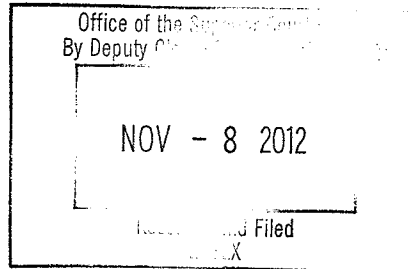


JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for Plaintiffs

By: Lorraine K. Rak
Deputy Attorney General
Chief, Consumer Fraud Prosecution Section
[REDACTED]



SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, ESSEX COUNTY
DOCKET NO. ESX-C-257 -12

JEFFREY S. CHIESA, Attorney General of the State of New Jersey, ERIC T. KANEFISKY, Acting Director of the New Jersey Division of Consumer Affairs, and ROBERT J. CAMPANELLI, Acting Superintendent of the State of New Jersey, Office of Weights and Measures,

Plaintiffs,

v.

COUTO & SONS, INC. d/b/a SUNOCO; JANE AND JOHN DOES 1-10, individually and as owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of COUTO & SONS, INC. d/b/a SUNOCO; 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, and Robert J.

Campanelli, Acting Superintendent of the New Jersey Office of Weights and Measures (“Superintendent”), with offices located at 1261 Routes 1 & 9 South, Avenel, New Jersey, by way of Complaint state:

PRELIMINARY STATEMENT

1. During emergencies and major disasters, such as hurricanes and tropical storms, 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 these types of 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 Couto and Sons, Inc. d/b/a Sunoco (“Defendant”) engaged in price gouging in the sale of motor fuel. Additionally, Defendant increased the price for motor fuel sold more than once within a twenty-four (24) hour period. In so doing, Defendant has committed numerous violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), and the Motor Fuels Act, N.J.S.A. 56:6-1 et seq.

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. Pursuant to N.J.S.A. 51:1-42, the New Jersey Office of Weights and Measures (“Office of Weights and Measures”) in the Department of Law and Public Safety, is charged with the responsibility, among other things, of establishing a uniform standard of weights and measures and to provide penalties for the use of other than standard or legal weights and measures, as provided in the Weights and Measures Act, N.J.S.A. 51:1-1.

5. The Superintendent is charged with the responsibility of administering the Weights and Measures Act and all the regulations promulgated thereunder. Pursuant to N.J.S.A. 56:6-4.1, the Superintendent may recover penalties for violations of the Motor Fuels Act.

6. By this action, the Attorney General, Director and Superintendent (collectively, “Plaintiffs”) seek injunctive and other relief for violations of the CFA and/or the Motor Fuels Act. 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 and/or 56:8-19, and/or the Motor Fuels Act, N.J.S.A. 56:6-4.1. Venue is proper in Essex County, pursuant to R. 4:3-2, because it is the county in which Defendant has conducted business.

7. On September 15 1972, Defendant was established as a Domestic For Profit Corporation in the State. At all relevant times, Defendant has maintained a main business address of 69 Wilson Avenue, Newark, New Jersey 07105.

8. The registered agent in the State for Defendant is John Couto, who maintains a mailing address of 758 Lafayette Avenue, Union, New Jersey 07083-6719.

9. 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 Defendant 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.

10. 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

11. In late October 2012, Sandy was approaching New Jersey.

12. 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.

13. 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").

14. Upon information and belief, on October 28, 2012, President Obama signed an emergency disaster declaration for New Jersey.

15. Upon information and belief, Governor Christie ordered the evacuation of all New Jersey barrier islands by 4:00 p.m. on October 28, 2012.

16. 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.

17. 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.

18. 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.

19. 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.

20. Upon information and belief, at least twenty-three (23) New Jersey residents have died as a result of Sandy.

21. 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.

22. 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.

23. 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 for several hours in lines that stretched for blocks.

24. 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.

25. 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

26. At all relevant times, Defendant has been engaged in the advertisement, offering for sale and/or sale of motor fuel to consumers. At all relevant times, the motor fuel was comprised of four (4) grades: (a) unleaded 87 octane ("Regular Gasoline"); (b) unleaded 89 octane ("Plus Gasoline"); (c) unleaded 91 octane ("Premium Gasoline"); and (d) unleaded 93 octane ("Ultra Gasoline").

27. Upon information and belief, Defendant blended Regular Gasoline and Ultra Gasoline to create Plus Gasoline and Premium Gasoline.

28. At all relevant times, Defendant received deliveries of motor fuel, specifically Regular Gasoline and Ultra Gasoline, from Sunoco, Inc. (R&M), 1735 Market Street, Suite LL, Philadelphia, Pennsylvania 19103-7583 ("Sunoco").

29. At all relevant times, Defendant paid Sunoco a per-gallon rate for Regular Gasoline and Ultra Gasoline.

30. 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 Sunoco.

31. At all relevant times, Defendant charged the same price for motor fuel purchased with cash or a credit card.

**C. Defendant's Sale of Motor Fuel
Prior to the State of Emergency**

32. On October 22, 2012, Defendant received a shipment of Regular Gasoline and Ultra Gasoline from Sunoco. The price per gallon Defendant paid was \$3.4823 for Regular Gasoline and \$3.7223 for Ultra Gasoline.

33. On October 26, 2012, Defendant sold motor fuel at the following prices per gallon: (a) Regular Gasoline - \$3.799; (b) Plus Gasoline - \$4.119; (c) Premium Gasoline - \$4.219; and (d) Ultra Gasoline - \$4.269.

34. Those prices were in effect until 7:08 a.m. on October 31, 2012.

**D. Defendant's Sale of Motor
Fuel after the State of Emergency**

35. At 7:08 a.m. on October 31, 2012, Defendant increased its motor fuel prices as follows: (a) Regular Gasoline - \$3.999; (b) Plus Gasoline - \$4.319; (c) Premium Gasoline - \$4.419; and (d) Ultra Gasoline - \$4.469.

36. At 4:06 a.m. on November 1, 2012, Defendant increased its motor fuel prices as follows: (a) Regular Gasoline - \$4.459; (b) Plus Gasoline - \$4.569; (c) Premium Gasoline - \$4.669; and (d) Ultra Gasoline - \$4.759.

37. From October 26, 2012, immediately prior to the State of Emergency, to November 1, 2012, after the State of Emergency had been declared and Sandy made landfall in New Jersey, Defendant's price for Regular Gasoline increased from \$3.799 per gallon to \$4.459 per gallon, which is an increase of 17.37%.

38. From October 26, 2012, immediately prior to the State of Emergency, to November 1, 2012, after the State of Emergency had been declared and Sandy made landfall in New Jersey, Defendant's price for Plus Gasoline increased from \$4.119 per gallon to \$4.569 per gallon, which is an increase of 10.92%.

39. From October 26, 2012, immediately prior to the State of Emergency, to November 1, 2012, after the State of Emergency had been declared and Sandy made landfall in New Jersey, Defendant's price for Premium Gasoline increased from \$4.219 per gallon to \$4.669 per gallon, which is an increase of 10.66%.

40. From October 26, 2012, immediately prior to the State of Emergency, to November 1, 2012, after the State of Emergency had been declared and Sandy made landfall in New Jersey, Defendant's price for Ultra Gasoline increased from \$4.269 per gallon to \$4.759 per gallon, which is an increase of 11.47%.

41. Defendant's cost for Regular Gasoline and Ultra Gasoline did not increase from October 26, 2012 to November 1, 2012.

42. On November 1, 2012, Defendant received a shipment of Regular Gasoline and Ultra Gasoline from Sunoco. The price per gallon Defendant paid was \$3.3023 for Regular Gasoline and \$3.5423 for Ultra Gasoline.

43. The price Defendant paid on November 1, 2012 was less than the price Defendant paid for the last shipment of Regular Gasoline and Ultra Gasoline it received on October 26, 2012. Despite the decrease in its cost, Defendant raised the prices for Regular Gasoline, Plus Gasoline, Premium Gasoline and Ultra Gasoline by more than 10% after the State of Emergency.

44. From October 31, 2012 to November 3, 2012, the New Jersey Division of Consumer Affairs has received approximately twenty-four (24) calls from consumers who complained about the prices being charged by Defendant, particularly for Regular Gasoline. Among other things, consumers reported that while Defendant was charging prices of \$3.99 or less per gallon for Regular Gasoline immediately prior to Sandy, Defendant was charging \$4.45 for Regular Gasoline after Sandy struck New Jersey.

COUNT I

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

45. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 44 as if more fully set forth herein.

46. 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).

47. 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.

48. 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.]

49. 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.

50. 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.]

51. On November 1, 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, Premium Gasoline and Ultra 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.

52. Accounting for Defendant's costs, on November 1, 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, Premium Gasoline and Ultra 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.

53. By offering for sale and/or selling motor fuel, specifically Regular Gasoline, Plus Gasoline, Premium Gasoline and Ultra Gasoline on November 1, 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.

54. 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 MOTOR FUELS ACT BY DEFENDANT (MULTIPLE PRICE CHANGES WITHIN 24 HOURS)

55. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 54 as if more fully set forth herein.

56. The Motor Fuels Act, N.J.S.A. 56:6-1 et seq. governs the sale of motor fuels by retail dealers within the State.

57. To the extent it is engaged in the operation of a service station in the State, Defendant is a “retail dealer” within the definition of N.J.S.A. 56:6-1.

58. The Motor Fuels Act provides in pertinent part:

Every retail dealer shall publicly display and maintain, in the manner regulated by the Director of the Division of Taxation, a sign stating the price per gallon if sold by the gallon, and per gallon and per liter if sold by the liter of the motor fuel sold by the dealer. All taxes, State and Federal, imposed with respect to the manufacture or sale of motor fuel shall be included in the price shown on said sign, but said sign shall contain a statement of the amount of taxes included in said price, or without specifying the amount thereof, said sign shall state that taxes are included in said price. A retail dealer shall not sell at any other price than the price, including tax, so posted. Any such price when posted shall remain posted and in effect for a period of not less than twenty-four (24) hours.

[N.J.S.A. 56:6-2(a) (emphasis added).]

59. At least from October 31, 2012 through November 1, 2012, Defendant increased the price for Regular Gasoline, Plus Gasoline, Premium Gasoline and Ultra Gasoline more than once within a twenty-four hour (24) hour period.

60. Defendant’s conduct constitutes multiple violations of the Motor Fuels Act, N.J.S.A. 56:6-1 et seq.

COUNT III

**VIOLATION OF THE CFA BY DEFENDANT
(UNCONSCIONABLE COMMERCIAL PRACTICES)**

61. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 60 as if more fully set forth herein.

62. 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.]

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

64. Defendant's conduct in violation of the CFA includes, but is not limited to, the following:

- a. Advertising, offering for sale and/or selling motor fuel, specifically Regular Gasoline, Plus Gasoline, Premium Gasoline and Ultra Gasoline on November 1, 2012 at prices constituting an excessive price increase compared to Defendant's prices on October 26, 2012, immediately prior to the State of Emergency;
- b. Selling Regular Gasoline, Plus Gasoline, Premium Gasoline and Ultra Gasoline at a price that was increased more than once within a twenty-four (24) hour period; and
- c. Charging consumers for motor fuel sold at an unlawful price.

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

PRAYER FOR RELIEF

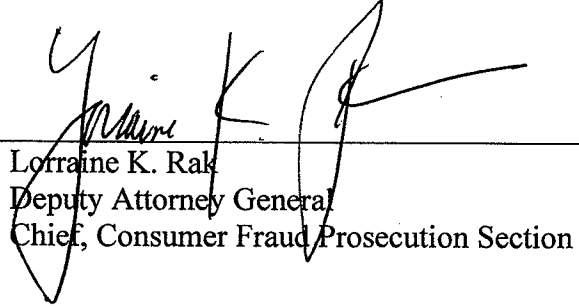
WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment against Defendant:

- (a) Finding that the acts of Defendant constitute multiple violations of the CFA and the Motor Fuels Act;
- (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 and the Motor Fuels Act including, but not limited to, the acts and practices alleged in this Complaint;
- (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 the maximum statutory civil penalties for each violation of the Motor Fuels Act, in accordance with N.J.S.A. 56:6-3;
- (f) 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

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

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

By: _____

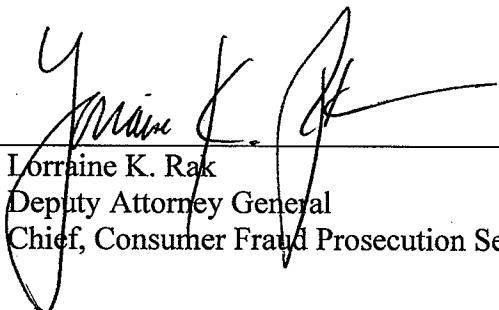

Lorraine K. Rak
Deputy Attorney General
Chief, Consumer Fraud Prosecution Section

Dated: November 8, 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 and Motor Fuels Act, 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

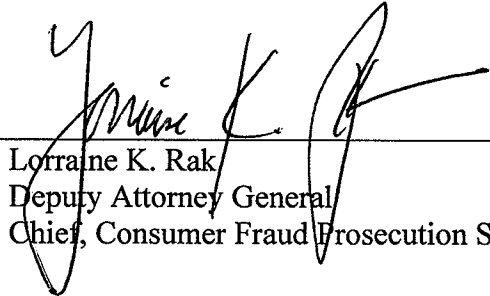
By: 
Lorraine K. Rak
Deputy Attorney General
Chief, Consumer Fraud Prosecution Section

Dated: November 8, 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

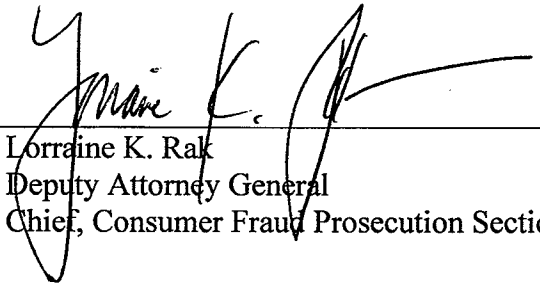
By: 
Lorraine K. Rak
Deputy Attorney General
Chief, Consumer Fraud Prosecution Section

Dated: November 8, 2012
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

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

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

By: 
Lorraine K. Rak
Deputy Attorney General
Chief, Consumer Fraud Prosecution Section

Dated: November 8, 2012
Newark, New Jersey