

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)

CLASS ACTION

~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

THIS CAUSE is before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. Having reviewed the motion and supporting papers including the Settlement Agreement and all exhibits attached thereto, and the record in this case, and for good cause shown:

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Preliminary Approval of Settlement Agreement

1. The Court finds for the purposes of preliminary approval, that the proposed settlement, as set forth in the Parties' Settlement Agreement, is fair, reasonable, adequate, and in the best interests of the Settlement Class, defined below. The Court further finds that the settlement was entered into at arm's length by informed and highly experienced counsel. The Court therefore preliminarily approves the proposed settlement.

Class Certification

2. The Court preliminarily certifies, pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3), for purposes of this proposed settlement only and pending final approval, a Settlement Class defined as:

All persons who received services in the States of New York, Maryland, or New Jersey who were enrolled as residential or small business/commercial customer of Ambit and were enrolled in Ambit's Budget Billing Program during the Class Period from May 4, 2010 through the preliminary approval date.

Excluded from the Settlement Class are: 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.

3. Pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3), and for settlement purposes only and pending final approval, the 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) Plaintiffs' claims are typical of the claims of the Class;
- (d) 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. The Court's preliminary certification of the Settlement Class as provided herein is

without prejudice to, or waiver of the rights of Defendants to contest certification of any class proposed in this action if the Settlement is not finally approved. In the event the Settlement is terminated or otherwise is not finally approved, the Court's findings in this Order shall have no effect on the Court's ruling on any motion to certify any class in this action and no party may cite or refer to the Court's approval of the Settlement Class as persuasive or binding authority with respect to any motion to certify any such class.

Appointment of Class Counsel and Class Representatives

5. For purposes of these settlement approval proceedings, the Court finds Plaintiffs Scott Lazarek, Henry Breton, Joshua Little, Samantha Mason and Gregory Stewart will fairly and adequately represent the interests of the Settlement Class and appoints them as Class Representatives of the Settlement Class.

6. For purposes of these settlement approval proceedings, the Court finds Steven Wittels, J. Burkett McInturff and Tiasha Palikovic of Wittels Law, P.C., and Jeffrey A. Klafter, Seth R. Lesser, and Fran Rudich of Klafter Olsen & Lesser LLP, are all skilled and capable attorneys who will fairly and adequately represent the interests of Settlement Class, and they are hereby appointed Class Counsel to represent the interests of the Settlement Class.

Notice to Class Members

7. The Court approves the form and content of the proposed Class Notice and Claim Form (Exhibits A and B to the Settlement Agreement), and approves the Parties' proposal (i) to disseminate the Class Notice and Claim Form by mail and, where available, email, and (ii) to disseminate the Class Notice and Claim Form on a website established by the Claims Administrator, as set forth in the Settlement Agreement. The Court finds that the Parties' proposal regarding notice to the Settlement Class constitutes the best notice practicable under the

circumstances as well as valid, due, and sufficient notice to all those entitled thereto, and that it complies fully with the requirements of due process and Fed. R. Civ. P. 23.

8. The Court approves the Settlement Agreement's schedule for dissemination of the Class Notice and Claim Form, requesting exclusion from the Settlement Class or objecting to the settlement, submitting papers in connection with Final Approval, and the Final Approval Hearing.

Claims Administration

9. The Court approves the appointment of a Claims Administrator, to be selected by the parties, with the responsibilities set forth in the Settlement Agreement.

10. As described in the Settlement Agreement, Settlement Class Members will have 60 days to file their claims from the date on which the Class Notice and Claim Form are disseminated to the Settlement Class. Any Settlement Class Member may opt out of the Settlement Class by mailing a completed request for exclusion to the Claims Administrator and all counsel within 60 days after the date on which Class Notice is disseminated to the Settlement Class. Persons or entities that request exclusion from the Settlement Class shall not be bound by any judgment and shall not be entitled to share the benefits of the Settlement Agreement. Any request for exclusion shall not be effective unless it complies with the requirements set forth in the Class Notice and is made within the time set forth in this Order. No Settlement Class Member, or any person acting on behalf of or in concert or participation with that Settlement Class Member, may exclude any other Settlement Class Member from the Settlement Class. So-called "mass" or "class" opt-outs shall not be allowed and shall be deemed invalid.

11. Any potential member of the Settlement Class that does not properly and timely opt out of the settlement shall be included in the Settlement Class and shall be bound by all the

terms and provisions of the Settlement Agreement, whether or not such Settlement Class Member has objected to the Settlement.

12. Any objecting Class Member must file with the Court a written objection, postmarked on or before the Claim Deadline. Any objections that do not comply with the requirements set forth in the Class Notice or are not made within the time set forth in this Order will not be considered. Any objections not raised properly and timely will be waived and any Settlement Class Member who fails to timely file and serve a valid written objection shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by any means, including but not limited to an appeal.

Final Approval Hearing

13. A Final Approval Hearing is hereby scheduled to be held before the undersigned on February 4, 2020, at 1 ^{PM} am/pm, at 402 East State Street, Trenton, NJ, to consider the fairness, reasonableness and adequacy of the Settlement Agreement, whether the Settlement Agreement should be finally approved, the entry of a Final Order and Judgment in the case, proposed service awards to Plaintiffs, an application for attorneys' fees, costs and reimbursement of expenses made by Class Counsel, and any other related matters that are brought to the attention of the Court in a timely fashion.

14. Plaintiffs' motions for final approval and for award of attorneys' fees, expenses, and service awards shall be filed fourteen (14) days before the Final Approval Hearing.

15. Any member of the Class that has not filed a request for exclusion may appear at the Final Approval Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness, and adequacy of the settlement; provided, however, that no person shall be heard in opposition to the settlement,

and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless, in accordance with the deadlines above, such person: (a) timely filed with the Clerk of the Court a notice of such person's intention to appear as well as a statement that indicates the basis for such person's opposition to the settlement, and any documentation in support of such opposition; and (b) timely served copies of such notice, statement, and documentation upon all counsel.

16. The date and time of the Final Approval Hearing shall be set forth in the Class Notice but shall be subject to adjournment by the Court without further notice to Class Members other than which may be posted on the Court's Electronic Case Filing (ECF) system or the website created pursuant to the Settlement Agreement.

Dated: Oct 23, 2019
Trenton, New Jersey

SO ORDERED:



Hon. Peter G. Sheridan U.S.D.J.