

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

**FILED
4/14/2021
9:34 AM
COUNTY CLERK
QUEENS COUNTY**

BRIAN WILLIAMS, Individually and on
Behalf of all Others Similarly Situated,

Plaintiff,

v.

GREENLIGHT ENERGY, INC.,

Defendant.

Index No.: 708394/2019

Sequence #7

**ORDER APPROVING PLAINTIFF’S UNCONTESTED
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

THIS CAUSE is before the Court on Plaintiff’s Uncontested Motion for Preliminary Approval of Class Action Settlement. Having reviewed the Motion, the Settlement Agreement, the Affirmation of Jonathan Shub, Esq., 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 interest of the Settlement Class. The terms of the Settlement Agreement and accompanying exhibits are incorporated in full in this Order as if fully set forth herein. The Court further finds that the Settlement was entered into at arm’s length by highly experienced counsel and free of any collusion to the detriment to the Class. The Court further determines that the benefit provided to the Settlement Class in the Settlement Agreement is within the range of settlements appropriate for final judicial approval. The Court therefore preliminarily approves the proposed Settlement.

Class Certification

2. For purposes of the Settlement, the Court conditionally certifies, pursuant to CPLR §901 *et seq.*, the Settlement Class defined as:

All Persons or Entities that were: (i) customers of Greenlight; and (ii) charged a variable rate for electricity by Greenlight in New York, New Jersey, Maryland, or Pennsylvania between March 1, 2014 to May 13, 2019.

Excluded from the Settlement Class are: Greenlight; any of its parents, subsidiaries, or affiliates; any entity controlled by it; any officer, director, employee, legal representative, predecessor, successor, or assignee of Greenlight; federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof) and the judge to whom this action is assigned and any member of his immediate family.

3. Pursuant to the Settlement Agreement, and for Settlement purposes only, the Court finds as to the Settlement Class that:

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

4. For purposes of the Settlement, the Court provisionally appoints Plaintiff Brian Williams as Representative of the Settlement Class.

5. For purposes of the Settlement, the Court provisionally appoints Jonathan Shub and Kevin Laukaitis of Shub Law Firm LLC (“Shub Law”), Daniel K. Bryson and Harper Segui of Whitfield Bryson LLP (“WB”), Greg Coleman and Lisa White of Greg Coleman Law (“GCL”), and Aarthi Manohar of Kohn, Swift & Graf, P.C. (“KSG”) to act as Class Counsel to the Settlement Class.

6. The Court approves, as to form and content, the Short Form Notice and Long Form Notice attached as Exhibits B and C, respectively, to the Settlement Agreement, and finds that the distribution of the Settlement Notice substantially in accordance with Section V of the Settlement Agreement meets the requirements of CPLR §901 *et seq.* and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

Notice To Potential Class Members

7. The Court approves the form and content of the proposed Short Form Notice (attached to the Settlement Agreement as Exhibit B) and Long Form Notice (attached to the Settlement Agreement as Exhibit C) (collectively, “Class Notice”) and approves the Parties’ proposal to distribute the Short Form Notice by U.S. Mail, and the Long Form Notice via the Internet, as set forth in the Settlement Agreement. The Court finds that the Parties’ proposal regarding class notice to potential class members constitutes the best notice practicable under the circumstances, and complies fully with the notice requirements of due process and CPLR §901 *et seq.* Other than as set forth in this Order and the Settlement Agreement, the parties, their counsel, and the Settlement Administrator shall have no other obligations to provide any additional notice to the Class Members, and the Court finds that no further notice to the Class Members is reasonably necessary.

8. The Court approves and Orders the following schedule for dissemination of the Class Notice, requesting exclusion from the Settlement Class, or objecting to the Settlement, submitting papers in connection with Final Approval, and the Final Approval Hearing, as follows:

Within 7 days after entry of Order Preliminarily Approving the Settlement	Defendant shall deliver to the Settlement Administrator an electronic file ("Class Member E-File"), in a format to be agreed upon by Greenlight and the Settlement Administrator, containing the following related data with respect to each Class Member: <ul style="list-style-type: none"> a. The name of the Class Member; b. The last known address of the Class Member; c. The account number(s) of the Class Member; d. Total amount paid for electricity for each Class Member during the Class Period; and e. The benefit to be received by each Class Member.
Within 30 days after entry of Order Preliminarily Approving the Settlement	The Settlement Administrator shall mail the Short Form Notice to all Settlement Class Members.
Within 30 days after entry of Order Preliminarily Approving the Settlement	The Settlement Administrator shall cause the Settlement Agreement, this Order, and a copy of the Long Form Notice to be posted on the website created pursuant to the Settlement Agreement, as set forth in the Short Form Notice.
Upon mailing of Class Notice	90-day Claim Period begins.
75 days after mailing of Class Notice	Plaintiff shall file a motion for final approval of settlement, and an application for the award of attorneys' fees, costs, and enhancement award for named plaintiff. The Settlement Administrator shall cause any such motions to be posted on the Settlement website.
90 days after mailing of Class Notice	Deadline for Settlement Class Members to submit Valid Claims. Opt-Out Date: Deadline for Settlement Class Members to opt-out of Settlement. Objection Date: Deadline for Settlement Class Members to object to terms of Settlement and to advise the parties and the Court of intent to appear at Final Approval Hearing.
97 days after mailing of Class Notice	Deadline for the Settlement Administrator to provide counsel with affidavit of mailing of Short Form Notice and remailing of any Short Form Notices to forwarding addresses that were returned as undeliverable.

97 days after mailing of Class Notice	Deadline for the Settlement Administrator to provide counsel a list of all Settlement Class Members eligible to receive any Benefit under the Settlement, as well as all Class Members that have returned a timely request to opt-out of the Settlement (as described in the Class Notice).
At least 21 days prior to Final Approval Hearing Class Notice	Class Counsel shall serve and file an affidavit of the Settlement Administrator declaring compliance with the notice provisions of this Order.
7 days prior to Final Fairness Hearing	Deadline for parties or Settlement Administrator to file any other submissions related to the Settlement or Final Approval Hearing.
120 days after Mailing of Class Notice	Earliest date for entry of order finally approving Settlement Agreement.

Claims Administration

9. For purposes of the Settlement, the Court provisionally approves and the parties are authorized to retain the Angeion Group as the Settlement Administrator, with the responsibilities set forth in the Settlement Agreement. The Angeion Group shall be subject to the jurisdiction of this Court relative to the performance of duties and responsibilities as Settlement Administrator in this action.

10. Any Class Member may request to be excluded (or “opt-out”) from the Class. A Class Member who wishes to opt-out of the Class must give written notice to the Settlement Administrator, Class Counsel, and counsel for Greenlight by the Opt-Out Deadline. Opt-Out requests must: (i) be signed by the Class Member who is requesting exclusion; (ii) include the full name, address, and phone number(s) of the Class Member requesting exclusion; and (iii) include the following statement: “I/We request to Opt-Out from the settlement in the Greenlight Action.” Requests for Exclusion that are not timely or do not clearly state an intention to opt-out of the Settlement will be considered invalid and of no effect, and the Person or Entity that untimely submits a Request for Exclusion will remain a Settlement Class Member and will be bound by any Orders entered by the Court, including the Final Approval Order and the Releases contemplated thereby. Any Person or Entity that successfully opts-out of the Settlement shall have no standing

to object to the Settlement and shall not be heard at the Final Approval Hearing. The receipt of the Class Notice or Opt-Out request shall not be deemed a determination by this Court or an admission or determination by the parties that the recipient thereof qualifies as a Class Member.

11. Except for those Persons or Entities that have properly and timely submitted Requests for Exclusion, all Settlement Class Members will be bound by the Settlement Agreement and the Final Approval Order, including the Releases, regardless of whether they file a Claim or receive any monetary relief. Any Person or Entity that timely and properly submits a Request for Exclusion shall not: (a) be bound by any orders or the Final Approval Order nor by the Releases contained therein; (b) be entitled to any relief under the Settlement Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement Agreement. Each Person or Entity requesting exclusion from the Settlement Class must personally sign his/her/its own individual Request for Exclusion. No Person or Entity may opt-out of the Settlement Class for any other Person or Entity, or be opted-out by any other Person or Entity, and no Person or Entity shall be deemed opted-out of the Settlement Class through any purported “mass” or “class” opt-outs.

12. Any Settlement Class Member who intends to object to the Settlement must do so by the Objection Deadline. In order to object, the Settlement Class Member must file with the Court prior to the Objection Deadline, and provide a copy to Class Counsel and Defendant’s Counsel, and the Settlement Administrator also prior to the Objection Deadline, a document that includes all of the following:

- a. attaches documents establishing, or provide information sufficient to allow the Parties to confirm that the objector is a Class Member;
- b. includes a statement of such Class Member’s specific Objection;
- c. states the grounds for the Objection;

- d. identifies any documents such objector desires the Court to consider;
- e. provides all information requested on the Claim Form; and,
- f. provides a list of all other Objections submitted by the objector, or the objector's counsel, to any class action settlements submitted in any Court in the United States in the previous five years (if the Settlement Class Member or his/her/its counsel has not objected to any other class action settlement in the United States in the previous five years, he/she/it or their counsel shall affirmatively so state in the Objection).

13. Any Settlement Class Member who fails to file and serve timely: (a) a written objection containing all of the information listed in items (a) through (f) of the previous paragraph; and, (b) notice of his/her intent to appear at the Final Approval Hearing pursuant to this paragraph, shall not be permitted to object to the Settlement and shall be bound by the Settlement Agreement and Releases and 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. Any Objector shall be precluded from raising any grounds for objecting to the Settlement, at the Final Approval Hearing or otherwise, that is not expressly stated in a valid written Objection.

14. Upon the filing of an objection, Class Counsel and Defendant's Counsel may take the deposition of the objecting Settlement Class Member pursuant to the CPLR §901 *et seq.* at an agreed-upon time and location, and to obtain any evidence relevant to the objection. Failure by an objector to make himself or herself available for deposition or comply with expedited discovery may result in the Court striking the objection. The Court may tax the costs of any such discovery to the Objector or the Objector's counsel if the Court determines that the Objection is frivolous or is made for an improper purpose. Failure of any objector to strictly adhere to the above procedure shall bar him/her/it from being heard at the Fairness Hearing.

Fairness Hearing

15. A Fairness Hearing is hereby scheduled to be held before the undersigned on **July 15, 2021** at 9:30 a.m., to consider the fairness, reasonableness and adequacy of the Settlement Agreement, the entry of a Final Order and Judgment in the case, dismissal of this action with prejudice, the entry of a permanent injunction precluding all class members that have not validly opted-out of this Settlement from commencing, prosecuting, or assisting in any lawsuit or proceeding against the Released Parties on any matters within the scope of the Released Claims (as defined in the Settlement Agreement), any petition for a Fee Award by Class Counsel, a Named Plaintiff Enhancement Award to the named Plaintiff, and any other related matters that are brought to the attention of the Court in a timely fashion.

16. Any member of the Settlement Class that has not filed a Request for Exclusion may appear at the Fairness 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 Agreement; provided, however, that no person shall be heard in opposition to the Settlement Agreement, 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) 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 Agreement, and any documentation in support of such opposition; and (b) serves copies of such notice, statement and documentation upon all counsel. The date and time of the Fairness Hearing shall be set forth in the Notice but shall be subject to adjournment by the Court without further notice to the members of the Settlement Class other than which may be posted on the New York State Courts E-Filing System (NYSCEF) or the website created pursuant to the Settlement Agreement, as set forth in the Short Form Notice.

17. If Final Approval of the Settlement is not granted, or if the Settlement is terminated for any reason, the Settlement and all proceedings had in connection therewith shall be without prejudice to the parties' rights and the parties shall return to the *status quo ante*, and all Orders issued pursuant to the Settlement and Preliminary and Final Approval process shall be vacated. In such event, the Settlement Agreement and all negotiations concerning it shall not be used or referred to in this action for any purpose whatsoever. If Final Approval of the Settlement is not granted, or if the Settlement is terminated for any reason, nothing in the Settlement Agreement and accompanying exhibits, Motion for Preliminary Approval of the Settlement, or this Order shall be construed by Greenlight as an admission or concession of any fault, wrongdoing, breach, or liability, nor shall it be construed against Plaintiff or any putative class as an admission or concession that his claims lack merit or any requested relief is unavailable. If Final Approval of the Settlement is not granted, or if the Settlement is terminated for any reason, nothing in the Settlement Agreement and accompanying exhibits, Motion for Preliminary Approval of the Settlement, or this Order shall be construed or used to determine that certification of any class is appropriate if this action were to be litigated, rather than settled.

Miscellaneous Relief

18. The Settlement may be modified, subject to Court approval, and as agreed to by the Class Representative and Greenlight, without requiring further notice to the Class Members.

19. The Court hereby stays all proceedings in this Court other than those proceedings necessary to carry out or enforce the terms and conditions of the Settlement, until the Effective Date of the Settlement has occurred.

20. Additionally, pending this Court's determination as to whether to finally approve the Settlement, the Court hereby prohibits and/or enjoins any other person, entity or counsel (other than successful opt-outs to this Settlement) from representing or from commencing, prosecuting,

or assisting in any lawsuit or proceeding against the Released Parties on any matters within the scope of the Released Claims (as defined in the Settlement Agreement).

21. Absent prior approval from this Court, the Representative Plaintiff and Class Counsel, shall not issue any press release, advertisement, internet posting, or any other public statement (to the media or otherwise), or make any other extrajudicial statements concerning the facts and circumstances of this action or the disclosures exchanged between the parties, with the exception of the notices to be distributed to the Class Members in accordance with this Settlement and for all other purposes of announcing the Settlement and benefits to the Class thereof. Any communications between Class Counsel and any individual ClassMembers seeking inquiries shall be limited to providing publicly available information contained in the notices provided to the Class Members, and Class Counsel shall in no way make any disparaging statements about Greenlight or the Released Parties in responding to any such inquiries.

22. The parties and their counsel shall meet and confer and work together in good faith to effectuate the terms of the Settlement Agreement and this Order. The Court may, upon proper notice and motion, resolve any disputes between the parties concerning the Settlement Agreement and this Order.

Dated: April 12, 2021

SO ORDERED:



Hon. Joseph Risi, A.J.S.C.

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