

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

EDIS TRUCKING, INC.,	§	
individually and on behalf of all	§	
others similarly situated,	§	
	§	
PLAINTIFF,	§	
	§	CIVIL ACTION NO. 13-CV-3294
v.	§	
	§	
PILOT CORPORATION,	§	
FJ MANAGEMENT, INC.,	§	CLASS ACTION COMPLAINT
CVC CAPITAL PARTNERS,	§	AND JURY DEMAND
PILOT TRAVEL CENTERS, LLC	§	
d/b/a PILOT FLYING J,	§	
JAMES A. “JIMMY” HASLAM, III,	§	
MARK HAZELWOOD,	§	
MITCH STEENROD,	§	
SCOTT WOMBOLD,	§	
JOHN FREEMAN and	§	
BRIAN MOSHER,	§	
	§	
DEFENDANTS.	§	

CLASS ACTION COMPLAINT AND JURY DEMAND

Plaintiff Edis Trucking, Inc. (“Plaintiff” or “ETI”), individually and on behalf of all others similarly situated (the “Class Members”), complains of the actions of Defendants Pilot Corporation (“Pilot”), FJ Management, Inc. (“FJ”), CVC Capital Partners (“CVC”), Pilot Travel Centers, LLC d/b/a/ Pilot Flying J (“Flying J”) (collectively, the “Entity Defendants”), James A. “Jimmy” Haslam, III (“Haslam”), Mark Hazelwood (“Hazelwood”), Mitch Steenrod (“Steenrod”), Scott Wombold (“Wombold”), John Freeman (“Freeman”) and Brian Mosher (“Mosher”) (collectively, the “Flying J Executives”) (altogether, “Defendants”), and respectfully states the following:

NATURE OF THE CASE

1. Plaintiff and Class Members are trucking companies that purchased fuel from Flying J. At all relevant times, Pilot, FJ and CVC, by and through the Flying J Executives (and other Pilot/Flying J employees), owned, operated, managed and directed Flying J. At all relevant times, Flying J owned and operated (and continues to own and operate) over 600 truck stops, travel centers and travel plazas in forty-four states nationwide under the Pilot Flying J brand. Flying J is the largest truck stop chain in the United States.

2. At all relevant times, Plaintiff and Class Members were parties to fuel rebate and/or discount contracts with Flying J, under which Flying J 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. Since at least January 1, 2005 (and possibly earlier), however, the Flying J Executives (and other Pilot/Flying J employees), Pilot, FJ and CVC engaged in an unlawful and intentional scheme to defraud and cheat Plaintiff and Class Members by depriving them of something of value and/or gaining a financial benefit for themselves by means of deprivation—to wit, the Flying J Executives (and other Pilot/Flying J employees), Pilot, FJ and CVC fraudulently and intentionally reduced and withheld fuel rebates and/or discounts owed to Plaintiff and Class Members, without their knowledge or approval, for the purposes of increasing Flying J's profitability, increasing the Entity Defendants' return on investment, and increasing the Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees). The Flying J Executives (and other Pilot/Flying J employees), Pilot, FJ and CVC intentionally engaged in this scheme to defraud and cheat Plaintiff and Class Members to their financial benefit to Plaintiff's and Class Members' financial detriment.

3. Plaintiff, for itself and Class Members, brings this action against Defendants as a

national class action under Title XI (“RICO”) of Public Law 91-452, 84 Stat. 922 (1970) (as codified at 18 U.S.C. §§ 1961–1968, as amended)¹ for engaging in the above-described scheme to defraud and cheat Plaintiff and Class Members and/or scheme to obtain money (*i.e.*, paying unilaterally reduced fuel rebates and/or discounts owed to Plaintiff and Class Members) by false promises. Plaintiff, for itself and Class Members, also brings this action against Defendants under various common law theories for Defendants’ clandestine and wrongful reduction and withholding of the fuel rebates and/or discounts owed to Plaintiff and Class Members that damaged Plaintiff and Class Members in their businesses and/or property.

4. The Flying J Executives (and other Pilot/Flying J employees), Pilot, FJ and CVC conducted and participated, directly and indirectly, in the affairs of Flying J (the RICO enterprise) through a pattern of unlawful activity—to wit, they engaged in repetitious and systematic mail fraud, interstate wire fraud, and/or foreign wire fraud in violation of 18 U.S.C. §§ 1341 and 1343 by using or causing the use of the United States Postal Service (“USPS”), private or commercial interstate carriers and/or the wires in interstate and foreign commerce to

¹ On April 18, 2013, the Affidavit of FBI Special Agent Robert Root, filed in support of the United States Government’s search warrant application, was unsealed by the United States District Court for the Eastern District of Tennessee in Case No. 3:13-MJ-2028 (Dkt. #4). The Root Affidavit is a comprehensive 120-page document describing Defendants’ intentional scheme to defraud and cheat Plaintiff and Class Members and/or intentional efforts to obtain money from Plaintiff and Class Members by false promises in excruciating detail, identifying 35 current and former Pilot/Flying J employees—including the Flying J Executives—who devised, participated in, condoned and/or ratified such wrongful actions. *Id.* ¶ 14.

The Root Affidavit specifically states that these Pilot/Flying J employees devised and conspired to devise “a scheme to defraud by use of the mail and the transmission of wire communication[s] in interstate commerce, in violation of 18 U.S.C. §§ 371 (conspiracy), 1341 (mail fraud), 1343 (wire fraud), and 1349 (conspiracy).” *Id.* ¶ 1. *See also* ¶¶ 2. A true copy of the Root Affidavit, including exhibits, is attached as Exhibit A to this Original Class Action Complaint and Jury Demand and incorporated by reference as if fully stated herein.

Plaintiff and Class Members do not seek to represent the Government in its criminal litigation, if any; this litigation seeks to recover private civil remedies, as noted.

intentionally, repeatedly and systematically (i) devise, engage in, condone and/or ratify the above-described scheme to defraud and cheat Plaintiff and Class Members out of the full amount of their monthly fuel rebates and/or discounts; and/or (ii) obtain money (*i.e.*, paying unilaterally reduced fuel rebates and/or discounts owed to Plaintiff and Class Members) by false promises. The wrongful acts of the Flying J Executives (and other Pilot/Flying J employees), Pilot, FJ and CVC, as they well knew and intended, without legal justification, unlawfully cheated Plaintiff and Class Members out of the full amount of fuel rebates and/or discounts owed to Plaintiff and Class Members—to Defendants' financial benefit and to Plaintiff's and Class Members' financial detriment.

5. At all relevant times throughout the Class Period, by their unlawful acts, the Flying J Executives, Pilot, FJ and CVC (i) received substantial income derived, directly or indirectly, from a pattern of unlawful activity (*i.e.*, the above-described scheme to defraud and/or obtaining money by false promises) that was used or invested, directly or indirectly, to acquire an interest in, establish, maintain, advance and/or operate a RICO enterprise that engaged in, or the activities of which affect, interstate and/or foreign commerce (in violation of 18 U.S.C. § 1962(a)); (ii) conducted or participated in the affairs of Flying J (the RICO enterprise) (in violation of 18 U.S.C. § 1962(c)); and/or (iii) conspired to violate 18 U.S.C. § 1962(a) and (c) (in violation of 18 U.S.C. § 1962(d)).

6. The Flying J Executives (and other Pilot/Flying J employees), Pilot, FJ and CVC agreed to commit (and committed) these substantive RICO offenses (*i.e.*, the above-described scheme to defraud and/or obtaining money by false promises) through the RICO enterprise (*i.e.*, Flying J) by engaging in multiple predicate acts of mail fraud and/or interstate and/or foreign wire fraud—all the while knowing of, and intentionally agreeing to, the overall objective of the

scheme to defraud, obtaining money by false promises and/or related matters as stated herein—to wit, repeatedly, systematically, unlawfully, intentionally and fraudulently reducing and withholding the monthly fuel rebates and/or discounts owed to Plaintiff and Class Members for the purposes of increasing Flying J's profitability, increasing the Entity Defendants' return on investment, and increasing the Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees). The Flying J Executives (and other Pilot/Flying J employees), Pilot, FJ and CVC knew, and intentionally so acted, that their above-described wrongful actions were fraudulent, misleading and unlawful, and would unlawfully and negatively impact Plaintiff's and Class Members' businesses and/or property. The Flying J Executives (and other Pilot/Flying J employees), Pilot, FJ and CVC knowingly and intentionally engaged in their scheme to defraud and to obtain money by false promises for the purpose of taking unlawful and unfair advantage of Plaintiff and Class Members. Defendants' knowing, intentional and wrongful acts directly and/or proximately caused Plaintiff and Class Members to suffer financial harm in their businesses and/or property.

7. In addition to violating the RICO statute, Defendants' wrongful actions constitute common law breach of contract, tortious interference with a contract, and negligent misrepresentation. Defendants' wrongful actions also have resulted in their unjust enrichment.

8. Plaintiff, for itself and Class Members, seek to recover from Defendants their actual, consequential and incidental damages, punitive damages, RICO treble damages, equitable relief in the form of disgorgement of gross revenues earned on the unilaterally reduced and withheld fuel rebates and/or discounts, injunctive relief to stop Defendants from continuing their scheme to defraud and/or obtaining money by false promises, pre- and post-judgment interest, attorneys' fees, litigation expenses, costs, and such other relief as the Court may find just and

appropriate.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over Plaintiff's claims under: (i) 18 U.S.C. § 1961, *et seq.*, under 18 U.S.C. § 1964(a), (c) (RICO); (ii) 28 U.S.C. § 1332(a) because the matter in controversy exceeds \$75,000, exclusive of interest and costs, and the Parties are citizens of different states and/or foreign states (diversity); (iii) 28 U.S.C. § 1332(d) (CAFA), because (a) there are 100 or more Class Members, (b) at least one Class Member is a citizen of a state that is diverse from the citizenship of at least one of Defendants, and (c) the matter in controversy exceeds \$5,000,000 USD, exclusive of interest and costs; and (iv) 28 U.S.C. § 1367 (supplemental jurisdiction). This Court has *in personam* jurisdiction over Defendants because at all relevant times, they resided, were found, had agents, directly and/or indirectly conducted business and/or committed a substantial amount of the wrongful acts made the basis of this suit in the Northern District of Illinois.

10. At all relevant times, Defendants resided, were found, had agents, directly and/or indirectly conducted business and/or committed a substantial amount of the wrongful actions made the basis of this suit in the Northern District of Illinois. Accordingly, venue is proper in the Eastern Division of the Northern District of Illinois pursuant to 28 U.S.C § 1391(a) and 18 U.S.C § 1965.

PARTIES

11. Plaintiff Edis Trucking, Inc. ("ETI") is a Wisconsin corporation with its principal place of business at 21228 Omega Circle, Franksville, Wisconsin 53126. ETI was a party to a fuel rebate and/or discount contract with Flying J between approximately June 2009 through and including September/October 2011, under which Flying J was required to credit or refund a certain

percentage of ETI's fuel purchases on a monthly basis. ETI has been damaged by Defendants' above-described scheme to defraud and/or by Defendants obtaining money by false promises—to wit, Defendants intentionally, unilaterally and fraudulently reduced and withheld fuel rebates and/or discounts owed to ETI.

12. Defendant Pilot Corporation, f/k/a Pilot Oil Corporation ("Pilot"), is a Tennessee corporation with its principal place of business in Knoxville, Tennessee. Pilot and Flying J are headquartered at, and operated from, the same address—5508 Lonas Drive, Knoxville, Tennessee 37909. Pilot operates the Pilot Food Mart convenience stores in Tennessee. At all relevant times, Pilot, along with FJ and CVC, by and through the Flying J Executives (and other Pilot/Flying J employees), owned, operated, managed and directed Flying J—the largest truck stop chain in the United States—and continue to do so. At all relevant times, Pilot also intentionally engaged in the above-described scheme to defraud and/or obtained money from Plaintiff and Class Members by false promises—to wit, Pilot fraudulently and intentionally reduced and withheld the fuel rebates and/or discounts owed to Plaintiff and Class Members, without their knowledge or approval, for the purposes of increasing Flying J's profitability, increasing its return on investment, and increasing the Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees).

13. Defendant FJ Management Inc. ("FJ") is a Utah corporation with its principal place of business in Salt Lake City, Utah. FJ is a privately held corporation that operates convenience stores, oil and refining, banking and insurance businesses. At all relevant times, FJ, along with Defendants Pilot and CVC, by and through the Flying J Executives (and other Pilot/Flying J employees), owned, operated, managed and directed Defendant Flying J—the largest truck stop chain in the United States—and continue to do so). At all relevant times, FJ also intentionally

engaged in the above-described scheme to defraud and/or obtained money from Plaintiff and Class Members by false promises—to wit, FJ fraudulently and intentionally reduced and withheld the fuel rebates and/or discounts owed to Plaintiff and Class Members, without their knowledge or approval, for the purposes of increasing Flying J's profitability, increasing its return on investment, and increasing the Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees).

14. Defendant CVC Capital Partners ("CVC") is a private equity firm headquartered in London, England. At all relevant times, CVC, along with Defendants Pilot and FJ, by and through the Flying J Executives (and other Pilot/Flying J employees), owned, operated, managed and directed Defendant Flying J—the largest truck stop chain in the United States—and continue to do so. At all relevant times, CVC also intentionally engaged in the above-described scheme to defraud and/or obtained money from Plaintiff and Class Members by false promises—to wit, CVC fraudulently and intentionally reduced and withheld the fuel rebates and/or discounts owed to Plaintiff and Class Members, without their knowledge or approval, for the purposes of increasing Flying J's profitability, increasing its return on investment, and increasing the Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees).

15. Defendant Pilot Travel Centers, LLC d/b/a Pilot Flying J ("Flying J") is a Delaware corporation with its principal place of business in Knoxville, Tennessee. Pilot and Flying J are headquartered at, and operated from, the same address—5508 Lonas Drive, Knoxville, Tennessee 37909. At all relevant times, Flying J owned and operated (and continues to own and operate) over 600 truck stops, travel centers and travel plazas in forty-four states nationwide under the Pilot Flying J brand that were patronized by Plaintiff and Class Members.

Flying J is the largest truck stop chain in the United States. At all relevant times, Flying J also intentionally engaged in the above-described scheme to defraud and/or obtained money from Plaintiff and Class Members by false promises—to wit, Flying J fraudulently and intentionally reduced and withheld the fuel rebates and/or discounts owed to Plaintiff and Class Members, without their knowledge or approval, for the purposes of increasing Flying J's profitability, increasing its return on investment, and increasing the Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees).

16. Defendant James A. "Jimmy" Haslam, III ("Haslam") is a citizen and resident of Knoxville, Tennessee or the surrounding metropolitan area. At all relevant times, Haslam was (and continues to be) Chairman and CEO of both Pilot and Flying J. In this position, Haslam exercised control, authority, responsibility and/or supervision over the Flying J Executives, Pilot and Flying J (and their officers, employees, agents and representatives), including corporate culture, operations, policies, procedures, the fuel rebate/discount program and the scheme to defraud Plaintiff and Class Members (and continues to do so). Haslam also engaged in and/or caused Flying J to engage in the above-described scheme to defraud and/or obtained money from Plaintiff and Class Members by false promises—to wit, Haslam fraudulently and intentionally reduced and withheld the fuel rebates and/or discounts Flying J owed to Plaintiff and Class Members, without their knowledge or approval, for the purposes of increasing Flying J's profitability, increasing its return on investment, and increasing his and the other Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees).

17. Defendant Mark Hazelwood ("Hazelwood") is a citizen and resident of Knoxville, Tennessee or the surrounding metropolitan area. At all relevant times, Hazelwood was (and

continues to be) President of both Pilot and Flying J and directly supervised by Haslam. In this position, Hazelwood exercised control, authority, responsibility and/or supervision over certain Flying J Executives, Pilot and Flying J (and their officers, employees, agents and representatives), including corporate culture, operations, policies, procedures, the fuel rebate/discount program and the scheme to defraud Plaintiff and Class Members (and continues to do so). Hazelwood also engaged in and/or caused Flying J to engage in the above-described scheme to defraud and/or obtained money from Plaintiff and Class Members by false promises—to wit, Hazelwood fraudulently and intentionally reduced and withheld the fuel rebates and/or discounts Flying J owed to Plaintiff and Class Members, without their knowledge or approval, for the purposes of increasing Flying J's profitability, increasing its return on investment, and increasing his and the other Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees).

18. Defendant Mitch Steenrod ("Steenrod") is a citizen and resident of Knoxville, Tennessee or the surrounding metropolitan area. At all relevant times, Steenrod was (and continues to be) Chief Financial Officer of both Pilot and Flying J and directly supervised by Haslam. In this position, Steenrod exercised control, authority, responsibility and/or supervision over certain Flying J Executives, Pilot and Flying J (and their officers, employees, agents and representatives), including corporate culture, operations, policies, procedures, the fuel rebate/discount program and the scheme to defraud Plaintiff and Class Members (and continues to do so). Steenrod also engaged in and/or caused Flying J to engage in the above-described scheme to defraud and/or obtained money from Plaintiff and Class Members by false promises—to wit, Steenrod fraudulently and intentionally reduced and withheld the fuel rebates and/or discounts Flying J owed to Plaintiff and Class Members, without their knowledge or approval,

for the purposes of increasing Flying J's profitability, increasing its return on investment, and increasing his and the other Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees).

19. Defendant Scott Wombold ("Wombold") is a citizen and resident of Knoxville, Tennessee or the surrounding metropolitan area. At all relevant times, Wombold was (and continues to be) Vice-President of National Accounts for both Pilot and Flying J and directly supervised by Hazelwood. In this position, Wombold exercised control, authority, responsibility and/or supervision over certain Flying J Executives, Pilot and Flying J (and their officers, employees, agents and representatives), including corporate culture, operations, policies, procedures, the fuel rebate/discount program and the scheme to defraud Plaintiff and Class Members (and continues to do so). Wombold also engaged in and/or caused Flying J to engage in the above-described scheme to defraud and/or obtained money from Plaintiff and Class Members by false promises—to wit, Wombold fraudulently and intentionally reduced and withheld the fuel rebates and/or discounts Flying J owed to Plaintiff and Class Members, without their knowledge or approval, for the purposes of increasing Flying J's profitability, increasing its return on investment, and increasing his and the other Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees).

20. Defendant John Freeman ("Freeman") is a citizen and resident of Knoxville, Tennessee or the surrounding metropolitan area. At all relevant times, Freeman was (and continues to be) Vice-President of Sales for both Pilot and Flying J and directly supervised by Hazelwood. Freeman's nickname at Pilot is "Stick". Freeman supervises Pilot's three Regional Sales Directors in the United States, Vincent Greco (West), Arnie Ralenkotter (Northeast) and Kevin Hanscomb (Southeast). Prior to being promoted to Vice President of Sales, Freeman was

a Regional Sales Director. As Vice-President of Sales, Freeman exercised control, authority, responsibility and/or supervision over certain Flying J Executives, Pilot and Flying J (and their officers, employees, agents and representatives), including corporate culture, operations, policies, procedures, the fuel rebate/discount program and the scheme to defraud Plaintiff and Class Members (and continues to do so). Freeman also engaged in and/or caused Flying J to engage in the above-described scheme to defraud and/or obtained money from Plaintiff and Class Members by false promises—to wit, Freeman fraudulently and intentionally reduced and withheld the fuel rebates and/or discounts Flying J owed to Plaintiff and Class Members, without their knowledge or approval, for the purposes of increasing Flying J's profitability, increasing its return on investment, and increasing his and the other Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees).

21. Defendant Brian Mosher ("Mosher") is a citizen and resident of Bettendorf, Iowa. At all relevant times, Mosher was (and continues to be) Director of Sales for National Accounts of both Pilot and Flying J and directly supervised by Hazelwood. In this position, Mosher exercised control, authority, responsibility and/or supervision over certain Flying J Executives, Pilot and Flying J (and their officers, employees, agents and representatives), including corporate culture, operations, policies, procedures, the fuel rebate/discount program and the scheme to defraud Plaintiff and Class Members (and continues to do so). Mosher also engaged in and/or caused Flying J to engage in the above-described scheme to defraud and/or obtained money from Plaintiff and Class Members by false promises—to wit, Mosher fraudulently and intentionally reduced and withheld the fuel rebates and/or discounts Flying J owed to Plaintiff and Class Members, without their knowledge or approval, for the purposes of increasing Flying J's profitability, increasing its return on investment, and increasing his and the other Flying J

Executives' compensation (and the compensation of other of Defendants' current and/or former employees).

FACTS

22. At all relevant times—that is, since as early as 2005 and continuing indefinitely into the future unless this Court intervenes—Defendants have intentionally devised, engaged in, condoned and/or ratified the above-referenced nationwide scheme to defraud and cheat Plaintiff and Class Members and/or obtained money from Plaintiff and Class Members under false promises (*i.e.*, the unilaterally reduced monthly fuel rebates and/or discounts), thereby damaging Plaintiff and Class Members in their businesses and property. *See* Exhibit A.

23. Plaintiff, for itself and Class Members, re-incorporates, by reference, adopts and alleges the detailed facts set forth in the Root Affidavit (Exhibit A) in support of its claims and causes of action.

24. As set forth in Exhibit A, at all relevant times, Flying J, acting by and through its officers, directors, employees, shareholders and/or agents, including the Flying J Executives (and other Pilot/Flying J employees), Pilot, FJ and CVC knowingly, intentionally, and repeatedly devised, engaged in, condoned and/or ratified the above-referenced scheme to defraud and cheat Plaintiff and Class Members and/or obtained money from Plaintiff and Class Members under false promises (*i.e.*, paying unilaterally reduced monthly fuel rebates and/or discounts), without their knowledge or approval, for the purposes of increasing Flying J's profitability, increasing the Entity Defendants' return on investment, and increasing the Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees). The dates and substance of Defendants' fraudulent communications by and between themselves

via the mails and/or interstate and/or foreign wires in furtherance of the above-referenced scheme to defraud, as well as their fraudulent communications to Plaintiff and Class Members in furtherance of their efforts to obtain money from Plaintiff and Class Members by false promises via the mails and/or interstate and/or foreign wires, are in Defendants' possession, custody, and control, to the exclusion of Plaintiff and Class Members, and await discovery.

25. As set forth in Exhibit A, at all relevant times, Defendants knowingly, intentionally, and repeatedly conspired with and/or worked with each other and others to knowingly, intentionally, and repeatedly devise, engage in, condone and/or ratify the above-referenced scheme to defraud and cheat Plaintiff and Class Members and/or obtain money from Plaintiff and Class Members under false promises (*i.e.*, paying unilaterally reduced monthly fuel rebates and/or discounts), without their knowledge or approval, for the purposes of increasing Flying J's profitability, increasing the Entity Defendants' return on investment, and increasing the Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees). The dates and substance of Defendants' fraudulent communications by and between themselves via the mails and/or interstate and/or foreign wires in furtherance of the above-referenced scheme to defraud, as well as their fraudulent communications to Plaintiff and Class Members in furtherance of their efforts to obtain money from Plaintiff and Class Members by false promises via the mails and/or interstate and/or foreign wires, are in Defendants' possession, custody, and control, to the exclusion of Plaintiff and Class Members, and await discovery.

26. As set forth in Exhibit A, at all relevant times, Defendants knowingly, intentionally, and repeatedly misrepresented, concealed, hid, and/or caused to be misrepresented,

concealed, and hidden, the above-described wrongful acts and practices, and the purposes of their wrongful acts and practices, committed in furtherance of the above-referenced scheme to defraud and cheat Plaintiff and Class Members and/or efforts to obtain money from Plaintiff and Class Members under false promises (*i.e.*, paying unilaterally reduced monthly fuel rebates and/or discounts). The dates and substance of Defendants' fraudulent communications by and between themselves via the mails and/or interstate and/or foreign wires in furtherance of the above-referenced scheme to defraud, as well as their fraudulent communications to Plaintiff and Class Members in furtherance of their efforts to obtain money from Plaintiff and Class Members by false promises via the mails and/or interstate and/or foreign wires, are in Defendants' possession, custody, and control, to the exclusion of Plaintiff and Class Members, and await discovery.

27. As a direct and/or proximate result of Defendants' above-described wrongful acts, from April 11-18, 2013, Magistrate Judge H. Bruce Guyton of the United States District Court for the Eastern District of Tennessee issued a series of search and seizure warrants for the Pilot/Flying J headquarters and other Pilot/Flying J business locations in and around Knoxville, Tennessee, which were subsequently executed by United States Government law enforcement officials. *See U.S.A. v. Pilot Flying J, Inc.*, Case Nos. 3:13-mj-02028; 3:13-mj-02028-1; 3:13-mj-02029; 3:13-mj-02029-1; 3:13-mj-02030; 3:13-mj-02030-1; 3:13-mj-02033; 3:13-mj-02033-1; 3:13-mj-02038; and 3:13-mj-02038-1.

**FLYING J EXECUTIVES', PILOT'S, FJ'S AND CVC'S PATTERN OF UNLAWFUL
ACTIVITY UNDER 18 U.S.C. § 1961, *et seq.*: MAIL FRAUD AND/OR INTERSTATE
AND/OR FOREIGN WIRE FRAUD**

28. The preceding factual statements and allegations are incorporated by reference.

29. The Flying J Executives (and other Pilot/Flying J employees), Pilot, FJ and CVC intentionally devised, engaged in, condoned and/or ratified the above-referenced open-ended and unlawful scheme to defraud and cheat Plaintiff and Class members out of the full amount of their monthly fuel rebates and/or discounts and/or intentionally engaged in efforts to obtain money from Plaintiff and Class Members (*i.e.*, paying unilaterally reduced monthly fuel rebates and/or discounts), without the knowledge or approval of Plaintiff and Class Members, for the purposes of increasing Flying J's profitability, increasing the Entity Defendants' return on investment, and increasing the Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees). The above-referenced wrongful acts violated all concepts of moral uprightedness, fundamental honesty, fair play and right dealing in the general and business life of the members of society. The above-referenced wrongful acts unfairly betrayed the confidences Plaintiff and Class Members placed in Defendants by and/or through the corruption of the Flying J Executives (and other Pilot/Flying J employees). The above-referenced wrongful acts also were a consistent, regular and dominant part of the manner in which the Flying J Executives (and other Pilot/Flying J employees), Pilot, FJ and CVC participated in and conducted the day-to-day business affairs of Flying J (the RICO enterprise), and would have continued but for the United States Government's or this Court's intervention.

30. The Flying J Executives (and other Pilot/Flying J employees), Pilot, FJ and CVC intentionally devised, instigated, perpetrated, executed, condoned and/or ratified the above-referenced scheme to defraud and cheat Plaintiff and Class Members and/or intentionally

engaged in efforts to obtain money from Plaintiff and Class Members under false promises by engaging in the repeated and systematic mail fraud and/or interstate and/or foreign wire fraud described in detail in the Root Affidavit (Exhibit A), in violation of 18 U.S.C. §§1341, 1343, pursuant to which they repeatedly defrauded and/or conspired to defraud and cheat Plaintiff and Class Members out of the full amount of their fuel rebates and/or discounts obtain money from Plaintiff and Class Members under false promises—to the financial benefit of the Flying J Executives (and other Pilot/Flying J employees), Pilot, FJ and CVC and to the financial detriment of Plaintiff and Class Members. Specifically, the Flying J Executives (and other Pilot/Flying J employees), Pilot, FJ and CVC, individually and/or on behalf of Flying J (and possibly others) and/or their unnamed co-conspirators, used and/or caused Flying J (the RICO enterprise) to use the USPS and/or private or commercial interstate carriers and/or interstate and/or foreign wires in interstate and/or foreign commerce to devise, engage in, condone and/or ratify the above-referenced open-ended and unlawful scheme to defraud and cheat Plaintiff and Class members out of the full amount of their monthly fuel rebates and/or discounts and/or intentionally engaged in efforts to obtain money from Plaintiff and Class Members by false promises (*i.e.*, paying unilaterally reduced monthly fuel rebates and/or discounts), without the knowledge or approval of Plaintiff and Class Members, for the purposes of increasing Flying J's profitability, increasing the Entity Defendants' return on investment, and increasing the Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees). The dates and substance of Defendants' fraudulent communications by and between themselves via the mails and/or interstate and/or foreign wires in furtherance of the above-referenced scheme to defraud, as well as their fraudulent communications to Plaintiff and Class Members in furtherance of their efforts to obtain money from Plaintiff and Class Members by

false promises via the mails and/or interstate and/or foreign wires, are in Defendants' possession, custody, and control, to the exclusion of Plaintiff and Class Members, and await discovery. By their unlawful actions, the Flying J Executives, Pilot, FJ and CVC (i) conducted and/or participated in the affairs of Flying J (the RICO enterprise) (in violation of 18 U.S.C. § 1962(c)) and/or (ii) conspired to violate 18 U.S.C. § 1962(c) (in violation of 18 U.S.C. § 1962(d)), and defrauded Plaintiff and Class Members in the process.

31. The Flying J Executives (and other Pilot/Flying J employees), Pilot, FJ and CVC caused Flying J (the RICO enterprise) to (i) engage in the fraudulent scheme with the intent, *inter alia*, to defraud and cheat Plaintiff and Class Members by covertly and unilaterally reducing and withholding the fuel rebates and/or discounts owed to Plaintiff and Class Members, and/or (ii) engage in efforts to obtain money from Plaintiff and Class Members by false promises (*i.e.*, paying unilaterally reduced monthly fuel rebates and/or discounts)—all without Plaintiff's and Class Members' knowledge or approval, for the purposes of increasing Flying J's profitability, increasing the Entity Defendants' return on investment, and increasing the Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees)—to the financial detriment of Plaintiff and Class Members. The above wrongful actions of the Flying J Executives (and other Pilot/Flying J employees), Pilot, FJ and CVC—which would have continued but for the United States Government's or this Court's intervention—constitute mail fraud and/or interstate and/or foreign wire fraud in violation of 18 U.S.C. §§ 1341, 1343.

32. The above multiple, repeated and continuous acts of mail fraud and/or interstate and/or foreign wire fraud by the Flying J Executives (and other Pilot/Flying J employees), Pilot, FJ and CVC constitute a pattern of unlawful activity pursuant to 18 U.S.C. § 1961(1); (5).

Nothing in the nature of the above-described intentional scheme to defraud and cheat Plaintiff and Class Members and/or intentional efforts to obtain money from Plaintiff and Class Members by false promises demonstrates that their wrongful actions would ever have terminated but for the United States Government's or this Court's intervention. Moreover, and independent of the duration of the scheme, the wrongful acts of the Flying J Executives (and other Pilot/Flying J employees), Pilot, FJ and CVC were a consistent, regular and dominant part of the manner in which they conducted and/or participated in the day-to-day business and financial affairs of Flying J (the RICO enterprise).

CLASS ACTION ALLEGATIONS

33. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this action against Defendants as a national class action for itself and all members of the following Class of all others similarly situated:

All individuals and entities that were parties to fuel rebate and/or discount contracts with any of Defendants, from January 1, 2005 to the present. Excluded from the Class are Defendants, any entity in which any Defendant has a controlling interest, Defendants' officers, directors, employees, shareholders, agents and legal representatives, any local, state or federal government agency, the Court and Court personnel.

34. The Class Members are so numerous that their joinder is impracticable. There are hundreds, if not thousands, of Class Members geographically dispersed throughout the United States. The precise number and identities of the Class Members are currently unknown to Plaintiff, but can easily be derived from the fuel rebate and/or discount contracts between Flying J and Class Members and/or Defendants' records of the trucking companies defrauded and cheated by Defendants' above-described wrongful actions.

35. There are questions of law and fact common to the Class as a whole that predominate over any questions affecting only individual Class Members including, *inter alia*:

- (i) whether Defendants' above-described wrongful actions violated 18 U.S.C. § 1962 (a), (c) and/or (d);
- (ii) whether Defendants' above-described wrongful actions constitute breach of contract at common law;
- (iii) whether Defendants' above-described wrongful actions constitute tortious interference with a contract at common law;
- (iv) whether Defendants' above-described wrongful actions constitute negligent misrepresentation at common law;
- (v) whether Defendants have been unjustly enriched by their above-described wrongful actions;
- (vi) whether Plaintiff and Class Members sustained damages because of Defendants' above-described wrongful actions;
- (vii) whether Plaintiff and Class Members are entitled to recover actual damages, consequential damages, incidental damages, punitive damages and/or RICO treble damages, and pre- and post-judgment interest, and attorneys' fees;
- (viii) whether Plaintiff and Class Members are entitled to disgorgement and/or other forms of equitable relief; and
- (ix) whether Plaintiff and Class Members are entitled to injunctive relief.

36. Plaintiff's claims are typical of Class Members' claims because Plaintiff and Class Members are all victims of Defendants' above-described wrongful actions—to wit, Defendants' (i) intentional scheme to defraud and cheat Plaintiff and Class Members by covertly and unilaterally reducing and withholding the fuel rebates and/or discounts owed to Plaintiff and Class Members; and/or (ii) intentionally engaging in efforts to obtain money from Plaintiff and Class Members by false promises (*i.e.*, paying unilaterally reduced monthly fuel rebates and/or discounts)—all without Plaintiff's and Class Members' knowledge or approval, for the purposes of increasing Flying J's profitability, increasing the Entity Defendants' return on investment, and increasing the Flying J Executives' compensation (and the compensation of other of Defendants'

current and/or former employees)—to the financial detriment of Plaintiff and Class Members.

37. Plaintiff and its counsel will fairly and adequately represent the interests of Class Members. 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, including successful cases asserting RICO violations.

38. A class action is superior to all other available methods for fairly and efficiently adjudicating Plaintiff's and Class Members' claims. Plaintiff and Class Members have been irreparably harmed as a result of Defendants' above-described wrongful actions. Litigating this case as a class action is appropriate because (i) it will avoid a multiplicity of suits and the corresponding burden on the courts and Parties, (ii) it would be virtually impossible for all Class Members to intervene as parties-plaintiff in this action, (iii) it will allow numerous individuals and entities with claims too small to adjudicate on an individual basis because of prohibitive litigation costs to obtain redress for their injuries, and (iv) it will provide court oversight of the claims process once Defendants' liability is adjudicated.

39. Certification of the Class, therefore, is appropriate under FED. R. CIV. P. 23(b)(3) because the above common questions of law or fact predominate over any questions affecting individual Class Members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

40. Certification of the Class also is appropriate under FED. R. CIV. P. 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and/or equitable relief with respect to the Class as a whole.

41. Certification of the Class also is appropriate under FED. R. CIV. P. 23(b)(1) because

the prosecution of separate actions by individual Class Members would create a risk of establishing incompatible standards of conduct for Defendants. For example, one court might decide that the challenged actions are illegal and enjoin Defendants, while another court might decide that the same actions and/or inaction are not illegal. Individual actions also could be dispositive of the interests of the other Class Members who were not parties to such actions and substantially impair or impede their ability to protect their interests.

42. Defendants' wrongful actions are generally applicable to the Class as a whole, for which Plaintiff seeks, *inter alia*, damages and equitable remedies.

43. Absent a class action, Defendants will retain the benefits of their wrongdoing despite their serious violations of the law and infliction of harm on Plaintiff's and Class Members' businesses and property.

CLAIMS FOR RELIEF/ CAUSES OF ACTION

COUNT I

VIOLATIONS OF 18 U.S.C. § 1962(c)

(AGAINST THE FLYING J EXECUTIVES, PILOT, FJ AND CVC)

44. The preceding factual statements and allegations are incorporated by reference.

45. Plaintiff and each Class Member is a "person" within the meaning of 18 U.S.C. §§ 1961(3), 1964(c).

46. The Flying J Executives, Pilot, FJ and CVC are "persons" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(a).

47. Flying J is an "enterprise" within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c) and, at all relevant times, was engaged in, and the activities of which affected, interstate and/or foreign commerce within the meaning of 18 U.S.C. §§ 1961(4), 1962(c), 1962(d).

48. The Flying J Executives, Pilot, FJ and CVC conducted and/or participated in the business and financial affairs of FJ (the RICO enterprise) through a pattern of unlawful activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5), 1962(c)—to wit, the above-described multiple, repeated, and continuous acts of mail fraud and/or interstate and/or foreign wire fraud in violation of 18 U.S.C. §§ 2, 1341, 1343.

49. The Flying J Executives', Pilot's, FJ's and CVC's pattern of unlawful activity and corresponding violations of 18 U.S.C. § 1962(c) directly and/or proximately caused Plaintiff and Class Members to suffer injury to their businesses and/or property within the meaning of 18 U.S.C. § 1964(c)—to wit, Plaintiff and Class Members were damaged (and will continue to be damaged) by the Flying J Executives', Pilot's, FJ's and CVC's (i) reduction and withholding of fuel rebates and/or discounts owed to Plaintiff and Class Members, without their knowledge or approval, for the purposes of increasing Flying J's profitability, increasing the Entity Defendants' return on investment, and increasing the Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees); and (ii) the earnings and profits Plaintiff and Class Members would have earned on their unilaterally reduced and withheld fuel rebates and/or discounts but for the Flying J Executives', Pilot's, FJ's and CVC's above-described wrongful acts. The Flying J Executives, Pilot, FJ and CVC committed these substantive RICO offenses by using Flying J (the RICO enterprise) to engage in multiple predicate acts of mail fraud and/or interstate and/or foreign wire fraud to defraud and cheat Plaintiff and Class Members and/or obtain money from Plaintiff and Class Members by false promises by covertly and unilaterally reducing and withholding fuel rebates and/or discounts owed to Plaintiff and Class Members, without their knowledge or approval, for the purposes of increasing Flying J's profitability, increasing the Entity Defendants' return on investment, and increasing the Flying J

Executives' compensation (and the compensation of other of Defendants' current and/or former employees)—to the financial detriment of Plaintiff and Class Members.

50. The Flying J Executives, Pilot, FJ and CVC knew their above-described tactics, misrepresentations and/or unlawful actions were fraudulent, misleading and illegal, and would cause Plaintiff and Class Members to suffer damages in the form of, *inter alia*, reduced fuel rebates and/or discounts, business destruction, lost profits and/or lost business opportunities. All of Plaintiff's and Class Members' damages were reasonably foreseeable by the Flying J Executives, Pilot, FJ and CVC and/or anticipated as a substantial factor and a natural consequence of their pattern of unlawful activity.

COUNT II

VIOLATION OF 18 U.S.C. § 1962(d) BY CONSPIRING TO VIOLATE 18 U.S.C. § 1962(a)

(AGAINST ALL DEFENDANTS)

51. The preceding factual statements and allegations are incorporated by reference.

52. Plaintiff and each Class Member is a "person" within the meaning of 18 U.S.C. §§ 1961(3), 1964(c).

53. Each Defendant is a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(a).

54. Flying J is an "enterprise" within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c) and, at all relevant times, was engaged in, and the activities of which affected, interstate and/or foreign commerce within the meaning of 18 U.S.C. §§ 1961(4), 1962(c), 1962(d).

55. Defendants conspired with other persons and/or each other within the meaning of 18 U.S.C. § 1962(d) to violate 18 U.S.C. § 1962(a); that is, Defendants conspired to receive income (*i.e.*, the unlawfully reduced and withheld fuel rebates and/or discounts) derived, directly

or indirectly, from the following pattern of unlawful activity in which they participated as principals within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5), and 1962(a)—to wit, the above-described multiple, repeated, and continuous instances of mail fraud and/or interstate and/or foreign wire fraud (as described above) in violation of 18 U.S.C. §§ 2, 1341, 1343. Defendants used or invested (and continue to use or invest), directly or indirectly, such income, or the proceeds of such income, in the operation of one or more RICO enterprises, which are engaged in, or the activities of which affect, interstate and/or foreign commerce.

56. Defendants' pattern of unlawful activity and corresponding violations of 18 U.S.C. § 1962(d) directly and/or proximately caused Plaintiff and Class Members to suffer injury to their businesses and/or property within the meaning of 18 U.S.C. § 1964(c)—to wit, Plaintiff and Class Members were damaged (and will continue to be damaged) by Defendants' (i) reduction and withholding of fuel rebates and/or discounts owed to Plaintiff and Class Members, without their knowledge or approval, for the purposes of increasing Flying J's profitability, increasing the Entity Defendants' return on investment, and increasing the Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees); and (ii) the earnings and profits Plaintiff and Class Members would have earned on their unilaterally reduced and withheld fuel rebates and/or discounts, but for and proximately and directly Defendants' above-described wrongful acts that constitute predicate acts under 18 U.S.C. § 1961(1) (A) and (5). Defendants committed these substantive RICO offenses by using Flying J (the RICO enterprise) to engage in multiple predicate acts of mail fraud and/or interstate and/or foreign wire fraud to defraud and cheat Plaintiff and Class Members and/or obtain money from Plaintiff and Class Members by false promises by covertly and unilaterally reducing and withholding the fuel rebates and/or discounts owed to Plaintiff and Class Members, without their knowledge or

approval, for the purposes of increasing Flying J's profitability, increasing the Entity Defendants' return on investment, and increasing the Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees)—to the financial detriment of Plaintiff and Class Members.

57. Defendants knew their above-described tactics, misrepresentations and/or unlawful actions were fraudulent, misleading, and illegal, and would cause Plaintiff and Class Members to suffer damages in the form of, *inter alia*, reduced fuel rebates and/or discounts, business destruction, lost profits and/or lost business opportunities. All of Plaintiff's and Class Members' damages were reasonably foreseeable by Defendants and/or anticipated as a substantial factor and a natural consequence of their pattern of unlawful activity.

COUNT III

VIOLATION OF 18 U.S.C. § 1962(d) BY CONSPIRING TO VIOLATE 18 U.S.C. § 1962(c)

(AGAINST THE FLYING J EXECUTIVES, PILOT, FJ AND CVC)

58. The preceding factual statements and allegations are incorporated by reference.

59. Plaintiff and each Class Member is a "person" within the meaning of 18 U.S.C. §§ 1961(3), 1964(c).

60. The Flying J Executives, Pilot, FJ and CVC are "persons" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(a).

61. Flying J is an "enterprise" within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c) and, at all relevant times, was engaged in, and the activities of which affected, interstate and/or foreign commerce within the meaning of 18 U.S.C. §§ 1961(4), 1962(c), 1962(d).

62. The Flying J Executives, Pilot, FJ and CVC conspired with other persons (including, without limitation, all non-Party individuals identified above) and/or each other

within the meaning of 18 U.S.C. § 1962(d) to violate 18 U.S.C. § 1962(c)); that is, the Flying J Executives, Pilot, FJ and CVC conspired to conduct and/or participate in the business and financial affairs of Flying J (the RICO enterprise) through a pattern of unlawful activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5), and 1962(c)—to wit, the above multiple, repeated, and continuous acts of mail fraud and/or interstate and/or foreign wire fraud in violation of 18 U.S.C. §§ 2; 1341; 1343.

63. The Flying J Executives', Pilot's, FJ's and CVC's pattern of unlawful activity and corresponding violations of 18 U.S.C. § 1962(d) directly and/or proximately caused Plaintiff and Class Members to suffer injury to their businesses and/or property within the meaning of 18 U.S.C. § 1964(c)—to wit, Plaintiff and Class Members were damaged (and will continue to be damaged) by the Flying J Executives', Pilot's, FJ's and CVC's (i) reduction and withholding of fuel rebates and/or discounts owed to Plaintiff and Class Members, without their knowledge or approval, for the purposes of increasing Flying J's profitability, increasing the Entity Defendants' return on investment, and increasing the Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees), and (ii) the earnings and profits Plaintiff and Class Members would have earned on their unilaterally reduced and withheld fuel rebates and/or discounts, but for and proximately and directly Defendants' above-described wrongful acts that constitute predicate acts under 18 U.S.C. § 1961(1) (A) and (5). The Flying J Executives, Pilot, FJ and CVC committed these substantive RICO offenses by using Flying J (the RICO enterprise) to engage in multiple predicate acts of mail fraud and/or interstate and/or foreign wire fraud to defraud and cheat Plaintiff and Class Members and/or obtain money from Plaintiff and Class Members by false promises by covertly and unilaterally reducing and withholding fuel rebates and/or discounts owed to Plaintiff and Class Members, without their

knowledge or approval, for the purposes of increasing Flying J's profitability, increasing the Entity Defendants' return on investment, and increasing the Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees)—to the financial detriment of Plaintiff and Class Members.

64. The Flying J Executives, Pilot, FJ and CVC knew their above-described tactics, misrepresentations and/or unlawful actions were fraudulent, misleading, and illegal, and would cause Plaintiff and Class Members to suffer damages in the form of, *inter alia*, reduced fuel rebates and/or discounts, business destruction, lost profits and/or lost business opportunities. All of Plaintiff's and Class Members' damages were reasonably foreseeable by the Flying J Executives, Pilot, FJ and CVC and/or anticipated as a substantial factor and a natural consequence of their pattern of unlawful activity.

COUNT IV

BREACH OF CONTRACT

(AGAINST FLYING J)

65. The preceding factual statements and allegations are incorporated by reference.

66. Plaintiff and Class Members, on the one hand, and Flying J, on the other hand, mutually intended to form and, in fact, entered into valid and enforceable fuel rebate and/or discount contracts under which Flying J 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.

67. All conditions precedent to Flying J's liability under these contracts were performed by Plaintiff and Class Members. Plaintiff and Class Members performed all of their obligations under the contracts by, *inter alia*, patronizing Flying J truck stops, purchasing fuel

and/or purchasing other goods and services. Flying J, however, breached its contracts with Plaintiff and Class Members by knowingly, maliciously, fraudulently, willfully, wantonly, unilaterally, negligently and/or wrongfully reducing and withholding Plaintiff's and Class Members' monthly fuel rebates and/or discounts. Flying J's wrongful actions constitute breach of contract at common law.

68. Flying J's above wrongful actions directly and/or proximately caused Plaintiff and Class Members to suffer damages in the form of, *inter alia*, reduced fuel rebates and/or discounts, business destruction, lost profits and/or lost business opportunities.

COUNT V

TORTIOUS INTERFERENCE WITH A CONTRACT

(AGAINST THE FLYING J EXECUTIVES)

69. The preceding factual statements and allegations are incorporated by reference.

70. By their above wrongful actions, the Flying J Executives intentionally and tortiously interfered with the valid and enforceable fuel rebate and/or discount contracts by and between Plaintiff and Class Members, on the one hand, and Flying J, on the other hand.

71. The Flying J Executives' above wrongful actions directly and/or proximately caused Plaintiff and Class Members to suffer damages in the form of, *inter alia*, reduced fuel rebates and/or discounts, business destruction, lost profits and/or lost business opportunities.

COUNT VI

NEGLIGENT MISREPRESENTATION

(AGAINST ALL DEFENDANTS)

72. The preceding factual statements and allegations are incorporated by reference.

73. Defendants uniformly and negligently misrepresented their above-described

wrongful acts in order to defraud Plaintiff and Class Members by reducing and withholding the fuel rebates and/or discounts owed to Plaintiff and Class Members, without their knowledge or approval, for the purposes of increasing Flying J's profitability, increasing the Entity Defendants' return on investment, and increasing the Flying J Executives' compensation (and the compensation of other of Defendants' current and/or former employees)—to the financial detriment of Plaintiff and Class Members.

74. Defendants had a duty to disclose and pay to Plaintiff and Class Members the proper amount of fuel rebates and/or discounts on a monthly basis. Defendants' failure to do so constitutes negligent misrepresentation at common law.

COUNT VII

UNJUST ENRICHMENT

(AGAINST ALL DEFENDANTS)

75. The preceding factual statements and allegations contained within Paragraphs 1–64 are incorporated by reference. With respect to Flying J only, this count is brought in the alternative to Count IV.

76. This Count is brought under the unjust enrichment laws of Alabama, Arizona, Arkansas, California, Colorado, Connecticut, D.C., Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, and Washington (collectively, the “Unjust Enrichment Jurisdictions”), on behalf of all individuals and entities that were parties to fuel rebate and/or discount contracts with any of Defendants, from January 1, 2005 to the present. Excluded from this Unjust Enrichment Sub-Class are Defendants, any entity in which

any Defendant has a controlling interest, Defendants' officers, directors, employees, shareholders, agents and legal representatives, any local, state or federal government agency, the Court and Court personnel.

77. Defendants (and other persons, including Defendants' current and/or former employees identified in Exhibit A and possibly others, the identities of whom are known only to Defendants at this time) have been (and continue to be) unjustly enriched by, *inter alia*, (i) the above-described unlawfully reduced and withheld fuel rebates and/or discounts; (ii) using and/or investing the fraudulently obtained revenues in connection with other enterprises; and (iii) generating a return on the amounts described in (i) and (ii). Accordingly, Plaintiff, for itself and Class Members, seeks to impose a constructive trust over (and recover) all amounts by which Defendants (and other persons, including Defendants' current and/or former employees identified in Exhibit A and possibly others, the identities of whom are known only to Defendants at this time) have been (and continue to be) unjustly enriched.

TOLLING OF THE STATUTES OF LIMITATION

78. The preceding factual statements and allegations are incorporated by reference.

79. **FRAUDULENT CONCEALMENT.** Defendants took active steps to conceal the fact that they wrongfully, improperly, illegally, unilaterally and repeatedly defrauded Plaintiff and Class Members by reducing and withholding the fuel rebates and/or discounts owed to them. The details of Defendants' efforts to conceal their above-described unlawful conduct are in their possession, custody and control, to the exclusion of Plaintiff and Class Members, and await further discovery. When this material information was first revealed to Plaintiff during April 2013—when the Root Affidavit (Exhibit A) was unsealed by the United States District Court for the Eastern District of Tennessee in Case No. 3:13-MJ-2028 (Dkt. #4)—Plaintiff exercised due

diligence by investigating the situation, retaining counsel and pursuing its claims. Defendants fraudulently concealed their above-described wrongful acts. Should such be necessary, therefore, all applicable statutes of limitation (if any) are tolled.

80. **EQUITABLE ESTOPPEL.** Defendants took active steps to conceal the fact that they wrongfully, improperly, illegally, unilaterally and repeatedly defrauded Plaintiff and Class Members by reducing and withholding the fuel rebates and/or discounts owed to them. The details of Defendants' efforts to conceal their above-described unlawful conduct are in their possession, custody and control, to the exclusion of Plaintiff and Class Members, and await further discovery. When this material information was first revealed to Plaintiff during April 2013—when the Root Affidavit (Exhibit A) was unsealed by the United States District Court for the Eastern District of Tennessee in Case No. 3:13-MJ-2028 (Dkt. #4)—Plaintiff exercised due diligence by investigating the situation, retaining counsel and pursuing its claims. Defendants concealed their above-described wrongful acts. Should such be necessary, therefore, all applicable statutes of limitation (if any) are tolled under the doctrine of equitable estoppel.

81. **EQUITABLE TOLLING.** Defendants took active steps to conceal the fact that they wrongfully, improperly, illegally, unilaterally and repeatedly defrauded Plaintiff and Class Members by reducing and withholding the fuel rebates and/or discounts owed to them. The details of Defendants' efforts to conceal their above-described unlawful conduct are in their possession, custody and control, to the exclusion of Plaintiff and Class Members, and await further discovery. When this material information was first revealed to Plaintiff during April 2013—when the Root Affidavit (Exhibit A) was unsealed by the United States District Court for the Eastern District of Tennessee in Case No. 3:13-MJ-2028 (Dkt. #4)—Plaintiff exercised due diligence by investigating the situation, retaining counsel and pursuing its claims. Defendants

concealed their above-described wrongful acts. Should such be necessary, therefore, all applicable statutes of limitation (if any) are tolled under the doctrine of equitable tolling.

RESPONDEAT SUPERIOR/AGENCY

82. The preceding factual statements and allegations are incorporated by reference.

83. Pilot and Flying J also are liable—under the doctrine of *respondeat superior* and/or agency theory—for the above-described wrongful acts committed by the Flying J Executives and/or their current or former officers, directors, employees, agents, and/or representatives (including the Pilot/Flying J employees identified in Exhibit A) during the course and scope of their employment by, or representation of, Pilot and Flying J—to wit, such wrongful acts were committed (i) within their general authority, (ii) in furtherance of their business, and (iii) to accomplish the objective for which such officers, directors, employees, agents, and/or representatives were hired—all of which directly and/or proximately caused (and continue to cause) Plaintiff and Class Members to suffer damages to their businesses and/or property to Defendants’ financial benefit.

RELIEF REQUESTED

84. The preceding factual statements and allegations are incorporated by reference.

85. **ACTUAL, CONSEQUENTIAL, AND/OR INCIDENTAL DAMAGES.** As a direct and/or proximate result of Defendants’ above wrongful acts, Plaintiff and Class Members have sustained (and will continue to sustain) actual, consequential, and/or incidental damages, including pre- and post-judgment interest, in the form of, *inter alia*, reduced fuel rebates and/or discounts, business destruction, lost profits and/or lost business opportunities—for which Plaintiff and Class Members are entitled to compensation. Alternatively, Plaintiff and Class Members are entitled to restitution and/or disgorgement of Defendants’ gross revenues earned on the

unlawfully reduced and withheld fuel rebates and/or discounts. All of the damages sustained by Plaintiff and Class Members were reasonably foreseeable by Defendants, for which they are jointly and severally liable. All conditions precedent to Plaintiff's and Class Members' claims have been performed and/or occurred.

86. **PUNITIVE DAMAGES.** Defendants' wrongful acts were committed intentionally, willfully, wantonly and/or with reckless disregard for Plaintiff's and Class Members' rights and interests. Accordingly, Plaintiff and Class Members are entitled to punitive damages from Defendants as punishment and to discourage such wrongful conduct in the future. All conditions precedent to Plaintiff's and Class Members' claims for relief have been performed or occurred.

87. **RICO TREBLE DAMAGES.** Plaintiff and Class Members also are entitled to automatic treble damages for Defendants' above wrongful conduct in violation of the RICO statute under 18 U.S.C. § 1964(c).

88. **INJUNCTIVE RELIEF.** Defendants' unlawful reduction and withholding of the fuel rebates and/or discounts owed to Plaintiff and Class Members has caused (and will continue to cause) Plaintiff and Class Members to suffer irreparable harm in the form of, *inter alia*, reduced fuel rebates and/or discounts, business destruction, lost profits and/or lost business opportunities. Such irreparable harm will not cease unless and until enjoined by this Court. Plaintiff and Class Members, therefore, are entitled to a temporary injunction, permanent injunction and/or other appropriate affirmative relief, including restitution and/or disgorgement of Defendants' gross revenues earned on the unlawfully reduced and withheld fuel rebates and/or discounts. All conditions precedent to Plaintiff's and Class Members' claims have been performed and/or occurred.

89. **ATTORNEYS' FEES, LITIGATION EXPENSES AND COURT COSTS.** Plaintiff and

Class Members also are entitled to recover their attorneys' fees, litigation expenses, and court costs under, *inter alia*, 18 U.S.C. § 1964(c). All conditions precedent to Plaintiff's and Class Members' claims for attorneys' fees, litigation expenses and court costs have been performed and/or occurred.

PRAYER

WHEREFORE, Plaintiff, for itself and Class Members, respectfully requests that (i) Defendants be cited to appear and answer this lawsuit, (ii) this action be certified as a class action, (iii) Plaintiff be designated the Class Representative, and (iv) Plaintiff's counsel be appointed as Class Counsel. Plaintiff, for itself and Class Members, further requests that Defendants be cited to appear and answer this lawsuit and, upon final trial or hearing, judgment be awarded against Defendants, jointly and severally, in favor of Plaintiff and Class Members, for:

- (a) With respect to Counts I–III (violations of 18 U.S.C. § 1961, *et seq.*)--
 - (i) threefold the actual, consequential and/or incidental damages sustained by Plaintiff and Class Members along with costs of suit, attorneys' fees, litigation expenses, and court costs, all pursuant to 18 U.S.C. § 1964(c), together with pre- and post-judgment interest at the highest legal rates;
 - (ii) equitable relief, as may be appropriate, pursuant to 18 U.S.C. § 1964(a), including an equitable accounting for all benefits, consideration, and gross revenues received, directly or indirectly, including the imposition of a constructive trust, the voiding of unlawful transfers, the disgorgement of all ill-gotten gross revenues and/or all amounts by which Defendants have been unjustly enriched; and
 - (iii) injunctive relief.
- (b) With respect to Counts IV–VI:
 - (i) actual, consequential and/or incidental damages to be determined by the trier of fact;
 - (ii) punitive damages;
 - (iii) all amounts by which Defendants have been unjustly enriched;

- (iv) an equitable accounting for all benefits, consideration, and gross revenues received, directly or indirectly, by any of the Defendants, including the imposition of a constructive trust, the voiding of unlawful transfers, and the disgorgement of all ill-gotten gross revenues;
- (v) injunctive relief (as set forth above);
- (vi) pre- and post-judgment interest at the highest legal rates;
- (vii) attorneys' fees and litigation expenses incurred through the trial and any appeals of this case;
- (viii) costs of suit; and
- (ix) for all Counts, such other and further relief that the Court deems just and proper.

JURY DEMAND

Plaintiff, for itself and all others similarly situated, respectfully demands a trial by jury on all claims so triable.

Dated: May 1, 2013

Respectfully submitted,

By: /s/ Ben Barnow

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