairly and adequately protect the interests of all Class members. Plaintiff has retained competent and experienced class action attorneys to represent her interests and those of the Class.

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

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

47. A class action is superior to all other available methods for resolving this controversy because i) the prosecution of separate actions by Class members will create a risk of adjudications with respect to individual Class members that will, as a practical matter, be

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

48. Accordingly, this action satisfies the requirements set forth under Fed. R. Civ. P. 23(a) and 23(b).

CAUSES OF ACTION

COUNT I

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

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

49. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

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

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

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

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

54. Through its conduct described above, Defendant has violated N.Y. G.B.L. § 349-d(6) and caused injury to Plaintiff and the New York Select Variable Plan Subclass.

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

56. As a direct and proximate result of Defendant's conduct, Plaintiff and the New York Select Variable Plan Subclass have suffered injury and monetary damages in an amount to be determined at the trial of this action but not less than \$500.00 for each violation, such damages to be trebled, plus attorneys' fees.

57. Plaintiff and the other members of the New York Select Variable Plan Subclass further seek an order enjoining Defendant from undertaking any further unlawful conduct. Pursuant to N.Y. G.B.L. § 349-d(10), this Court has the power to award such relief.

COUNT II

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

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

58. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

59. Plaintiff brings this claim under N.Y. G.B.L. § 349-d(7) on her own behalf and on behalf of each member of the New York Select Variable Plan Subclass.

60. N.Y. G.B.L. § 349-d(7) provides that “[i]n every contract for energy services and in all marketing materials provided to prospective purchasers of such contracts, all variable charges shall be clearly and conspicuously identified.”

61. Defendant’s Terms of Service fail to identify a single variable charge in the New York Select Variable Plan. Moreover, the Company’s limited one-sentence reference to the Plan in the Terms of Service since January 30, 2012 is not conspicuous. The reference is in the same small print as the Terms of Service’s other terms and is buried in Ambit’s form contract. Further, the Company’s marketing materials make no reference at all to even the existence of the New York Select Variable Plan.

62. Through its conduct described above, Defendant has violated N.Y. G.B.L. § 349-d(7) and caused injury to Plaintiff and other customers enrolled in the New York Select Variable Plan.

63. As a direct and proximate result of Defendant’s conduct, Plaintiff and the New York Select Variable Plan Subclass have suffered injury and monetary damages in an amount to be determined at the trial of this action but not less than \$500.00 for each violation, such damages to be trebled, plus attorneys’ fees.

64. Plaintiff and the other members of the New York Select Variable Plan Subclass further seek an order enjoining Defendant from undertaking any further unlawful conduct. Pursuant to N.Y. G.B.L. § 349-d(10), this Court has the power to award such relief.

COUNT III

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

(ON BEHALF OF ALL SUBCLASSES)

65. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

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

67. Defendant’s acts are consumer-oriented in that they are directed at members of the consuming public.

68. Defendant has engaged in, and continues to engage in, deceptive acts and practices in violation of N.Y. G.B.L. § 349-d(3) by:

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

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

70. As a direct and proximate result of Defendant’s unlawful deceptive acts and practices, Plaintiff and the Class have suffered injury and monetary damages in an amount to be

determined at the trial of this action but not less than \$500.00 for each violation, such damages to be trebled, plus attorneys' fees.

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

COUNT IV

NEW YORK GENERAL BUSINESS LAW § 349

(ON BEHALF OF ALL SUBCLASSES)

72. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

73. Plaintiff brings this claim under N.Y. G.B.L. §349 on her own behalf and on behalf of each member of the Class.

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

75. Defendant’s acts are consumer-oriented in that they are directed at members of the consuming public.

76. Defendant has engaged in, and continue to engage in, deceptive acts and practices in violation of N.Y. G.B.L. §349 by:

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

- e. Failing to adequately disclose that Ambit withholds the refund checks promised to its Guaranteed Savings Plan customers.

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

78. As a direct and proximate result of Defendant's unlawful deceptive acts and practices, Plaintiff and the Class have suffered injury and monetary damages in an amount to be determined at the trial of this action but not less than \$50.00 for each violation, such damages to be trebled, plus attorneys' fees.

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

COUNT V

UNJUST ENRICHMENT

(ON BEHALF OF ALL SUBCLASSES)

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

81. Plaintiff brings this claim on her own behalf and on behalf of each member of the Class.

82. As a result of its deceptive, unlawful, and unfair conduct, Defendant Ambit has been enriched by (i) withholding refunds owed to customers, and (ii) defaulting Guaranteed Savings Plan customers into the more costly New York Select Variable Plan.

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

84. As a result of Defendant's collection of excessive energy charges and failure to make timely refunds, it would be unjust and/or inequitable for Defendant to retain the benefits of its conduct without restitution to Plaintiff and the Class of the monies paid to Defendant. Accordingly, Defendant must account to Plaintiff and the Class for its unjust enrichment.

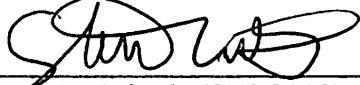
PRAYER FOR RELIEF

WHEREFORE, Plaintiff Taurshia Simmons respectfully requests that the Court:

- (a) Issue an order certifying the Classes defined above, appointing the Plaintiff as Class representative, and designating the undersigned firm as Class Counsel;
- (b) Find that Defendants have committed the violations of law alleged herein;
- (c) Enter an order granting monetary relief pursuant to G.B.L. §349 on behalf of the Class;
- (d) Enter an order granting monetary relief pursuant to G.B.L. §349-d on behalf of the Class;
- (e) Determine that all Defendants have been unjustly enriched as a result of their wrongful conduct, and enter an appropriate order awarding restitution and monetary damages to the Class;
- (f) Render an award of compensatory damages, the amount of which is to be determined at trial;
- (g) Issue an injunction or other appropriate equitable relief requiring Defendants to refrain from engaging in the deceptive practices alleged herein;
- (h) Render an award of punitive damages;
- (i) Enter judgment including interest, costs, reasonable attorneys' fees, costs, and expenses; and
- (j) Grant all such other relief as the Court deems appropriate.

Dated: September 5, 2013
New York, New York

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