

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

FRED WOODWARD)	Civil Action No.
individually and on behalf of all others similarly)	
situated,)	
)	CLASS ACTION COMPLAINT
Plaintiff,)	
)	
v.)	
)	
PILOT CORPORATION and)	
PILOT TRAVEL CENTERS, LLC;)	JURY TRIAL DEMANDED
)	
Defendants.)	

FIRST AMENDED CLASS ACTION COMPLAINT

FRED WOODWARD individually and on behalf of all others similarly situated, upon information and belief alleges the following claims on behalf of himself and a class of those similarly situated:

I. INTRODUCTION OF THE CLAIMS

Background

1. Defendants Pilot Corporation and Pilot Travel Centers, LLC, (hereafter, collectively “Pilot”) have adopted, promulgated, represented and benefitted from inaccurate rebate procedures and pricing structures for certain customers including Plaintiff and many others. As a direct result, each putative class member ultimately paid substantially more for diesel fuel than the agreed-upon price. The amounts of the economic loss are ascertainable, and the identities of the putative Class members are known to Pilot.
2. Pilot was contractually bound to pay rebates to class members for purchases of its diesel

fuel. Pilot systematically understated and underpaid amounts owed to Plaintiff and other similarly situated customers. Pilot wrongfully caused each member of the putative class (see Paragraph 31 for class definition) to suffer ascertainable economic loss.

3. Upon information and belief, Pilot also engaged in a two-tiered pricing structure that would impose higher prices on unsophisticated customers without their knowledge that would result in higher fuel prices being paid to Pilot.
4. Pilot executives, directors, principals, sales agents and administrative staff conspired to reduce the amount of rebate payments and implement the two-tiered pricing scheme in order to increase Pilot profits and increase sales commissions of its sales agents, without the consent of customers such as Plaintiff.
5. Pilot contracted with the putative class members to provide them with diesel fuel, purchased at its truck stop facilities and travel centers operating throughout the country, at a certain price pursuant to the terms of the diesel price discount deal and agreement between Pilot and the customer.
6. Pilot further agreed that it would provide to the putative class members a rebate on the diesel fuel purchased at their truck stop facilities and travel centers operating throughout the country, pursuant to the terms of the diesel price discount deal and agreement between Pilot and the customer.
7. According to a standard corporate program, which constitutes a uniform binding agreement with each class member, customers would receive the rebate amount either via check on a monthly or quarterly basis, or via a direct discount on the invoice for “direct bill” customers to whom Pilot had extended credit for the purchase of diesel fuel.

The FBI Investigation

8. Beginning in May, 2011, the Federal Bureau of Investigation entered agreements with confidential sources to obtain information about Pilot's pricing and rebate fraud scheme.
9. Over the course of the investigation, it was determined that Pilot executives and employees had been intentionally defrauding some of its customers by deliberately charging a higher price than the contractually agreed upon price, and then concealing the fact and nature of this increased price from victimized customers.
10. The federal investigation included the use of concealed recording devices carried with the consent of confidential informants to record conversations the informant had with several Pilot employees concerning the pricing and rebate fraud scheme.
11. On April 18, 2013, the affidavit of FBI Special Agent Robert Root, filed in support of his search warrant application, was unsealed by the U.S. District Court for the Eastern District of Tennessee at Knoxville. See Case No. 3:13-MJ-2028, Doc. 4, attached as Exhibit "A" and incorporated herein by reference.
12. The recordings made during the federal investigation reveal that Pilot maintained at its corporate offices in Knoxville, Tennessee, spreadsheets showing the amount owed to customers under their rebate agreements versus the amount actually paid.
13. Informants also recorded information shared at sales seminars in which sales representatives were advised to commit pricing and rebate fraud by charging its customer more than agreed upon and/or sending its customers less than they were owed, and training sales representatives on how to determine which customers would have difficulty discovering the price discrepancies.

Pilot's Fraudulent Activity

14. Pilot employees targeted customers who utilized non-party credit lines such as TCheck, who were referred to as “low hanging fruit.”
15. Pilot staff also intentionally withheld relevant pricing information from its customers who made inquiries about the rebate amounts they received.
16. Additionally, in some cases, Pilot sales staff made “handshake” deals with its customers, providing no written record of the customer’s agreed upon rebate rate.
17. The rebate fraud was perpetrated by Pilot’s regional sales managers, who would manually reduce the rebate amount listed on monthly spreadsheets provided to them, for certain customers. The customers would then receive the reduced rebate amount. These spreadsheets were compiled and maintained by Pilot’s regional account representatives, based at Pilot headquarters in Knoxville, Tennessee.
18. At least certain of the regional account representatives would manufacture “back-up” data to support the reduced rebate in Pilot’s computer system.
19. The rebate fraud was perpetrated company-wide, in each of Pilot’s three sales regions. In addition, Pilot executives discussed, and agreed to, teaching the rebate fraud system to Pilot’s sales managers at an upcoming annual sales meeting.
20. To address the rare and exceptional occasion where a customer caught the discrepancy, Pilot executives and employees were instructed to blame the error on a computer glitch.
21. The recorded conversations between the FBI informant, a Pilot sales representative, and his co-workers revealed that these actions were taken with the awareness and consent of Pilot executives, including Chief Executive Officer James A. “Jimmy” Haslam, III, President

Mark Hazelwood, and Chief Financial Officer Mitch Steenrod.

22. Plaintiff Fred Woodward and each member of the Putative Class have suffered economic damages as a direct and proximate result of Pilot's unlawful scheme and uniform corporate misrepresentations.
23. The records upon which the damages are readily ascertainable remain in the exclusive possession and control of the Defendants. The Defendants fraudulently concealed its non-disclosure of correct rebate amounts.

II. PARTIES, JURISDICTION & VENUE

24. Plaintiff, Fred Woodward, is a natural person and a resident of 28 Mast Road, Epping New Hampshire 03042. Mr. Woodward is a cross-country trucker and has used his PILOT driver payback preferred customer card within the putative class period.
25. Defendant Pilot Corporation, f/k/a Pilot Oil Corporation, is a Tennessee corporation with its principal place of business located at 5508 Lonas Dr., Knoxville, Tennessee, 37909, and may be served via its registered agent: C T Corporation System, 800 S. Gay St., Ste 2021, Knoxville, Tennessee, 37929.
26. Defendant Pilot Travel Centers, LLC is a Delaware corporation with its principal place of business located at 5508 Lonas Dr., Knoxville, Tennessee, 37909, and may be served via its registered agent: C T Corporation System, 800 S. Gay St., Ste 2021, Knoxville, Tennessee, 37929.
27. Venue is proper in this Court pursuant to 28 U.S.C. §1391 (b) and (c). Plaintiff is a resident of the State of New Hampshire, a substantial portion of the events giving rise to Plaintiff's claims arose in this District, and a substantial portion of the affected interstate trade and

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commerce described herein has been carried out in this District.

28. The trade and interstate commerce relevant to this action is the sale of and payment for significant amounts of diesel fuel to members of the Putative Class, including Putative Class Representative Fred Woodward. Defendants, directly or through affiliates or subsidiaries, carried out and participated in the wrongful scheme as described in detail or otherwise referenced herein and in so doing participated in the continuous and uninterrupted flow of interstate commerce. The activities of Defendants and their employees (or co-conspirators) as described herein, were within the flow of, and had a substantial effect on, interstate commerce.
29. This Court has subject matter jurisdiction pursuant to 18 U.S.C. § 1964(c), the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"). This Court also has venue over this action pursuant to 28 U.S.C. Sections 1332(d) and 1711-1715 – the so-called Class Action Fairness Act as the amount in controversy exceeds \$5 million dollars and more than a third of the putative members of the class of Plaintiffs are citizens or have usual places of business in states different than the state in which the Defendants maintain their headquarters.

III. CLASS ACTION ALLEGATIONS

30. Plaintiff brings this action on behalf of himself and all individuals and/or entities in the United States that are or have been in contract with Pilot for the purchase of diesel fuel, for commercial use from Pilot's stations and travel plazas, and did not receive the contractually agreed discount and/or rebate from April 18, 2005 to the present.
31. Plaintiff seeks certification of a class pursuant Fed. R. Civ. P. 23. The Putative Class ("the

Class”) is defined as follows:

All persons or entities in the United States who are or have been in contract with Defendants for the purchase of diesel fuel, for commercial use from Defendants’ stations and travel plazas, and who did not receive the contractually agreed discount and/or rebate from April 18, 2005 to the present. (Herein “Putative Class Members”)

32. Excluded from the Class are Defendants, their employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly-owned subsidiaries or affiliated companies; class counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case.
33. The Class is so numerous that joinder of all putative Class members is impracticable. Plaintiffs believe that the putative Class contains more than 1000 members and that the actual number of putative Class members will be ascertained through discovery.
34. There are numerous questions of law and fact common to the Class, and their resolution will be material to the legal claims asserted. These questions include, but are not limited to:
 - a. Whether the Defendants, their employees, and/or agents intentionally participated in schemes to defraud and use interstate mails and wires in furtherance of the scheme in violation of 18 U.S.C. §1343;
 - b. Whether the Defendants, their employees, and/or agents engaged in a pattern of racketeering activity under the federal RICO statute;
 - c. Whether Defendants, their employees, and/or agents breached the

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contractual agreements for diesel fuel rebates and/or discounts; and

d. Whether Defendants wrongfully converted Plaintiffs' funds.

35. The questions of law and fact common to all Class members predominate over any questions that may affect only individual Class members. The evidence proving that Pilot is engaging in the alleged conduct and deceptive scheme is common to the Class.
36. A class action is a superior method of adjudicating the Class members' claims because individual actions would unnecessarily burden the Court and create the risk of inconsistent results.
37. The claims of Plaintiff Fred Woodward are typical of the claims of the putative Class members. Plaintiff and all putative Class members are or were individuals or entities that had or have a substantially similar contractual agreement with Pilot and did not receive the contractually agreed discount and/or rebate by reason of Pilot's system-wide and uniformly implemented scheme to defraud and make misrepresentations to Plaintiffs and the putative class members and fail to honor the full terms of the rebate/discount contract.
38. Plaintiff Fred Woodward has no interests that are antagonistic or adverse to the other putative Class members. While the terms and rates of rebates and or discounts may vary among the Class Members, the scheme to illegally defraud Class Members, its implementation and furtherance is common to all Class Members.
39. Plaintiff Fred Woodward will fairly and adequately protect the interests of the Class.
40. Plaintiff Fred Woodward is otherwise an adequate representative of the Class. Mr. Woodward has retained counsel that is experienced in multi-district class action litigation, complex litigation, and civil RICO litigation. Plaintiff and his counsel have engaged in a

lengthy factual and legal investigation to develop this case. Plaintiff will fairly and adequately protect and represent the interests of the Class.

41. Pilot's deceptive conduct had and continues to have the effect of depriving Plaintiff and all Putative Class Members of contractually agreed to rebates and/or discounts for diesel fuel to their detriment. Accordingly, declaratory and injunctive relief that prevents Pilot from continuing to defraud Plaintiffs and putative Class members is appropriate on a Class-wide basis.
42. Given the significant expense required to prosecute the foregoing claims against Pilot, particularly the cost, time, and expense to prove the common fraudulent scheme and conspiracy, the costs of individual actions may well approach or exceed the amount recovered in any individual action. The expense of pursuing individual actions would require many individual Class members to forego their individual claims against Pilot if they are not permitted to pursue those claims as a class.
43. This action is manageable. This action amounts to a large-scale "garden variety" theft, or "flim flam" case.

FRAUDULENT CONCEALMENT

44. By its very nature, the unlawful activity, as alleged herein, was self-concealing. Defendants conspired and engaged in secret and surreptitious activities in order to secretly manipulate the unlawful prices paid and maintain their fraudulent scheme.
45. Defendants fraudulently concealed their anticompetitive activities by, among other things, engaging in secret communications in furtherance of the conspiracy.

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46. Defendants agreed among themselves not to discuss publicly or otherwise reveal the nature and substance of the acts and communications in furtherance of the agreements alleged herein. For example, the [The Wall Street Journal](#) (7/5, Morris, Subscription Publication, 2.29M) reported that a confidential informant has told the FBI that Pilot CEO Jimmy Haslam was aware of the rebate scheme, though Haslam has repeatedly denied knowledge of it. The Journal notes, as previously reported, that the FBI affidavit filed in Knoxville claims that the rebate scheme was discussed at meetings attended by Haslam and Pilot president Mark Hazelwood. The continued denials evidence the furtherance of a plan to fraudulently conceal what took place extending beyond the date of the unsealing of the FBI affidavit.
47. None of the facts or information available to Plaintiff, if investigated with reasonable diligence, could or would have led to the discovery of the conspiracies alleged in this Complaint. Plaintiff was lulled into believing that the prices offered to it was the result of market conditions and the contractual agreement they entered into, rather than the product of Defendants' manipulation and collusive activities.
48. As a result, Plaintiff was prevented from learning of the facts needed to commence suit against Defendants for the manipulative and anticompetitive conduct alleged in this Complaint until at least July 2013.
49. There are many reasons why these facts could not have been known: (1) Defendants' pricing and pricing strategies are not public information; (2) the Defendants put in place

strategies and uniform responses to fool class members who suspected the fraud, or who called discrepancies to the Defendant's attention; (3) the Defendants have engaged in paying off class members to keep quiet and not disclose or cooperate in related investigations; and (4) the nature of the pricing and billing at issue further obscures what Defendants were, and are, doing at any particular time.

50. Because of Defendants' active steps, including fraudulent concealment of their conspiracy to prevent Plaintiff from suing them for the unlawful activities alleged in this Complaint, Defendants are equitably estopped from asserting that any otherwise applicable limitations period has run.

IV. CAUSES OF ACTION

COUNT I - CONVERSION

51. Plaintiff incorporates by reference and makes a part hereof each of the paragraphs set forth herein.
52. Pilot wrongfully converted consumer rebate funds to its own use. James A. "Jimmy" Haslam used the wrongfully skimmed funds, in whole or in part, to pay for his "cash" purchase of the Cleveland Browns
53. Plaintiff and his similarly situated Putative Class Members are entitled to the discounts and/or rebate funds withheld by Pilot pursuant to Pilot's agreements and promises to fully and faithfully discount its fuel and/or pay rebate funds to its consumers.
54. Plaintiffs are entitled to return of these discount and/or rebate funds together with interest.

COUNT II – VIOLATION OF RACKETEER INFLUENCED AND

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CORRUPT ORGANIZATION ACT, 18 U.S.C. §1962(c)

55. Plaintiff incorporates by reference and makes a part hereof each of the paragraphs set forth herein.
56. Defendants are and were at all times mentioned herein "persons" as that term is defined in 18 U.S.C. § 1961(3).
57. Defendant Pilot Corporation and Defendant Pilot Travel Centers LLC d/b/a Pilot Flying J constitutes an association-in-fact "enterprise" as that term is defined in 18 U.S.C. § 1961(4), which is engaged in and affects interstate and foreign commerce (the "Pilot Enterprise"). The Pilot Enterprise at all times mentioned herein was and is engaged in the scheme to defraud Plaintiff and the putative Class members within the United States. Defendant Pilot Corporation and Defendant Pilot Travel Centers LLC d/b/a Pilot Flying J are distinct entities.
58. The pattern of racketeering activity engaged in by Defendants involves a scheme to defraud whereby Pilot would deceptively, unilaterally and fraudulently reduce diesel fuel price rebates and discounts from Pilot customers, including Plaintiff and putative Class members, without the knowledge or approval of the customer, for the dual purposes of increasing the profitability of Pilot and increasing the diesel sales commissions of the Pilot employees participating in the fraudulent scheme. The pattern of racketeering is separate and distinct from the legitimate business, undertaken by the Pilot Enterprise. The Defendant's repeatedly, systematically, unlawfully, intentionally and fraudulently acted to cause class members to suffer economic loss.
59. The scheme is otherwise set forth in greater detail with specificity of facts not under seal by

Court Order in Attachment “A” - the affidavit of FBI Special Agent Robert Root, unsealed by the U.S. District Court for the Eastern District of Tennessee at Knoxville in Case No. 3:13-MJ-2028 (Doc. #4) on April 18, 2013.

60. Pilot was aware of this scheme to defraud and deceptively understate diesel fuel price rebates and discounts for Pilot customers, including Plaintiff Fred Woodward and the Putative Class Members.
61. Pilot carried out their unlawful scheme without the advance knowledge or approval of the Putative Class Members for the purposes of increasing the profitability of Pilot and/or increasing the diesel sales commissions of the Pilot employees participating.
62. Defendants sought to use Pilot Enterprise as part of their unlawful scheme.
63. In multiple mailings, emails and telephone calls to Putative Class Members, Defendants deceptively, fraudulently and unilaterally decreased diesel fuel price discounts and/or rebates causing the class to suffer ascertainable economic loss.
64. Defendants knowingly and willfully omitted and/or misstated material information concerning the price rebate discounts in their mailings, emails, and telephone calls and fraudulently concealed their conduct.
65. The Defendants intended that the Pilot Enterprise transmit this false and misleading information to Plaintiffs and Putative Class Members.
66. The Pilot Enterprise did transmit this false and misleading information to Putative Class Members by use of the U.S mail, facsimile, direct deposit and/or email.
67. Putative Class Members relied on the false and misleading information from Defendants and reasonably believed the amounts they received represented the full and accurate

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discount and/or rebate owed to them pursuant to their contract.

68. The pattern of racketeering activity engaged in by Defendants involves schemes and artifices to defraud constituting mail fraud (18 U.S.C. § 1341) and wire fraud (18 U.S.C. § 1343), all of which is "racketeering activity" as defined in 18 U.S.C. § 1961(1)(B).

Defendants have engaged in these schemes and artifices with the specific intent to defraud, causing damage to the Putative Class Members by preventing them the full benefit of their contract with Pilot.

69. The pattern of racketeering engaged in by Defendants involves thousands of uniform, system wide, and carried out predicate acts constituting mail fraud and wire fraud, as previously set forth above. All of these acts are related to the pattern of racketeering and have taken place over many years, establishing both relatedness and continuity.

70. As a direct and proximate result of the pattern of racketeering engaged in by Defendants, Plaintiffs and the putative Class members suffered ascertainable economic damages in an amount to be proven at trial and should also be awarded attorney's fees and treble damages.

COUNT III - BREACH OF CONTRACT

71. Plaintiff incorporates by reference and makes a part hereof each of the paragraphs set forth herein.

72. The contracts and agreements between Plaintiff and the putative class and Defendants regarding fuel prices and discounts and the payments of rebates or credits for diesel purchases constituted valid and legally binding contracts supported by adequate consideration.

73. At all times relevant to this class action complaint, Plaintiff Fred Woodward and Putative

Class Members performed their obligations under the rebate/discount contract.

74. Defendants materially breached the contracts when they engaged in the deceptive scheme described herein and as a result, did not provide the actual rebates and/or discounts as provided for in the contracts.
75. As a result of Defendants' breach of the contracts, Plaintiff and the putative class have suffered ascertainable economic harm in excess of \$5 million dollars and in an amount to be proven at trial.

WHEREFORE, premises considered, Plaintiff and putative class pray for the following relief:

- A) For a Certification of the Class as described herein;
- B) For a trial by jury as to all issues that may be so tried;
- C) For an award of actual damages in an amount to be proven at trial;
- D) For an award of punitive damages;
- E) For interest at the highest allowable rate;
- F) For injunctive relief as deemed necessary or reasonable by this Court to make the Plaintiffs whole and to prevent future wrongful conduct on the part of the Defendants;
- E) For an award of attorney's fees in an amount determined by this Court;
and
- F) For such other relief as this Court deems just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(a) of the Federal Rules of Civil Procedure, Plaintiff demands a jury

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trial as to all issues triable by a jury.

Respectfully submitted, this 9th day of July, 2013.

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