

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

DUANE AND KERRY AUSTIN, Individually and on  
Behalf of all Others Similarly Situated,  
Plaintiffs,  
v.  
KIWI ENERGY NY, LLC,  
Defendant

Index No.: 515350/2017

**NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT**

This Notice is to inform you of a proposed settlement of a class action lawsuit pending against KIWI ENERGY NY LLC (“Kiwi”). As described below, this Settlement is on behalf of all persons who at any time from August 8, 2011 through June 26, 2019 (Preliminary Approval Date) were customers of Kiwi in New York and/Ohio, or SPRING ENERGY RRH LLC (“Spring”) in Pennsylvania, Maryland, or New Jersey and paid Kiwi and/or Spring for electricity and/or natural gas supply services.

Kiwi’s and Spring’s records indicate that you may be a member of the Class. This Notice affects your legal rights and is given to you pursuant to New York CPLR 901 *et seq.* Please read this document carefully.

**YOU SHOULD READ THIS NOTICE CAREFULLY BECAUSE IT WILL AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS.**

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|----------------------------|--|--|
| <b>SUBMIT A CLAIM FORM</b> | This is the only way to get a Benefit under the Settlement.<br><br>Submit an online Claim Form at <a href="http://www.kiwienergysettlement.com">www.kiwienergysettlement.com</a> by using the Class Member ID on the front of the postcard mailed to you. You can also download a Claim Form to submit by mail at <a href="http://www.kiwienergysettlement.com">www.kiwienergysettlement.com</a> or receive one by calling 1-844-367-8812. | Deadline:<br><b>September 24, 2019</b> |
| <b>EXCLUDE YOURSELF</b>    | If you exclude yourself from the Settlement, you will not receive a Benefit. Excluding yourself is the only option that allows you to ever bring or maintain your own lawsuit against Kiwi or Spring regarding the allegations in the Action ever again.   | Deadline:<br><b>September 24, 2019</b> |
| <b>OBJECT</b>              | You may write to the Court about why you object to ( <i>i.e.</i> , don’t like) the Settlement and think it shouldn’t be approved. Filing an objection does not exclude you from the Settlement.  | Deadline:<br><b>September 24, 2019</b> |
| <b>DO NOTHING</b>          | You will not receive a Benefit. You will also give up your right to object to the Settlement and you will be not be able to be part of any other lawsuit about the legal claims in this case.  |  |

- These rights and options—and the deadlines to exercise them—are explained in more detail below.
- The Court in charge of this Action has preliminarily approved the Settlement as fair, reasonable, and adequate, and must decide whether to give final approval to the Settlement. The relief provided to Class Members will be provided only if the Court gives final approval to the Settlement and, if there are any appeals, after the appeals are resolved in favor of the Settlement. ***Please be patient.***

Questions? Visit [www.kiwienergysettlement.com](http://www.kiwienergysettlement.com) or call 1-844-367-8812

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## BACKGROUND INFORMATION

### 1. Why did I get this Notice?

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You received this Notice because a Settlement has been reached between the Parties. According to Kiwi's and Spring's available records you may be a Class Member and may be eligible for the relief detailed below.

This Notice explains the nature of the Kiwi Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement (which defines certain capitalized terms used in this Notice), see Section 13 below.

### 2. What is the lawsuit about?

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This Settlement resolves a class action against Kiwi, entitled *Austin v. Kiwi Energy NY, LLC* (Supreme Court of the State of New York, County of Kings). Plaintiffs Duane and Kerry Austin (the "Representative Plaintiffs") filed the lawsuit against Kiwi on behalf of themselves and all others similarly situated. The lawsuit alleges that Kiwi made misleading representations, contrary to its obligations under applicable laws. Plaintiffs also allege that Kiwi's rates did not comply with its customer contracts.

Kiwi and Spring deny each and every one of the allegations of wrongdoing or liability and contend that their rates were adequately and fully disclosed, that they never made any misleading representations or statements, and that they did not overcharge any customer for electricity or natural gas supply service, and numerous defenses have been asserted to the lawsuit. Kiwi and Spring also deny that class certification is warranted or appropriate.

The Court did not resolve the claims and defenses raised in this action. The Court has not determined that this matter should be certified as a class action, except if the Settlement is fully approved by the Court. Nor has the Court determined that Kiwi or Spring did anything wrong.

**The issuance of this Notice is not an expression of the Court's opinion on the merit or the lack of merit of the Representative Plaintiffs' claims or the defenses in the lawsuit. Both Plaintiffs and Kiwi/Spring recognize that to resolve the issues raised in the lawsuit would be time-consuming, uncertain, and expensive.**

For information about how to learn about what has happened in the lawsuit to date, please see Section 9 below.

### 3. Why is this lawsuit a class action?

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In a class action lawsuit, one or more people called "Representative Plaintiff(s)" (in this case, Duane and Kerry Austin) sues on behalf of other people who have similar claims. For purposes of this proposed Settlement, one court will resolve the issues for all Class Members. The company sued in this case, Kiwi, is called the Defendant.

### 4. Why is there a Settlement?

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The Representative Plaintiffs have made claims against Kiwi. Kiwi and Spring deny that they have done anything wrong or illegal and deny any liability. The Court has **not** decided that the Representative Plaintiffs or Kiwi or Spring should win the lawsuit, nor has the Court ever determined that Kiwi or Spring did anything wrong. Instead, after an extensive investigation by Plaintiffs' counsel, both sides agreed to a Settlement recognizing that the outcome of the action is uncertain. Plaintiffs' counsel has concluded that the Settlement is in the best interest of the Class Members. Under the Settlement, Plaintiffs avoid the cost of a trial, and the Class Members will receive relief now rather than years from now, if at all.

## 5. How do I know if I am part of the Settlement?

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The Court has decided that everyone who fits this description is a Class Member for purposes of the proposed Settlement:

- any Person or Entity in New York and/or Ohio who had an account with Kiwi at any time from August 8, 2011 to the June 26, 2019 and paid Kiwi for electricity and/or natural gas supply services; and/or
- any Person or Entity in Pennsylvania, Maryland, and/or New Jersey who had an account with Spring at any time from August 8, 2011 to the June 26, 2019 and paid Spring for electricity and/or natural gas supply services.

Excluded from the Settlement Class are: Kiwi; Spring; any of their parents, subsidiaries, or affiliates; any entity controlled by either of them; any officer, director, employee, legal representative, predecessor, successor, or assignee of Kiwi or Spring; 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.

## 6. I'm still not sure if I am included.

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If you are still not sure whether you are included, you can contact the Settlement Administrator for help about whether you are a Class Member. Contact the Settlement Administrator by clicking the red contact us button at [www.kiwienergysettlement.com](http://www.kiwienergysettlement.com), by mail at *Austin v Kiwi Energy LLC* c/o Settlement Administrator, PO Box 34669, Philadelphia, PA 19101-4669, or by telephone at toll-free 1-844-367-8812.

# THE PROPOSED SETTLEMENT

## 7. What relief does the Settlement provide to the Class Members?

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Each Class Member may elect to receive a Benefit in the form of a check. Your *actual* Benefit will vary depending upon the total amount you paid Kiwi and/or Spring for electricity and/or natural gas supply during the Class Period and based upon the total value of Valid Claims submitted. The specific amount of a customer's check will be calculated this way:

Settlement Class Members with dates of enrollment as Kiwi's New York and Ohio customers or Spring's Pennsylvania, Maryland, and/or New Jersey customers from August 8, 2011 through June 26, 2019 for electricity and/or natural gas supply services will receive a check in the amount of five percent (5%) of all amounts paid to Kiwi and/or Spring per electricity or natural gas account. The maximum total Benefit amount payable by Kiwi and Spring will be \$1,750,000. In the event that the value of the Benefits claimed exceeds \$1,750,000, the Benefit payable to each Settlement Class Member will be reduced *pro rata* by the percentage to which the Benefits claimed by Settlement Class Members exceed the maximum total Benefit. In the event that the value of the Benefits claimed is less than \$1,750,000, the Benefit payable to each Settlement Class Member will be increased *pro rata* by the percentage to which the Benefits claimed by Settlement Class Members is less than the maximum total Benefit.

**In exchange for the relief outlined above, Class Members who do not Opt-Out of the Settlement (as described below) will relinquish their right to bring claims on their own behalf, including claims for monetary relief, and Class Members will not be able to sue Kiwi or Spring on the same or any related claims. The proposed Settlement does not mean that any law was violated or that Kiwi or Spring did anything wrong. Plaintiffs and Class Counsel believe the proposed Settlement is fair and in the best interests of all Class Members.**

## HOW TO REQUEST A SETTLEMENT PAYMENT – SUBMITTING A CLAIM FORM

### **8. How can I get a Benefit?**

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To qualify for a Benefit, you must send in a Claim Form by the deadline. A Claim Form is available on the Internet at the website [www.kiwienergysettlement.com](http://www.kiwienergysettlement.com). The Claim Form may be submitted electronically or by mail. Read the instructions carefully, fill out the form, and postmark it by September 24, 2019 or submit it online not later than 11:59 p.m. (Eastern) on September 24, 2019.

### **9. When will I get a Benefit?**

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As described in Sections 17 and 18 below, the Court will hold a hearing on October 23, 2019 at 10:30 a.m., to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. You can check on the progress of the case on the website dedicated to the Settlement at [www.kiwienergysettlement.com](http://www.kiwienergysettlement.com). *Please be patient.*

## THE LAWYERS IN THIS CASE AND THE REPRESENTATIVE PLAINTIFFS

### **10. Do I have a lawyer in this case?**

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The Court has ordered that the law firm of Kohn, Swift & Graf, P.C. (“Class Counsel”) will represent the interests of all Class Members. You will not be separately charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

### **11. How will the lawyers be paid?**

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Kiwi and Spring have agreed to pay Class Counsel’s attorney’s fees and costs up to \$975,000, subject to approval by the Court. You will not be required to pay any attorney’s fees or costs for Class Counsel’s attorney’s fees and costs.

### **12. Will the Representative Plaintiffs receive any compensation for their efforts in bringing this Action?**

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The Representative Plaintiffs will request a service award (also known as a “named plaintiff enhancement award”) of a collective total of up to \$5,000 to be paid to them for their services as Class Representatives and efforts in bringing the lawsuit. The Court will make the final decision as to the amount to be paid to the Representative Plaintiffs.

## DISMISSAL OF ACTION AND RELEASE OF ALL CLAIMS

### **13. What am I giving up to obtain relief under the Settlement?**

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If the Court approves the proposed Settlement, unless you exclude yourself from the Settlement, you will be releasing your claims against Kiwi and/or Spring. This means that you will not be able to file a lawsuit, continue prosecuting a lawsuit, or be part of any other lawsuit against Kiwi and/or Spring regarding rates or amounts charged to you for their electricity and/or natural gas supply services. The Settlement Agreement, available on the Internet at the website [www.kiwienergysettlement.com](http://www.kiwienergysettlement.com) contains the full terms of the release.

## HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT

### 14. How do I exclude myself from the Settlement?

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Any potential Class Member who desires to be excluded from the Settlement Class must give written notice of the election to Opt-Out on or before the date specified in the Preliminary Approval Order, with copies mailed to the Settlement Administrator, Class Counsel, and counsel for Kiwi and Spring. 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 Kiwi Action." No Opt-Out request will be valid unless all of the information described above is included and you clearly state your intention to opt-out of the Settlement. If you timely request exclusion from the Class, you will be excluded from the Class, you will not be bound by the judgment entered, and you will not be precluded from bringing your own timely, individual claims against Kiwi and/or Spring based on the conduct complained of in the lawsuit.

## HOW TO OBJECT TO THE SETTLEMENT

### 15. How do I tell the Court that I object to the Settlement?

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At the date, time, and location stated in Section 18 below, the Court will hold a Fairness Hearing to determine if the Settlement is fair, reasonable, and adequate, and to also consider Class Counsel's request for an award of attorneys' fees and costs, and service awards to the Representative Plaintiffs.

If you wish to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, you must submit a written objection to the Court, Class Counsel, and Kiwi and Spring's Counsel listed below, postmarked no later than September 24, 2019.

#### **COURT**

Clerk of Court  
The Kings County Clerk Supreme Court Building  
360 Adams Street  
Room 189  
Brooklyn, NY 11201

#### **CLASS COUNSEL**

Jonathan Shub  
Kevin Laukaitis  
Kohn, Swift & Graf, P.C.  
1600 Market Street  
Suite 2500  
Philadelphia, PA 19103

#### **KIWI'S AND SPRING'S COUNSEL**

Elliot A. Hallak  
Harris Beach PLLC  
677 Broadway  
Suite 1101  
Albany, NY 12207

#### **SETTLEMENT ADMINISTRATOR**

Austin v Kiwi Energy LLC  
c/o Settlement Administrator  
PO Box 34669  
Philadelphia, PA 19101-4669

Any Objection must (a) attach documents establishing, or provide information sufficient to allow the Parties to confirm that the objector is a Class Member; (b) include a statement of such Class Member's specific Objection; (c) state the grounds for the Objection; (d) identify any documents such objector desires the Court to consider; and (e) provide all information requested on the Claim Form. In addition, any Settlement Class Member objecting to the Settlement shall provide 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 or its counsel has not objected to any other class action settlement in the United States in the previous five years, he/she or it shall affirmatively so state in the Objection. You may, but need not, submit your Objection through counsel of your choice. If you do make your objection through an attorney, you will be responsible for your personal attorney's fees and costs. You will not be permitted to raise any grounds for objecting to the Settlement that are not clearly stated in your written Objection.

**IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND WILL NOT BE ENTITLED TO SPEAK AT THE FAIRNESS HEARING.**

If you submit a written Objection, you may appear at the Fairness Hearing, either in person or through personal counsel hired at your expense, to object to the Settlement Agreement. You are not required, however, to appear. If you, or your attorney, intend to make an appearance at the Fairness Hearing, you must include on your timely and valid written Objection a statement substantially similar to "Notice of Intention to Appear."

**16. What is the difference between excluding myself and objecting to the Settlement?**

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Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

**FAIRNESS HEARING**

**17. What is the Fairness Hearing?**

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The Court has preliminarily approved the Settlement as fair, reasonable, and adequate to the Settlement Class and will hold a hearing to decide whether to give final approval to the Settlement. The purpose of the Fairness Hearing will be for the Court to make a final determination as to whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; to consider the award of attorneys' fees and costs to Class Counsel; and to consider the request for service award to the Representative Plaintiffs.

**18. When and where is the Fairness Hearing?**

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The Court will hold a Fairness Hearing (also known as a "Final Approval Hearing") at 10:30 a.m. on October 23, 2019 in Courtroom 276 of The Kings County Supreme Court Building, 360 Adams Street, Brooklyn, NY 11201. The hearing may be postponed to a different date or time or location without notice. Please check the Court docket or [www.kiwienergysettlement.com](http://www.kiwienergysettlement.com) for any updates about the Settlement generally or the Fairness Hearing specifically. If the date or time of the Fairness Hearing changes, an update to the Settlement website will be the only way you will be informed of the change.

## **19. May I speak at the Fairness Hearing?**

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At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement.

You may attend, but you do not have to. As described above in Section 15, you may speak at the Fairness Hearing only if (a) you have timely served and filed an objection, and (b) you have timely and validly provided a Notice of Intent to Appear.

If you have requested exclusion from the Settlement, however, you may not speak at the Fairness Hearing.

## **ADDITIONAL INFORMATION**

## **20. How do I get more information?**

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To see a copy of the Settlement Agreement, the Court's Preliminary Approval Order, Class Counsel's application for attorneys' fees and costs, and the operative complaints filed in the lawsuits, please visit the Settlement website located at: [www.kiwienergysettlement.com](http://www.kiwienergysettlement.com). Alternatively, you may contact the Settlement Administrator by clicking the red contact us button at [www.kiwienergysettlement.com](http://www.kiwienergysettlement.com), by mail at: *Austin v Kiwi Energy LLC* c/o Settlement Administrator, PO Box 34669, Philadelphia, PA 19101-4669, or toll-free telephone: 1-844-367-8812.

The description of the lawsuit is general and does not cover all of the issues and proceedings that have occurred. In order to see the complete file you should visit <https://iapps.courts.state.ny.us/nyscef> or the Clerk's office at 360 Adams Street, Room 189, Brooklyn, NY 11201. The Clerk will tell you how to obtain the file for inspection and copying at your own expense.

## **21. What if my address or other information has changed or changes after I submit a Claim Form?**

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Contact the Settlement Administrator at:

Austin v Kiwi Energy LLC  
c/o Settlement Administrator  
PO Box 34669  
Philadelphia, PA 19101-4669

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**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.**

Dated: July 26, 2019

By Order of the Court  
CLERK OF THE COURT  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS