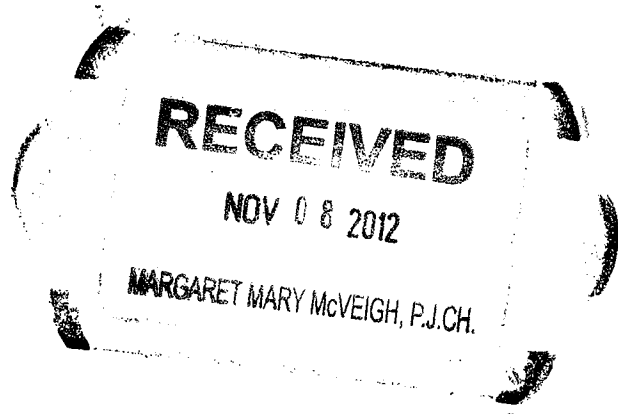


JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for Plaintiffs



SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION,  
PASSAIC COUNTY  
DOCKET NO. PAS-C- 95 -12

JEFFREY S. CHIESA, Attorney General of the State of New Jersey, and ERIC T. KANEFSKY, Acting Director of the New Jersey Division of Consumer Affairs,

Plaintiffs,

v.

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

Defendants.

Civil Action

**COMPLAINT**

Plaintiffs Jeffrey S. Chiesa, Attorney General of the State of New Jersey (“Attorney General”), with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and Eric T. Kanefsky, Acting Director of the New Jersey Division of Consumer Affairs (“Director”), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of Complaint state:

## PRELIMINARY STATEMENT

1. During emergencies and major disasters, such as hurricanes, tropical storms, earthquakes, fires and floods, some merchants have taken unfair advantage of consumers by greatly increasing prices for certain merchandise, which are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain the life health or safety or comfort of persons or their property, a practice commonly known as “price gouging.” When a declared state of emergency results in an abnormal disruptions of the market, the New Jersey Legislature has found it in the public interest that excessive and unjustified price increases in the sale of certain merchandise, price gouging, be prohibited. See N.J.S.A. 56:8-107 and N.J.S.A. 56:8-109.

2. On October 27 2012, just prior to Tropical Storm Sandy reaching the State of New Jersey (“State” or “New Jersey”), Governor Chris Christie (“Governor Christie”) declared a State of Emergency. In the wake of the State of Emergency and Tropical Storm Sandy, defendant Kistruga Inc. d/b/a LUKOIL (“Kistruga” or “Defendant”) engaged in price gouging in the sale of motor fuel. In so doing, Kistruga committed numerous violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”).

## PARTIES AND JURISDICTION

3. The Attorney General is charged with the responsibility of enforcing the CFA. The Director is charged with the responsibility of administering the CFA on behalf of the Attorney General.

4. By this action, the Attorney General and Director (collectively, "Plaintiffs") seek injunctive and other relief for violations of the CFA. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-8, 56:8-11, 56:8-13 and/or 56:8-19. Venue is proper in Passaic County, pursuant to R. 4:3-2, because it is the county in which Kistruga has conducted business.

5. On April 1, 2011, Kistruga was established as a limited liability company in the State. Upon information and belief, at all relevant times, Kistruga has maintained a business address of 253 McBride Avenue, Paterson, New Jersey 07501. Kistruga's registered agent is Mr. Amir Alzubi, who maintains a mailing address of 253 McBride Avenue, Paterson, New Jersey 07501.

6. John and Jane Does 1 through 10 are fictitious individuals meant to represent the owners, officers, directors, shareholders, founders, managers, agents, servants, employees, and/or representatives of Kistruga who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

7. XYZ Corporations 1 through 20 are fictitious corporations meant to represent any additional corporations who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

**GENERAL ALLEGATIONS COMMON TO ALL COUNTS:**

**A. Tropical Storm Sandy and Executive Order No. 104 Declaring a State of Emergency**

8. In late October 2012, Tropical Storm Sandy was approaching New Jersey.

9. Tropical storms have the potential to cause severe weather conditions, including heavy rains, high winds, main stream and river flooding, and progressing runoff that may threaten homes and other structures, and endanger lives in the State.

10. On October 27, 2012, at approximately 11:30 a.m., due to the approach of Tropical Storm Sandy, Governor Christie issued Executive Order No. 104, which immediately declared a State of Emergency in New Jersey (“State of Emergency”).

11. Upon information and belief, on October 28, 2012, President Obama signed an emergency disaster declaration for New Jersey.

12. Upon information and belief, Governor Christie ordered the evacuation of all New Jersey barrier islands by 4:00 p.m. on October 28, 2012.

13. Upon information and belief, on October 29, 2012, Tropical Storm Sandy made landfall in New Jersey and resulted in severe weather conditions of an unprecedented magnitude, including enormous storm surges, devastating winds and widespread flooding throughout the State.

14. Upon information and belief, while moving ashore at Atlantic City, Tropical Storm Sandy brought winds in excess of 80 miles per hour, and heavy rainfall that reached almost 12 inches.

15. Tropical Storm Sandy resulted in severe wind and water damage, among other things, to the New Jersey shoreline, homes and businesses. Residents were forced to evacuate their homes which, in many instances, were completely destroyed.

16. Tropical Storm Sandy produced winds that toppled trees and downed power lines throughout New Jersey, causing widespread power outages that affected at least 2.4 million households and countless businesses.

17. Upon information and belief, at least twenty-three (23) New Jersey residents have died as a result of Tropical Storm Sandy.

18. As a result of the power outages caused by Tropical Storm Sandy, many New Jersey residents resorted to the use of generators that were powered by gasoline.

19. The widespread flooding and power outages forced the closure of motor fuel retailers in the State as well as prevented fuel deliveries to many of those retailers as well as retailers who otherwise could have been open for business. Such resulted in widespread and lingering shortages of motor fuel.

20. This situation left many New Jersey residents without an available source of motor fuel not only for transportation but also for other essential services, such as the operation of generators. Those New Jersey residents who were fortunate enough to find a retailer that was open and had fuel were forced to wait in line for several hours in lines that stretched for blocks.

21. On November 5, 2012, Governor Christie issued Executive Order No. 108 which declared that a limited state of energy emergency with regard to the supply of motor fuel exists in Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Monmouth, Passaic, Somerset, Sussex, Union and Warren Counties and implemented an odd-even gas rationing system.

22. Upon information and belief, deliveries of motor fuel to retailers in the State did not resume until several days following Tropical Storm Sandy.

23. Upon information and belief, there was no appreciable increase in the cost of motor fuel delivered to retailers in the State following Tropical Storm Sandy.

24. The Acting Director served Kistruga with a subpoena demanding the production of documents reflecting any increased costs to justify these price increases to consumers for motor fuel. Notwithstanding its having been given the opportunity to do so, Kistruga has not produced any documents justifying these increases.

**B. Defendant's Business Generally**

25. Upon information and belief, at all relevant times, Defendant has been engaged in the advertisement, offering for sale and/or sale of motor fuel to consumers.

26. At all relevant times, Defendant received deliveries of motor fuel, specifically gasoline and diesel fuel, from suppliers.

27. At all relevant times, Defendant paid its suppliers a per-gallon rate for motor fuel.

28. At all relevant times, Defendant advertised, offered for sale and/or sold motor fuel to consumers at a per-gallon rate higher than the rate paid to its suppliers.

29. At all relevant times, Defendant advertised, offered for sale and/or sold motor fuel at a higher price for credit card purchases compared to cash purchases.

**C. Defendant's Excessive Prices For Regular Gasoline**

30. At all relevant times, Defendant received from its suppliers and advertised, offered for sale and/or sold to consumers unleaded 87 octane gasoline, commonly known as "regular gasoline" ("Regular Gasoline").

31. Shown below is a chart of the relevant prices Defendant paid to its supplier and advertised, offered for sale and/or sold Regular Gasoline to consumers:

<b>Date</b>	<b>Cash Price For Consumers</b>	<b>Credit Card Price For Consumers</b>
October 25, 2012	\$3.449	\$3.569
October 26, 2012	\$3.449	\$3.569
October 27, 2012	\$3.399	\$3.529
October 28, 2012	\$3.399	\$3.529
October 29, 2012	\$3.399	\$3.529
October 30, 2012	\$3.399/\$3.499	\$3.529/\$3.629
October 31, 2012	\$3.499	\$3.629
November 1, 2012	\$5.499	\$5.499

32. Thus, as demonstrated above, Defendant increased the price of gasoline on November 1, 2012, to \$5.499 per gallon (cash or credit), which represents an increase of \$2.05 per gallon, or approximately 59 percent, over the price being charged immediately prior to the Declaration of the State of Emergency on October 26, 2012.

33. Upon information and belief, on November 1, 2012, Defendant made about 230 sales of Regular Gasoline to consumers.

**D. Consumer Complaints As to Defendant**

34. The Division of Consumer Affairs (“DCA”) has received approximately twenty-two consumer complaints regarding excessive prices being charged to consumers for Regular Gasoline. From November 1, 2012 to November 5, 2012, the Division received approximately twenty-seven (27) consumer complaints regarding the prices being charged by defendant. Of these consumers, three (3) specifically stated that they recalled that defendant was charging prices of between \$3.42 to \$3.60 per gallon for Regular Gasoline immediately prior to the storm.

**COUNT I**

**VIOLATION OF THE CFA (N.J.S.A. 56:8-109) BY DEFENDANT  
(EXCESSIVE PRICES DURING EMERGENCIES)**

35. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 34 as if more fully set forth herein.

36. The CFA defines “merchandise” as including “any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale.” N.J.S.A. 56:8-1(c).

37. At all relevant times, Defendant has been engaged in the advertisement, offering for sale and/or sale of merchandise within the meaning of N.J.S.A. 56:8-1(c), specifically motor fuel.

38. The CFA states:

It shall be an unlawful practice for any person to sell or offer to sell during a state of emergency or within 30 days of the termination of a state of emergency, in the area for which the state of emergency has been declared, any merchandise which is consumed or used as a direct result of an emergency or which is consumed or used to preserve, protect, or sustain the life, health, safety or comfort of person or their property for a price that constitutes an excessive price increase.

[N.J.S.A. 56:8-109.]

39. At all relevant times, Defendant has been engaged in the advertisement, offering for sale and/or sale of merchandise consumed or used as a direct result of an emergency and/or which is consumed or used to preserve, protect, or sustain the life, health, safety or comfort of person or their property within the meaning of N.J.S.A. 56:8-109, specifically motor fuel.

40. An “excessive price increase” means:



A price that is excessive as compared to the price at which the consumer good or service was sold or offered for sale by the seller in the usual course of business immediately prior to the state of emergency. A price shall be deemed excessive if:

(1) The price exceeds by more than 10 percent the price at which the good or service was sold or offered for sale by the seller in the usual course of business immediately prior to the state of emergency, unless the price charged by the seller is attributable to additional costs imposed by the seller's supplier or other costs of providing the good or service during the state of emergency.

(2) In situations where the increase in price is attributable to additional costs imposed by the seller's supplier or additional costs of providing the good or services during the state of emergency, the price presents an increase of more than 10 percent in the amount of markup from cost, compared to the markup customarily applied by the seller in the usual course of business immediately prior to the state of emergency.

[N.J.S.A. 56:8-108]

41. On November 1, 2012, after Sandy made landfall in New Jersey and within thirty (30) days after the State of Emergency had been declared, Defendant sold Regular Gasoline, at prices more than 10 percent higher than on October 26, 2012, immediately prior to the State of Emergency, which constitutes an excessive price increase.

42. By offering for sale and/or selling motor fuel, specifically Regular Gasoline on November 1, 2012, at prices constituting an excessive price increase compared to Defendant's prices on October 26, 2012, immediately prior to the State of Emergency, Defendant has engaged in unlawful practices in violation of the CFA, specifically N.J.S.A. 56:8-109.

43. Each instance of Defendant offering for sale and/or selling motor fuel at a price constituting an excessive price increase constitutes a separate violation of the CFA, N.J.S.A. 56:8-109.

## COUNT II

### **VIOLATION OF THE CFA BY DEFENDANT (UNCONSCIONABLE COMMERCIAL PRACTICES)**

44. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 34 as if more fully set forth herein.

45. The CFA prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby...

[N.J.S.A. 56:8-2.]

46. In the operation of its business, Defendant has engaged in the use of unconscionable commercial practices.

47. Defendant has engaged in unconscionable commercial practices including, but not limited to, the following:

- a. Advertising, offering for sale and/or selling motor fuel, specifically Regular Gasoline on November 1, 2012, at prices constituting an excessive price increase compared to Defendant's prices on October 31, 2012, immediately prior to the State of Emergency.

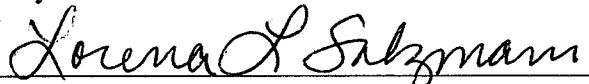
48. Each unconscionable commercial practice by Defendant constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

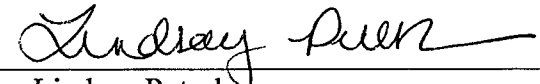
**PRAYER FOR RELIEF**

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment against Defendant:

- (a) Finding that the acts of Defendant constitute multiple violations of the CFA;
- (b) Permanently enjoining Defendant, along with its agents, employees, representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under his control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA;
- (c) Directing Defendant to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (d) Directing Defendant to pay the maximum statutory civil penalties for each violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (e) Directing Defendant to pay costs and fees, including attorneys' fees, for the use of the State, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (f) Granting such other relief as the interests of justice may require.

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
Lorena Salzmam  
Deputy Attorney General

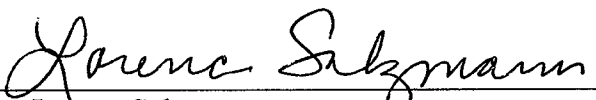
By:   
Lindsay Puteska  
Deputy Attorney General

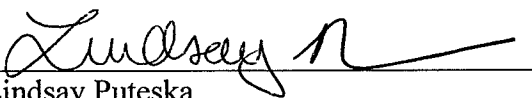
Dated: November 8, 2012

**RULE 4:5-1 CERTIFICATION**

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the CFA, is not the subject of any other action pending in any other court of this State. I am aware that the following private action has been commenced against Amir Alzubi, Lukoil Auto Repair: Prime Uniform Supply v. Amir Alzubi, Lukoil Auto Repair, Superior Court of New Jersey, Bergen County, Special Civil Part, Docket No. DC02101010. I further certify, to the best of my information and belief, that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
Lorena Salzmann  
Deputy Attorney General

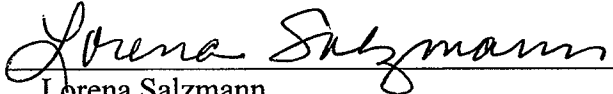
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Lindsay Puteska  
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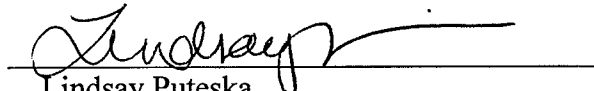
Dated: November 8, 2012

**RULE 1:38-7(c) CERTIFICATION OF COMPLIANCE**

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
Lorena Salzmänn  
Deputy Attorney General

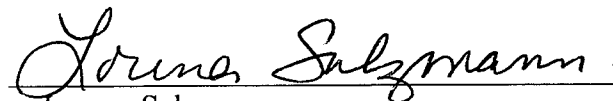
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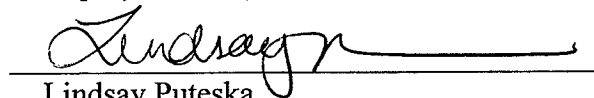
Dated: November 8, 2012

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Deputy Attorneys General Lorena Salzmänn and Lindsay Puteska are hereby designated as trial counsel for the Plaintiffs in this action.

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
Lorena Salzmänn  
Deputy Attorney General

By:   
Lindsay Puteska  
Deputy Attorney General

Dated: November 8, 2012