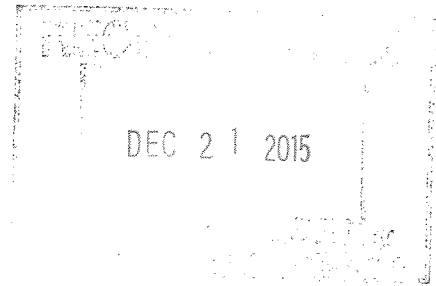


JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street- 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for Plaintiffs



By: Russell M. Smith, Jr. (014202012)  
Deputy Attorney General  
[REDACTED]

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, ESSEX COUNTY  
DOCKET NO. C-278-15

JOHN J. HOFFMAN, Acting Attorney General of  
the State of New Jersey, STEVE C. LEE, Acting  
Director of the New Jersey Division of Consumers  
Affairs, and DAVID FREED, Acting  
Superintendent of the New Jersey State Office of  
Weights and Measures,

Plaintiffs,

v.

ADVANCE STORES COMPANY, INC.; JANE  
AND JOHN DOES 1-10, individually and as  
owners, officers, directors, founders, managers,  
agents, employees, and representatives of  
ADVANCE STORES COMPANY, INC.; and XYZ  
CORPORATIONS 1-10,

Defendants.

Civil Action

COMPLAINT

Plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey ("Attorney General"), with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, Steve C. Lee, Acting Director of the New Jersey Division of Consumer Affairs ("Director"), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, and David Freed, Acting Superintendent of the New Jersey State Office of Weights and Measures

("Superintendent"), with offices located at 1261 Routes 1 & 9 South, Avenel, New Jersey, (collectively, "Plaintiffs"), by way of Complaint state:

### PRELIMINARY STATEMENT

1. Frequently, consumers shop for automotive accessories and/or parts when there is a specific need for their motor vehicles to be repaired or serviced. Many automotive accessories and parts are manufactured by competing companies and often possess differing characteristics (e.g. motor oil). Many consumers lack familiarity with such merchandise, and must rely on the representations of automotive parts retailers, among other things, as to the pricing of the merchandise. Accordingly, it is critically important that automotive parts retailers clearly and conspicuously post the selling price of merchandise, and that such merchandise is sold at the price listed at the point of display. Further, any retailer that provides automotive repairs in the State of New Jersey ("New Jersey" or "State") is required, among other things, to post a consumer notice as to the right to a written estimate for such repairs.

2. At all relevant times, Advance Stores Company, Inc. ("Advance Auto" or "Defendant") has been engaged in the advertisement, offer for sale, sale of automotive parts and performance of automotive repairs in the State of New Jersey ("State" or "New Jersey"), and across the country. Advance Auto represents that it is the largest automotive aftermarket parts retailer in North America: as of January 3, 2015, Advance Auto's parent company Advance Auto Parts, Inc., operated 5,372 retail stores, under the trade names Advance Auto Parts, Carquest, Worldpac and Autopart International, including 124 stores in New Jersey. Based upon investigations by the New Jersey Division of Consumer Affairs ("Division"), Advance Auto: (a)

sold a variety of merchandise, through the use of scanners, at prices in excess of the price listed at the point of display; and (b) failed to post the total selling price of merchandise. As detailed below, such conduct is in violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”) and the Weights and Measures Act, N.J.S.A. 51:1-1 et seq.

### **PARTIES AND JURISDICTION**

3. The Attorney General is charged with the responsibility of enforcing the CFA and all the regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq. (“CFA Regulations”). The Director is charged with the responsibility of administering the CFA and the CFA Regulations on behalf of the Attorney General.

4. The Superintendent is charged with the responsibility of enforcing the Weights and Measures Act, and all the regulations promulgated thereunder, N.J.A.C. 13:47B-1.1 et seq., and N.J.A.C. 13:47K1.1 et seq. (“Weights and Measures Regulations”).

5. By this action, Plaintiffs seek injunctive relief and other relief for violations of the CFA and/or the Weights and Measures Act. Plaintiffs bring this action pursuant to their authority under the CFA and the Weights and Measures Act, specifically N.J.S.A. 56:8-8, 56:8-11, 56:8-13, 56:8-19, and 51:1-103.

6. Venue is proper in Essex County, pursuant to R. 4:3-2, because it is a county in which Advance Auto has maintained a business address and/or otherwise conducted business.

7. Advance Auto is a Virginia corporation established on June 17, 1929. At all relevant times, Advance Auto has maintained a principal place of business at 5008 Airport Road, Roanoke, Virginia 24012.

8. John and Jane Does 1 through 10 are fictitious individuals meant to represent the agents, servants, employees, and/or representatives of Advance Auto 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.

9. XYZ Corporations 1 through 10 are fictitious corporations meant to represent any additional business entities who have been involved in the conduct that gives rise to the 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. Advertisement and Retail Sale of Merchandise:**

10. Upon information and belief, as of January 3, 2015, Advance Auto operated at least sixty-nine (69) retail stores in New Jersey doing business as “Advance Auto Parts” (“Advance Stores”).

11. At all relevant times, the Advance Stores offer for sale a wide assortment of merchandise and services including, but not limited to, automotive parts and accessories.

12. Upon information and belief, Advance Auto advertises and offers merchandise and services for sale to consumers in New Jersey and elsewhere through various media, including television commercials, newspaper advertisements, advertising circulars and its own website ([www.advanceautoparts.com](http://www.advanceautoparts.com)), among others.

**B. The Division's Inspection of Advance Stores:**

13. Since April 2007, Defendant has been found to have committed at least 1,211 separate violations of the Weights and Measures Act, specifically N.J.S.A. 51:1-97(a)(4), in connection with merchandise offered for sale at Advance Stores that scanned at a price in excess of the price posted at the point of display.

14. During the period of January 21, 2015 through February 23, 2015, the New Jersey Division of Consumer Affairs ("Division"), through its Office of Weights and Measures and Office of Consumer Protection, conducted inspections at following seven (7) Advance Stores:

Store #	Street	City	State
5182	471 Main Street	East Orange	New Jersey
5357	158-160 Clinton Ave.	Newark	New Jersey
5867	1158 E. St. Georges Ave.	Linden	New Jersey
7248	376 Rt. 18	East Brunswick	New Jersey
7275	77-105 Bloomfield Ave.	Bloomfield	New Jersey
8819	1366 St. Georges Ave.	Avenel	New Jersey
8414	455A Terrill Rd.	Fanwood	New Jersey

15. During the period of January 21, 2015 through February 23, 2015, Advance Auto offered for retail sale at the above-referenced Advance Stores a wide assortment of automotive parts and accessories including, but not limited to, car covers, motor oil, leather cleaner and conditioner, windshield wash solvent and wax.

COUNT I

**VIOLATION OF THE CFA BY DEFENDANT  
(UNCONSCIONABLE COMMERCIAL PRACTICES,  
FALSE PROMISES AND MISREPRESENTATIONS;  
SALE OF MERCHANDISE AT PRICE IN EXCESS OF POSTED PRICE)**

16. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 15 above as if more fully set forth herein.

17. The CFA, N.J.S.A. 56:8-2, 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...

18. 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).

19. At all relevant times, Defendant has been engaged in the advertisement and sale of merchandise within the meaning of N.J.S.A. 56:8-1(c), specifically automotive parts and accessories.

20. At all relevant times, Defendant has employed the use of a point of sale system which includes a barcode scanner that determines the price of merchandise purchased by consumers at Advance Stores.

21. During the period of January 21, 2015 through February 23, 2015, merchandise offered for sale and/or sold by Defendant was found to have scanned at a price in excess of the price listed at the point of display, including but not limited to, at the following Advance Stores:

Store #	Street	City	State
5182	471 Main Street	East Orange	New Jersey
5357	158-160 Clinton Ave.	Newark	New Jersey
5867	1158 E. St. Georges Ave.	Linden	New Jersey
7248	376 Rt. 18	East Brunswick	New Jersey
7275	77-105 Bloomfield Ave.	Bloomfield	New Jersey
8819	1366 St. Georges Ave.	Avenel	New Jersey
8414	455A Terrill Rd.	Fanwood	New Jersey

22. The merchandise found to have scanned at a prices in excess of the price listed at the point of display, includes but is not limited to, the following:

<u>Merchandise</u>	<u>Amount Above Posted Price</u>
3M Automotive Attachment Tape	\$4.84
Advanced Auto Parts Marine Grease	\$0.20
Auto Craft 2-in-1 Microfiber Wash Mop	\$0.60
Auto Craft Primary Wire Red 8 Gauge 6"	\$0.50
Black Magic Protectant Pro Shine	\$0.10
Castrol Transmax Multi-Vehicle ATF Automatic Transmission Fluid	\$1.00
Dorman Hex Flange Nuts 5/16-18	\$1.20
Drive Works Halogen Headlamp	\$0.50
Drive Works Oil Filter DW-111	\$0.10
Drive Works Oil Filter DW-5315	\$2.70
Fit System Convex Mirror	\$0.10
Gorilla Super Glue (Bloomfield)	\$0.30
Gorilla Super Glue (East Orange)	\$0.30
J-B Weld Marine Weld Marine Epoxy	\$0.60
Marvel Air Tool Oil	\$0.40
Meguiar's Gold Class Leather Wipes 25ct.	\$0.10
Pennzoil Premium Plus Marine Outboard Engine Oil	\$0.60
Permatex Copper Spray-A-Gasket Hi-Temp Sealant 9oz.	\$0.10

Purolator Oil Filer	\$0.10
Road Runner Ice Melt Remover Jug	\$0.30
SAS Foam Ear Plugs 2prs.	\$0.30
Scott Pro Towels	\$0.30
Splash De-Icer	\$0.10
Splash Original Blue Windshield Wash (Avenel)	\$0.20
Splash Original Blue Windshield Wash (Fanwood)	\$0.20
Turtle Wax Polish Compound Premium RenewRx	\$1.00
Turtle Wax Rubbing Compounds Heavy Duty Cleaner	\$1.20

23. Defendant's conduct in violation of the CFA includes, but is not limited to the following unconscionable commercial practices, false promises and/or misrepresentations:

- a. Offering for sale and/or selling merchandise to consumers at prices that exceed the price posted at the point of display or otherwise; and
- b. Misrepresenting to consumers at the point of display or otherwise, the price of merchandise offered for sale at Advance Stores.

24. Each unconscionable commercial practices, false promises and/or misrepresentation by Defendant constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

## COUNT II

### **VIOLATION OF THE CFA BY DEFENDANT (FAILURE TO DISPLAY TOTAL SELLING PRICE)**

25. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 24 above as if more fully set forth herein.

26. The CFA requires that persons offering merchandise for sale display the total selling price, as follows:

It shall be an unlawful practice for any person to sell, attempt to sell or offer for sale any merchandise at retail unless the total selling price of such merchandise is plainly marked by a stamp, tag, label or sign affixed to the merchandise or located at the point where merchandise is offered for sale.



[N.J.S.A. 56:8-2.5.]

27. In addition, the CFA provides:

For purposes of this act, each day for which the total selling price is not marked in accordance with the provision of this act for each group of identical merchandise shall constitute a separate violation of this act and the act of which this act is a supplement.

[N.J.S.A. 56:8-2.6.]

28. During the period of January 21, 2015 through February 23, 2015, merchandise offered for sale and/or sold by did not include a plainly marked total selling price including, but not limited to, at the following Advance Stores:

Store #	Street	City	State
5182	471 Main Street	East Orange	New Jersey
5357	158-160 Clinton Ave.	Newark	New Jersey
5867	1158 E. St. Georges Ave.	Linden	New Jersey
7275	77-105 Bloomfield Ave.	Bloomfield	New Jersey
8819	1366 St. Georges Ave.	Avenel	New Jersey
8414	455A Terrill Rd.	Fanwood	New Jersey

29. The merchandise found not to include a plainly marked total selling price affixed to the merchandise or located at the point of display in the Advance Stores, includes but is not limited to, the following products:

<u>Merchandise</u>	<u>Shelf Count</u>
#12-1ft Stainless Steel Self-Tapping Pan Head	127
3 Ton Ratcheting Jack Stand	1
32" Snowbrush	16
Advance Auto Parts Anti-Freeze (Bloomfield)	24
Advance Auto Parts Anti-Freeze (East Orange)	21

Aquafina Water Bottles	4
Auto Homelock Deicer and Lubricant	13
AutoCraft 10 Gauge Booster Cables	5
AutoCraft 3 Pack Microfiber Towels	3
AutoCraft 3 Square Feet Drying Towel	2
AutoCraft 6 Pack Microfiber Towels	17
AutoCraft Bone Sponge	7
AutoCraft Plastic Shop Creeper	3
Betty Boo Mats	4
Cargo Carrier Hitch Mounted Steel Tray	2
Coolant Return System	5
CRC Parts Washer Solvent	1
Fix-A-Flat, 16 ounce bottles	11
Fix-A-Flat, 24 ounce bottles	4
Flo Tool 24 Quart Drain Container	2
Flo Tool 5 Gallon Drain Pan	5
Flo Tool 7 Quart Drain Pain	4
Ford Mats	2
Full Throttle	30
Grease Monkey Disposable Nitrile Gloves	5
HEET Gas-Line Antifreeze and Water Remover	9
Hex Head Cap Screws	278
Honda Mats	4
MicroFiber Chenille Mitt	3
Microfiber Mitt with Scrubber	3
Mossy Oak Mats	10
Multi-Purpose Funnels	11
Peak Flush and Fill Kit	3
Peak Jump Starter 750 AMP	3
Peak Jump Starter 900 AMP	3
Prestone 50/50 Anti-Freeze Coolant	209
Prestone Concentrate Anti-Freeze Coolant	55
Prestone De-Icer	13
Rain-X 2-in-1	8
Repair Manuals (various manuals for GM, Chevy, Dodge, Cadillac, Jeep)	174
RV and Marine Anti-Freeze	14
Shell Rotella T Triple Protection Engine Oil	20
Shell Rotella T5 Synthetic Oil Blend SAE Low-30	11
Shell Rotella T6 Synthetic Oil SAE 5W-40	6
Shell Rotella-T 15W-40 Motor Oil	2

Shield AW 46 Hydraulic Fluid	6
Side Post Terminal (#A6171)	22
Soda bottles (Coca-Cola products)	37
Splash Original Blue Windshield Washer (Avenel)	282
Splash Original Blue Windshield Washer (East Orange)	380
Steel Rivets Assortments	157
Terminal Corrosion Protection (#A6619)	29
Terminal Protection Kit (#A6620)	9
Thrifty-Sorb Multi-Purpose Absorbent	11
Top Post Terminal (#A6718)	7

30. Each instance and each day where Defendant offered for sale and/or sold merchandise without labeling or displaying the total selling price constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.5 and N.J.S.A. 56:8-2.6.

### COUNT III

#### **VIOLATION OF THE WEIGHTS AND MEASURES ACT BY DEFENDANT (INACCURATE PRICE SCANNING)**

31. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 30 above as if more fully set forth herein.

32. The Weights and Measures Act, N.J.S.A. 51:1-1 et seq., governs the use of a weight and measure in the State.

33. The Weights and Measures Act provides that:

No person shall:

....

(4) Misrepresent the price of any commodity or service sold, offered, exposed or advertised for sale by weight, measure, count or time, or represent the price in any manner calculated or tending to mislead or in any way deceive a person.

[N.J.S.A. 51:1-97(a)(4).]

34. The Weights and Measures Act defines a “commodity” as “any...goods, wares [or] merchandise...measured by any weighing and measuring or counting system.” N.J.S.A. 51:1-2(a).

35. At all relevant times, Defendant has been engaged in the advertisement and sale of “commodities” within the meaning of N.J.S.A. 51:1-2(a), specifically automotive parts and accessories.

36. At all relevant times, Defendant has employed the use of a point of sale system which includes a barcode scanner to determine the value of commodities purchased by consumers at Advance Stores, and is a “weight and measure” within the meaning of the Weights and Measures Act, N.J.S.A. 51:1-2(e).

37. During the period of January 21, 2015 through February 23, 2015, commodities offered for sale and/or sold by Defendant was found to have scanned at a price in excess of the price listed at the point of display, including but not limited to, at the following Advance Stores:

Store #	Street	City	State
5182	471 Main Street	East Orange	New Jersey
5357	158-160 Clinton Ave.	Newark	New Jersey
5867	1158 E. St. Georges Ave.	Linden	New Jersey
7248	376 Rt. 18	East Brunswick	New Jersey
7275	77-105 Bloomfield Ave.	Bloomfield	New Jersey
8819	1366 St. Georges Ave.	Avenel	New Jersey
8414	455A Terrill Rd.	Fanwood	New Jersey

38. The commodities found to have scanned at a price in excess of the price listed at the point of display at the Advance Stores include, but are not limited to, the following products:

<u>Merchandise</u>	<u>Amount Above Posted Price</u>
3M Automotive Attachment Tape	\$4.84
Advanced Auto Parts Marine Grease	\$0.20
Auto Craft 2-in-1 Microfiber Wash Mop	\$0.60
Auto Craft Primary Wire Red 8 Gauge 6"	\$0.50
Black Magic Protectant Pro Shine	\$0.10
Castrol Transmax Multi-Vehicle ATF Automatic Transmission Fluid	\$1.00
Dorman Hex Flange Nuts 5/16-18	\$1.20
Drive Works Halogen Headlamp	\$0.50
Drive Works Oil Filter DW-111	\$0.10
Drive Works Oil Filter DW-5315	\$2.70
Fit System Convex Mirror	\$0.10
Gorilla Super Glue (Bloomfield)	\$0.30
Gorilla Super Glue (East Orange)	\$0.30
J-B Weld Marine Weld Marine Epoxy	\$0.60
Marvel Air Tool Oil	\$0.40
Meguiar's Gold Class Leather Wipes 25ct.	\$0.10
Pennzoil Premium Plus Marine Outboard Engine Oil	\$0.60
Permatex Copper Spray-A-Gasket Hi-Temp Sealant 9oz.	\$0.10
Purolator Oil Filer	\$0.10
Road Runner Ice Melt Remover Jug	\$0.30
SAS Foam Ear Plugs 2prs.	\$0.30
Scott Pro Towels	\$0.30
Splash De-Icer	\$0.10
Splash Original Blue Windshield Wash (Avenel)	\$0.20
Splash Original Blue Windshield Wash (Fanwood)	\$0.20
Turtle Wax Polish Compound Premium RenewRx	\$1.00

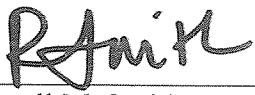
39. Each commodity having a list price that is contrary to the price that was calculated through the weigh and measure device at the Advance Stores, comprises a separate violation of the Weights and Measures Act, N.J.S.A. 51:1-97(a) and N.J.S.A. 51:1-100.

### PRAYER FOR RELIEF

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

- (a) Finding that the acts and omissions of Defendant constitute multiple instances of unlawful practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., and the Weights and Measures Act, N.J.S.A. 51:1-1 et seq.
- (b) Permanently enjoining Defendant and its owners, officers, directors, founders, managers, agents, employees, representatives and all other persons or entities directly under their control, from engaging in, continuing to engage in or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq. and the Weights and Measures Act, N.J.S.A. 51:1-1 et seq., including, but not limited to, the acts and practices alleged in this Complaint, as authorized by the CFA, N.J.S.A. 56:8-8;
- (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 alleged practice herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (d) Assessing the maximum statutory civil penalties against Defendant for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (e) Assessing the maximum statutory civil penalties against Defendant for each and every violation of the Weights and Measures Act, including enhanced civil penalties for second and subsequent violations, in accordance with N.J.S.A. 51:1-97(a);
- (f) Directing the assessment of costs and fees, including attorneys' fees, against Defendants, jointly and severally, for the use of the State of New Jersey, 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.

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
Russell M. Smith, Jr.  
Deputy Attorney General

Dated: 12/18/2015  
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in this action involving the aforementioned violations of the CFA, N.J.S.A. 56:8-1 et seq., the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., and the Weights and Measures Act, N.J.S.A. 51:1-1 et seq., 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.

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: \_\_\_\_\_



Russell M. Smith, Jr.  
Deputy Attorney General

Dated: \_\_\_\_\_

12/18/2015


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).

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs


By:   
Russell M. Smith, Jr.  
Deputy Attorney General

Dated: 12/18/2015  
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

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

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
Russell M. Smith, Jr.  
Deputy Attorney General

Dated: 12/18/2015  
Newark, New Jersey