

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

OLADIPUPO ADESINA  
Plaintiff,

v.

ACN, INC. and XOOM ENERGY, LLC  
Defendants.

NO. \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

Plaintiff Oladipupo Adesina (“Plaintiff”) files this class action complaint on behalf of himself and all others similarly situated, by and through the undersigned attorneys, against Defendants ACN, Inc. (“ACN”) and XOOM Energy, LLC (“XOOM”) (collectively “Defendants”) and alleges as follows upon personal knowledge as to himself and his own acts and experiences and, as to all other matters, upon information and belief based upon, *inter alia*, investigation conducted by his attorneys.

**NATURE OF THE CASE**

1. Plaintiff brings this class action individually and on behalf of the Class defined below against Defendants to obtain relief, including, among other things, damages and declaratory relief. This class action is brought to remedy violations of law in connection with Defendants’ fraudulent and deceptive bait-and-switch sales model with their variable rate Simpleflex customers. Defendants represent to potential customers, that if they switch to XOOM from their local utilities or other energy suppliers, they will receive a low introductory rate on

their energy bill, followed by competitive market-based rates and savings on their energy bills. However, these representations are a bait-and-switch scheme. Following the low introductory rate, Defendants' energy rates increase dramatically, causing XOOM customers' electricity bills to rise.

2. Defendants' sales pitch is in reality false and misleading in that the rates actually charged to consumers are not competitive and bear little relation to prevailing market conditions. As a consequence of this scheme, consumers across the nation are essentially being scammed out of millions of dollars in exorbitant charges for electricity and gas.

### **JURISDICTION AND VENUE**

3. This is a proposed class action covering the states of California, Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Texas, and Virginia. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(d)(2), because Plaintiff and Defendants are of diverse citizenship and the aggregate amount in controversy exceeds \$75,000.00 exclusive of interest and costs. Likewise, this court has jurisdiction under 28 U.S.C. §1332(d)(2), members of the putative class (each individual member a "Class member" and collectively the "Class members") are of diverse citizenship from the Defendants and the aggregate amount in controversy exceeds five million dollars (\$5,000,000.00) exclusive of interest and costs. There are 100 or more members of the proposed Plaintiff Class.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred here, a substantial part of

the property that is the subject of this action is situated in this district, and Defendants are subject to personal jurisdiction in this District.

### **PARTIES**

5. Plaintiff Oladipupo Adesina is a resident of Laurel, Maryland. On or around June 2014, Plaintiff switched his energy supplier to XOOM Energy with the promise of energy cost savings and competitive market rates.

6. Defendant ACN Inc., a corporation with its principal place of business in Concord, North Carolina, is a multi-level marketing company that provides, among other things, energy through XOOM Energy using a network of independent sales agents known as “Independent Business Owners” (“IBOs”).

7. Defendant XOOM Energy, LLC, a corporation with its principal place of business in Huntersville, North Carolina, is a retail electricity and natural gas provider: XOOM purchases electric power and natural gas from other companies and delivers it to the local utility company on behalf of its customers.

### **FACTUAL ALLEGATIONS**

8. Until recently, electricity and natural gas were supplied and distributed by local utility companies. Over the last several years, however, states have begun to change the regulations in the energy industry to enhance competition between energy providers.

9. In theory, the deregulation of energy allows consumers to shop around for the best energy rates. But, as Defendants have demonstrated, the deregulation has also provided energy companies with the opportunity to gouge unsuspecting consumers. Specifically, Defendants

have exploited deregulated markets by engaging in a bait-and-switch sales scheme with potential consumers.

10. Defendants lure consumers away from their local utility companies or other energy suppliers by falsely suggesting that they will lower their energy costs. Defendants misleading scheme promises consumers low introductory rates, followed by a competitive market rate. But in reality, after the teaser rate, consumers' energy bills skyrocket.

11. Energy rates subject to market fluctuations, like those offered by Defendant, are higher than the rates previous paid by Plaintiff and other Class members pay for their electricity and gas, a material fact that Defendants do not disclose.

12. Adding to the fraudulent scheme, Defendants make the cancellation process lengthy and difficult; it takes up to two billing cycles for disgruntled customer who wishes to switch to another company to do so.

13. Defendants consistently and repeatedly represent their rates as both low and competitive, and guarantee customer satisfaction. Misleading statements on their website and in their marketing materials include the following:

“The power to choose means you can find a company that is willing to provide great customer service and better rates from day one”

“Competition means you can pay less on your utility bills, and companies now have to earn your business”

“It takes only a moment to see our rates and discover if you too can lower your utility bills with XOOM. Once you hear about our unparalleled blend of pricing plans, reliable supply sources and superior customer service, you'll find it hard not to choose us”

14. Defendants also advise their IBOs to advertise to their customers that by switching to XOOM, they will enjoy energy costs savings. As one IBO has explained, “They tell us during the meetings that XOOM Energy is a way for your family and friends to save money on their electricity and gas bills and for you to make quick money.”

15. These statements are materially misleading, because by switching to XOOM, consumers receive energy services that are substantially more costly.

16. At a minimum, Defendants exploit ambiguities in their representations by creating an illusory expectation of competitive pricing.

17. The misleading impressions created by Defendants are not dispelled by any disclaimers contained on the company website.

18. For example, Defendants represent in the FAQ section of their website: “A variable rate plan allows you to purchase energy at market-based prices that change from month to month. While a variable rate is subject to monthly price increases or decreases, it may help you realize the lowest possible cost in the market. However, it also exposes you to possible price increases, and, unlike a fixed rate, a variable rate does not protect you against price volatility. This may be higher or lower than the utility rate.”<sup>1</sup>

19. In a short video on their website, Defendants assert that the Simpleflex variable rate has many advantages, including that it “never be more than the market will bear,” allows “flexibility to switch,” is “well worth the reward,” and demands “no long-term commitment.”<sup>2</sup>

20. A reasonable consumer hearing these statements would believe that switching to XOOM would be beneficial to them and that they would enjoy substantial energy costs savings.

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<sup>1</sup> <http://xoomenergy.com/partner/acn/en/faq>

<sup>2</sup> <http://xoomenergy.com/en/residential>

21. While the disclaimer indicates that XOOM variable rates do not guarantee future savings, Defendants fail to disclose that, after the introductory rate, their rates will substantially exceed the rates charged by the local utility company, and that savings will most likely never occur again.

22. Defendants mislead consumers by claiming that an increase in cost is only “possible.” In actuality, a substantial increase in a consumer’s energy bill is virtually inevitable. Consumers who read the disclaimer would reasonably believe that, more likely than not, they would be saving money on their utility bills and if the rates did fluctuate, it would not be substantially higher than the local market rate, and they would never imagine that their utility bills could more than double each month.

23. Defendants’ misrepresentations and omissions caused injury to Plaintiff and Class members. Had Plaintiff and the Class known that they would be charged substantially more for their energy supply by switching to XOOM, they would not have enrolled with XOOM.

24. Plaintiff and the Class have sustained economic injury and damages as a result of Defendants’ wrongful conflict.

### **Facts Specific to Plaintiff**

25. After viewing XOOM’s above described website and speaking with an IBO, Plaintiff switched to XOOM as his energy supplier.

26. Plaintiff enjoyed reasonable energy rates for 2 months, but after the second month, XOOM increased its electric rates and charged Plaintiff higher than his local utility provider was charging their customers each month.

27. In fact, the amount that Plaintiff was charged by XOOM for electricity during the month of September 2014 was over 30% higher than he would have paid his local utility company during the same period.

### **Online Customer Complaints**

28. Numerous complaints about Defendants' deceptive and misleading marketing and pricing schemes have been raised on the Internet.

29. Consumers regularly complain that they were lured into switching energy suppliers to XOOM with the promise of energy bill savings, but following a low promotional rate, their energy bills skyrocketed, sometimes even doubling in price from their previous local utility provider.

30. Below is a small sample of customer complaints made on the Internet regarding Defendants' fraudulent sales and marketing scheme:

- I too signed up for xoom to help a friend working with ACN. I understand price fluctuations and was fine with that since I was told that it would always be competitive. For months it was, sometimes better but about the same as PSE&G. These last two months have been vastly different. In January we spent \$275 more with xoom. In February we spent OVER \$650 more than we would have with PSE&G. Let me repeat, WE SPENT OVER \$650 MORE WITH XOOM. Is this competitive??? Is this fair market fluctuations?? I do understand MLMs vs pyramids. I am an educated person. I did however trust that by competitive we were at least playing on the same ballfield. I have certainly now been educated. I never dreamed that two months to switch back would potentially cost me over \$1,000. I would have rather placed that money directly into the hands of the friend I was hoping to help out. Now it will take UP TO 90 DAYS to switch back. That's right folks, I get to pay xoom for another two months. I called to discuss and they said I could sign up for the fixed rate which was quoted to me on March 13 to be 0.7999 per Kwh. Doing a little math, I plugged in my usage last month to that figure..... \$1,391.03 (this doesn't include delivery or the gas portion-only electric. This is more than my whole bill. I am a level-headed person, willing to see all sides. This company is a fraud. They are quite literally taking food out of my children's mouths. They are corrupt and anyone who chooses to receive a penny from them is contributing to the raping of their customers. THESE ARE THE

FACTS. MY BILL ISN'T LYING. I can not get out from under them for two more months. It is a crime. Maybe those who are so tired of "effin lazy people" ought not be so blindly loyal that they continue to drink the coolaid. If anyone is seeking a CLASS ACTION SUIT..... COUNT ME IN!!!!

- Over a year with Xoom now. Trying to help out a friend. Triple bills and a year contract that has long since expired. Renewed without our agreement. \$100 to cancel. Ridiculous! Count me in on this lawsuit as well!
- My bill increased by thirty to fifty percent. Then ZOOM refused to terminate my services when requested to do so. ZOOM rents from the primary Utility Company and the consumer ends up paying twice. Please do not fall for this scam. Stay with your original energy provider. I am more than disappointed with this company. They are making money at our expense with nothing to provide in terms of service or saving money. I did not sign a contract, I signed with a friend. Please don't sign any contracts on the strength of friendship where money is involved.<sup>3</sup>
- The problems re Xoom energy are not about Billing as much as the savings promises. The costs are greater than PGE, SOCAL etc, as you will and DO get charged for both your current company plus Xoom. They need to train their independents better. They target seniors and will not let them out of their contract. DO NOT SIGN UP WITH THIS COMPANY!!! My costs ARE: \$20.00 a month higher on XOOM!
- Wish I didn't sign up with Xoom Energy. They are sold by ACN (pyramid company) to people. I purchased their gas service and was told I'd save a few bucks. Even if I broke even, I would do it for my friend. My first month I got a bill from my regular gas company and another bill from Xoom, both in different amounts but almost doubling my bill. I called Xoom and they told me that they supply the gas, but the gas company charges for transportation of the gas and taxes. I asked why my bill was double the normal amount, and from my local gas company it appears that they are charging more for the transportation than what I normally paid for everything. The Xoom rep was polite, but could not explain it and simply said that in Southern CA the gas company charges more she guessed. I cancelled immediately which costs \$25 cancellation fee within the first year, but saved me way more to cancel than continue. So if you are told it will save you money, research it first, even if it is for a friend.
- I've just canceled my contract with Xoom Energy; service was provided in Northern California. Only reason for canceling? My normally \$30/ month spring gas bill for my house (I've lived here for several years, have the bill stubs from previous years to compare with, use same amount of gas consistently month to

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<sup>3</sup> <http://www.reviewstalk.com/complaints-reviews/xoom-energy-111031.html>



month, year to year so don't try to tell me that it's due to some weird spike in usage, PGE anomaly, etc) soared to \$100/ month. Advertised savings? Yes. Real, actual, honest savings? NO...

- I totally agree with all of you. I was also tricked by a friend who promised me that he would save me money on my energy bills and immediately within the first 2 months with Xoom Energy my bills have almost doubled. I have not had any good experiences with Xoom energy and was never told that I would be locked into this horrible contract with this rip off of a company for a year. I never had to sign anything and actually never even met with my so called friend in person to sign up for this SCAM service. I was only asked to provide my current account # with my current energy supply which I have never had any problems with. I should have known better seeing how he called repeatedly for days trying to convince me to let him sign me up for the service so he could save me some money because he knew that I was already enduring financial difficulties. In the end I am one pissed off ex friend and completely dissatisfied customer of XOOM energy. Don't sign up for this service because all you are doing is making ACN and all their affiliates money and you will end up losing money. XOOM ENERGY IS A SCAM!!!<sup>4</sup>
- I was told that when I signed up, that I'd receive a bill from Xoom for the Gas I used and that the current utility company would bill me for distribution and services. After reviewing my bills, and doing the math, I came to the conclusion that I'd save a little money by paying Xoom for the gas instead of the regular service provider. Granted the savings would be split up between the two billing companies, but it amounted to about a 10-15% savings and it was worth it. My normal gas bill was only about \$28-30 per month. After signing up with Xoom, my gas bill was still 28-30 dollars, but I then got a bill for \$26-28 in addition to the regular bill. I called for assistance and was told this is normal. Basically, what Xoom told me was straight up fraud. Instead of receiving a savings of 10-15%, my billing rose by almost 100%. Xoom basically just double charges you for the gas you purchase from your regular utility company. When you figure this out, which is immediately if you're paying attention, they then charge you another \$70 to cancel the service. I was told about the cancellation fee, but I wasn't told that they were lying about the entire perceived benefit. Don't get fooled, this is a straight rip off. I have billing statements that prove what I'm saying is true. Feel free to contact me and I will provide them. Xoom Energy is nothing more than a bunch of thieves.
- I switched to Xoom Energy as a favor to a "friend" who promised 3 months of savings then said I could cancel anytime after that. I went back and looked at one bill within the first 3 months and I literally saved 2 cents. After the first 3 months

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<sup>4</sup> <http://www.complaintsboard.com/complaints/xoom-energy-san-angelo-texas-c581563.html>

that rate jumped to 5x the rate that PSEG was charging and double the rate for electricity. Once you try to cancel it will take months to get out of the nightmare for the gas. Do not be nice and switch for your loser friends/neighbors who got suckered into the ACN pyramid scam. Keep ACN and Xoom Enery their problem, don't make it yours!

- I was sold on the fact my natural gas service by XOOM would always be less or equal to our regular provider Consumer Power. For the first 3 month I monitored my bill and found it to be under the price that Consumers were charging, so far so good eh. I am retired and was having some health issues for a while, and was able to keeping track of my bill like I should. When I did finally looked at my bill I about fell off my chair. I went from a rate of 5.6 to 10.9. They were charging me almost double of what Consumers would of charged me. I called this so so friend of mine who sold this to me, who canceled his xoom energy several months earlier, to explain what was all this BS you were feeding me. He did end up apologizing to me and my family. This company is a total scam, bait and switch, con game company you ever dealt with. Just BEWARE. It may take only 3 minutes to sign up, but may take up 60 day to be put back to your regular provider. Maybe longer if they continue to play the con game.
- This company is over charging for there gas services. There Web, says it is at .66 cff. However they are charging 1.29 per cff. My bill for the month was \$268.00. Not because it was cold. I talked to them and a supervisor, but because I did not sign up for a fixed rate I was charged the amount of 1.29. Prior to that I was at .59cff. They are unwilling to give me a price reduction. I checked with my local gas company and they are charging .474 for cff. I canceled my service with Xoom energy. I only wanted a fair price and discount off my bill. They refused.
- Xoom Energy SCAM!!! THEY WILL ROB YOU, THEN ROB YOU AGAIN WEN YOU TRY TO CANCEL, AND THEY WILL SPIT IN YOUR FACE EVERY TIME YOU TRY TO CALL THEM.... DO YOURSELF A FAVOR AND DONT LISTEN TO YOUR FRIENDS OR FAMILY FROM ACN WHO WILL TRY TO SIGHN YOU UP WITH THEM, RUN... THEIR PRICES THEY WILL CHARGE YOU, ARE NON EXISTANT. TAKE YOUR TODAYS BILL AND TRIPPLE IT, I AM NOT EVEN EXADURATING....<sup>5</sup>
- I now regret signing up for Xoom Enery. Xoom is a total scam. Takes 3 minutes to sign up, 30 to 60 day to cancel. At lest that what they tell you if you ever get through

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<sup>5</sup> <http://www.ripoffreport.com/r/xoom-energy/huntersville-north-carolina-28078/xoom-energyfraud-huntersville-north-carolina-1121468>

- Xoom is a scam - I was assured there would always be ease of canceling with no fees by ACN rep!!!!!!!!!!!! Plus I was told the rate would be the same or less than the competition and it was for 3 months then it doubles in December and tripled in January!!!!!!!!!!!!!!!!!!!!<sup>6</sup>
- I live in Riverside, CA, 50 mi. east of LA. I recently agreed to go with an alternative supplier for natural gas based on the promise of lowered bills. As a result of this move to Xoom Energy my bills have almost doubled. The reason is that the Gas Company charges for distribution, more than wiping out any savings on the actual gas. Xoom Energy wants \$70 to cancel my contract, so, ok. Buyer beware.<sup>7</sup>
- Stay away from this company. They promise low rates, but after a few months they creep them up. Now I pay 70% more for gas than I did with DTE. It is price gouging. I paid almost \$1000 more last year with them.
- I signed up with Xoom Energy trying to help out someone else earn some money and I got F\*\*KED. My bill went from \$494.13 in March 2014 to \$1,274.52 in April 2014. Now it's \$1991.34. What kind of S\*\*T is that? I was asked if I wanted to be put on the do not call list and I told them no because I want them to call me so I can tell them to come out and and I can wipe that ASS. I will be contacting the Attorney General's Office, the Consumer Protection Agency and anybody else I think that can take these BITCHES down without me going to jail. If one of their reps come in contact with me again they will be playing pussy and I will be doing the F\*\*KING. I will try to cut their ass too short to S\*\*T. Let's all get together and hunt them like an animal in the woods and we're hungry. Let's get our money back. Let's take the company down. That my plan.
- I just found out on pge bill that I have zoom energy charges, they charged us for 6 months w highest bills ever. I didn't pay attention on our highes bills cause of newborn baby:( We need to bring criminal charges against Zoom Energy. We have tried for the months to cancel their service they claim it will be taken care of only to receive another bill. We need to find an attorney to bring criminal charges against them!
- Like all others on here I switched thinking I was helping some one!!! Anyone ever tell you they can save you money run!!! I was told the rates would always stay competitive!! Competitive my A\$\$!!!!!! Not only did I change my home but my business to!!! WOW to how much money I lost!!! ACN/Xoom biggest losers out there!! They call themselves champions!!!! They they make FB status' show

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<sup>6</sup> <http://reviews.gethuman.com/complaints/XOOM-Energy/>

<sup>7</sup> <http://www.practicalmachinist.com/vb/general/ot-xoom-energy-california-238198/>

it's so nice that their bill's are paid without working to hard!!! Guess not when your screwing the people that do work hard!!!!!!

- OMG this is a case of criminal fraud. We need to bring criminal charges against Doom Energy. We have tried for the last year to cancel their service they claim it will be taken care of only to receive another bill. We need to find an attorney to bring criminal charges against them!
- Beware of switching - you will be told how much you will save, but the numbers don't lie - Xoom \$1.39 per therm, PSEG \$0.29 per therm. Can't get away from these crooks fast enough. It's very obvious that some posters on this message board work for ACN (toby, pati0154, squozen, Twells20, Catcar12691) - keep lining your pockets. My bill for Feb and March came to over \$1300! Sickening - run as far away from this ripoff as possible, don't believe it, no matter who tells you that you will save - you won't.
- When I join them I was told I could save money over bge. Went for .10 a kilowatt to .20 a kilowatt Just got a bill for 580.00 for February and 470.00 bill for March I live in a small apartment my bill has never been over 200.00 ever Xoom energy a f@cking scam.
- XOOM is cheating people out of their hard-earned money. There's been no saving for us, quite the contrary. This month, we're being charged \$562.73 just for their "supply charges", not including what Pepco charges us for electricity, and last month was no better. Yes, it's time for a thorough investigation into how this company operates.
- I EXPERIENCED THE SAME ISSUES. I NEVER SAW SAVINGS AND MY WIFE AND HER DAUGHTER KEPT SAYING BECAUSE OF WINTER THE USAGE IS MORE THAT IS WHY... CLOSED MINDED SUCKERS THEN I SPOKE WITH FEW SUPERVISORS AND INVESTIGATED MYSELF... XOOM CAN RAISE THEIR PRICE WITHOUT NOTICE AND THEIR CHARGE IS NOT REGULATED... THAT IS HOW THEY KNOW TO F\*\*K PEOPLE THROUGH ACN AND OTHER BULLS\*\*TS, AND THE PERSON WHO SIGNS UP GETS A CHUNK OF MONEY EACH TIME I PAY A BILL/ AND THE ONE WHO IS SUPPORTING THIS .... JUST F\*\*K OFF
- We lived in our current residence for 9 years. The most our gas & electric bills run around. \$480. Today we found just our ZOOM gas bill was \$500.00. That is \$500.00 we don't have. My husband switched to this company because he felt pressured to do it because a friend asked him to switch. We are devastated that our rates were variable. This company is a scam so the energy sales people made a ton of \$\$\$ on your expense. The phony sales reps are having lavish dinners, get away trips and winning electronics for prizes. The BIG kicker is if you try to change back, it is a 60 day process. We will now endure another 2 months of

\$500.00 Xoom bills all by changing our PSEG carrier to Xoom. Major, major mistake. Sad how they are getting away with this! My next letter is to the BBB. I'm going to try to make sure this does not happen to another person.

- Very disappointed in Xoom Energy by ACN. They jacked up their rates this winter to 0.1999 where BGE and other electric companies remain between .08999 and .09999. As you can see, Xoom is double that price. My electric bill was astronomical due to this gouge in price. I signed up to support a friend, but when they heard of this absurd pricing, they dropped were in support of canceling the service from Xoom. Now let's talk about the customer service. The service agent was rude and did not care about my concern over the absurd pricing. She mentioned how competitive Xoom was with other service agencies, however, could not explain the almost 10 cent difference in pricing! Xoom is a scam! I should have been more cautious when I learned of the pyramid type procedure. If you are thinking of signing up with Zoom Energy by ACN - DON'T and if you are with Xoom Energy currently - CANCEL!
- Signed up as a favor for a "friend" ans was guaranteed savings. I did not believe I would save money but never dreamed I would now be charged \$1.49 per thermal unit when the public utility company (PSEG) is currently charging \$0.388 per thermal unit. This company is nothing but a scam and anyone defending it is obviously involved in the pyramid scam known as ACN. SCAM!!!
- Total scam. They promise slightly lower rates for the first 3 months then it goes up. We are with PSE&G in Northern NJ. My wife signed up to help a friend who worked for ACN selling their service. During summer months we didn't see big difference, but over the past two months, December and January, we were paying almost a \$100 or roughly 35% more a month than we would with PSE&G gas supply. I called to switch back to PSE&G, but it takes 6 weeks to process the request. As a result we are stuck with XOOM for most of the winter, costing us hundreds of dollars. STAY AWAY!
- Why isn't there a class action law suit against Xoom Energy?A previous complainant claims their energy bill doubled. What a joke! You got off lucky pall. My bill went up over "OVER" 3 and ½ times (+3x!!!!!!). Couldn't keep up with the bill, used my tax return to make payments current. Now I'm in collections. Xoom energy doesn't just suck...their criminals. They take advantage of the system to fraudulently rob us. Try calling them and you can't reach a customer representative to discontinue services. I called them pretending to be a potential customer and got a customer representative immediately! And then I voiced my complaint. You need to call your local energy provider and switch back to them immediately. They need to first read your meter before you get off the hook with Xoom. Even then, Xoom will try keeping you on their billing list for an additional

three (3) months. Don't let this happen to you. Keep regular contact with your energy provider to be sure the switch takes place within the allotted time frame.  
WHY ISN'T THERE A CLASS ACTION LAW SUIT AGAINST XOOM?

- I NEVER make complaints...however after receiving a \$500 light bill which is double my normal bill, I have to write and say that I am furious. Stay away from Xoom unless you like paying more. By the way I joined ACN, I am done with that too as I can't in good faith represent a company that rips people off.<sup>8</sup>
- Company charge me 59% more than their initial rate offer on my second bill. This complaint is in regards to the outrages price Xoom Energy charged on my Apr 2014, bill for supplying Gas., which was my 2nd bill. I was very disappointed after reviewing Xoom Energy portion of the bill I received from \*\*\*\*\*. The Them chg reflected on my bill was not consistent with the initial agreed cost per them of \$0.0489 when I signed up with their company. I was charged \$0.999 per them, which was 59% higher than the initial offered price. They did not inform me their cost would automatically increase or the amount of increase after the 1st bill would more than double. As a result of the additional chg, their portion of the Gas bill was \$77.16 higher. If they had billed me at the rate of 0.4890 for the 151.6 TH used, I would have been charged (0. 4890 X 151.6 TH) \$74.13 for the ENERGY CHARGE, not \$151.45. It is understandably that rates increase over a period of time, but not on the 2ND bill by such a significant amount. Their chg was more than double on my 2nd bill. - See more at:
- Huge Energy Cost. Cancelled 2 months ago. XOOM still has not cancelled my account. My name is \*\*\*\*\*. I enrolled with XOOM Energy through a company called \*\*\*a network marketing company. After a few years, my bill doubled! I cancelled my account on March 12, 2014 and received a confirmation email from XOOM (March 12, 2014) indicating that my account would be cancelled once \*\*\*\*\* (?) honors this request. It is \*\*\* 18 and my account is still with XOOM and I am still required to pay the astronomical energy costs! It is not fair. I called other energy companies to get price quotes and one example I was given was for \$140 of electricity I paid through XOOM I would have only paid \$72 at another energy company. They are robbing people. Even after I cancelled my service over 2 months ago, I am still being robbed and have no choice but to pay my bills because they can shut off my service. I am completely disgusted with this company and feel I should be reimbursed the ridiculous amount of money they have charged me since my cancellation. Not to mention what they charged me in prior months.

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<sup>8</sup> <http://www.complaintboard.com/xoom-energy-110637.html>



- Gas charges more than industry standards without notice. Increased more than 100% each month. When we signed up with them, the gas was 0.62 cents per therm. \*\*\*\*\* gas price was 0.5325 per therm. When I received the January bill, they were charging 0.6990 cents per therm. I called them and no one answered my call. I left them a message, they did not call back. I sent them an email to cancel, even though I received a read message, they did not call back. So, I received the February bill, I noticed that they increased their price to 0.7990 cents per therm. I called and finally spoke to someone. I asked for cancellation as well as adjusting the price. They said they would get back to me within 14 days, it never happened. When I received the final bill, they increased their rates to \$1.4990 per therm. It is 210% higher than January rates. Yet \*\*\*\*\* gas rates still at 0.5325 cents per therm. The Xoom energy is advertising on their website from 0.5290 to 0.7990 cents. Yet they are charging me 1.4990 per therm. As a consumer, I know that this company is trying to take advantage of a lot of consumers who want to cancel their account. I sent them an email telling them that I will not pay these bills due to their billing practices and discrimination and also file a lawsuit against them. Please help us out here so they can not hear from many consumers.
  
- Extremely high charges over the course of last three months. I've been a customer with Xoom over the last year. We have been pleased with the service up until now. Over the course of last three months starting in January we have noticed extreme increases in pricing. When I requested an explanation of the increases under Gas Charge line, I was informed that I should call my provider (\*\*\*\*\*) because that's who's responsible for explaining that part of the bill, which I did, only to find out that Xoom energy was price gauging by about 40%, and that \*\*\*\*\* has nothing to do with Gas Charge - they only have static delivery charges that pretty much have stayed the same for the past six months or so. With this information, I underpaid my February month bill, on purpose, to the amount that I would be charged if I was to go back to my original provider (\*\*\*\*\*). Fast forward a month. I just received another bill, and the Gas Charge line has increased once again... from 7.99 cents to 9.99 cents - mind you, this is 4.89 cents above what \*\*\*\*\* charges currently according to the \*\*\*\*\* Utility Board. There is no additional service that Xoom provides, there are no hidden benefits, they don't do anything but answer a phone when it comes to customer service and even at that point they cannot explain the charges and how they are derived. I'm requesting a reasonable rate adjustment, with an understanding that everyone is in business to make money. I will not stand for this price gauging as the company is losing customers, they drive up the price on the remaining loyal members.<sup>9</sup>

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<sup>9</sup> <http://www.bbb.org/charlotte/business-reviews/energy-service-companies/xoom-energy-in-huntersville-nc-284732/complaints>

31. These complaints reflect the false and misleading course of conduct that Defendants are engaged in, resulting in damages to consumers across the nation.

32. Customers are not the only ones fed up with Defendants' deceptive and misleading sales practices.

33. An ABC 7 Eyewitness News article "Undercover Investigation Reveals Energy Billing Problems" conducted an investigation and interview with a former ACN sales representative regarding Defendants' sales and marketing practices.

"It puts a knot in my stomach the size of a grapefruit," said Robert Spitzers, a former ACN Salesman. Robert Spitzers' sick over a dozen friends and family he unintentionally misled. The former salesman earned commissions off them after promising they'd save if they switched their electric and gas provider to Xoom Energy. "I'm robbing people. I pitching to them that they can save money but it's the exact opposite," adds Spitzers. He even signed up his own mom and dad. Xoom sent them this enrollment confirmation stamped "promo: Save 3 to 5 percent." But, their first month's savings, just 16 cents. "That's not the 3 to 5 percent savings they promised," adds Spitzers. Over the next six months the bill ballooned. Xoom charged them nearly \$1,000 more than if she'd stayed with PSE&G.<sup>10</sup>

34. ABC News also interviewed 2 ACN salesman regarding their sales tactics:

**7 On Your Side:** When you get customers, what do you tell them about (electric and gas) prices? Can people save money?

"Yeah, yeah, yeah, there is a savings," said Vic Patel, ACN Team Coordinator.

**7 On Your Side:** "You can promise savings?"

Patel: "3 to 5 percent. No, it's there. It's not promising. It's there."

**7 On Your Side:** "What's the selling point point?"

Patrick Dowling: "Savings, 100 percent. Savings. Nobody's gonna (become a customer). 100 percent.

**7 On Your Side:** "What are the savings?"

Dowling: 3 to 5 percent.

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<sup>10</sup> <http://7online.com/archive/9522092/>



## **CLASS ACTION ALLEGATIONS**

35. Plaintiff brings this suit as a class action on behalf of himself and all XOOM Energy customers with variable-rate plans from January 1, 2011 to the present. The proposed class (the “Class”) is defined as follows:

All Simpleflex variable-rate customers in California, Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Texas, and Virginia who (1) used XOOM as their electricity supplier, and (2) used XOOM as their natural gas supplier. Excluded from the Class are (a) any Judge or Magistrate presiding over this action and members of their families; (b) ACN, Inc., XOOM Energy, and their subsidiaries and affiliates; and (c) all persons who properly execute and file a timely request for exclusion from the Class.

36. Plaintiff reserves the right to redefine the Class(es) prior to class certification.

37. The exact number of Class members is unknown as such information is in the exclusive control of Defendants. Plaintiff, however, believes that the Class encompasses thousands of individuals who are geographically dispersed throughout the nation. Therefore, the number of persons who are members of the Class described above are so numerous that joinder of all members in one action is impracticable.

38. Questions of law and fact that are common to the entire Class predominate over individual questions because the actions of Defendants’ complained of herein were generally applicable to the entire Class. These legal and factual questions include, but are not limited to:

- a. The nature, scope and operations of Defendants’ wrongful practices;
- b. Whether Defendants engaged in fraudulent practices as to Class members;

- c. Whether Defendants' conduct amounts to a violation of the North Carolina Unfair & Deceptive Trade Practices Act;
- d. Whether Defendants breached their contracts with consumers;
- e. Whether Defendants breached the covenant of good faith and fair dealing with Class members;
- f. Whether Defendants negligently misrepresented the true nature of their energy rates;
- g. Whether Defendants have been unjustly enriched;
- h. Whether Plaintiff and the Class suffered damages as a result of Defendants' misconduct and, if so, the proper measure of damages.

39. Plaintiff's claims are typical of the members of the Class because Plaintiff and Class members were injured by the same wrongful practices. Plaintiff's claims arise from the same practices and course of conduct that gives rise to the claims of the Class members, and are based on the same legal theories. Plaintiff has no interests that are contrary to or in conflict with those of the Class he seeks to represent.

40. Questions of law or fact common to Class members predominate; a class action is superior to other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. While the Class members' aggregate damages are likely to be in the millions of dollars, the individual damages incurred by each Class member are, as a general matter, too small to warrant the expense of individual suits. The likelihood of individual Class members

prosecuting separate claims is remote, and even if every Class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials on the same factual issues. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. Certification of the Class under Rule 23(b)(3) is proper.

41. Relief concerning Plaintiff's rights under the laws herein alleged and with respect to the Class would be proper. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with regard to Class members as a whole and certification of the Class under Rule 23(b)(2) proper.

**COUNT I**  
**VIOLATION OF NORTH CAROLINA UNFAIR & DECEPTIVE TRADE PRACTICES**  
**ACT N.C. Gen. Stat. § 75-1.1, et seq.**

42. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

43. Plaintiff asserts this cause of action on behalf of himself and the other members of the Class.

44. This cause of action is brought pursuant to North Carolina's Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat, § 75.1, *et seq.* ("UDTPA").

45. UDTPA declares unlawful all unfair and deceptive acts or practices in or affecting commerce.

46. Under UDTPA, Defendants' misleading representations regarding energy costs savings and competitive market rates are unfair, deceptive and unconscionable.

47. In the course of soliciting and promoting their energy cost savings and competitive market rates to consumers and in entering into agreements with consumers to provide such purported services, Defendants have engaged in unfair and deceptive acts and practices in trade or commerce in violation of N.C. Gen. Stat. § 75-1.1.

48. Defendants violated the UDTPA by engaging in a fraudulent and deceptive bait-and-switch- sales model of inducing customers to switch from their energy suppliers to XOOM Energy with a low promotional rate offer and energy savings, and then charging the consumer exorbitant non-competitive energy rates following the promotional period.

49. Defendants violated the UDTPA by falsely representing that consumers would save money on their energy bills by switching to XOOM.

50. Defendants violated the UDTPA by failing to disclose that on a consistent basis, XOOM's regular rates are substantially higher than its competitors and not competitive in the market.

51. Defendants violated the UDTPA by failing to disclose to consumers that after the initial promotional period, energy rates were almost guaranteed to increase substantially.

52. Defendants violated the UDTPA by failing to adequately inform consumers that XOOM's energy rates generally increase and will rarely ever be lower than the competitive market price.

53. Defendants violated the UDTPA by representing to consumers that the Defendants have a special “unparalleled blend of pricing plans” that can save consumers money on their energy bills, when in fact, Defendants have no such special pricing, and consumers are more likely to obtain better rates and energy savings with their local public utility companies.

54. Defendants’ acts and practices as alleged in the foregoing paragraphs were false, misleading, deceptive, and unfair to consumers, in violation of N.C. Gen. Stat. § 75-1.1.

55. Plaintiff and Class members relied on Defendants’ misrepresentations. Had Defendants disclosed in their marketing and sales statements that consumers’ energy bills would more likely than not increase with XOOM, Plaintiff and Class members would not have switched to XOOM for their energy supply.

56. As a direct and proximate result of Defendants’ deceptive, fraudulent, and unfair practices, Plaintiff and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

57. Plaintiff, on behalf of himself and all others similarly situated, demands judgment against Defendants for damages and declaratory relief.

## **COUNT II** **BREACH OF CONTRACT**

58. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

59. Where the relevant agreements between XOOM and its customers do not specify the applicable price, to prevent the contract from being too indefinite or from placing Plaintiff and the Class at Defendants’ mercy, the agreements should be deemed to contain an implied contractual term mandating a reasonable price. In this case, a reasonable price would be the

prevailing market rates in effect during the applicable class period. The best approximation of such a reasonable market price is the rates charged by the Plaintiff and Class members' local public utility companies.

60. Defendants breached this implied contractual term by charging Plaintiffs and Class members unreasonable and exorbitant energy rates well above market prevailing rates.

61. As a direct and proximate result of Defendants' wrongful conduct, the Plaintiff and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

62. Plaintiff, on behalf of himself and all others similarly situated, demands judgment against Defendants for damages and declaratory relief.

**COUNT III**  
**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

63. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

64. Defendants have a duty of good faith and fair dealing with respect to their dealings with consumers, including Plaintiff and the Class members.

65. There is an implied duty of good faith and fair dealing in every contract, and Defendants had an implied duty to ensure that their marketing materials and other representations regarding electricity and gas rates were not false and misleading with respect to energy consumers.

66. When a contract contains an unspecified price term such as in the XOOM Simpleflex agreement, the seller does not have unlimited discretion to set the prices. Rather,

under the covenant of good faith and fair dealing, the seller must set the prices reasonably and in good faith.

67. Defendants know that the possibility of energy savings is the primary incentive to induce consumers to switch to XOOM.

68. Defendants breached the covenant of good faith and fair dealing by engaging in deceptive and misleading representations of energy costs savings and failing to set their rates at a competitive market rate, and instead, charging customers excessive energy rates that generally far exceed the market rate by as much as 100%. In so doing, Defendants acted recklessly, maliciously, in bad faith, and without good cause, thereby preventing Plaintiff and the Class from receiving their reasonably expected benefits under the services agreements.

69. Under the covenant of good faith and fair dealing, the court should read in the applicable price properly paid by the Class for XOOM's services as a reasonable, market-based rate, which is the rate charged by the Class members' local public utilities companies during the class period. All monies paid above this reasonable amount should be restored to the Class as damages.

70. Plaintiff and Class members relied to their detriment upon misleading assertions and conduct of Defendants' and such reliance may be presumed based on the Defendants' unlawful conduct.

71. As a direct and proximate result of Defendants' deceptive, fraudulent, and unfair practices, Plaintiff and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

72. Plaintiff, on behalf of himself and all others similarly situated, demands judgment against Defendants for damages and declaratory relief.

**COUNT IV**  
**COMMON LAW FRAUD, INCLUDING FRAUDULENT INDUCEMENT, AND**  
**FRAUDULENT CONCEALMENT**

73. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

74. Defendants made several false and fraudulent representations of material fact to Plaintiff and Class members regarding the cost savings benefits of switching to XOOM, and concealed certain material information regarding the upward trend of their energy rates from the Plaintiff and Class members.

75. Among those representations, Defendants through ACN IBOs and their website fraudulently represented to consumers that they would save money on their energy bills by switching to XOOM.

76. Defendants fraudulently represented to consumers that their energy rates were competitive in the market when in fact, on a consistent basis, their rates are not competitive and more often than not, higher than the market rate.

77. Defendants fraudulently represented to consumers that they have a special “unparalleled blend of pricing plans” that can save consumers money on their energy bills when, in fact, Defendants have no such special pricing, and consumers are more likely to obtain better rates and energy savings with their local utility companies.



78. Defendants fraudulently concealed from consumers that after the initial promotional period, their energy rates were almost guaranteed to increase substantially, generally higher than the rates at local utility companies.

79. Defendants' misrepresentations and concealments of material facts concerning their energy rates and alleged savings were made purposefully, willfully, wantonly, and recklessly to induce Plaintiff and the Class to switch to XOOM as their energy supplier.

80. At the time Defendants made these misrepresentations and concealments, and at the time Plaintiff and consumers switched to XOOM, Plaintiff and consumers were unaware of the falsity of these representations, and reasonably believed them to be true.

81. In making these representations, Defendants knew they were false and intended that the Plaintiff and Class members would rely upon such misrepresentations.

82. Plaintiff and Class members did in fact rely upon such misrepresentations.

83. Defendants' misrepresentations fraudulently induced Plaintiff and Class members to switch to XOOM, only to have their energy bills increase.

84. Plaintiff and Class members' reliance was reasonable as they trusted that Defendants would act honestly and in good faith.

85. As a direct and proximate result of Defendants' deceptive, fraudulent, and unfair practices, Plaintiff and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

86. Plaintiff, on behalf of himself and all others similarly situated, demands judgment against Defendants for damages and declaratory relief.

**COUNT V**  
**NEGLIGENT MISREPRESENTATION**

87. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

88. Under the circumstances alleged, Defendants owed a duty to Plaintiff and the Class to provide them with accurate information regarding the true nature of XOOM's energy rates and lack of energy cost savings.

89. Defendants represented to Plaintiff and Class members that by switching to XOOM, they would enjoy savings with competitive market rates.

90. Defendants' representations were false, negligent and material.

91. Defendants negligently made these false misrepresentations with the understanding that Plaintiff and Class members would rely upon them.

92. Plaintiff and Class members did in fact reasonably rely upon these misrepresentations and concealments made by Defendants.

93. As a direct and proximate result of Defendants' negligent actions, Plaintiff and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

94. Plaintiff, on behalf of himself and all others similarly situated, demands judgment against Defendants for damages and declaratory relief.

**COUNT VI**  
**UNJUST ENRICHMENT**

95. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

96. Plaintiff and the Class have conferred substantial benefits on Defendants by switching to XOOM as their energy supplier, and Defendants have consciously and willingly accepted and enjoyed these benefits.

97. Defendants knew or should have known that consumers' payments for XOOM energy were given and received with the expectation that consumers would be saving money on their energy bills as represented by Defendants.

98. Because of the deliberate fraudulent misrepresentations, concealments, and other wrongful activities described above, including but not limited to, inducing consumers to switch to XOOM with representations of energy cost savings, and charging consumers exorbitant undisclosed rates grossly out of line with market conditions, Defendants have been unjustly enriched by their wrongful receipt of Plaintiff and Class members' monies.

99. As a direct and proximate result of Defendants' wrongful conduct and unjust enrichment, Plaintiff and Class members have suffered damages in an amount to be determined at trial.

100. Defendants should be required to disgorge all monies, profits and gains which they have obtained or will unjustly obtain in the future at the expense of consumers.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this case be certified and maintained as a class action and for a judgment to be entered upon Defendants as follows:

- A. Appointing Plaintiff as the representative of the Class and their counsel as Class counsel;

- B. For economic and compensatory damages on behalf of Plaintiff and all Class members;
- C. For actual damages sustained;
- D. For treble damages pursuant to law, and all other actual, general, special, incidental, statutory, punitive, and consequential damages to which Plaintiff and Class members are entitled;
- E. For injunctive relief, compelling Defendants to cease their unlawful actions;
- F. For reasonable attorneys' fees, reimbursement of all costs for the prosecution of this action, and pre-judgment and post-judgment interest; and
- G. For such other and further relief this Court deems just and appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff respectfully demands a trial by jury on all issues within the instant action so triable.

Dated: October 10, 2014

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