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Attorney for Plaintiffs

By: Nicholas Kant
Deputy Attorney General
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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, HUDSON COUNTY
DOCKET NO. HUD-C-184-12

JOHN J. HOFFMAN, Acting Attorney General of the
State of New Jersey, and ERIC T. KANEFSKY, Director
of the New Jersey Division of Consumer Affairs,

Plaintiffs,

v.

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

Defendants.

Civil Action

FINAL CONSENT
JUDGMENT

The parties to this Action and Final Consent Judgment ("Consent Judgment") are plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey, and Eric T. Kanefsky, Director of the New Jersey Division of Consumer Affairs (collectively, "Plaintiffs"),¹ and defendant Empire Oil, L.L.C. d/b/a Delta ("Empire Oil" or "Defendant") (collectively,

¹ This action was commenced on behalf of Jeffrey S. Chiesa, former Attorney General, and the Director. In accordance with R. 4:34-4, the caption has been revised to reflect the current Acting Attorney General.

“Parties”). As evidenced by their signatures below, the Parties do consent to the entry of this Consent Judgment and its provisions without trial or adjudication of any issue of fact or law, and without an admission of any liability or wrongdoing of any kind.

PRELIMINARY STATEMENT

Plaintiffs commenced this Action on November 20, 2012, alleging that Defendant violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), through its excessive and unjustified price increases (e.g. price gouging) in the sale of motor fuel after Governor Chris Christie declared a State of Emergency on October 27, 2012, just prior to Tropical Storm Sandy reaching New Jersey. Specifically, Plaintiffs alleged that from October 26, 2012 to November 3, 2012, Defendant’s prices for motor fuel increased as follows: (1) Regular Gasoline – from \$3.399 per gallon to \$4.099 per gallon, an increase of 20.59%; and (2) Plus Gasoline – from \$3.659 per gallon to \$4.399 per gallon, an increase of 20.22%. Further, Plaintiffs alleged that these increased prices remained in effect through November 4, 2012. Additionally, Plaintiffs alleged that from October 26, 2012 to November 4, 2012, Defendant’s price for motor fuel increased as follows: Supreme Gasoline – from \$3.759 per gallon to \$4.599 per gallon, which is an increase of 22.34%. Defendant denies the allegations.

The Court has reviewed the terms of this Consent Judgment and based upon the Parties’ agreement and for good cause shown:

IT IS HEREBY ORDERED, ADJUDGED AND AGREED AS FOLLOWS:

1. JURISDICTION

1.1 The Parties admit jurisdiction of this Court over the subject matter and over the Parties for the purpose of entering into this Consent Judgment. The Court retains jurisdiction for the purpose of enabling the Parties to apply to the Court at any time for such further orders and

relief as may be necessary for the construction, modification, enforcement, execution or satisfaction of this Consent Judgment.

2. VENUE

2.1 Pursuant to N.J.S.A. 56:8-8, venue as to all matters between the Parties hereto relating to or arising out of this Consent Judgment shall lie exclusively in the Superior Court of New Jersey, Chancery Division, Hudson County.

3. EFFECTIVE DATE

3.1 This Consent Judgment shall be effective on the date that it is entered with the Court ("Effective Date").

4. DEFINITIONS

As used in this Consent Judgment, the following capitalized words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Judgment:

4.1 "Action" shall refer to the matter John J. Hoffman, et al. v. Empire Oil, L.L.C. d/b/a Delta, Superior Court of New Jersey, Chancery Division, Hudson County, Docket No. HUD-C-184-12, and all pleadings and proceedings related thereto, including the Complaint, filed November 20, 2012.

4.2 "Advertisement" shall be defined in accordance with N.J.S.A. 56:8-1(c). This definition applies to other forms of the word "Advertisement" including, without limitation, "Advertising."

4.3 "Attorney General" shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

4.4 "Consumer" shall refer to any Person who is offered Merchandise for Sale.

4.5 “Division” or “Division of Consumer Affairs” shall refer to the New Jersey Division of Consumer Affairs.

4.6 “Excessive Price Increase” shall be defined in accordance with N.J.S.A. 56:8-108.

4.7 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c) and includes motor fuel.

4.8 “New Jersey” and “State” shall refer to the State of New Jersey.

4.9 “Person[s]” shall be defined in accordance with N.J.S.A. 56:8-1(d).

4.10 “Sale” shall be defined in accordance with N.J.S.A. 56:8-1(e).

4.11 “State of Emergency” shall be defined in accordance with N.J.S.A. 56:8-108.

5. INJUNCTIVE RELIEF AND BUSINESS PRACTICES

5.1 Defendant shall not engage in any unfair or deceptive acts or practices in the conduct of any business in the State and shall comply with such State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended including, but not limited to, the CFA.

5.2 Defendant shall be permanently enjoined from Advertising, offering for Sale and/or selling Merchandise, specifically motor fuel, at a price constituting an Excessive Price Increase during a State of Emergency or within thirty (30) days after termination of the State of Emergency, in violation of N.J.S.A. 56:8-109.

6. SETTLEMENT AMOUNT

6.1 The Parties have agreed to a settlement of the Action in the amount of Fifty-Four Thousand Four Hundred and 10/100 Dollars (\$54,400.10) (“Settlement Amount”).

6.2 The Settlement Amount comprises Fifty Thousand Four Hundred Eighty and 95/100 Dollars (\$50,480.95) in civil penalties, pursuant to N.J.S.A. 56:8-13; and Two Thousand

Seven Hundred Ninety and 00/100 Dollars (\$2,790.00) in reimbursement of Plaintiffs' attorneys' fees and One Thousand One Hundred Twenty-Nine and 15/100 Dollars (\$1,129.15) in reimbursement of Plaintiffs' investigative costs, pursuant to N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19.

6.3 Defendant shall pay Eighteen Thousand and 00/100 Dollars (\$18,000.00) of the Settlement Amount ("Settlement Payment"), as follows:

- a. Fifteen Thousand and 00/100 Dollars (\$15,000.00) shall be paid within thirty (30) days of the Effective Date; and
- b. Three Thousand and 00/100 Dollars (\$3,000.00) shall be paid on or before December 31, 2013.

6.4 The Settlement Payment shall be made by bank check, attorney trust account check or other guaranteed funds made payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to the undersigned:

Nicholas Kant, Deputy Attorney General
Consumer Fraud Prosecution Section
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

6.5 Upon making the Settlement Payment, Defendant shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Plaintiffs pursuant to the terms herein.

6.6 For a period of three (3) years from the Effective Date, the Thirty-Six Thousand Four Hundred and 10/100 Dollars (\$36,400.10) balance of the Settlement Amount, which

comprises civil penalties, shall be suspended and automatically vacated at the end of that period (“Suspended Penalty”), provided:

- a. Defendant complies in all material respects with the injunctive relief and business practices set forth in Section 5; and
- b. Defendant makes the Settlement Payment in the manner required under Section 6.3.

6.7 In the event Defendant materially fails to comply with Section 6.6, Plaintiffs shall provide Defendant with notice seeking payment of the entire Suspended Penalty, as well as any unpaid portion of the Settlement Payment. In any such notice, however, Plaintiffs shall provide Defendant with the specific details of Defendant’s alleged noncompliance, as well as any supporting documents. Defendant shall be afforded a fifteen (15) day period from receipt of such notice within which to cure any such noncompliance.

6.8 In the event of Defendant’s failure to cure any such noncompliance, Plaintiffs may move on notice or by Order to Show Cause to have a Judgment entered for the Suspended Penalty, as well as any unpaid portion of the Settlement Payment. Defendant shall have a right to submit opposition to any motion or Order to Show Cause application filed by Plaintiffs and to contest same on any return date. Upon entry by the Court of any such Judgment, Plaintiffs shall then arrange for entry of such Judgment upon the Statewide docket.

6.9 Upon request by or on behalf of Defendant and the vacating of the Suspended Penalty, Plaintiffs shall provide Defendant with a Warrant of Satisfaction of the Settlement Amount. Such Warrant of Satisfaction shall have no effect upon Defendant’s continuing obligations under any other provision of this Consent Judgment.

7. DISMISSAL OF ACTION

7.1 The entry of this Consent Judgment constitutes a dismissal with prejudice of the Action.

8. GENERAL PROVISIONS

8.1 This Consent Judgment is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Judgment.

8.2 This Consent Judgment shall be governed by, and construed and enforced in accordance with, the laws of the State.

8.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Judgment and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Judgment.

8.4 This Consent Judgment contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Judgment shall be modified only by a written instrument signed by or on behalf of the Plaintiffs and Defendant.

8.5 Except as otherwise explicitly provided for in this Consent Judgment, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

8.6 If any portion of this Consent Judgment is held invalid or unenforceable by operation of law, the remaining terms of this Consent Judgment shall not be affected.

8.7 This Consent Judgment shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Judgment avoid compliance with this Consent Judgment.

8.8 This Consent Judgment is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Judgment nor any action taken hereunder shall constitute, or be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of the Defendant; and (b) an admission by the Defendant that any of its acts or practices described in or prohibited by this Consent Judgment are unfair or deceptive or violate any of the consumer protection laws of the State. This Consent Judgment is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms of this Consent Judgment; or (b) any action or proceeding involving a Released Claim (as defined in Section 9) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

8.9 Nothing contained in this Consent Judgment shall be construed to limit or otherwise affect the rights of any Persons who are not Parties to this Consent Judgment with respect to any of the matters contained herein.

8.10 The Parties represent and warrant that their signatories to this Consent Judgment have authority to act for and bind the respective Parties.

8.11 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Judgment may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Judgment.

9. RELEASE

9.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Judgment and conditioned on Defendant making the

Settlement Payment in the manner referenced in Section 6, Plaintiffs hereby agree to release Defendant from any and all civil claims or consumer related administrative claims, to the extent permitted by State law, which the Plaintiffs could have brought prior to the Effective Date against Defendant for violations of the CFA as alleged in the Action, as well as the matters specifically addressed in Section 5.2 of the Consent Judgment ("Released Claims").

9.2 Notwithstanding any term of this Consent Judgment, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Judgment; and (c) any claims against Defendant by any other agency or subdivision of the State.

10. PENALTIES FOR FAILURE TO COMPLY

10.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Judgment or to seek sanctions for violations hereof or both.

10.2 The Parties agree that any future violations of the injunctive provisions of this Consent Judgment and/or the CFA shall constitute a second or succeeding violation under N.J.S.A. 56:8-13 and that the Defendant may be liable for enhanced civil penalties.

11. COMPLIANCE WITH ALL LAWS

11.1 Except as provided in this Consent Judgment, no provision herein shall be construed as:

- (a) Relieving Defendant of its obligations to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- (b) Limiting or expanding any right the Plaintiffs may otherwise have to obtain information, documents or testimony from Defendant pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Defendant may otherwise have pursuant to any State or Federal law, regulation or rule, to

oppose any process employed by the Plaintiffs to obtain such information, documents or testimony.

12. NOTICES UNDER THIS CONSENT JUDGMENT

12.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Judgment shall be sent by the United States Mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Plaintiffs:

Nicholas Kant, Deputy Attorney General
Consumer Fraud Prosecution Section
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

For the Defendant:

Justin P. Kolbenschlag, Esq
Greenbaum, Rowe, Smith & Davis, LLP
P.O. Box 5600
Woodbridge, NJ 07905

IT IS ON THE 13th DAY OF August 2013 SO ORDERED,
ADJUDGED AND DECREED.



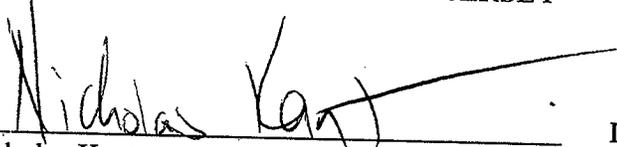
HON. HECTOR R. VELAZQUEZ, P.J.CH.

JOINTLY APPROVED AND
SUBMITTED FOR ENTRY:

FOR THE PLAINTIFFS:

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: _____


Nicholas Kant
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: Aug. 9, 2013

124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
[REDACTED] [REDACTED] [REDACTED]

FOR DEFENDANT:

GREENBAUM, ROWE, SMITH & DAVIS, LLP

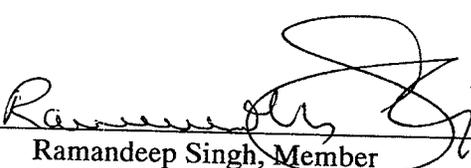
By: _____


Justin P. Kolbenschlag, Esq
Greenbaum, Rowe, Smith & Davis, LLP
P.O. Box 5600
Woodbridge, NJ 07905
Telephone: (732) 476-2518

Dated: 7/31, 2013

EMPIRE OIL, LLC

By: _____


Ramandeep Singh, Member
Empire Oil, LLC
7319 Bergenline Avenue
North Bergen, New Jersey 07047

Dated: 7/31, 2013