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FILED

NOV 20 2012

SUPERIOR COURT OF NEW JERSEY
COUNTY OF HUDSON
CHANCERY DIVISION # 3

By: Nicholas Kant
Deputy Attorney General
[REDACTED]

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, L. COUNTY
DOCKET NO. HUD-C- 184 -12

JEFFREY S. CHIESA, Attorney General of the State of
New Jersey, and ERIC T. KANEFSKY, Acting Director
of the New Jersey Division of Consumer Affairs,

Plaintiffs,

v.

EMPIRE OIL, L.L.C. d/b/a DELTA; JANE AND JOHN
DOES 1-10, individually and as owners, officers,
directors, shareholders, founders, managers, agents,
servants, employees, representatives and/or independent
contractors of EMPIRE OIL, L.L.C. d/b/a DELTA; and
XYZ CORPORATIONS 1-10,

Defendants.

Civil Action

COMPLAINT

Plaintiffs Jeffrey S. Chiesa, Attorney General of the State of New Jersey ("Attorney General"), with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and Eric T. Kanefsky, Acting Director of the New Jersey Division of Consumer Affairs ("Director"), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of Complaint state:

PRELIMINARY STATEMENT

1. During emergencies and major disasters, such as hurricanes, earthquakes, fires and floods, some merchants have taken unfair advantage of consumers by greatly increasing prices for certain merchandise, which are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain the life health or safety or comfort of persons or their property, a practice commonly known as "price gouging." When a declared state of emergency results in abnormal disruptions of the market, the New Jersey Legislature has found it in the public interest that excessive and unjustified price increases in the sale of certain merchandise, price gouging, be prohibited. See N.J.S.A. 56:8-107 and N.J.S.A. 56:8-109.

2. On October 27 2012, just prior to Tropical Storm Sandy ("Sandy") reaching the State of New Jersey ("State" or "New Jersey"), Governor Chris Christie ("Governor Christie") declared a State of Emergency. In the wake of the State of Emergency and Sandy, defendant Empire Oil, L.L.C. d/b/a Delta ("Empire Oil" or "Defendant") engaged in price gouging in the sale of motor fuel. In so doing, Empire Oil committed numerous violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA").

PARTIES AND JURISDICTION

3. The Attorney General is charged with the responsibility of enforcing the CFA. The Director is charged with the responsibility of administering the CFA on behalf of the Attorney General.

4. By this action, the Attorney General and Director (collectively, "Plaintiffs") seek injunctive and other relief for violations of the CFA. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-8, 56:8-11, 56:8-13, 56:8-19 and/or 56:8-

109. Venue is proper in Hudson County, pursuant to R. 4:3-2, because it is the county in which Empire Oil has conducted business.

5. On September 14, 2012, Empire Oil was established as a limited liability company in the State. Upon information and belief, at all relevant times, Empire Oil has maintained a business address of 7319 Bergenline Avenue, North Bergen, New Jersey 07047. Empire Oil's registered agent is Balwinder Singh, who maintains a mailing address of 94 Trinity Place, Avenel, New Jersey 07001 ("94 Trinity Place, Avenel"). Upon information and belief, Empire Oil's managing member is Arvinder Singh, who maintains a mailing address of 94 Trinity Place, Avenel.

6. John and Jane Does 1 through 10 are fictitious individuals meant to represent the owners, officers, directors, shareholders, founders, managers, agents, servants, employees, and/or representatives of Empire Oil who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

7. XYZ Corporations 1 through 10 are fictitious corporations meant to represent any additional corporations who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS:

A. Sandy and Executive Order No. 104 Declaring a State of Emergency

8. In late October 2012, Sandy was approaching New Jersey.
9. Hurricanes and tropical storms have the potential to cause severe weather conditions, including heavy rains, high winds, main stream and river flooding, and progressing runoff that may threaten homes and other structures, and endanger lives in the State.
10. On October 27, 2012 at approximately 11:30 a.m., due to the approach of Sandy, Governor Christie issued Executive Order No. 104, which immediately declared a State of Emergency in New Jersey ("State of Emergency").
11. Upon information and belief, on October 28, 2012, President Obama signed an emergency disaster declaration for New Jersey.
12. Upon information and belief, Governor Christie ordered the evacuation of all New Jersey barrier islands by 4:00 p.m. on October 28, 2012.
13. Upon information and belief, on October 29, 2012, Sandy made landfall in New Jersey and resulted in severe weather conditions of an unprecedented magnitude, including enormous storm surges, devastating winds and widespread flooding throughout the State.
14. Upon information and belief, while moving ashore at Atlantic City, Sandy brought winds in excess of 80 miles per hour, and heavy rainfall that reached almost 12 inches.
15. Sandy resulted in severe wind and water damage, among other things, to the New Jersey shoreline, homes and businesses. Residents were forced to evacuate their homes which, in many instances, were completely destroyed.

16. Sandy produced winds that toppled trees and downed power lines throughout New Jersey, causing widespread power outages that affected at least 2.4 million households and countless businesses.

17. Upon information and belief, at least thirty-four (34) New Jersey residents have died as a result of Sandy.

18. As a result of the power outages caused by Sandy, many New Jersey residents resorted to the use of generators that were powered by gasoline.

19. The widespread flooding and power outages forced the closure of motor fuel retailers in the State as well as prevented fuel deliveries to many of those retailers as well as retailers who otherwise could have been open for business. Such resulted in widespread and lingering shortages of motor fuel.

20. This situation left many New Jersey residents without an available source of motor fuel not only for transportation but also for other essential services, such as the operation of generators. Those New Jersey residents who were fortunate enough to find a retailer that was open and had fuel were forced to wait in line for several hours in lines that stretched for blocks.

21. On November 5, 2012, Governor Christie issued Executive Order No. 108 which declared that a limited state of energy emergency with regard to the supply of motor fuel exists in Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Monmouth, Passaic, Somerset, Sussex, Union and Warren Counties and implemented an odd-even gas rationing system. This system remained in place until 6:00 a.m. on November 13, 2012.

22. Upon information and belief, deliveries of fuel to retailers in the State did not resume until several days following Sandy.

B. Defendant's Business Generally

23. Upon information and belief, at all relevant times, Defendant has been engaged in the advertisement, offering for sale and/or sale of motor fuel to consumers.

24. At all relevant times, Defendant received deliveries of motor fuel, specifically gasoline and diesel fuel, from suppliers, for which Defendant paid a per-gallon rate.

25. At all relevant times, Defendant advertised, offered for sale and/or sold motor fuel to consumers at a per-gallon rate higher than the rate paid to its suppliers.

26. At all relevant times, Defendant advertised, offered for sale and/or sold motor fuel at a higher price for credit card purchases compared to cash purchases.

C. Defendant's Excessive Prices For Regular Gasoline

27. At all relevant times, Defendant received from its suppliers and advertised, offered for sale and/or sold to consumers unleaded 87 octane gasoline, commonly known as "regular gasoline" ("Regular Gasoline").

28. Shown below is a chart of the relevant prices Defendant paid to its suppliers for Regular Gasoline, and the prices at which it advertised, offered for sale and/or sold Regular Gasoline to consumers:

Date	Price Paid To Supplier	Cash Price For Consumers	Credit Card Price For Consumers
October 25, 2012	\$2.975	\$3.399	\$3.479
October 26, 2012	No delivery	\$3.399	\$3.479
October 27, 2012	State Of	Emergency	Declared
October 28, 2012	No delivery	\$3.399 / \$3.499	\$3.479 / \$3.579
October 29, 2012	No delivery	\$3.499	\$3.579
October 30, 2012	No delivery	n/a	n/a
October 31, 2012	No delivery	n/a	n/a
November 1, 2012	No delivery	n/a	n/a
November 2, 2012	\$3.279	n/a	n/a
November 3, 2012	\$3.200	\$4.099	n/a
November 4, 2012	No delivery	\$4.099	n/a

29. Thus, on October 26, 2012, immediately prior to the State of Emergency, to November 3, 2012 and November 4, 2012, after the State of Emergency had been declared and Sandy made landfall in New Jersey, Defendant's price for Regular Gasoline purchased with cash rose from \$3.399 per gallon to \$4.099 per gallon, which is an increase of 20.59%.

30. Further, on October 26, 2012, immediately prior to the State of Emergency, to November 3, 2012, after the State of Emergency had been declared and Sandy made landfall in New Jersey, Defendant's markup for Regular Gasoline purchased with cash rose from 14.25% to 25.01% and/or 28.09%, depending on what time Defendant received its delivery on November 3, 2012, which is an increase of 10.76% and/or 13.84%, respectively.

31. Also, on October 26, 2012, immediately prior to the State of Emergency, to November 4, 2012, after the State of Emergency had been declared and Sandy made landfall in New Jersey, Defendant's markup for Regular Gasoline purchased with cash rose from 14.25% to 28.09%, which is an increase of 13.84%.

32. Upon information and belief, Defendant did not make any credit card sales of Regular Gasoline on November 3, 2012 or November 4, 2012.

D. Defendant's Excessive Prices For Supreme Gasoline

33. At all relevant times, Defendant received from its suppliers and advertised, offered for sale and/or sold to consumers unleaded 93 octane gasoline, commonly known as "super gasoline," "premium gasoline" or "supreme gasoline" ("Supreme Gasoline").

34. Shown below is a chart of the relevant prices Defendant paid to its suppliers for Supreme Gasoline, and the prices at which it advertised, offered for sale and/or sold Supreme Gasoline to consumers:

Date	Price Paid To Supplier	Cash Price For Consumers	Credit Card Price For Consumers
October 25, 2012	\$3.12	\$3.759	\$3.859
October 26, 2012	No delivery	\$3.759	\$3.859
October 27, 2012	State Of	Emergency	Declared
October 28, 2012	No delivery	\$3.759	\$3.859
October 29, 2012	No delivery	\$3.859	\$3.959
October 30, 2012	No delivery	n/a	n/a
October 31, 2012	No delivery	n/a	n/a
November 1, 2012	No delivery	n/a	n/a
November 2, 2012	\$4.500	n/a	n/a
November 3, 2012	\$3.430	\$4.990	n/a
November 4, 2012	No delivery	\$4.599	n/a

35. Thus, on October 26, 2012, immediately prior to the State of Emergency, to November 4, 2012, after the State of Emergency had been declared and Sandy made landfall in New Jersey, Defendant's price for Supreme Gasoline purchased with cash rose from \$3.759 per gallon to \$4.599 per gallon, which is an increase of 22.34%.

36. Further, on October 26, 2012, immediately prior to the State of Emergency, to November 4, 2012, after the State of Emergency had been declared and Sandy made landfall in New Jersey, Defendant's markup for Regular Gasoline purchased with cash rose from 20.48% to 34.08%, which is an increase of 13.60%.

37. Upon information and belief, Defendant did not make any credit card sales of Supreme Gasoline on November 3 or 4, 2012.

E. Defendant's Excessive Prices For Plus Gasoline

38. At all relevant times, advertised, offered for sale and/or sold to consumers unleaded 89 octane gasoline, commonly known as "plus gasoline" ("Plus Gasoline").

39. Upon information and belief, at all relevant times, Defendant made Plus Gasoline by mechanically blending a mixture of 65% Regular Gasoline and 35% Premium Gasoline.

40. Shown below is a chart of the relevant prices Defendant paid to its suppliers for the components of Plus Gasoline, and the prices at which it advertised, offered for sale and/or sold Plus Gasoline to consumers:

Date	Price Paid To Supplier	Cash Price For Consumers	Credit Card Price For Consumers
October 25, 2012	\$2.975 (Regular Gasoline) \$3.12 (Supreme Gasoline)	\$3.659	\$3.739
October 26, 2012	No delivery	\$3.659	\$3.739
October 27, 2012	State Of	Emergency	Declared
October 28, 2012	No delivery	\$3.659 / \$3.759	n/a
October 29, 2012	No delivery	\$3.759	n/a
October 30, 2012	No delivery	n/a	n/a
October 31, 2012	No delivery	n/a	n/a
November 1, 2012	No delivery	n/a	n/a
November 2, 2012	\$3.279 (Regular Gasoline) \$4.500 (Supreme Gasoline)	n/a	n/a
November 3, 2012	\$3.200 (Regular Gasoline) \$3.430 (Supreme Gasoline)	\$4.399	n/a
November 4, 2012	No delivery	\$4.399	n/a

41. By calculating the cost per gallon for Plus Gasoline consisting of 65% Regular Gasoline at \$2.975 per gallon and 35% Premium Gasoline at \$3.12 per gallon, Defendant's cost for Plus Gasoline was \$3.026 per gallon on October 26, 2012, immediately prior to the State of Emergency.

42. By calculating the cost per gallon for Plus Gasoline consisting of 65% Regular Gasoline at \$3.20 per gallon and 35% Premium Gasoline at \$3.430 per gallon, Defendant's cost for Plus Gasoline was \$3.28 per gallon on November 3 and/or 4, 2012, (depending on what time Defendant received its delivery on November 3, 2012), after the State of Emergency had been declared and Sandy made landfall in New Jersey.

43. Thus, from October 26, 2012, immediately prior to the State of Emergency, to November 3 and 4, 2012, after the State of Emergency had been declared and Sandy made

landfall in New Jersey, Defendant's price for Plus Gasoline purchased with cash rose from \$3.659 per gallon to \$4.399 per gallon, which is an increase of 20.22%.

44. Further, from October 26, 2012, immediately prior to the State of Emergency, to November 3 and/or 4, 2012, (depending on what time Defendant received its delivery on November 3, 2012), after the State of Emergency had been declared and Sandy made landfall in New Jersey, Defendant's markup for Plus Gasoline purchased with cash rose from 20.95% to 34.11%, which is an increase of 13.19%.

45. Upon information and belief, Defendant did not make any credit card sales of Plus Gasoline on November 3 or 4, 2012.

F. Consumer Complaints And Division of Consumer Affairs Visit

46. Upon information and belief, the Division of Consumer Affairs ("Division") has received ten (10) consumer complaints regarding Defendant's prices for motor fuel.

47. On November 4, 2012 at approximately 3:15 p.m., after the State of Emergency had been declared and Sandy made landfall in New Jersey, New Jersey Division of Consumer Affairs Investigators Cullen Church and Oscar Mejia ("Investigator Mejia") visited Defendant to serve a Subpoena Duces Tecum on behalf of the Division.

48. At that time, Investigator Mejia took several photographs of Defendant's premises, four (4) of which are shown below and indicate that Defendant's posted prices at that time were: (a) \$4.099 for Regular Gasoline purchased with cash; (b) \$4.399 per gallon for Plus Gasoline purchased with cash; (c) \$4.599 for Supreme Gasoline purchased with cash; and (d) credit card prices were not posted.



COUNT I

VIOLATION OF THE CFA (N.J.S.A. 56:8-109) BY DEFENDANT (EXCESSIVE PRICES DURING EMERGENCIES)

49. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 48 as if more fully set forth herein.

50. The CFA defines “merchandise” as including “any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale.” N.J.S.A. 56:8-1(c).

51. At all relevant times, Defendant has been engaged in the advertisement, offering for sale and/or sale of merchandise within the meaning of N.J.S.A. 56:8-1(c), specifically motor fuel.

52. The CFA states:

It shall be an unlawful practice for any person to sell or offer to sell during a state of emergency or within 30 days of the termination of a state of emergency, in the area for which the state of emergency has been declared, any merchandise which is consumed or used as a direct result of an emergency or which is consumed or used to preserve, protect, or sustain the life, health, safety or comfort of person or their property for a price that constitutes an excessive price increase.

[N.J.S.A. 56:8-109.]

53. At all relevant times, Defendant has been engaged in the advertisement, offering for sale and/or sale of merchandise consumed or used as a direct result of an emergency and/or which is consumed or used to preserve, protect, or sustain the life, health, safety or comfort of person or their property within the meaning of N.J.S.A. 56:8-109, specifically motor fuel.

54. An “excessive price increase” means:

A price that is excessive as compared to the price at which the consumer good or service was sold or offered for sale by the seller in the usual course of business immediately prior to the state of emergency. A price shall be deemed excessive if:

(1) The price exceeds by more than 10 percent the price at which the good or service was sold or offered for sale by the seller in the usual course of business immediately prior to the state of emergency, unless the price charged by the seller is attributable to additional costs imposed by the seller's supplier or other costs of providing the good or service during the state of emergency.

(2) In situations where the increase in price is attributable to additional costs imposed by the seller's supplier or additional costs of providing the good or services during the state of emergency, the price presents an increase of more than 10 percent in the amount of markup from cost, compared to the markup customarily applied by the seller in the usual course of business immediately prior to the state of emergency.

[N.J.S.A. 56:8-108]

55. On November 3 and/or 4, 2012, after Sandy made landfall in New Jersey and within thirty (30) days after the State of Emergency had been declared, Defendant sold Regular Gasoline, Plus Gasoline and Supreme Gasoline at prices more than 10 percent higher than on October 26, 2012, immediately prior to the State of Emergency, which constitutes an excessive price increase.

56. Accounting for Defendant's costs, on November 3 and/or 4, 2012, after Sandy made landfall in New Jersey and within thirty (30) days after the State of Emergency had been declared, Defendant's markup for Regular Gasoline, Plus Gasoline and Supreme Gasoline was more than 10 percent higher than Defendant's markup for those fuels on October 26, 2012, immediately prior to the State of Emergency, which constitutes an excessive price increase.

57. By offering for sale and/or selling motor fuel, specifically Regular Gasoline, Plus Gasoline and Premium Gasoline November 3 and/or 4, 2012 at prices constituting an excessive price increase compared to Defendant's prices on October 26, 2012, immediately prior to the State of Emergency, Defendant has engaged in unlawful practices in violation of the CFA, specifically N.J.S.A. 56:8-109.

58. Each instance of Defendant offering for sale and/or selling motor fuel at a price constituting an excessive price increase constitutes a separate violation of the CFA, N.J.S.A. 56:8-109.

COUNT II

VIOLATION OF THE CFA BY DEFENDANT (UNCONSCIONABLE COMMERCIAL PRACTICES)

59. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 58 as if more fully set forth herein.

60. The CFA prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby...

[N.J.S.A. 56:8-2.]

61. In the operation of its business, Defendant has engaged in the use of unconscionable commercial practices.

62. Defendant has engaged in unconscionable commercial practices and deception including, but not limited to, the following:

- a. Advertising, offering for sale and/or selling motor fuel, specifically Regular Gasoline, Plus Gasoline and Premium Gasoline on November 3 and/or 4, 2012 at prices constituting an excessive price increase compared to Defendant's prices on October 26, 2012, immediately prior to the State of Emergency.

63. Each unconscionable commercial practice by Defendant constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

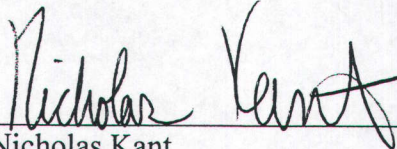
PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment against Defendant:

- (a) Finding that the acts of Defendant constitute multiple violations of the CFA;
- (b) Permanently enjoining Defendant, along with its agents, employees, representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under his control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA;
- (c) Directing Defendant to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (d) Directing Defendant to pay the maximum statutory civil penalties for each violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (e) Directing Defendant to pay costs and fees, including attorneys' fees, for the use of the State, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and

- (f) Granting such other relief as the interests of justice may require.

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 

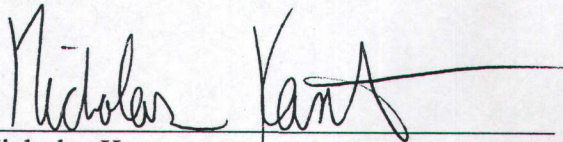
Nicholas Kant
Deputy Attorney General

Dated: November 20, 2012
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the CFA, is not the subject of any other action pending in any other court of this State. I further certify, to the best of my information and belief, that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

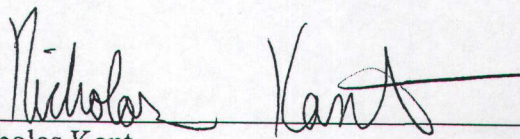
By: 
Nicholas Kant
Deputy Attorney General

Dated: November 20, 2012
Newark, New Jersey

RULE 1:38-7(c) CERTIFICATION OF COMPLIANCE

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

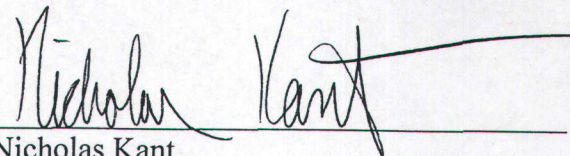
By: 
Nicholas Kant
Deputy Attorney General

Dated: November 20, 2012
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Deputy Attorney General Nicholas Kant is hereby designated as trial counsel for the Plaintiffs in this action.

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Nicholas Kant
Deputy Attorney General

Dated: November 20, 2012
Newark, New Jersey