

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

Ohio Auto Delivery, Inc., individually,	)	
and on behalf of all others similarly	)	
situated,	)	No.
	)	
Plaintiff,	)	Judge
	)	
v.	)	<b>CLASS-ACTION COMPLAINT</b>
	)	<b>(Jury trial demanded)</b>
Pilot Travel Centers, LLC,	)	
d/b/a Pilot Flying J,	)	
	)	
Defendant.	)	

**NATURE OF THE CASE**

1. Plaintiff and class members are trucking companies that purchased fuel from Defendant Pilot Travel Centers LLC, d/b/a Pilot Flying J. Defendant owns and operates over 600 truck stops, travel centers, and travel plazas in 44 states nationwide and is the nation's largest truck-stop chain.

2. Plaintiff and class members had fuel rebate or discount contracts with Defendant, under which Defendant was required to credit or refund a certain percentage of Plaintiff's and class members' fuel purchases (via rebates and/or discounts) on a monthly basis. But since early 2005 (and possibly earlier), Defendant was engaged in an unlawful and intentional scheme to defraud and cheat Plaintiff and class members by depriving them of their proper fuel rebates and discounts for the purpose of increasing its profitability, increasing its return on investment, and increasing the compensation of Defendant's executives.

3. By virtue of the foregoing, Defendant committed common-law and statutory violations against Plaintiff and class members.

### **JURISDICTION AND VENUE**

4. This matter in controversy exceeds \$5,000,000, as each member of the proposed Class, which is believed to number at least in the tens of thousands, is entitled to compensation. In addition, Plaintiff alleges a national class, which will result in at least one class member residing in a different state than Defendant. Accordingly, this Court has jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2).

5. This Court has personal jurisdiction over Defendant because Defendant is authorized to do business and regularly conducts business in Ohio, and it marketed, sold, and issued its fuel services in Ohio.

6. Venue is proper under 18 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiff's claim occurred in this District.

### **PARTIES**

7. Plaintiff Ohio Auto Delivery, Inc. is an Ohio corporation with its principal place of business at 1700 Feddern Avenue, Grove City, Ohio. During the class period, Plaintiff had a fuel rebate or discount contract with Defendant under which Defendant was required to credit or refund a certain percentage of Plaintiff's fuel purchases on a monthly basis.

8. Defendant Pilot Travel Centers, LLC, d/b/a/ Pilot Flying J, is a privately held Delaware limited liability company with its company headquarters located at 5508 Lonas Drive, Knoxville, Tennessee 37909. Pilot Travel Centers, LLC is jointly owned by Pilot Corporation and unnamed co-conspirators 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.

### FACTS

9. Since 2005, Defendant represented to its customers that it would provide rebates or discounts on diesel fuel purchased at Defendant truck stops operating throughout the U.S., according to diesel fuel price-rebate and discount agreements between it and its customers.

10. Defendant's customers fall into two categories: (1) "Direct Billed Customers," who are customers that purchase diesel fuel on credit extended by Defendant and periodically receive invoices from Defendant for the cost of diesel fuel they purchased on credit presumably absent an agreed-upon discount and (2) "Funded/Restricted Customers," who are customers that purchase diesel fuel from Defendant using a credit source other than Defendant and who presumably receive an agreed-upon fuel-purchase discount in the form of a monthly rebate check.

11. On or about May 4, 2011, a confidential source—CHS-1—contacted the FBI and reported knowledge of fraudulent activity by certain Defendant employees directed against Defendant's customers. *See* Affidavit in Support of Search Warrant Application at 8 (Exhibit A).

12. CHS-1 advised that a current Defendant sales employee, referred to as CHS-2, had confided to CHS-1 that Defendant employees were intentionally defrauding some of Defendant's customers by deliberately withholding diesel-fuel price rebates and discounts without these customers' knowledge or approval. CHS-1 agreed to record conversations with CHS-2 regarding Defendant's sales personnel's fraudulent conduct. *Id.*

13. During the FBI's investigation, the FBI determined that Defendant's employees were defrauding customers by withholding diesel-fuel price rebates and discounts from Defendant's customers, resulting in higher diesel-fuel prices.

14. Defendant referred to its fuel-rebate fraud in two ways: (1) "discount fraud" (also known as "managing the discount" and "jacking the discount"), which involves reducing a diesel discount agreement with a customer without the customer's knowledge or approval, and (2) "rebate fraud," which involves reducing a rebate amount due to a customer without the customer's knowledge or approval.

15. Defendant engaged in fuel-rebate fraud for the purpose of increasing its profitability and the sales commissions of its employees.

16. During recorded conversations between CHS-1 and CHS-2 from June 2011 through 2012, CHS-2 explained that Defendant's Vice President of Sales, John Freeman, and its Director of National Sales, Brian Mosher, were withholding a portion of the rebate amount due to Defendant's customers who received monthly rebate checks. *Id.* at 9.

17. On October 2, 2012, a former Defendant's Regional Sales Manager, Cathy Giesick, advised FBI agents that Mosher was secretly and illegally lowering customers' discount rate for diesel-fuel purchases. Giesick explained that once a month regional account representative, Heather Jones, e-mailed an Excel file to Mosher that listed all the customers and rebate amounts due. Mosher then typed the reduced rebate amount into the Excel file and returned the file to Jones for preparation of rebate checks for the customers. *See id.* at 20-21.

18. Giesick advised the FBI that another Regional Account Representative, Karen Crutchman, e-mailed Giesick spreadsheets that detailed the amount that customers' rebates were deceptively reduced. *See id.* at 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 did 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 explained that Defendant used Sales Force, a cloud-based account-management program accessed through salesforce.com. Mosher instructed Giesick to input into Sales Force what rebate deals her customers were supposed to receive and what rebates Defendant actually gave them. Giesick explained that if Jones reduced a customer's rebate as instructed by Mosher, Jones would manufacture back-up data to support the reduced rebate amount. *See id.* at 22.

20. On October 4, 2012, CHS-2, the FBI and IRS contacted a Defendant's Regional Director of Sales who 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 explained that the Diesel Fuel Rebate Fraud occurred with the knowledge of Defendant's President Mark Hazelwood and its Chief Executive Officer James A. "Jimmy" Haslam, III, because Rebate Fraud activities were discussed at sales meetings in Knoxville, Tennessee where Hazelwood and Haslam were present.

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

22. The FBI's recorded conversations between the confidential informants and coworkers reveal that actions to further the Rebate Fraud scheme were taken with the apparent awareness and consent of Haslam, Hazelwood, and Chief Financial Officer Mitch Steenrod.

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

23. The FBI's recorded conversations reveal that Defendant took active steps to conceal its activities from customers and from law-enforcement officials.

24. Defendant's employees withheld pricing information from customers who inquired about their rebate amounts. For instance, if a customer caught a discrepancy, Defendant would blame the discrepancy on a "computer glitch." *See id.* at 22.

25. Code words were used throughout Defendant's corporate structure to discuss the Rebate Fraud scheme, such as "the gray side" of pricing, "jacking the discount," "costplussing" and "screwing."

26. Defendant's salespeople viewed the Rebate Fraud scheme as a game. On October 25, 2012, Freeman said, "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."

27. At a November 19, 2012, regional sales directors meeting at Freeman's lake house, Mosher instructed Defendant'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.

*Id.* at 54, 56-57.

28. Defendant took special advantage of Spanish-speaking customers. Defendant's regional sales director, Kevin Hascomb, explained as much on February 15, 2012: "[T]here 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."

29. Defendant also targeted customers who used non-party credit lines, referring to them as "low hanging fruit." *See id.* at 87.

30. In June 2012, Defendant's customer, Morehouse Truckline, discovered that over a period of seven years Defendant had shorted it for rebates totaling \$146,564.55 from the purchase of 4,187,558.44 gallons of diesel fuel. Morehouse Truckline complained to Defendant and requested a check in the amount of its unpaid rebates.

31. In August 2012, Rob Yuronich, a current Defendant Regional Sales Manager, described Mosher's role in the scheme to CHS-2: "[H]e 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 id.* at 28.

32. At the November 19, 2012, regional sales directors meeting at Freeman's lake house, Holly Radford, Defendant's regional sales account representative, laughed when a Defendant colleague recalled the black-and-white pricing at his previous job. Radford stated, "And what did I tell you. Welcome to the gray side." *See id.* at 58-59.

33. On February 5, 2013, Defendant's employee, Chris Andrews, discussed the Rebate Fraud with CHS-2. Andrews admitted that he had been deceiving some customers in his old region about their diesel fuel price discounts, that he had agreed with the deceptive manual rebate practices that Mosher taught, that on November 19, 2012, he had tried not to detail his manual rebate activities in e-mails based on his experience in testifying before the FTC in connection with the Pilot/Flying J merger. *See id.* at 73.

34. Defendant's employees made future plans to further implement Defendant's Rebate Fraud. On February 18, 2013, CHS-2 advised that Freeman and Hazelwood had discussed the possibility of a new internal two-tiered "A" and "B" pricing structure to impose higher prices on less sophisticated customers. This would be known as "Aunt Bea."



35. On April 1, 2013, Crutchman informed CHS-2 that Steenrod and Defendant's general counsel Kristen Seabrook had requested information about Defendant's direct sales manual rebate practices. Crutchman also advised that Director of Inside Sales, Vickie Borden, had requested that all Defendant 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 from that point forward, Seabrook would be approving rebate amounts. *See id.* at 88.

36. 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 90-91.

37. On April 9, 2013, Crutchman advised CHS-2 that Seabrook had requested that Crutchman and every other regional account representative supply Seabrook, by the end of the day on April 12, 2013, 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 documents stating what rebate amounts a customer should have received from Defendant compared with what Defendant 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 id.* at 98-99.

38. On April 15, 2013, FBI and IRS agents raided Defendant's corporate headquarters in Knoxville, Tennessee. The FBI found probable cause that from 2008 through 2013, Pilot employees had engaged in a conspiracy and scheme to defraud by deceptively withholding diesel-fuel price rebates and discounts from Defendant's customers for the dual purposes of

increasing Defendant's profitability and increasing the diesel sales commissions due Defendant's employees who participated in the fraud. *See id.* at 99.

### CLASS-ACTION ALLEGATIONS

39. Based on Rule 23(b)(3) of the Federal Rules of Civil Procedure, Plaintiff brings this action for itself and all members of the following class:

***Nationwide class under Tennessee law***

All people and businesses that were parties to fuel-rebate or discount contracts with Defendant from 2005 to the present.

40. In the alternative, Plaintiff brings this action for itself and all members of the following alternative class:

***Ohio-only class under Ohio law***

All people and businesses in Ohio that were parties to fuel rebate and/or discount contracts with Defendant from 2005 to the present.

Excluded from both classes are Defendant, any entity in which either Defendant has a controlling interest, Defendant's officers, directors, employees, shareholders, agents and legal representatives, any government agency, the Court, and Court personnel.

41. The class members are so numerous that joinder is impracticable. There are hundreds, if not thousands, of class members geographically dispersed throughout the U.S. and Ohio. The precise number and identities of the class members are currently unknown but can easily be derived from Defendant's records concerning its fuel rebate or discount contracts.

42. Common questions of law and fact predominate over any questions affecting only individual class members including, such as:

- a. whether class members had fuel-rebate or discount contracts with Defendant;
- b. whether Defendant failed to pay class members the correct amounts according to these fuel-rebate or discount contracts;
- c. whether Defendant breached its fuel-rebate or discount contracts with class members;
- d. with respect to the Ohio Class, whether Defendant violated the Ohio Deceptive Trade Practices Act;
- e. whether Defendant have been unjustly enriched;
- f. whether Plaintiff and class members sustained damages because of Defendant's above-described wrongful actions;
- g. whether Plaintiff and class members are entitled to recover actual damages, consequential damages, incidental damages, and/or and pre- and post-judgment interest, and attorneys' fees;
- h. whether Plaintiff and class members are entitled to disgorgement and/or other forms of equitable relief; and

43. Plaintiff's claims are typical of class members' claims because Plaintiff and class members are all victims of Defendant's intentional scheme to cheat them by covertly and secretly reducing and withholding the fuel rebates and discounts.

44. Plaintiff and its counsel will fairly and adequately represent class members' interests. Plaintiff has no interests antagonistic to or in conflict with any of the class members' interests. Plaintiff's lawyers are highly experienced in prosecuting class actions and complex commercial litigation.

45. A class action is the superior method for fairly and efficiently adjudicating this controversy for the following reasons:

- a. Class members' claims are relatively small compared to the burden and expense required to litigate their claims individually, so it would be impracticable for class members to seek individual redress for Defendant's illegal and deceptive conduct;
- b. Even if class members could afford individual litigation, the court system could not. Individual litigation creates the potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Plus Plaintiff anticipates no unusual difficulties in managing this class action.

**COUNT I**  
**BREACH OF CONTRACT UNDER TENNESSEE LAW**  
**(On behalf of the Nationwide class)**

46. Plaintiff realleges and incorporates by reference every allegation set forth in the preceding paragraphs as though alleged in this Count.

47. Plaintiff and class members, on the one hand, and Defendant, on the other hand, mutually intended to form and, in fact, entered into valid and enforceable fuel rebate or discount contracts under which Defendant was required to credit or refund a certain percentage of Plaintiff's and class members' fuel purchases (in the form of rebates and discounts) on a monthly basis. *See Exhibit B.*

48. Plaintiff and class members performed all conditions precedent to Defendant's liability under these contracts. Plaintiff and class members performed all of their obligations under the contracts (i.e., provided consideration) by patronizing Defendant's truck stops, purchasing fuel and purchasing other goods and services.

49. During the time that Defendant was not cheating and defrauding Plaintiff and the class members, Defendant, too, performed its obligations under the contracts (i.e., provided consideration) by providing fuel services to Plaintiff and the class members.

50. Defendant's offer, Plaintiff's and the class members' acceptance, and the exchange of consideration created binding contracts between Defendant and Plaintiff and between Defendant and class members.

51. Defendant breached its contracts with Plaintiff and class members by intentionally reducing and withholding Plaintiff's and class members' monthly fuel rebates or discounts. Defendant's wrongful actions breached its contracts with Plaintiff and class members.

52. Defendant's breach of contract directly and proximately caused Plaintiff and class members to suffer actual and consequential damages in the form of reduced fuel rebates and discounts, business destruction, lost profits, and lost business opportunities.

**COUNT II**  
**BREACH OF CONTRACT UNDER OHIO LAW**  
**(On behalf of the Ohio-only class)**

53. Plaintiff realleges and incorporates by reference every allegation set forth in the preceding paragraphs as though alleged in this Count.

54. Plaintiff and Ohio class members, on the one hand, and Defendant, on the other hand, mutually intended to form and, in fact, entered into valid and enforceable fuel rebate or discount contracts under which Defendant was required to credit or refund a certain percentage of Plaintiff's and class members' fuel purchases (in the form of rebates and discounts) on a monthly basis.

55. Plaintiff and Ohio class members performed all conditions precedent to Defendant's liability under these contracts. Plaintiff and class members performed all of their

obligations under the contracts (i.e., provided consideration) by patronizing Defendant's truck stops, purchasing fuel and purchasing other goods and services. During the time that Defendant was not cheating and defrauding Plaintiff and the class members, Defendant, too, performed its obligations under the contracts (i.e., provided consideration) by providing fuel services to Plaintiff and the Ohio class members.

56. Defendant's offer, Plaintiff's and the Ohio class members' acceptance, and the exchange of consideration created binding contracts between Defendant and Plaintiff and between Defendant and Ohio class members.

57. Defendant breached its contracts with Plaintiff and Ohio class members by intentionally reducing and withholding Plaintiff's and Ohio class members' monthly fuel rebates or discounts. Defendant's wrongful actions breached its contracts with Plaintiff and Ohio class members.

58. Defendant's breach of contract directly and proximately caused Plaintiff and Ohio class members to suffer actual and consequential damages in the form of reduced fuel rebates and discounts, business destruction, lost profits, and lost business opportunities.

**COUNT III**  
**VIOLATION OF THE OHIO DECEPTIVE TRADE PRACTICES**  
**O.R.C. § 4165.01 *et seq.***  
**(On behalf of the Ohio-only class)**

59. Plaintiff realleges and incorporates by reference every allegation set forth in the preceding paragraphs as though alleged in this Count.

60. Defendant is a "person" as defined in O.R.C. § 4165.01(D).

61. In violation of O.R.C. § 4165.02, Defendant engaged in the following false, unfair, deceptive, untrue, and misleading advertising:

(A)(7) Represent[ing] that . . . services . . . have . . . characteristics [or] benefits . . . that they do not have;

(A)(11) Advertise[ing] services with intent not to sell them as advertised; and

(A)(12) Mak[ing] false statements of fact concerning the reasons for, existence of, or amounts of price reductions.

62. Defendant's DTPA violations directly and proximately caused damage to Plaintiff and class members.

63. According to O.R.C. § 4165.03(A)(2), Plaintiff and class members are entitled to recover their actual damages.

64. According to O.R.C. § 4165.03(B), Plaintiff and class members are entitled to their attorneys' fees since Defendant willfully committed the foregoing deceptive trade practices, knowing them to be deceptive.

**COUNT IV**  
**UNJUST ENRICHMENT**  
**(On behalf of the Ohio-only class)**

65. Plaintiff realleges and incorporates by reference every allegation set forth in the preceding paragraphs as though alleged in this Count.

66. As a result of Plaintiff and class members overpaying for their fuel rebates or discounts, Plaintiff and class members conferred a benefit upon Defendant, and Defendant received and retained this benefit under such circumstances that it would be inequitable and unconscionable to permit them to retain this benefit without paying its reasonable value to Plaintiff and class members.

67. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and class members suffered injury and seek an order directing Defendant to return to them the amount that each of them improperly paid to Defendant, plus interest.

**COUNT V**  
**COMMON-LAW FRAUD UNDER OHIO LAW**  
**(On behalf of the Ohio-only class)**

68. Plaintiff realleges and incorporates by reference every allegation set forth in the preceding paragraphs as though alleged in this Count.

69. Defendant knew it was using standardized forms or routinized procedures to cheat Plaintiff and class members out of their proper fuel rebates and discounts.

70. Defendant concealed the fact that it was cheating Plaintiff and class members out of their proper fuel rebates and discounts.

71. Defendant intended to induce Plaintiff and class members to rely on Defendant's lies that it was paying Plaintiff and class members their proper fuel rebates and discounts.

72. Plaintiff and class members actually relied on Defendant's lies that Defendant was paying them their proper fuel rebates and discounts.

73. Plaintiff and class members were directly and proximately injured by their reliance on Defendant's lies that Defendant was paying them their proper fuel rebates and discounts.

**FRAUDULENT CONCEALMENT**

74. Defendant had a legal obligation to disclose its illegal behavior to Plaintiff but chose not to, instead choosing to wrongfully conceal Plaintiff's rightful fuel rebates and discounts by conducting its scheme in secret and, understandably, refusing to describe or



otherwise reveal it to Plaintiff. In like manner, Defendant repeatedly lied to Plaintiff about the amount of its fuel rebates or discounts, which lies purposely concealed the fact that Defendant had manipulated Plaintiff's fuel rebates and discounts. Even more details of Defendant's efforts to conceal its unlawful conduct are in Defendant's possession.

75. To the extent that Plaintiff might have failed to discover during its claims' various limitations periods (which failure to discover Plaintiff expressly denies) operative facts that form the basis for Plaintiff's claims, when Plaintiff learned about Defendant's illegal conduct in April 2013—when the U.S. District Court for the Eastern District of Tennessee in Case No. 3:13-MJ-2028 unsealed Exhibit A to this Complaint—Plaintiff immediately exercised due diligence by investigating the facts, retaining counsel, and pursuing its claims.

76. Because Defendant fraudulently concealed its above-described wrongful acts, this Court should toll any applicable statutes of limitation.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendant, as follows:

- A. An order finding that this action may be maintained as a class action under Federal Rules 23(b)(3), certifying Plaintiff's Nationwide Class (on his Nationwide claims) and/or his Ohio Class (on his Ohio-only claims), and appointing Plaintiff's counsel as counsel for the class or classes;
- B. With respect to Count I, an order finding that Defendant breached its contracts with Plaintiff and the Nationwide class members and awarding actual and consequential damages;
- C. With respect to Count II, an order finding that Defendant breached its contracts with Plaintiff and the Ohio-only class members and awarding actual and consequential damages;
- D. With respect to Count III, With respect to Count V, an order finding that Defendant violated the Ohio Deceptive Trade Practices Act and awarding actual damages and attorneys' fees to the Ohio-only class members;

- E. With respect to Count IV, an order in favor of Plaintiff and Ohio-only class members declaring that they unjustly enriched Defendant and ordering disgorgement of Defendant's ill-gotten gains or that Defendant make restitution to Plaintiff and the Ohio-only class members;
- F. With respect to Count V, an order finding that Defendant committed common-law fraud against Plaintiff and the Ohio-only members and awarding them damages;
- G. An order awarding pre-judgment and post-judgment interest as applicable; and
- H. An order awarding all other relief as may be just and appropriate.

**JURY DEMAND**

Plaintiff demands trial by jury on all triable issues.

Dated: May 30, 2013

Respectfully submitted:

/s/ Daniel R. Karon  
Daniel R. Karon (#0069304)  
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