

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

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PAUL OTTO, individually and on behalf of all  
others similarly situated,

Plaintiff

v.

PILOT CORPORATION and PILOT TRAVEL  
CENTERS, LLC d/b/a PILOT FLYING J

Defendants.

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Case No.:

**CLASS ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

**INTRODUCTION**

1. Plaintiff Paul Otto (“Plaintiff”), brings this class action on behalf of himself and on behalf of a Class of individuals and entities (hereinafter referred to as “Class Members”) who purchased diesel fuel for commercial use from Defendants Pilot Corporation and Pilot Travel Centers, LLC d/b/a Pilot Flying J (collectively referred to as “Pilot” or “Defendants”), pursuant to a diesel fuel rebate or discount program from January 1, 2005 to the present. Plaintiff seeks to recover damages incurred by the Class due to Defendants’ withholding tens of millions of dollars in diesel fuel price rebates and discounts from customers since at least 2005 (herein referred to as “Diesel Fuel Rebate Fraud” or “Rebate Fraud”), in violation of state and federal law. Plaintiff makes the allegations herein based on personal knowledge of these matters relating to himself and upon information and belief as to all other matters.

2. As a result of Defendants’ alleged fraudulent scheme, customers such as Plaintiff were not receiving owed diesel fuel rebates and discounts for years. Defendants’ sales officials

withheld diesel fuel price rebates and discounts from customers in order to increase Defendants' profits and their sales commissions.

3. Pilot Chief Executive Officer, James A. "Jimmy" Haslam, III was allegedly aware of the price rebate and discount withholding scheme and sat in on meetings where the scheme was discussed by Pilot salespersons. According to an affidavit filed by a Federal Bureau of Investigation ("FBI") agent in the Eastern District of Tennessee on April 18, 2013, Pilot salespeople took advantage of customers who they considered "too unsophisticated to catch" the rebate and discount errors.<sup>1</sup>

4. Plaintiff and Class Members sustained substantial damages as a result of Defendants' nationwide Diesel Fuel Rebate Fraud.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over the subject matter of this action pursuant to the Class Action Fairness Act, 28 U.S.C. §§ 1332(d), 1446, and 1453(b). Plaintiff further alleges upon information and belief that the cumulative amount in controversy for Plaintiff and the putative Class exceeds \$5 million dollars, exclusive of interest and costs. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 (b) and (c) because Defendants conduct business in this District by providing services to Plaintiff and/or putative Class Members located in this District or otherwise have sufficient contacts with this District to justify them being fairly brought into Court in this District.

#### **THE PARTIES**

6. Plaintiff Paul Otto is a resident of Wisner, Nebraska. Plaintiff is a truck owner operator. Through Morehouse Truck Line, Plaintiff Otto was a customer of Pilot Corporation

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<sup>1</sup> Affidavit of Robert H. Root, *USA v. Pilot Flying J*, 3: 13-mj -02028 (E.D. Tenn.)(filed Apr. 18, 2013) attached hereto as Exhibit "A."

and Pilot Travel Centers, LLC d/b/a Pilot Flying J pursuant to a diesel fuel rebate or discount program from January 1, 2005 to the present.

7. Defendant Pilot Corporation is a Tennessee privately-held corporation with its corporate headquarters located at 5508 Lonas Drive, Knoxville, Tennessee 37909, where Pilot Corporation's officers direct, control, and coordinate the corporation's activities.

8. Defendant Pilot Travel Centers, LLC is a privately-held Delaware limited liability company with its company headquarters also located at 5508 Lonas Drive, Knoxville, Tennessee 37909. Pilot Travel Centers, LLC is jointly owned by Pilot Corporation, FJ Management, Inc., and CVC Capital Partners. Pilot Corporation is the majority owner of Pilot Travel Centers, LLC. Pilot Travel Centers, LLC does business as Pilot Flying J and operates truck stops under the Pilot Travel Centers and Flying J Travel Plaza brands.

9. The Defendants have engaged in the conduct alleged in this Complaint, and/or the Defendants' officers, agents, employees, or representatives have engaged in the alleged conduct while actively involved in the management of Defendants' business and affairs.

### **FACTUAL ALLEGATIONS**

10. Since at least 2005, Pilot represented to its customers that it would provide rebates or discounts on diesel fuel purchased at Pilot and Pilot Flying J truck stops operating throughout the United States, pursuant to diesel fuel price rebate and discount agreements between Pilot and its customers.

11. Pilot customers fall into two categories:

(1) "Direct Billed Customers" who purchase diesel fuel from Pilot on credit extended by Pilot. Direct Billed Customers would receive an invoice from Pilot for the cost of diesel fuel purchased on credit with any agreed upon discount on a

periodic basis.

(2) “Funded/Restricted Customers” purchase diesel fuel from Pilot using a credit source other than Pilot. Funded/Restricted Customers receive an agreed upon discount from Pilot for the purchase of diesel fuel in the form of a monthly rebate check.

12. On or about May 4, 2011, the FBI was contacted by a confidential source, referred to as “CHS-1,” who reported his/her knowledge of fraudulent activity by certain Pilot employees directed at Pilot’s customers. *See* Exhibit A at p. 8. CHS-1 advised that a current Pilot sales employee, referred to as “CHS-2”, confided to CHS-1 that certain Pilot employees were intentionally defrauding some of Pilot’s customers by deliberately and deceptively withholding diesel fuel price rebates and discounts from Pilot customers, without the knowledge or approval of the customers, which resulted in Pilot charging the customers a higher price for diesel fuel than the agreed upon price. *Id.* CHS-1 agreed to record conversations with CHS-2 regarding Pilot’s sales personnel’s fraudulent conduct.

13. During the FBI’s investigation, it was determined that Pilot employees were intentionally defrauding customers by withholding diesel fuel price rebates and discounts from Pilot customers, without the knowledge or approval of the customers, which resulted in Pilot charging a higher price for diesel fuel without the knowledge or consent of Pilot’s customers.

14. Pilot advanced the overarching Diesel Fuel Rebate Fraud in two methods:

(1) “Discount Fraud,” also referred to as “managing the discount” and “jacking the discount,” involves reducing a diesel discount agreement with a customer, without the customer’s knowledge or approval.

(2) “Rebate Fraud” involves the reduction of a rebate amount due to a customer,

without the customer's knowledge or approval.

15. Pilot engaged in Diesel Fuel Rebate Fraud for the dual purpose of increasing Pilot's profitability and the sales commissions of Pilot employees.

16. During recorded conversations between CHS-1 and CHS-2 beginning in June 2011 and continuing through 2012, CHS-2 advised that Pilot's Vice President of Sales, John Freeman, and Pilot's Director of National Sales, Brian Mosher, were fraudulently withholding a portion of the rebate amount due to their customers who received monthly rebate checks. *See Exhibit A at p. 9.*

17. On October 2, 2012, a former Regional Sales Manager for Pilot, Cathy Giesick, advised FBI agents that Mosher was intentionally lowering the agreed upon discount rate for diesel fuel purchases for customers. Giesick explained that a Regional Account Representative, Heather Jones, would once a month send by email an Excel file to Mosher that listed all of the customers and the actual rebate amount due. Mosher would then type the reduced rebate amount into the Excel file and return the file to Heather Jones for preparation of rebate checks to send to Pilot's customers. *See Exhibit A at p. 20-21.*

18. Giesick advised the FBI that another Regional Account Representative, Karen Crutchman, emailed Giesick spreadsheets that detailed the amount that a customer's rebate was deceptively reduced. *See Exhibit A at p. 21.* Crutchman also advised Giesick over the phone how much a customer's account should be reduced. *Id.* at 21 -22. Further, Crutchman informed CHS-2 that she was cutting customers' discounts without their knowledge, that she maintained spreadsheets tracking her rebate and discount cutting, and that if a customer does not receive daily pricing information, the customer would have a difficult time detecting any rebate or discount reduction. *Id.* at 69.

19. In a November 1, 2012 interview at the U.S. Attorney's Office in Fort Worth, Texas, Giesick stated that Pilot used Sales Force, which is a cloud-based account management program accessed through salesforce.com using a username and password. Mosher instructed Giesick to input into Sales Force what rebate deals her customers were supposed to receive and what they actually received. Giesick also related that if Heather Jones reduced a customer's rebate as instructed by Mosher, Jones would manufacture back-up data to support the reduced rebate amount. *See* Exhibit A at p. 22.

20. On October 4, 2012, CHS-2, a Pilot Regional Director of Sales, was contacted by the FBI and IRS and agreed to provide information to the agents. CHS-2 explained that the Rebate Fraud was directed at both Direct Billed Customers and Restricted/Funded Customers. CHS-2 also stated that the Diesel Fuel Rebate Fraud occurred with the knowledge of Pilot's President Mark Hazelwood and Pilot's CEO Jimmy Haslam because Rebate Fraud activities were discussed at sales meetings in Knoxville, Tennessee, in which Hazelwood and Haslam were present.

21. CHS-2 advised that the Rebate Fraud had been occurring at Pilot for more than five years and admitted that approximately eight years ago, he or she and Crutchman executed the Rebate Fraud scheme against Mesilla Valley Trucking for about two years. *See* Exhibit A at p. 24.

22. The FBI's recorded conversations between the confidential informants and coworkers reveal that actions in furtherance of the Diesel Fuel Rebate Fraud scheme were taken with the apparent awareness and consent of CEO Haslam, President Mark Hazelwood, and Chief Financial Officer Mitch Steenrod.

23. CHS-2 confirmed that rebate checks for customers were sent from Pilot headquarters in Knoxville, Tennessee.

24. The conversations recorded by the FBI further reveal that Pilot took active steps to conceal their activities from customers and from law enforcement officials.

25. Pilot employees withheld relevant pricing information from customers who inquired about their rebate amounts. If a customer caught a discrepancy, Pilot would blame the discrepancy on a “computer glitch.” *See* Exhibit A at p. 22.

26. Code words were used throughout Pilot’s corporate structure to discuss the Diesel Fuel Rebate Fraud scheme, such as “the gray side” of pricing; “jacking the discount”; “cost-plussing”; and “screwing”.

27. In fact, Pilot’s salespeople viewed the Diesel Fuel Rebate Fraud scheme as a game. On October 25, 2012, Pilot’s Vice President of Sales John Freeman stated,

We’re playin’ [expletive omitted] poker with funny money, and it’s liar’s poker with funny money because of all this cost-plus stuff. So, you know, I’m not, I don’t want to get into a moral or ethical conversation, because I believe that if a guy’s gonna [expletive omitted] you then we got to go to [expletive deleted] him harder. . . . [expletive deleted] ‘em early and [expletive deleted] ‘em often.”

28. At a November 19, 2012, regional sales directors meeting at Freeman’s lake house, Mosher instructed Pilot’s salespeople on manual rebates:

So, again my point is this: Know your customer. Know what you’re sending him, know what his preferences are, know how sophisticated he is, okay? If the guy’s sophisticated and he truly has gone out and gotten deals from the other competitors and he’s getting’ daily process from us, don’t jack with his discounts, ‘cause he’s gonna know, okay?

...

And I look at my P&L, and my P&L says, “Huh. I’m payin’ him \$25,000 and we made \$25,000 on it. That’s not a very good deal for me.” I’ll probably cut this one down to like 21. This customer is not a very sophisticated buyer and he doesn’t know what we’ve done here, right?



□

But, he is sophisticated enough to ask me to provide him a backup. That's why we have to go through this gyration, because then I send this back to Heather and Heather makes a backup equate to \$20,996.63. And it shows all the discounts on each location, because that's what the customer's asked for.

...

I'm sending cost-plus pricing to a guy that has absolutely no idea what cost-plus pricing is. And he's not gonna take the time to know what it means, 'cause frankly, he's lazy, and he doesn't care. . . . That guy does not deserve premium pricing from us, in my opinion, because he's not willing to go back and do all the work on it.

*See Exhibit A at p. 54,56, 57.*

29. Pilot took advantage of Spanish-speaking customers. Pilot's Regional Sales Director, Kevin Hascomb, stated the following on February 15, 2012, “. . . there is a language barrier. So you can get away with a little bit more because they know that they are not going to understand everything that you say.”

30. Pilot also targeted customers who utilized non-party credit lines such as Tcheck and were referred to as “low hanging fruit.” *See Exhibit A at p. 87.*

31. In June 2012, Pilot customer Morehouse Truckline discovered it had been shorted over a period of seven years for rebates totaling \$146,564.55 from the purchase of 4,187,558.44 gallons of diesel fuel purchased from Pilot. Morehouse Truckline complained to Pilot and requested a check in the amount of the reduced rebates.

32. In August 2012, Rob Yuronich, a current Pilot Regional Sales Manager, described Mosher's role in the scheme to CHS-2: “. . . he honestly felt that, that [if] somebody doesn't know and isn't smart enough to know what their deal is and checking it and follow up, should I [ ] really be giving them the [ ] deal if I had to. . .” Yuronich related that Mosher was involved in deceptively reducing Morehouse Truckline's rebates. *See Exhibit A at p. 28.*



33. At the November 19, 2012, Regional Sales Directors meeting at Freeman's lake house, a Regional Sales Account Representative for Pilot, Holly Radford, laughed when a colleague at Pilot recalled the black-and-white pricing at his previous job. Radford stated "And what did I tell you. Welcome to the gray side." *See Exhibit A at p. 58-59.*

34. On February 5, 2013, Chris Andrews discussed the Rebate Fraud with CHS-2. Andrews stated he was deceiving some customers in his old region about their diesel fuel price discounts, that he agreed with the deceptive manual rebate practices that Brian Mosher taught on November 19, 2012, and that he tries not to detail his manual rebate activities in e-mails based on his experience in testifying before the Federal Trade Commission in connection with the Pilot/Flying J merger. *See Exhibit A at p. 73.*

35. Pilot employees made future plans to further implement the Diesel Fuel Rebate Fraud. On February 18, 2013, CHS-2 advised that John Freeman and Mark Hazelwood discussed potential for a new internal Pilot two-tiered "A" and "B" pricing structure to impose higher prices on less sophisticated customers, which would be known as "Aunt Bea."

36. On April 1, 2013, CHS-2 was informed by Crutchman that Pilot CFO Mitch Steenrod and General Counsel Kristen Seabrook requested that they be provided information about Pilot's direct sales manual rebate practices. Crutchman also advised that Director of Inside Sales, Vickie Borden, requested that all Pilot Regional Account Representatives provide information to her regarding what rebate amounts had been paid to customers, compared with what rebate amounts should have been paid to customers. Borden informed Crutchman that from that point forward, Seabrook would be approving rebate amounts. *See Exhibit A at p. 88.* Crutchman stated to CHS-2, ". . . we've had these happen before, look at Western Express, that

had been the biggest one that we've gotten caught, or, had to go back and pay." Further, "[y]ou just can't do stuff like this and it not come back to you." *Id.* at p. 90-91.

37. On April 9, 2013, Crutchman advised CHS-2 that Seabrook requested that Crutchman and every other Regional Account representative supply Seabrook, by the end of the day on Friday, April 12, 2013, with all information necessary for Seabrook to review, calculate and approve rebate amounts for customers that were scheduled to go out the week of April 15, 2013, as well as any document stating what rebate amount a customer should have been paid by Pilot compared with what Pilot actually paid the customer, any pricing information sent to a customer, and any document showing an agreed upon diesel discount price for a customer. *See* Exhibit A at p. 98-99.

38. On Monday, April 15, 2013, the FBI and Internal Revenue Service raided Pilot's corporate headquarters in Knoxville, Tennessee. The FBI found probable cause that:

From 2008 through 2013, Pilot employees engaged in a conspiracy and scheme to defraud by deceptively withholding diesel fuel price rebates and discounts from Pilot customers, without the knowledge or approval of the customer, for the dual purposes of increasing the profitability of Pilot and increasing the diesel sales commissions of the Pilot employees participating in the fraud, in violation of 18 U.S.C. §§ 371 (conspiracy), 1341 (mail fraud), 1343 (wire fraud), and 1349 (conspiracy).

*See* Exhibit A at p. 99.

39. Plaintiff and Class Members allege that Defendants' actions were willful, wanton, malicious, and in total disregard for the rights of the Plaintiff and Class Members. Defendants knew or should have known, in light of the surrounding circumstances that their conduct as alleged herein would naturally and probably result in damages to Plaintiff and Class Members. Defendants continued their wrongful conduct with malice or in reckless disregard of the consequences, from which malice may be inferred. Further, Defendants intentionally pursued

their course of conduct for the purpose of causing Plaintiff and Class Members damages.

Punitive damages should be awarded to deter the actions of Defendants and others who might engage in similar action or conduct.

### **CLASS ACTION ALLEGATIONS**

40. Pursuant to Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3), Plaintiff brings this action on behalf of a class defined as follows:

All persons and entities in the United States who purchased diesel fuel for commercial use from Defendants Pilot Corporation and Pilot Travel Centers, LLC d/b/a Pilot Flying J pursuant to a diesel fuel rebate or discount program from January 1, 2005 to the present.

Excluded from the Class are Defendants and their officers, directors, management, employees, subsidiaries, or affiliates, all federal governmental entities, the Court and any members of the Court's staff or family.

41. Members of the Class are so numerous that joinder is impracticable. Plaintiff believes that there are hundreds, if not thousands of Class Members. Further, the Class is readily identifiable from information and records maintained by Defendants.

42. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class were damaged by the same wrongful conduct of Defendants, *i.e.*, the Defendants' fraudulent Diesel Fuel Rebate Fraud scheme.

43. Plaintiff will fairly and adequately protect and represent the interests of the Class. The interests of Plaintiff are coincident with, and not antagonistic to, those of the Class.

44. Plaintiff is represented by counsel who are experienced and competent in the prosecution of class action litigation, and have particular experience with class action litigation involving allegations of fraud.

45. Questions of law and fact common to the members of the Class predominate over questions that may affect only individual Class members because Defendants have acted on grounds generally applicable to the entire Class, thereby determining damages with respect to the Class as a whole is appropriate. Such generally applicable conduct is inherent in Defendants' wrongful conduct.

46. Questions of law and fact common to the Class include:

- (a) whether Defendants engaged in a diesel fuel rebate scheme by wrongfully withholding price rebates and discounts from Pilot customers;
- (b) whether Defendants engaged in conduct amounting to active concealment and fraud;
- (c) whether Defendants engaged in unconscionable, false, and deceptive acts or trade practices in violation of the states' Deceptive Trade Practices Acts.
- (d) whether Defendants have been unjustly enriched by their diesel fuel rebate scheme;
- (e) whether Defendants wrongfully converted consumer price rebates and discounts;
- (f) whether Defendants breached contracts with Plaintiff and Class Members for diesel fuel rebates and discounts;
- (g) whether Defendants engaged in fraudulent concealment;
- (h) the nature and extent of damages and injunctive relief to which Plaintiff and the Class Members are entitled;
- (i) whether punitive damages should be awarded; and,

- (j) whether Plaintiff and the Class Members should be awarded attorneys' fees and costs.

47. Class action treatment is a superior method for the fair and efficient adjudication of the controversy. Such treatment will permit a large number of similarly situated persons or entities to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, or expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities a method for obtaining redress on claims that could not practicably be pursued individually, substantially outweighs potential difficulties in management of this class action.

48. Plaintiff knows of no special difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

#### **COUNT I-FRAUD**

49. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

50. Pilot made intentional misrepresentations regarding diesel fuel rebates and discounts for customers or engaged in conduct amounting to active concealment and fraud.

51. During the Class Period, Pilot engaged in a pattern of making misrepresentations and/or nondisclosures of fact, which Pilot knew to be false, or made the misrepresentations recklessly, without regard to whether they were true or not, and with the intent to defraud Plaintiff and Class Members.

52. By implementing a company-wide Diesel Fuel Rebate Fraud scheme, whereby owed rebates and discounts were reduced or withheld from customers and customers were

provided false reasons for such activity, Pilot engaged in conduct amounting to blatant fraud and continued active concealment. Pilot made misrepresentations regarding the Diesel Fuel Rebate Fraud scheme with the intent that Plaintiff and Class Members would rely on same.

53. Plaintiff reasonably and justifiably relied on Pilot's misrepresentations and/or nondisclosures of fact.

54. As a direct and proximate result of Defendants' fraud, Plaintiff and the Class Members were injured in their businesses and property and have suffered damages.

55. Defendants' actions were willful, wanton, malicious, and in total disregard for the rights of Plaintiff and Class Members. Defendants knew or should have known, in light of the surrounding circumstances that their conduct would naturally and probably result in damages to Plaintiff and Class Members. Defendants continued their wrongful conduct with malice or in reckless disregard of the consequences, from which malice may be inferred. Further, Defendants intentionally pursued their course of conduct for the purpose of causing Plaintiff and Class Members damages. Punitive damages should be awarded to deter the actions of Defendants and others who might engage in similar action or conduct.

#### **COUNT II - DECEPTIVE TRADE PRACTICES ACTS**

56. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

57. During the Class Period, Defendants engaged in unconscionable, false, and deceptive acts or trade practices by engaging in the Diesel Fuel Rebate Fraud scheme as alleged herein. Defendants' conduct in instituting the Diesel Fuel Rebate Fraud scheme constitutes a deceptive trade practice in violation of states' Deceptive Trade Practices Acts.

58. Defendants misled and deceived Plaintiff and Class Members by reducing diesel fuel rebates and discounts without their knowledge or consent. Defendants' profited from rebate funds and discounts wrongfully withheld from Plaintiff and Class Members.

59. Defendants' unfair and deceptive trade practices are the type that the states' Deceptive Trade Practices Acts are designed to remedy.

60. Plaintiff and the members of the Class have been damaged as a proximate result of the conduct complained of herein.

61. Defendants knowingly engaged in the deceptive practices, which constitute unfair and deceptive conduct in trade or commerce.

62. The conduct described above constitutes unfair or deceptive trade practices predominately and substantially affecting the conduct of trade or commerce throughout the United States in violation of the states' Deceptive Trade Practice Acts, including:

Alabama:	Ala. Code §8-19-5
Arkansas:	Ark. Code Ann. §4-88-101, et seq.
Arizona:	Ariz. Rev. Stat. §44-1522, et seq.
California:	Cal. Civ. Code §§ 1780 - 1784, Business and Profession Code § 1720, et seq., § 1750, et seq.
Connecticut:	Conn. Gen. Stat. Ann. §§42- 110a - 42-110g
Colorado:	Col. Rev. Stat. §§6-1 -101 - 6-1 -114
District of Columbia:	D.C. Code Ann. §§28-3801 - 28-3819
Florida:	Fla. Stat. Ann. §§501.201 - 501.213
Georgia:	Ga. Stat. §10-1-393, et. seq.
Idaho:	Idaho Code §§48-601 - 48-619
Illinois:	815 IL CS 505/2
Indiana:	Ind. Code §24-5-0.5, et. seq.
Iowa:	Iowa Code §714.16
Kansas:	Kan. Gen. Stat. Ann. §§50-623 - 50-644
Kentucky:	Ky. Rev. Stat. Ann. §§367.110 - 367.990
Louisiana:	La. Rev. Stat. Ann. §§ 13:1401 - 13:1418
Maine:	Me. Rev. Stat. Ann. §§206 - 214
Maryland:	Md. Code Ann. §§ 13-501
Massachusetts:	Mass. Gen. L. Ann. Ch. 93A. §§ 1-11
Michigan:	Mich. Stat. Ann. § 19.418(B)
Minnesota:	Minn. Stat. Ann. §§325D.09 – 325D.16



Missouri:	Mo. Ann. Stat. §§407.010 - 407.701
Montana:	Mont. Rev. Code Ann. §§30-14-101 - 30-14-224
Nebraska:	Neb. Rev. Code §§59- 1501 - 59-1 623
Nevada:	Nev. Rev. Stat. §§590A.010 - 590A.280
New Hampshire:	N.H. Rev. Stat. Ann. §358-A:2
New Jersey:	N.J. Rev. Stat. §§56:8-1 - 56:8-24
New Mexico:	N.M. Stat. AIII1. §57-12-10
New York:	N.Y. Gen. Bus. 1. §§349 - 350
North Carolina:	N.C. Gen. Stat. §§75-1 - 75-56
North Dakota:	N.D. Cent. Code §5 1-15-02
Ohio:	Ohio Rev. Code Ann. §1345
Oklahoma:	Okla. Stat. Tit. 15 §753
Oregon:	Ore. Rev. Stat. §§646.605 - 646.642
Pennsylvania:	73 Pa. Stat. §201, et seq.
Rhode Island:	R.I. Rev. L. Ann. §§6-13.1-1 - 6-13.1-11
South Carolina:	S.C. Code §39-5-20, et. seq.
South Dakota:	S.D. Comp. L. §§37-24-1 37-24-35
Tennessee:	Tenn. Code Ann. §47-18-101, et seq.
Texas:	Tex. Rev. Civ. Stat. §§ 17.41 - 17.63
Utah:	Utah Code Ann. § 13-11-19
Virginia:	Va. Code §59.1-200, et. seq.
Washington:	RCW §19-86-010, et seq.
West Virginia:	W. Va. Code Ann. §46A-6-104
Wisconsin:	Wis. Stat. Ann. § 100.18
Wyoming:	Wyo. Stat. §40-12-105, et. seq.

63. As approximate results of the Defendants' deceptive trade practices, Plaintiff and the members of the Class have suffered actual damages in an amount to be proven at trial.

64. Defendants' conduct complained of herein renders it liable under the states' DTPAs for damages for the consequences of such conduct.

65. Defendants' actions were willful, wanton, malicious, and in total disregard for the rights of Plaintiff and Class Members. Defendants knew or should have known, in light of the surrounding circumstances that their conduct in violation of states' Deceptive Trade Practices Acts would naturally and probably result in damages to Plaintiff and Class Members. Defendants continued their wrongful conduct with malice or in reckless disregard of the consequences, from which malice may be inferred. Further, Defendants intentionally pursued their course of conduct

for the purpose of causing Plaintiff and Class Members damages. Punitive damages should be awarded to deter the actions of Defendants and others who might engage in similar action or conduct.

66. Plaintiff and Class Members are entitled to any and all penalties and/or multipliers of damages as may be provided for in the states' DTPAs.

67. Plaintiff and Class Members are entitled to an award of reasonable attorneys' fees, costs of this action, plus pre and post judgment interest as may be allowed by law.

### **COUNT III - UNJUST ENRICHMENT**

68. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

69. As the result of Defendants' fraudulent diesel fuel rebate scheme, Plaintiff and the Class Members conferred a benefit upon Defendants, and Defendants received and retained this benefit under such circumstances that it would be inequitable and unconscionable to permit Defendants to retain this benefit without paying its reasonable value to Plaintiff and Class Members.

70. Defendants were unjustly enriched by their fraudulent diesel fuel rebate scheme.

71. As a direct and proximate result of Defendants' unjust enrichment, Plaintiff and Class Members suffered damages. Defendants should not be permitted to unjustly enrich themselves at the expense of Plaintiff and Class Members, but in equity and good conscience should be required to make restitution for all funds acquired as a result of Defendants' unlawful conduct.

72. Defendants should disgorge all funds unlawfully received and retained due to Defendants' conduct, as described herein.

#### COUNT IV - CONVERSION

73. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

74. Pilot wrongfully converted consumer rebate funds and discounts to its own use. Facts in support of the allegations against Pilot are set forth in great detail in Exhibit A, the content of which is incorporated herein.

75. Plaintiff and Class Members are entitled to the rebate funds and discounts withheld and converted by Pilot. Pilot agreed and promised to fully and faithfully pay rebate funds to Plaintiff and Class Members but failed to do so. Instead, Pilot converted the rebate funds and discounts to its own use.

76. As a direct and proximate result of Pilot's conversion, Plaintiff and Class Members sustained damages.

77. Plaintiff and Class Members are entitled to a return of all rebate funds and discounts wrongfully converted by Pilot.

78. Defendants' actions were willful, wanton, malicious, and in total disregard for the rights of Plaintiff and Class Members. Defendants knew or should have known, in light of the surrounding circumstances that their conduct would naturally and probably result in damages to Plaintiff and Class Members. Defendants continued their wrongful conduct with malice or in reckless disregard of the consequences, from which malice may be inferred. Further, Defendants intentionally pursued their course of conduct for the purpose of causing Plaintiff and Class Members damages. Punitive damages should be awarded to deter the actions of Defendants and others who might engage in similar action or conduct.

### **COUNT V - BREACH OF CONTRACT**

79. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

80. Defendants breached their contracts with Plaintiff and Class Members on agreed upon rebate and discount amounts.

81. Defendants intentionally defrauded Plaintiff and Class Members by withholding the contractually agreed upon diesel fuel price rebates and discounts from customers, without the knowledge or approval of the customers, which resulted in Defendants charging a higher price for diesel fuel, without the knowledge or consent of Plaintiff and Class Members.

82. As a direct and proximate result of Defendants' breach of contract, Plaintiff and Class Members suffered damages.

83. Plaintiff and Class Members are entitled to damages sustained as a result of Defendants' breach of contract.

### **COUNT VI - FRAUDULENT CONCEALMENT**

84. Throughout the Class Period, Defendants affirmatively and fraudulently concealed their unlawful conduct.

85. Defendants falsely attributed the diesel fuel rebate scheme to "computer glitches," with the intention of concealing the true nature of their wrongful conduct. Defendants prepared false back up reports and data to provide to customers to conceal Defendants' fraud.

86. Defendants did not inform Plaintiff or other Class Members that they were withholding diesel fuel rebates and changing discounts. Accordingly, Plaintiff and Class Members could not have discovered the violations alleged herein until shortly before filing this Complaint. Defendants secretly conducted their diesel fuel rebate scheme, concealed the nature

of their unlawful conduct and acts in furtherance thereof, and fraudulently concealed their activities through various other means and methods designed to avoid detection.

87. As a result of Defendants' fraudulent concealment, all applicable statutes of limitations affecting the Plaintiffs and Class Members' claims have been tolled. Plaintiff and the Class Members did not discover, nor could have discovered through reasonable diligence, that Defendants were engaged in a fraudulent scheme as alleged herein. Plaintiff could not have discovered the existence of the fraudulent scheme alleged herein at an earlier date by the exercise of reasonable due diligence because of the deceptive practices and techniques of secrecy employed by Defendants to avoid detection and affirmatively conceal such violations.

88. Because the diesel fuel rebate scheme was kept secret by Defendants, Plaintiff was unaware of the fact diesel fuel rebates were being withheld as alleged herein.

89. As a result of the Defendants' fraudulent concealment of their wrongful conduct, Plaintiff asserts the tolling of any applicable statute of limitations affecting the causes of action by Plaintiff and the Class Members.

### **DEMAND FOR JUDGMENT**

WHEREFORE, Plaintiff, on behalf of himself and the Class, respectfully requests that the Court:

- A. Determine that this action may be maintained as a class action pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) and (b)(3), and direct that reasonable notice of this action, as provided by Federal Rule of Civil Procedure 23(c)(2), be given to the Class, and declare Plaintiff the Representative of the Class;
- B. Enter joint and several judgments against Defendants and in favor of Plaintiff and the Class;

- C. Award compensatory damages to Plaintiff and the Class in an amount to be determined at trial;
- D. Award punitive damages in an appropriate amount;
- E. Enter an injunction permanently barring continuation of the conduct complained of herein; and
- F. Award Plaintiff and the Class the costs incurred in this action together with reasonable attorneys' fees and expenses, including any necessary expert fees as well as pre-judgment and post-judgment interest.

**DEMAND FOR JURY TRIAL**

Plaintiff, on behalf of himself and others similarly situated, hereby requests a jury trial pursuant to Federal Rule of Civil Procedure 38 on any and all claims so triable.

DATED: May 31, 2013

Respectfully submitted,



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