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*Attorneys for Plaintiff and others similarly situated*

Doris Gambrell, Eugene Gambrell, and  
Falguni Patel, on behalf of themselves and  
others similarly situated,

Plaintiff,

vs.

Hess Corporation, Inc. and John Doe  
Entities 1 – 10,

Defendants.

FILED & RECEIVED #2  
2012 DEC -41 P 12:15  
CIVIL OFFICE  
MIDDLESEX COUNTY

SUPERIOR COURT OF NEW JERSEY  
MIDDLESEX COUNTY - LAW DIVISION

Docket No.: MID-L-7761-12

CIVIL ACTION

**FIRST AMENDED  
CLASS ACTION COMPLAINT  
AND JURY DEMAND**

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**NATURE OF CASE**

1. This action raises class claims against Defendants Hess Corporation for selling New Jersey consumer's fuel mislabeled as regular gasoline, when in fact it was all or part diesel fuel.
2. The mislabeled fuel was sold to the named Plaintiffs and numerous other New Jersey consumers on or about November 3, 2012, causing substantial damage to their vehicles.
3. Defendants' misrepresentation of the fuel sold to Plaintiffs and the putative class members violated the New Jersey Motor Fuel Retail Sales Act, at N.J.S.A. 56:6-2, the Consumer Fraud Act, at N.J.S.A. 56:8-2, and the Truth in Consumer Contract, Warranty and Notice Act, at N.J.S.A. 56:12-15, and also constituted an aggravated breach of contract, entitling Plaintiffs and the putative class members to treble damages, statutory damages, injunctive relief, and reasonable attorney's fees and costs.
4. Alternatively, Defendants' sale of diesel fuel to customers requesting regular gasoline constituted reckless and/or grossly negligent conduct, entitling Plaintiffs and the putative class members to actual damages, including damages for emotional distress, as well as punitive damages.

**PARTIES**

5. Plaintiffs Doris Gambrell and Eugene Gambrell reside in Somerset, New Jersey.
6. Plaintiff Falguni Patel resides in Monmouth Junction, New Jersey.

7. Defendant Hess Corporation, Inc. is a foreign profit corporation with a main business address located at 1 Hess Plaza, Woodbridge, New Jersey. Hess operates, either directly or through franchisees, fuel stations throughout New Jersey.
8. Plaintiffs purchased the contaminated gasoline from Hess Store #30332, which is located at 2800 Route 1 North, North Brunswick, New Jersey.
9. On information and belief consumers were sold contaminated gasoline from other Hess locations in New Jersey.
10. John Doe Entities 1-10 are fictional names used to represent Defendants' principals, officers, directors, affiliates, franchisees, licensees, agents, representatives, or employees that might have been involved in the transactions at issue.

### VENUE

11. Venue in this action properly lies in Middlesex County because Plaintiffs live there, Defendants conduct business there, and Defendants have a main business address there.

### ALLEGATIONS OF FACT

#### **Doris and Eugene Gambrell**

12. On November 3, 2012, at approximately 10:10 am, Doris & Eugene Gambrell took their 2012 Kia Soul, VIN KNDJT2A62C7468351 (the "Kia"), to Hess Store # 30332 at 2800 Route 1 North, North Brunswick, New Jersey (the "Hess station"), to purchase regular gasoline.
13. The Hess station displayed a sign advertising the sale of regular unleaded gasoline.
14. When they arrived at the gas pump at the Hess station, Plaintiff Eugene Gambrell asked the Hess employee who approached him to fill the Kia's fuel tank with regular gasoline.
15. The attendant proceeded to fuel the Kia from a pump that displayed a sign indicating that it dispensed regular gasoline, with no indication that it dispensed diesel fuel.
16. The Kia's fuel tank was already about half full, so the attendant dispensed 7.74 gallons of fuel to fill the tank.
17. Plaintiff Eugene Gambrell paid \$26.31 for the 7.74 gallons of fuel with a credit card, and drove the Kia to Plaintiffs' home in nearby Somerset, New Jersey.
18. Upon arriving home, the Gambrells noticed a smell coming from the Kia and suspected that something was wrong with the fuel they purchased at the Hess station.
19. Plaintiff Doris Gambrell returned to the Hess station in a different car to report the problem

with the Kia.

20. An employee at the Hess station told Plaintiff Doris Gambrell that the Gambrells had received diesel fuel instead of regular gasoline.
21. An employee at the Hess station told Plaintiff Doris Gambrell that other customers who asked for regular gasoline were also sold diesel fuel.
22. As a result of Hess dispensing diesel fuel into the Kia instead of the regular gasoline that the Gambrells contracted for, the Kia was substantially damaged and its value was substantially diminished.
23. As a result of Hess's misrepresentation of the fuel as regular gasoline, the Kia was substantially damaged and its value was substantially diminished.
24. Although Hess has offered to repair the Kia, it has not offered to make the Gambrells whole by addressing the diminution in value or the loss of use of the Kia.

#### **Falguni Patel**

25. On November 3, 2012, Plaintiff Falguni Patel's son drove her 2010 Mercedes C300 (the "Mercedes") to the Hess station to purchase gasoline.
26. The Hess station displayed a sign advertising the sale of regular unleaded gasoline.
27. Plaintiff Patel's son waited in a line of cars for approximately ten minutes before he reached the gas pumps at approximately 10:00 a.m. A police officer was directing traffic.
28. All of the available pumps at the Hess station were being used to fill vehicles with gasoline. Plaintiff Patel's son was directed to the first set of pumps on the south side of the Hess station closest to Route 1.
29. Plaintiff Patel's son asked the Hess station attendant to fill the Mercedes tank with regular gasoline.
30. The attendant proceeded to fuel the Mercedes from a pump that displayed a sign indicating that it dispensed regular gasoline, with no indication that it dispensed diesel fuel.
31. The Mercedes' fuel tank already was about half full, so the attendant dispensed one half of a tank of gas into the vehicle's engine.
32. After being filled at the Hess station on November 3<sup>rd</sup>, Plaintiff Patel noticed that the Mercedes' engine was exhibiting performance problems and was getting fewer miles per gallon. On November 14<sup>th</sup>, the vehicle's check engine light came on, the engine began rumbling, and Plaintiff Patel had difficulty shifting gears.

33. Plaintiff Patel had her car towed to a Mercedes dealership on November 14<sup>th</sup> and learned that there was diesel fuel in the vehicle's engine.
34. On November 15<sup>th</sup>, Plaintiff Patel contacted Hess to submit a complaint concerning the station's dispensing diesel fuel into her vehicle.
35. On November 16<sup>th</sup>, Plaintiff Patel spoke to a Hess representative concerning the service and repairs required as a result of the Hess station's dispensing diesel fuel into the Mercedes. The Hess representative indicated that Hess would pay for repairs to the vehicle, but required that she first send a diagnostic report and proof of her gasoline purchase.
36. Between November 16<sup>th</sup> and November 28<sup>th</sup>, Plaintiff Patel and her son spoke to several Hess representatives concerning Hess' payment for the necessary repairs to the Mercedes. Plaintiff Patel had difficulty reaching a Hess representative who would provide her with any information on the status of her claim. During this time, Plaintiff did not have use of the Mercedes, and was required to use a loaner vehicle from the Mercedes dealership.
37. As a result of Hess dispensing diesel fuel into the Mercedes instead of the regular gasoline that Plaintiff Patel's son contracted for, the Mercedes was substantially damaged and its value was substantially diminished.
38. As a result of Hess's misrepresentation of the fuel as regular gasoline, the Mercedes was substantially damaged and its value was substantially diminished.
39. Although Hess has offered to repair the Mercedes, it has not offered to make Plaintiff whole by addressing the diminution in value or the loss of use of the Mercedes.
40. The vehicles of the other customers who received diesel fuel from Hess after asking for regular gasoline suffered substantial damage and substantial diminution in value.
41. Hess has similarly not taken steps to address the diminution in value or loss of use of the vehicles of the other customers who were sold diesel fuel after asking for regular gasoline.
42. The Gambrells suffered damages from Hess's conduct, including, without limitation, the diminished value of the Kia, the cost of replacement of the Kia, the cost of repair of the Kia, the loss of use of the Kia, and the amount paid for the fuel.
43. Plaintiff Patel suffered damages from Hess's conduct, including, without limitation, the diminished value of the Mercedes, the cost of replacement of the Mercedes, the cost of repair of the Mercedes, the loss of use of the Mercedes, the amount paid for the fuel, and the amount paid for towing the vehicle to the Mercedes dealership.

## CLASS ACTION ALLEGATIONS

44. This action is brought and may properly proceed as a class action, pursuant to the provisions of Rule 4:32 of the New Jersey Court Rules. Plaintiffs seek certification of a Class initially defined as:

All persons who, during the applicable limitations period, received fuel that contained diesel fuel from a pump that was labeled for regular gasoline at a Hess filling station located in New Jersey.

Specifically excluded from the Class is any judge or magistrate involved in this matter and members of their immediate family.

45. The class for whose benefit this action is brought is so numerous that joinder of all members is impracticable. Specifically Hess has admitted to the press that “dozens” of customers who asked for regular gasoline received fuel that contained diesel fuel on or around November 3, 2012.

46. There are questions of law and fact common to the members of the Class, including, without limitation:

- a. Whether Defendants violated the New Jersey Motor Fuel Retail Sales Act, at N.J.S.A. 56:6-2(g) by permitting delivery of fuel that contained diesel fuel into tanks servicing pumps that were labeled as containing regular gasoline.
- b. Whether Defendants violated the New Jersey Motor Fuel Retail Sales Act, at N.J.S.A. 56:6-2(g) by misrepresenting fuel as regular gasoline when it in fact contained diesel fuel.
- c. Whether Defendants violated the regulations promulgated under the New Jersey Motor Fuel Retail Sales Act, at N.J.A.C. 18:19-2.5, by substituting one grade of motor fuel for another.
- d. Whether Defendants violated the regulations promulgated under the New Jersey Motor Fuel Retail Sales Act, at N.J.A.C. 18:19-2.5, by posting an advertisement that incorrectly identified the name of the fuel product to be dispensed.
- e. Whether Defendants violated the New Jersey Consumer Fraud Act (CFA) at N.J.S.A. 56:8-2 by misrepresenting fuel as regular gasoline when it in fact contained diesel fuel.
- f. Whether Defendants violated the New Jersey Truth in Consumer Contract, Warranty and Notice Act (TCCWNA), at N.J.S.A. 56:12-15 by displaying a sign that misrepresented fuel as regular gasoline when it in fact contained

diesel fuel, in violation of the New Jersey Motor Vehicle Fuel Retail Sales Act and/or the CFA.

- g. Whether Defendants engaged in a breach of contract by delivering gasoline that contained diesel fuel to customers who asked for regular gasoline.
- h. Whether Defendants acted in a negligent, grossly negligent, or reckless manner, and/or engaged in grossly negligent or reckless conduct by delivering gasoline that contained diesel fuel to customers who asked for regular gasoline.

- 47. Plaintiffs have claims typical of the claims of the members of the Class, since all such claims arise out of the Defendants' selling and dispensing of diesel fuel into cars with regular engines, after the customers asked for regular gasoline.
- 48. The Class, of which Plaintiffs are members, is readily identifiable.
- 49. Plaintiffs will fairly and adequately protect the interests of the Class and have retained competent counsel experienced in the prosecution of consumer litigation.
- 50. Plaintiffs have no interests antagonistic to those of the Class.
- 51. The questions of law and fact common to the Class predominate over questions affecting only individuals.
- 52. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. A class action will cause an orderly and expeditious administration of the claims of the Class and will foster economies of time, effort and expense.
- 53. The prosecution of separate actions by individual members of the Class would run the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for the Defendants in this action, or adjudications with respect to individual class members would be dispositive of the interests of other members not a party to the action. Prosecution as a class action will eliminate the possibility of repetitious litigation.
- 54. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.
- 55. Plaintiffs do not anticipate any difficulty in the management of this litigation.

## CLAIMS

### First Count: Violations of the Consumer Fraud Act

56. Plaintiffs restate all the preceding allegations of this Complaint as though fully pled here.
57. The Consumer Fraud Act, at N.J.S.A. 56:8-2 prohibits businesses from engaging in *any* misrepresentations, deception, or unconscionable commercial conduct in connection with consumer sales.
58. Defendants violated the CFA by misrepresenting the fuel that sold to Plaintiffs and the putative class members as regular gasoline when it contained diesel fuel.
59. The violation of another statute, particularly another statute providing protection to consumers, can constitute a deceptive and/or unconscionable commercial practice in violation of the CFA.
60. Defendants engaged in unconscionable commercial practices in violation of the CFA by violating the Motor Vehicle Fuel Retail Sales Act at N.J.S.A. 56:6-2(g), which prohibits fuel retailers from permitting delivery of fuel into tanks of a type different from the sign on the pump serviced by the tank.
61. Defendants engaged in unconscionable commercial practices in violation of the CFA by violating the regulations promulgated under the Motor Vehicle Fuel Retail Sales Act at N.J.A.C. 18:19-2.5, which prohibits motor fuel retail sellers from substituting one grade of motor fuel for another.
62. Defendants engaged in unconscionable commercial practices in violation of the CFA by violating the regulations promulgated under the Motor Vehicle Fuel Retail Sales Act at N.J.A.C. 18:19-2.5, which requires that all advertisements posted by motor fuel retail sellers correctly identify the name of the fuel product to be dispensed.
63. Plaintiffs and the putative class members suffered an ascertainable loss caused by Defendants' CFA violations including, without limitation, the diminished value of the vehicles into which Defendants dispensed diesel fuel, the cost of replacement of the vehicles into which Defendants dispensed diesel fuel, the cost of repair of the vehicles into which Defendants dispensed diesel fuel, the loss of use of the vehicles into which Defendants dispensed diesel fuel, and the amount Plaintiffs and the putative class members paid to Defendants for the fuel.

### Second Count: Violation of the Truth in Consumer Contract, Warranty and Notice Act

64. Plaintiffs restate all the preceding allegations of this Complaint as though fully pled here.
65. The Truth in Consumer Contract, Warranty, and Notice Act (TCCWNA), at N.J.S.A. 56:12-15 prohibits businesses from displaying signs or notices, or offering consumer contracts with

language that violates the consumer's rights or the business's responsibilities under other laws.

66. The sign at the Hess station pump that Defendants used to dispense the diesel fuel to Plaintiff's and the putative class members' vehicles is a consumer sign, a consumer notice, and/or an offer to enter into a consumer contract, and so is subject to the Truth in Consumer Contract, Warranty, and Notice Act (TCCWNA), at N.J.S.A. 56:12-15.
67. The sign contained language that misrepresented the fuel offered at the pump as regular gasoline when it in fact contained diesel fuel.
68. The misrepresentation on the sign violated the CFA at N.J.S.A. 56:8-2.
69. The language of the sign also violated the New Jersey Motor Vehicle Fuel Retail Sales Act at N.J.S.A. 56:6-2(g), which prohibits fuel retailers from permitting fuel of a type different from that appearing on the sign at the pump to be delivered to the tank servicing the pump.
70. The language on the sign also violated the regulations promulgated under the Motor Vehicle Fuel Retail Sales Act at N.J.A.C. 18:19-2.5, which prohibits motor fuel retail sellers from substituting one grade of motor fuel for another.
71. The language on the sign also violated the regulations promulgated under the Motor Vehicle Fuel Retail Sales Act at N.J.A.C. 18:19-2.5, which requires that all advertisements posted by motor fuel retail sellers correctly identify the name of the fuel product to be dispensed.
72. By displaying signs or notices, or offering consumer contracts with language that violates the consumer's rights or the business's responsibilities under the CFA and/or the Motor Vehicle Fuel Retail Sales Act, Defendants violated TCCWNA as to Plaintiffs and the putative class members.
73. Defendants therefore are liable to Plaintiffs and the putative class members for actual damages, statutory damages, and reasonable attorney's fees and costs pursuant to N.J.S.A. 56:12-17.

### **Third Count: Breach of Contract**

74. Plaintiffs restate all the preceding allegations of this Complaint as though fully pled here.
75. Defendants posted an advertisement offering the sale of regular unleaded gasoline.
76. Defendants offered regular unleaded gasoline for sale.
77. Plaintiffs and the putative class members viewed Defendants' advertisement and accepted Defendants' offer for the sale of regular unleaded gasoline.
78. Plaintiffs and the putative class members accepted Defendants' offer to sell regular gasoline



and requested that Defendants dispense regular gasoline into their vehicles.

79. Plaintiffs paid Defendants to dispense regular gasoline into their vehicles.
80. Defendants dispensed diesel fuel into the vehicles of Plaintiffs and the putative class members.
81. Defendants breached their contracts with Plaintiffs and the putative class members for the sale of regular gasoline by dispensing diesel fuel into the vehicles of Plaintiffs and the putative class members.
82. As a result of Defendants' breach, Plaintiff and the putative class members have suffered damages, including, without limitation, the diminished value of the vehicles into which Defendants dispensed diesel fuel, the cost of replacement of the vehicles into which Defendants dispensed diesel fuel, the cost of repair of the vehicles into which Defendants dispensed diesel fuel, the loss of use of the vehicles into which Defendants dispensed diesel fuel, and the amount Plaintiffs and the putative class members paid to Defendants for the fuel.

**Fourth Count (Pled in the Alternative): Negligent and/or Reckless Destruction of Property**

83. Plaintiffs restate all the preceding allegations of this Complaint as though fully pled here.
84. Defendants offered regular unleaded gasoline for sale.
85. Plaintiffs and the putative class members requested that Defendants dispense regular unleaded gasoline into their vehicles.
86. Plaintiffs and the putative class members reasonably expected that the gasoline dispensed from pumps labeled as dispensing regular gasoline would in fact dispense regular, non-diesel gasoline.
87. Plaintiffs and the putative class members reasonably expected that Defendants would dispense regular, non-diesel gasoline into their vehicles after they requested regular gasoline.
88. Defendants owed a duty to Plaintiffs and the putative class members to dispense regular, non-diesel gasoline into their vehicles after they requested regular gasoline.
89. Defendants failed to exercise reasonable care in ensuring that it dispensed the correct motor fuel into the vehicles of Plaintiffs and the putative class members.
90. Defendants failed to exercise reasonable care in ensuring that the fuel storage tank(s) servicing the regular gasoline pumps contained only regular gasoline.
91. Defendants breached their duty to dispense regular gasoline to Plaintiffs and the putative class members by dispensing diesel fuel into the vehicles of Plaintiffs and the putative class

members.

92. As a result of Defendants' breach, Plaintiffs and the putative class members have suffered damages, including damages for emotional distress.
93. The damages incurred by Plaintiffs and the putative class members were proximately caused by Defendants' breach, i.e., Defendants' dispensing of diesel fuel after Plaintiffs and the putative class members requested regular gasoline.
94. The damages incurred by Plaintiffs and the putative class members were a foreseeable consequence of Defendants' breach, i.e., Defendants' dispensing of diesel fuel after Plaintiffs and the putative class members requested regular gasoline.
95. Defendants knew, or should have known, that diesel fuel had been added to the storage tank(s) servicing their regular gasoline pumps.

**WHEREFORE**, Plaintiffs demand judgment for themselves and others similarly situated against the Defendants as follows:

- a. An order certifying the class for declaratory and injunctive relief under R. 4:32-1(b)(2) or alternatively certifying the class for money damages under R. 4:32-1(b)(3);
- b. A declaratory judgment that Defendants violated the Consumer Fraud Act, the Truth in Consumer Contract, Warranty, and Notice Act (TCCWNA), and the New Jersey Motor Vehicle Fuel Retail Sales Act and regulations;
- c. A judgment for injunctive relief requiring Defendants to send formal notice to all class members, advising them of the declaratory ruling and of their right to seek remedies under the CFA and TCCWNA, on their own and independent of this action, if they suffered an ascertainable loss resulting from Defendants' violations or alternatively a judgment for money damages for each class member;
- d. A judgment for injunctive relief enjoining Defendants from engaging in future violations of the CFA, TCCWNA, and the Motor Vehicle Fuel Retail Sales Act and regulations;
- e. For actual damages;
- f. For compensatory damages;
- g. For treble damages, pursuant to the CFA at N.J.S.A. 56:8-19;
- h. For maximum civil penalties under the Truth-in-Consumer Contract, Warranty and Notice Act, N.J.S.A. 56:12-17;
- i. For reasonable attorneys' fees and costs of suit in connection with this action, pursuant to

the CFA at N.J.S.A. 56:8-19, and TCCWNA at N.J.S.A. 56:12-17;

- j. For a refund of all moneys acquired by Defendants due to unlawful acts, pursuant to N.J.S.A. 56:8-2.11;
- k. For pre-judgment and post-judgment interest; and
- l. For such other and further relief as the Court deems equitable and just.

**JURY DEMAND**

Plaintiffs demand a trial by jury on all issues subject to trial.

**NOTICE TO ATTORNEY GENERAL OF ACTION**

A copy of this complaint will be mailed to the Attorney General of the State of New Jersey within ten days after the filing with the Court, pursuant to N.J.S.A. 56:8-20.

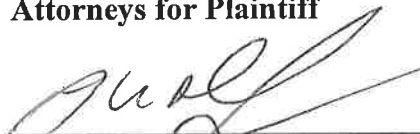
**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, Andrew R. Wolf, Esq. is hereby designated as trial counsel in this matter.

**CERTIFICATION**

Pursuant to R. 4:5-1, I hereby certify to the best of my knowledge that the matter in controversy is not the subject of any other action pending in any court or the subject of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. I further certify that I know of no party who should be joined in the action at this time.

**The Wolf Law Firm, LLC  
Attorneys for Plaintiff**

  
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Andrew R. Wolf, Esq.

Date: December 4, 2012