

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**JOSHUA LITTLE, SAMANTHA MASON,
GREGORY STEWART, SCOTT
LAZAREK, and HENRY BRETON,**

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

Plaintiffs,

v.

**AMBIT ENERGY HOLDINGS, LLC,
AMBIT NORTHEAST, LLC, and AMBIT
NEW YORK, LLC,**

Defendants.

Case No. 16 Civ. 8800 (PGS)
(LHG)

**ORDER GRANTING FINAL
APPROVAL OF CLASS
ACTION SETTLEMENT AND
FINAL JUDGMENT**

THIS CAUSE is before the Court on Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement. Having considered the motion and supporting papers including 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 AS FOLLOWS:

1. For purposes of this Order Approving Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement and Final Judgment (the

“Judgment”), the Court adopts all defined terms as set forth in the Settlement Agreement filed in this case.

2. This Court has jurisdiction over the subject matter of the litigation, the Named Plaintiffs, the other Class Members, the Releasors, and the Released Persons, and the Court reserves, without affecting the finality of this Judgment, its continuing and exclusive jurisdiction over the Parties to the Settlement Agreement, including Plaintiffs, Defendants, and all Class Members, to administer, supervise, construe and enforce the Settlement Agreement in accordance with its terms.

3. With respect to the Settlement Class and for purposes of approving this Settlement only, this Court finds as to the Settlement Class that:

- a. the Class is so numerous that joinder of all members is impracticable;
- b. there are questions of law or fact common to the Class;
- c. the claims of the Named Plaintiffs are typical of the claims of the Class;
- d. the Named Plaintiffs will fairly and adequately protect the interests of the Class;
- e. questions of law and fact common to Class members predominate over any questions affecting only individual Class members; and
- f. a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of and solely in connection with the Settlement, the Court certifies this action as a class action on behalf of the following Settlement Class:

All persons who received services in the States of New York, Maryland, or New Jersey who were enrolled as a residential or small business/commercial customer of Ambit and were enrolled in Ambit's Budget Billing Program during the Class Period.

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

5. The Parties have complied fully with the notice provisions of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

6. Based on evidence and other material submitted in conjunction with the Final Approval Hearing, the Court hereby finds and concludes that (1) the Class Notice and Claim Form were disseminated to members of the Settlement Class in accordance with the Settlement Agreement and the Court's Preliminary

Approval Order,¹ and (2) the Class Notice and Claim Form complied with this Court's Preliminary Approval Order.

7. The Court finds and concludes that the Class Notice and Claim Form, and all other aspects of the notice, opt-out, and claims submission procedures set forth in the Settlement Agreement fully satisfy Rule 23 of the Federal Rules of Civil Procedure and the requirement of due process, were the best practicable under the circumstances, and support the Court's exercise of jurisdiction over the Settlement Class and the Class Members.

8. There were no objections to the Settlement, and five Class members requested to opt out of the Settlement. 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 Judgment.

9. The Court finds that the Settlement Agreement is the product of arm's-length settlement negotiations between the Parties.

10. The Court finds and concludes that the Settlement is fair, reasonable, and adequate and should be approved.

11. The Court hereby approves the Settlement (as set forth in the Settlement Agreement), the releases therein, and all other terms in the Settlement

¹ On October 23, 2019 the Court issued its Order Approving Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Preliminary Approval Order") (ECF No. 67).

Agreement, as fair, just, reasonable, and adequate as to the Parties. The Parties are directed to perform in accordance with the terms set forth in the Settlement Agreement. Without further order of the Court, the Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement and to make other non-material modifications in implementing the Settlement Agreement that are not inconsistent with this Judgment.

12. This action is dismissed with prejudice. The Parties are to bear their own attorneys' fees and costs, except as otherwise expressly provided in the Settlement Agreement and in this Judgment.

13. By this Judgment, the Releasers shall be deemed to have (and by operation of the Judgment shall have) fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Persons.

14. In accordance with Section J of the Settlement Agreement, Plaintiffs and each and every Class Member are permanently barred and enjoined from asserting, instituting, commencing, maintaining, enforcing, pursuing, or prosecuting any of the Released Claims, as set forth in Section J of the Settlement Agreement, against the Released Persons, including during any appeal from this Judgment, in any action or proceeding, either directly, individually, representatively, derivatively, or in any other capacity, by whatever means, in any

local, state, or federal court, or in any agency of other authority or arbitral or other court or forum wherever located. This permanent bar and injunction is necessary to protect and effectuate the Settlement Agreement, this Judgment, and this Court's authority to effectuate the Settlement Agreement and is ordered in aid of this Court's jurisdiction and to protect its judgments.

15. Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Released Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. The Released Persons may file the Settlement Agreement and/or the Judgment in any other action that may be brought against them to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

16. If for any reason the Effective Date does not occur, then (1) the certification of the Settlement Class shall be deemed vacated, (2) the certification of the Settlement Class for settlement purposes shall not be considered as a factor

in connection with any subsequent class-certification issues, and (3) the Parties shall return to the *status quo ante* in the litigation as it existed without prejudice to the right of any of the Parties to assert any right or position that could have been asserted if the Settlement had never been reached or proposed to the Court.

17. Upon consideration of Class Counsel's request for Service Awards to the Named Plaintiffs, the request is GRANTED. Consistent with the terms of Paragraphs 11(ee) and 34 of the Settlement Agreement, Defendants shall pay Service Awards to the Named Plaintiffs in the amounts requested in Plaintiffs' Unopposed Motion for Final Approval of the Class Action Settlement and consistent with the terms of the Settlement Agreement.

18. Upon consideration of Class Counsel's request for an award of fees and expenses, the request is GRANTED. Defendants shall pay Class Counsel fees and expenses consistent with the terms of Paragraphs 11(j) and 35 of the Settlement Agreement, and as detailed in Plaintiffs' Unopposed Motion for Final Approval of the Class Action Settlement.

19. Within 130 days from the Effective Date, the Claims Administrator shall destroy all personally identifying information about any Class Member in its possession, custody, or control, including (but not limited to) any list that the Claims Administrator received from Defendants in connection with the Claims Administrator's efforts to provide Notice to Class members.

20. This document is a final, appealable order and shall constitute a judgment for purposes of Rules 54 and 58 of the Federal Rules of Civil Procedure. By incorporating the Settlement Agreement's terms herein, the Court determines that this Final Judgment complies in all respects with Rule 65(d)(1) of the Federal Rules of Civil Procedure.

SO ORDERED.

s/Peter G. Sheridan

PETER G. SHERIDAN, U.S.D.J.

July 1, 2020