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JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for Plaintiffs

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MERCER COUNTY
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MAY 23 2014
CIVIL CASE MANAGEMENT

MAY 23 2014

By: Cathleen O'Donnell
Deputy Attorney General
Consumer Fraud Prosecution
[REDACTED]

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DEPUTY CLERK OF SUPERIOR COURT

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MERCER COUNTY
DOCKET NO. MER-C- 32 -14

JOHN J. HOFFMAN, Acting Attorney General of the State of New Jersey, THE NEW JERSEY BOARD OF PUBLIC UTILITIES, and STEVE C. LEE, Acting Director of the New Jersey Division of Consumer Affairs,

Civil Action

Plaintiffs,

v.

HIKO ENERGY, LLC, JANE AND JOHN DOES 1-20, individually and as owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of HIKO ENERGY, LLC, and XYZ CORPORATIONS 1-10,

COMPLAINT

Defendant.

Plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey ("Attorney General"), with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, the New Jersey Board of Public Utilities, with offices located at 44 South Clinton Avenue, Trenton, New Jersey 08625 ("BPU" or "Board"), and Steve C. Lee, 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. At all relevant times, HIKO Energy, LLC (“HIKO Energy” and/or “Defendant”) has been licensed by BPU as a third party supplier (“TPS”) of electric power and of natural gas in the State of New Jersey (“New Jersey” or “State”).

2. In this cost-conscious time, where consumers’ budgets are stretched to the max, any reduction they can obtain in their utility bills, an expense that cannot be eliminated, but only managed, can provide valuable financial relief for cash-strapped consumers. It is not surprising therefore, that when an energy supplier promises significant monthly savings, consumers jump at the opportunity.

3. HIKO Energy made just such promises. In aggressive door-to-door and telephone solicitations, HIKO Energy guaranteed consumers monthly savings of up to 10% for the first six months on their monthly electric and gas bills. HIKO Energy even put the guarantee in writing, including it in their contracts and their “welcome to HIKO Energy letters.” But instead of realizing the promised monthly savings, consumers saw their bills steadily skyrocket. HIKO Energy also signed up consumers without the proper authorization. After increasing consumers’ bills, HIKO Energy failed to respond to consumer complaints and inquiries, virtually providing no way for consumers to cancel their contracts in a timely manner and to stop the exorbitant billing.

4. BPU has received approximately three hundred forty-eight (348) consumer complaints concerning HIKO Energy from September 5, 2013 to April 7, 2014, while the New Jersey Division of Consumer Affairs (“Division”) has received complaints from forty-one (41) consumers. In addition, the New Jersey Better Business Bureau (“BBB”) has forwarded to the

Division one hundred and fifty-five (155) consumer complaints that it received from September 1, 2013 to May 5, 2014. Generally, consumers complained that: (1) they were guaranteed a certain percentage of savings, for the first six months, over the pricing they paid their current energy supplier or local distribution company (“LDC”) and that, after they switched to HIKO Energy, their bills skyrocketed; (2) they did not authorize a switch to HIKO Energy or only authorized a switch for electric generation service, but were also switched for gas supply as well; and (3) they could not contact anyone at HIKO Energy to inquire as to their bills or cancellation.

5. Defendant’s conduct constitutes multiple violations of the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. (“EDECA”), the Regulations Governing Energy Licensing and Registration, N.J.A.C. 14:4-5.1 et seq. (“Energy Licensing and Registration Regulations”), Regulations Governing Retail Choice Consumer Protection, N.J.A.C. 14:4-7.1 et seq. (“Retail Choice Consumer Protection Regulations”), the Regulations Governing Energy Anti-Slamming, N.J.A.C. 14:4-2.1 et seq. (“Energy Anti-Slamming Regulations”), the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq. (“Advertising Regulations”), as well as the Plain Language Act, N.J.S.A. 56:12-1 et seq. (“PLA”). The Attorney General, Director and BPU submit this Complaint to halt Defendant’s deceptive business practices, to seek adherence to the applicable law, and to prevent consumers from suffering further monetary harm.

PARTIES AND JURISDICTION

6. The Attorney General, pursuant to N.J.S.A. 52:17A-4, is charged with the responsibility of enforcing the CFA, N.J.S.A. 56:8-1 et seq., and all regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq. (“CFA Regulations”). The Director, pursuant to N.J.S.A. 52:17B-124, is charged with the responsibility of administering the CFA and the CFA Regulations

on behalf of the Attorney General.

7. BPU, pursuant to N.J.S.A. 48:2-13, has been granted general supervision and regulation of and jurisdiction and control over all public utilities, including electric and gas utilities that operate within New Jersey, as well as their property, property rights, equipment, facilities and franchises.

8. Pursuant to the EDECA, N.J.S.A. 48:3-49 et seq., specifically N.J.S.A. 48:3-56, 48:3-78 and 48:3-79, BPU has authority and jurisdiction over electric power suppliers and gas power suppliers. Among other things, BPU licenses electric power suppliers and gas power suppliers. N.J.S.A. 43:3-78 and N.J.S.A. 43:3-79.

9. The EDECA defines “electric power supplier” as “a person or entity that is duly licensed pursuant to the provisions of [the EDECA] to offer and to assume the contractual and legal responsibility to provide electric generation service to retail customers” N.J.S.A. 48:3-51. The EDECA further defines “electric generation service” as “the provision of retail electric energy and capacity which is generated off-site from the location at which the consumption of such electric energy and capacity is metered for retail billing purposes, including agreements and arrangements related thereto.” N.J.S.A. 48:3-51.

10. The EDECA defines “gas supplier” as “a person that is duly licensed pursuant to the provisions of [the EDECA] to offer and assume the contractual and legal obligation to provide gas supply service to retail customers” N.J.S.A. 48:3-51. The EDECA further defines “gas supply service” as “the provision to customers of the retail commodity of gas” N.J.S.A. 48:3-51.

11. By this action, the Attorney General, Director and BPU (collectively, “Plaintiffs”) seek injunctive relief and other relief for violations of the EDECA, the Energy Licensing and Registration Regulations, the Retail Choice Consumer Protection Regulations, the Energy Anti-

Slamming Regulations, the CFA, the Advertising Regulations and the PLA. Plaintiffs bring this action pursuant to their authority under the EDECA, specifically N.J.S.A. 48:3-82, 48:3-83, 48:3-84 and 48:3-86, and the CFA, specifically N.J.S.A. 56:8-8, 56:8-11, 56:8-13 and 56:8-19. Venue is proper in Mercer County, pursuant to R. 4:3-2(b), because it is a county in which the Defendant has conducted business.

12. HIKO Energy is a limited liability company established in the State of New York on January 14, 2010. At all relevant times, HIKO Energy has maintained a principal business address of 12 College Road, Monsey, New York 10952.

13. HIKO Energy registered as a foreign limited liability company in New Jersey on December 23, 2010, providing a main business address of [REDACTED] Teaneck, New Jersey 07666.

14. Upon information and belief, 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 HIKO Energy 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.

15. Upon information and belief, XYZ Corporations 1 through 10 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

16. At all relevant times, HIKO Energy has advertised, marketed, offered for sale and sold electric generation service to retail customers in New Jersey.

17. At all relevant times, HIKO Energy has advertised, marketed, offered for sale and sold gas supply service to retail customers in New Jersey.

18. Upon information and belief, during the period of HIKO Energy's most aggressive sales solicitations, April 2013 to November 2013, its client base in New Jersey steadily rose from approximately 7,017 to approximately 38,183 consumers.

19. Upon information and belief, after consumers experienced HIKO Energy's exorbitant prices for electric generation and/or gas supply services, they requested to be switched back to their previous LDC. During the period of December 2013 to May 2014, HIKO Energy's New Jersey client base steadily decreased to its current level.

20. As of May 13, 2014, HIKO Energy supplies energy to approximately 15,249 residential customers in the State: 7,572 electric generation customers; and 7,677 gas supply customers.

21. At all relevant times, HIKO Energy has maintained a website located at www.hikoenergy.com ("HIKO Website").

22. At all relevant times, HIKO Energy offered electric generation and/or gas supply service in the territories covered by Public Service Electric and Gas Company ("PSE&G"), Rockland Electric Company, New Jersey Natural Gas Company, Jersey Central Power and Light Company, Atlantic City Electric Company, Elizabethtown Gas Company and South Jersey Gas Company.

A. Licensing of Defendant with BPU:

23. On or about March 10, 2011, Defendant submitted an initial application to BPU for a New Jersey Gas Supplier license and for a New Jersey Electric Power Supplier license ("Initial Application"). As part of the Initial Application, Boruch Gottesman, the Managing Member of

Defendant, provided a signed Certification Under Oath which provided, among other things, that “I hereby certify that the Licensee agrees to comply with all standards, rules and regulations applicable to this license and to meet all reliability standards in accordance with N.J.S.A. 48:3-78 (Section 29c(2) of the Act), or as may be established by any applicable regulatory authority.”

24. In its initial application for registration, HIKO Energy identified its New Jersey office address of [REDACTED] Teaneck, New Jersey 07666 (“Teaneck Address”).

25. At all relevant times, the Teaneck Address has been a private, single-family home in a residential neighborhood. Upon information and belief, the home located at the Teaneck Address it is owned by Chaim Gottesman. Upon information and belief, Chaim Gottesman is a relative of Boruch Gottesman.

26. The initial application also lists Chaim Gottesman as HIKO Energy’s Registered Agent and the in-state customer service representative with a location at the Teaneck Address.

27. On July 14, 2011, BPU issued Electric Supplier License No. ESL-0107 and Gas Supplier License No. GSL-0107 to HIKO Energy. The initial licensure was valid for the period of July 14, 2011 through July 12, 2012.

28. HIKO Energy subsequently submitted two renewal applications and the BPU renewed both licenses, with the last renewal granted March 20, 2013 through March 19, 2014.

29. On or about May 13, 2014, (“May 2014 Renewal”) HIKO Energy applied for a renewal of its licenses, which is currently pending before the Board.

30. The May 2014 Renewal provides for an unnamed Registered Agent at 1 Trade Plaza, Hackensack, New Jersey 07601.

B. Defendant’s Marketing and Sale of Gas Supply Service and Electric Generation Service Generally:

31. Commencing on or about December 2011, Defendant advertised, marketed, offered

for sale and sold electric generation and gas supply services to consumers in the State through door-to-door solicitations (“Door-to-Door Solicitations”), telephone solicitations (“Telephone Solicitations”) and the HIKO Website.

32. At all relevant times, Defendant has advertised and offered electric generation service and gas supply service for sale to consumers in the State through the HIKO Website.

33. The homepage of the HIKO Website states:

HIKO Energy, LLC is committed to lowering the cost for energy consumers in all markets we serve. As a local, independent supplier, we understand the needs of both residents and businesses within our greater community. . . . we strive to offer the most competitive pricing in the marketplace. Our goal is to provide excellent customer service and a tailored cost savings plan that’s right for each person or need.

By keeping a close eye on markets and trends and strategically purchasing energy on your behalf, we work to ensure more money stays where it belongs – in your pocket.

. . . . Call or click above to see what options we can offer. It’s a great first step in making your energy bills more manageable.

34. The homepage of the HIKO Website includes a tab/link to an “About Us” section, which if accessed, includes the following:

. . . . HIKO Energy LLC is dedicated to providing energy consumers with not only their gas and electric needs, but the confidence and security that their supplier is there for them and ready to respond to their needs.

35. As of at least May 2013, the homepage of the HIKO Website included a tab/link to a “Residential” section, which if accessed, included the following:

THE HIKO ADVANTAGE We believe business should be about people. You deserve to be treated with respect, courtesy, and trust.

We offer full-service convenience, manage your energy needs & also offer various plans to lower electric bill, lower gas bill and reduce utility bill of our customers.

With HIKO you will still get:

- Superior customer service.

36. As of at least March 2014, the second paragraph on the “Residential” section, of the HIKO Website contained the following modification:

We offer full-service convenience, manage your energy needs, and also offer various variable rate plans for our customers.

37. On the Residential page of the HIKO Website is a dialogue box which states:

Energy Choice 101:
What Am I Choosing?
[click here](#)

If the consumer accesses the “click here” link, it takes the consumer to a page which states in relevant part:

. . . . Because we want your business, we have the greatest incentive to procure your gas and electricity at the best prices.

. . . . HIKO Energy works in partnership with your local utility, so if you have electric or gas service now, you will enjoy that same reliable service when HIKO is your provider.

38. The homepage of the HIKO Website includes a tab/link to a section entitled “Sign Up Now.” When the consumer clicks on this link, a series of boxes appears for the consumer to put in pertinent information such as name, address, current electric generation and/or gas supplier, and account number. There is also a box for the consumer to check that he has read the terms and conditions and a corresponding link. If a consumer clicks on the link, it links the consumer to the “New York Terms and Conditions.” There is also a box to check that the consumer has read the consumer bill of rights and a corresponding link. If the consumer clicks on link, it links the consumer to the “New York Consumer Bill of Rights.”

39. At all relevant times, the HIKO Website has contained a tab entitled “Terms and Conditions.” If the consumer clicks on this tab, it lists terms and conditions for several states,

including New Jersey. At varying times, the "New Jersey Terms and Conditions" has listed HIKO Energy's address as 1 University Plaza, Suite 507, Hackensack New Jersey 07601 ("Hackensack Address") or 12 College Road, Monsey, New York 10952 ("Monsey Address").

40. At all relevant times, the HIKO Website did not include a reference to HIKO Energy's Electric Supplier License or Gas Supplier License.

41. At all relevant times, the HIKO Website did not include a list of LDC(s) in whose service territories it was offering electric generation and/or gas supplier services.

42. At all relevant times, the HIKO Website did not include a statement as to whether or not HIKO Energy offers budget billing.

43. At all relevant times, the HIKO Website did not include any pricing information,

44. At all relevant times, the HIKO Website did not include a statement that switching to a competitive TPS is not mandatory and that the customer has the option to remain with the LDC for basic generation service or basic gas supply service.

**C. Defendant's Contracts and Other Documents
For Electric Generation and Gas Supply Services:**

HIKO Contract:

45. At all relevant times, Defendant required consumers in Door-to-Door Solicitations, to enter into an agreement for electric generation and/or natural gas supply service entitled "Third Party Supplier ("TPS") NJ Electric Generation and Natural Gas Supply Agreement and Authorization" ("HIKO Contract"). The HIKO Contract is a legal-sized document with text on both the front and back.

46. At all relevant times, there were three (3) different versions of the HIKO Contract. At varying times, one version of the HIKO Contract did not list any guaranteed savings on the first page.

47. At varying times, a second version of the HIKO Contract contained a guaranteed 10% savings and stated on the first page:

HIKO ENERGY GUARANTEED 10% SAVINGS

HIKO will be 10% lower than the utility's price for the first six months of service. Afterwards, it will be rolled onto a competitive, monthly variable rate.

48. At varying times, a third version of the HIKO Contract contained a guaranteed 1-7% savings and stated on the first page:

HIKO ENERGY GUARANTEED SAVINGS

HIKO will be 1-7% lower than the utility's price for the first six months of service. Afterwards, it will be rolled onto a competitive, monthly variable rate. After receiving twelve consecutive months of service from HIKO, you will be eligible for one FREE month of service. See Welcome Packet for details.

49. At all relevant times, the three versions of the HIKO Contract provided for a monthly duration of the contract and provided as follows:

2. **Term.** This Agreement shall commence after the date of Customer's notice regarding the change of TPS is deemed effective by the LDC, and shall continue monthly thereafter. HIKO will provide notice to Customer at least 30 days prior to the end of the term of this Agreement of the date upon which the term of this Agreement will end. This Agreement will automatically renew on a month-to-month basis at the same terms, unless HIKO sends Customer written notice of proposed changes to such terms in advance of the renewal date. . . .

50. At all relevant times, the three versions of the HIKO Contract provided the following statement as to electric generation and/or gas supply price:

3. **Pricing, Billing, and Termination.** Unless otherwise agreed to in writing, the price for all electricity sold under this Agreement shall be [] Variable Rate per kWh which shall each month change and reflect the wholesale cost of electricity (including capacity, energy, balancing, settlement, ancillaries), transmission and distribution charges, and other market-related factors, plus all sales and other applicable taxes, fees, charges or other assessments and HIKO's costs, expenses and margins; or a [] Fixed Rate per kwh as set forth on first page which includes sales and other

applicable taxes. Unless otherwise agreed to in writing, the price each month maybe lower or higher than the LDC Price.

Unless otherwise agreed to in writing, the price for all gas sold under this Agreement shall be [] Variable Rate per therm which shall each month change and reflect the wholesale cost of natural gas (including commodity, capacity, storage and balancing), transportation to the Delivery Point, and other market-related factors, plus all sales and other applicable taxes, fees, charges or other assessments and HIKO's costs, expenses and margins; or a [] NYMEX plus \$ ___ adder that varies each month; or [] a Fixed Rate per therm as set forth on first page which includes sales and other applicable taxes. Unless otherwise agreed to in writing, the price each month maybe lower or higher than the LDC Price. . . .

51. At all relevant times, the three versions of the HIKO Contract provided for a minimum seven-day right of rescission, and provided as follows:

7. **Residential Customer Rights.** Customer will receive a confirmation notice of its choice of TPS, and Customer will have 7 calendar days from the date of such confirmation notice to contact the LDC and rescind its selection. This Agreement shall not be effective upon the residential Customer until the 7-day confirmation period has expired,

52. At all relevant times, the three versions of the HIKO Contract limited a consumer's remedies in any legal action and provided as follows:

12. **Liability.** The remedy in any claim or suit by Customer against HIKO will be solely limited to direct actual damages (which will not exceed the amount of Customer's single largest monthly invoice amount in the immediately preceding 12 months). All other remedies at law or in equity are hereby waived. In no event will either HIKO or Customer be liable for consequential, incidental, indirect, special or punitive damages. These limitations apply without regard to the cause of any liability damages. . . .

53. At all relevant times, the three versions of the HIKO Contract listed its New Jersey business address as the Teaneck Address and provided as follows:

13. **HIKO Contact Information.** Customer may contact HIKO Customer Service Center at 1.888.264.4908, Monday through Friday 8:00 a.m. – 6:30 p.m. EST (contact center hours subject to change). Customer may write to HIKO at: HIKO, 655 Suffern Road Teaneck, N.J. 07666.

54. At all relevant times, the three versions of the HIKO Contract provided for a dispute

resolution process which required, among other things, that HIKO Energy respond to complaining consumer's within ten (10) days of the receipt of the complaint, and provided as follows:

14. **Dispute Resolution.** In the event of a billing dispute or a disagreement involving HIKO's service hereunder, the parties will use their best efforts to resolve the dispute. Customer should contact HIKO by telephone or in writing as provided above. When HIKO receives a customer complaint or inquiry via call center, email or regular mail, the representative will make a record of the complaint and apply a case number or other identifying feature. The representative will investigate the substance of the complaint or inquiry and provide a response to the customer within ten (10) days of receipt of the complaint or inquiry. If the customer is not satisfied with the resolution presented by the call center representative, the representative will raise the complaint or inquiry with a supervisor, who will review the matter and respond to the customer within five (5) business days. If the Customer is not satisfied with the HIKO response, HIKO will advise the Customer that the Customer can contact the Board at 1.800.624.0421, to request an alternate dispute resolution procedure or file a formal complaint. Upon receipt of a complaint forward by the Board or other governmental agency, HIKO will respond within ten (10) days and in accordance with the direction provided by the Commission or other agency. Customer must pay the bill in full, except for the specific disputed amount, during the pendency of the dispute, and such payment shall be refunded if warranted by the final resolution of the complaint.

55. At all relevant times, the three versions of the HIKO Contract provided a Choice of Law provision which requires the application of New York law, and provided as follows:

15. **Choice of Laws.** Venue for any lawsuit brought to enforce any term or condition of this Agreement or to construe the terms hereof shall lie exclusively in the State of New York. This Agreement shall be construed under and shall be governed by the laws of the State of New York without regard to the application of its conflicts of law principles.

56. Among other things, the HIKO Contract provided a "check off" box for either a Gas Pricing Plan or an Electric Pricing Plan, each of which had additional check off boxes for a monthly variable rate or fixed rate. Several provisions of the HIKO Contract contain references to a "fixed rate" plan including duration, billing and termination provisions that differ between variable and fixed rate plans.

57. Upon information and belief, HIKO Energy does not offer fixed rate plans for either electric generation service or gas supply services.

Terms and Conditions:

58. At all relevant times, consumers who were solicited door-to-door or over the telephone were also sent in the mail a four-page document entitled “New Jersey Terms and Conditions” (“Terms and Conditions”). At the top of the first page is a “Customer Disclosure Statement” that reads in relevant part:

PRICE	VARIABLE
How variable price is determined.	<p>Gas Variable Price shall reflect each month the wholesale cost of natural gas (including commodity, capacity, storage and balancing), transportation to the Delivery Point, and other market-related factors, plus all applicable taxes, fees, charges or other assessments and HIKO’s costs, expenses and margins.</p> <p>Electric Variable Price shall each month reflect the cost of electricity obtained from all sources (including energy, capacity, settlement, ancillaries), related transmission and distribution charges and other market-related factors, plus all applicable taxes, fees, charges or other assessments and HIKO’s costs, expenses and margins.</p>
Length of Agreement and end date.	1 month. For more details, see section 2-Term.
Process customer may use to rescind the agreement without penalty.	A residential customer may rescind by calling toll-free number within 3 business days of receipt of the sales agreement.
Provisions for renewal of agreement.	After initial term, unless otherwise agreed to, renews on a month to month basis until terminated by either party. For more details, see section 2-Term.

59. Following the Customer Disclosure Statement is a section entitled “NJ ELECTRIC SUPPLY AGREEMENT” which contains nineteen (19) numbered paragraphs. A section entitled “NJ NATURAL GAS SUPPLY AGREEMENT” which also contains nineteen (19) similar paragraphs, follows. There are internal inconsistencies within the Terms and Conditions, as well as slight differences between the language in the Terms and Conditions and the HIKO Contract.

60. For example, the HIKO Contract lists the term as “monthly,” while the chart above lists the term as 1 month, but also references an “initial term” which is described later in the Terms

and Conditions as follows:

2. **Term.** This Agreement shall commence after the date of Customer's notice regarding the change of TPS is deemed effective by the LDC, and shall continue for 12 months thereafter (the "Initial Term"). HIKO will provide notice to Customer at least 30 days prior to the end of the term of this Agreement of the date upon which the term of this Agreement will end. Upon completion of the Initial Terms, this Agreement will automatically renew on a month-to-month basis at the same terms, unless HIKO sends Customer written notice of proposed changes to such terms in advance of the renewal date. . . .

61. The HIKO Contract provides consumers with a minimum of seven (7) days from receipt of a change notice from their current energy supplier to rescind. The Customer Disclosure Statement, however, provides the consumer with three (3) business days to rescind the agreement. Moreover, while a later provision in the Terms and Conditions state:

7. **Residential Customer Rights.** Customer will receive a confirmation notice of its choice of TPS, and Customer will have 14 calendar days from the date of such confirmation notice to contact the LDC and rescind its selection. This Agreement shall not be effective upon the residential Customer until the 14-day confirmation period has expired,

62. The first paragraph of both the NJ ELECTRIC SUPPLY AGREEMENT and the NATURAL GAS SUPPLY AGREEMENT within the Terms and Conditions states: "This is an agreement between HIKO Energy, LLC . . . and the undersigned customer. . . .", but there is no signature block on any of the four (4) pages of the Terms and Conditions.

63. Within the NJ ELECTRIC SUPPLY AGREEMENT section, there are references to gas supply service. For example:

3. **Pricing, Billing, and Termination.** Unless otherwise agreed to in writing, the price for all gas supply sold under this Agreement shall be [] Variable Rate per kWh which shall each month change and reflect the wholesale cost of electricity (including capacity, energy, balancing, settlement, ancillaries), transmission and distribution charges, and other market-related factors, plus all sales and other applicable taxes, fees, charges or other assessments and HIKO's costs, expenses and margins; or a [] fixed price of _____ per kWh, plus, in each case, all applicable taxes.

64. The Terms and Conditions also contain provisions similar to those in the HIKO Contract including, but not limited to, Liability, Dispute Resolution and Choice of Law.

65. At varying times, the Terms and Conditions listed HIKO Energy's address as the Teaneck Address or the Hackensack Address.

Welcome Letter:

66. In addition to the HIKO Contract, consumers who were solicited door-to-door and those who were solicited over the telephone were also sent in the mail a Welcome Letter. One version of the Welcome Letter did not contain a pricing guarantee.

67. A second version of the Welcome Letter stated:

Here are some of the perks and details about the rate and offer you've chosen:

- **Guaranteed Savings!** You have been enrolled onto a variable rate, which is guaranteed to be 1-7% less than your local Utility's price to compare, for the first six monthly billing cycles. After the six-month introductory rate plan, you will be automatically rolled over onto a competitive variable rate, which will be determined by HIKO Energy, based on numerous key factors, including current market conditions and climate. The variable rate can change regularly.
- **Free Month of Energy Supply!** After being with HIKO Energy for twelve monthly billing cycles, please send in any one of those twelve bills, and HIKO will send you a check for the supply portion of it!

68. Upon information and belief, some consumers who signed a HIKO Contract that included a Six Months Savings Guarantee, received a Welcome Letter that referenced only a variable rate plan and did not contain the guarantee language.

69. Upon information and belief, HIKO Energy failed to provide some consumers who switched to HIKO Energy copies of all relevant documents.

D. Defendant's Aggressive Sales Tactics:

Door-to-Door Solicitation:

70. At all relevant times, Defendant has advertised and otherwise offered electric generation and/or gas supply services for sale to consumers in the State through Door-to-Door Solicitations.

71. Upon information and belief, in some Door-to-Door Solicitations, HIKO Energy sales representatives led consumers to believe that they were in some way affiliated with or working on behalf of, PSE&G, including, but not limited to: (a) telling consumers that they were from PSE&G; (b) telling consumers that PSE&G was switching its gas supplier, which was located in Texas, to a local supplier in Teaneck (i.e., HIKO Energy) to save consumers money and that the representative was there to facilitate the change; (c) wearing, in at least one instance, a PSE&G company sticker on a HIKO Energy identification badge; and (d) stating that they were there to correct a PSE&G billing error and assist in obtaining a refund.

72. Upon information and belief, in at least one instance, a HIKO Energy sales representative told a college student, who was living in a house with multiple students, that the house's "lines" had crossed with their neighbors' and that they were paying their neighbors' utility bill. The sales representative then asked to see the student's bill, confirmed the overcharge and said that he was there to straighten out the billing error, but while he was fixing the error, suggested a way to save additional money.

73. Upon information and belief, HIKO Energy sales representatives convinced persons other than the named customer on the account or a person authorized to make decisions on the account to sign the HIKO Contract to authorize the switch.

74. Upon information and belief, HIKO Energy sales representatives promised consumers

that by switching to HIKO Energy, the consumers would enjoy guaranteed savings over their current energy suppliers' rates. This guarantee took several forms, including: (a) a 10% guaranteed rate reduction for the first six (6) months of the contract; (b) a 1-7% guaranteed rate reduction for the first six (6) months of the contract, and one month free after twelve (12) months of service (collectively, "First Six Months Savings Guarantee"); and (c) various other percentage savings including 15%, 20% and 25% over the course of a contract ("Lower Prices Guarantee").

75. Upon information and belief, HIKO Energy sales representatives told consumers that, after the First Six Months Savings Guarantee was completed, the consumers would be moved into a competitive, monthly variable rate plan.

76. Upon information and belief, consumers who questioned the variable rate plan were assured by HIKO Energy sales representatives that, after the First Six Months Savings Guarantee was completed, their rates would either remain below what they were paying their current energy supplier, or be equal to, but never more than what they were paying their current supplier.

77. For those consumers who were promised savings pursuant to the First Six Months Savings Guarantee, HIKO Energy sales representative used HIKO Contracts that contained the First Six Months Savings Guarantee.

78. Upon information and belief, consumers who were verbally offered a Lower Prices Guarantee, were told by HIKO Energy sales representatives that their rates would either remain below what they were paying their current energy supplier, or be equal to, but never more than what they were paying their current supplier.

79. For those consumers who were promised a Lower Prices Guarantee, HIKO Energy sales representatives used HIKO Contracts that did not contain any guarantee language.

80. Upon information and belief, HIKO Energy sales representatives failed to adequately

explain that consumers were signing up for and/or the consequences of a variable rate plan.

81. Upon information and belief, HIKO Energy sales representatives failed to adequately explain to consumers that they would continue to receive billing charges from PSE&G.

82. Upon information and belief, HIKO Energy sales representatives told consumers that they could “opt out” or cancel the HIKO Contract at any time, but failed to inform consumers that it would take between 30 and 60 days or one to two billing cycles, to actually end the charges from HIKO Energy and switch back to their previous electric and or gas supplier.

83. Upon information and belief, at all relevant times, consumers in Door-to-Door Solicitations who chose to switch their electric generation and/or gas supply service to HIKO Energy, signed a HIKO Contract. Thereafter, the HIKO Energy sales representative would place a verification call to conduct a recorded authorization wherein the consumer would verify pertinent information such as name, address, current energy provider, account number and that the consumer agreed to switch to HIKO Energy.

84. Upon information and belief, at varying times, the Six Months Savings Guarantee was stated in the verification call.

85. Upon information and belief, HIKO Energy sales representatives often instructed consumers to just “answer yes” to all of the questions.

86. Upon information and belief, weeks after this HIKO Contract was signed, the consumer received in the mail the Terms and Conditions, a Welcome Letter, a NJ Bill of Consumer Rights statement, and a letter describing the one month free program, if applicable.

87. Upon information and belief, HIKO Energy failed to provide some consumers who switched to HIKO Energy copies of all relevant documents.

Telephone Solicitations:

88. At all relevant times, Defendant has advertised and otherwise offered electric generation and/or gas supply service for sale to consumers in the State through Telephone Solicitations.

89. Upon information and belief, HIKO Energy sales representatives convinced persons other than the named customer on the account or a person authorized to make decisions on the account to sign the HIKO Contract to authorize the switch.

90. Upon information and belief, during Telephone Solicitations, HIKO Energy sales representatives promised consumers that by switching to HIKO Energy, the consumers would enjoy guaranteed savings over their current energy suppliers' rates, including the Lower Prices Guarantee.

91. Upon information and belief, consumers who questioned the variable rate plan were assured by HIKO Energy sales representatives that their rates would either remain below what they were paying their current energy supplier, or be equal to, but never more than what they were paying their current supplier.

92. Upon information and belief, during Telephone Solicitations, HIKO Energy sales representatives did not adequately explain to consumers that they were signing up for and/or the consequences of a variable rate plan.

93. Upon information and belief, during Telephone Solicitations, HIKO Energy sales representatives did not adequately explain to consumers that they would continue to receive billing charges from PSE&G.

94. Upon information and belief, during Telephone Solicitations, HIKO Energy sales representatives told consumers that they could "opt out" or cancel the HIKO Contract at any time, but failed to inform consumers that it would take between 30 and 60 days or one to two billing

cycles, to actually end the charges from HIKO Energy and switch back to their previous electric and/or gas supplier.

95. Upon information and belief, at all relevant times, consumers who received a Telephone Solicitation and who chose to switch their electric generation and/or gas supply service to HIKO Energy, verified their switch to HIKO Energy verbally during the call.

96. Upon information and belief, weeks after this call, the consumer received in the mail the Terms and Conditions, a Welcome Letter, and a NJ Bill of Consumer Rights statement.

97. Upon information and belief, HIKO Energy failed to provide some consumers with copies of all relevant documents.

E. Defendant's Switching Consumers to HIKO Energy Without Proper Authorization:

98. Upon information and belief, HIKO Energy switched some consumers to HIKO Energy electric generation service and/or gas supply service without their knowledge or authorization.

99. Upon information and belief, in at least three (3) instances, consumers began receiving charges for HIKO Energy on their utility bill without any knowledge of the company. Upon information and belief, when these consumers complained to HIKO Energy, the company could either not produce a signed HIKO Contract, or produced a HIKO Contract with a signature that did not belong to the consumer.

100. Upon information and belief, HIKO Energy had authorization to switch some consumers' electric supply from their current LDC to HIKO Energy, and then at some later date, also switched the consumers' to HIKO Energy's gas supply service without additional authorization.

101. Upon information and belief, HIKO Energy obtained permission from persons other than the account holder to switch the account holders' electric and/or gas supply service to HIKO

Energy (i.e., an account holder's boyfriend, and a long-term guest in an account-holder's home.)

F. Consumer Experience with Defendant's Pricing, Customer Service and Cancellation:

102. Upon information and belief, the vast majority of consumers who contracted with HIKO Energy saw an immediate increase in the price they paid their LDC for electric and/or gas supply, typically during the first month, but at least during the First Six Months Savings Guarantee. These prices continued to escalate and consumers experienced double, triple and, in some cases, almost quadruple the costs of electric and/or gas supply compared to what they had been paying to their previous supplier.

103. During the months between December 2013 and February 2014, consumers complained of their monthly bills increasing, as compared to their LDC, by the following amounts: (a) \$394; (b) \$322; and (c) \$289. Similarly, some consumers experienced their bills increasing, as compared to their LDC, by the following percentages: (a) 710.4%; (b) 388.7%; and (c) 387.8%.

104. HIKO Energy's bills often tripled the generation amount charged to consumers; e.g., from 9.5 cents per kWh to 29.9 cents per kWh.

105. Upon information and belief, a small number of consumers saw some small savings in their electric and/or gas supply bills during the first few months, or even during the First Six Months Savings Guarantee, but once the First Six Months Savings Guarantee was complete, consumers' bills skyrocketed to double, triple and, in some cases, almost quadruple the costs of electric and/or gas supply compared to what they had been paying to their previous supplier.

106. Upon information and belief, HIKO Energy did not offer competitive pricing as represented during the Door-to-Door and Telephone Solicitations, the HIKO Contract and the Welcome Letter.

107. Upon information and belief, consumers who attempted to contact HIKO Energy to

complain of slamming, inquire about their bill, demand a refund and/or request cancellation of their contract, were unable to do so.

108. Upon information and belief, the vast majority of consumers who attempted to contact HIKO Energy could not reach a “live person” to speak with and simply obtained an automated customer service system that transferred them to a voice-mail box which was full and would not accept further messages.

109. Upon information and belief, for those consumers who happened to call when the voice-mail box was not full and were able to leave a message, the call was not returned.

110. Upon information and belief, for the minority of consumers who managed to contact a “live” person, they were either told: (a) that a supervisor would call them back within twenty-four (24) hours, which did not occur; or (b) to leave a message so a supervisor would call them back in twenty-four (24) hours and were then transferred to the full voice-mail box.

111. Upon information and belief, HIKO Energy failed to respond to attempts by customers to reach it through e-mail.

112. Upon information and belief, HIKO Energy did not maintain a New Jersey office for consumers to have access to customer service.

113. On or about March 12, 2014, a Division Investigator visited the Teaneck Address and observed that the location was a , single-family home in a residential neighborhood. At the time of the visit, taped to the mailbox by the front door was a hand written sign that stated, “No Soliciting This is NOT Hiko nor has it ever been. We are in no way affiliated. We do not know what it is.”

114. On or about May 6, 2014, a Division Investigator visited the Hackensack Address and determined that two companies are located there: Beckerman Group, Inc., a public relations firm; and Antenna Group, Inc. a communications firm. Upon information and belief, an employee of one

of the companies confirmed that HIKO Energy does not have an office at that location.

115. In the its May 2014 Renewal, HIKO Energy identified an unnamed Registered Agent located at 1 Trade Plaza, Hackensack, New Jersey 08601. Upon information and belief, no such address exists.

116. A large number of consumers who could not reach HIKO Energy or did so, but did not receive a satisfactory response from the company, also complained to the Division and/or the BBB. A review of the available responses to these complaints reveals that HIKO Energy mischaracterized the First Six Months Savings Guarantee in its responses to complaints. HIKO Energy claimed that its First Six Months Savings Guarantee was not in fact a guarantee on the first six months of service, but rather, over the course of a twelve-month period, consumers would realize savings on six months of service. This is in contradiction to the First Six Months Savings Guarantee represented during Door-to-Door and Telephone Solicitations, in the HIKO Contract and the Welcome Letter.

117. Upon information and belief, by failing to provide consumers adequate access to customer service, including the ability to cancel their contract in a timely manner, HIKO Energy was able to continue to bill consumers exorbitant rates for electric and/or gas supply.

COUNT I

VIOLATION OF THE EDECA AND ENERGY LICENSING AND REGISTRATION REGULATIONS BY DEFENDANT (FAILING TO COMPLY WITH BASIC REQUIREMENTS)

118. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 117 above as if more fully set forth herein.

119. The EDECA authorized the Board to adopt electric power supplier licensing standards and gas supplier licensing standards, among other things, to require that the TPS: (a)

provide the name and address of the in-State customer service agent for the TPS; (b) maintain an office within this State for the purposes of accepting service of process, maintaining such records as the Board requires and ensuring accessibility to the Board, consumers and electric and/or gas public utilities; and (c) comply with such specific standards of conduct for electric power suppliers and gas suppliers as the Board shall adopt. N.J.S.A. 48:3-78(c)(1)(e), (3), (6) and N.J.S.A. 48:3-79(c)(1)(e), (3), (6).

120. The Energy Licensing and Registration Regulations, N.J.A.C. 14:4-5.1 et seq., apply to electric power suppliers and gas suppliers.

121. The Energy Licensing and Registration Regulations, N.J.A.C. 14:4-5.2, set forth basic requirements for an electric power supplier and gas supplier, and provide, in relevant part:

(b) To be eligible for an electric power supplier, gas supplier . . . license, an applicant shall maintain an office in New Jersey for purposes of accepting service of process, maintaining the records required under this subchapter and ensuring the licensee's accessibility to State agencies, consumers and gas and electric public utilities. To satisfy this requirement, an applicant shall:

1. Lease or own space in a building in New Jersey. The space shall be sufficient to house all records required to be kept under this subchapter. The records may be kept in electronic form; and
2. Provide the street address of the New Jersey office. A post office box or rented mail-receiving space at a mall service store shall not constitute a New Jersey office.

(c) The applicant shall document that it will make itself accessible to customers and regulators by maintaining the following:

1. An Internet website and e-mail address through which Board staff and customers can contact the applicant;
2. A customer service representative, who is available by toll-free telephone during normal New Jersey business hours to respond to complaints or inquiries from customers; and
3. A regulatory affairs representative, who is available by telephone during normal New Jersey business hours, and who will do the following:

i. Assist Board staff in pursuing investigations on behalf of the Board and/or the Division of Consumer Affairs in the Department of Law and Public Safety; and

ii. Facilitate the resolution of billing complaints and other problems.

(d) An automated telephone service shall not, by itself, satisfy the requirements in (c)2 and 3 above. Rather, the applicant shall make it possible for customers, Board staff and/or Division of Consumer Affairs staff, to speak to an individual. It is not necessary that these representatives be located in New Jersey. However, a representative shall be available to the Board staff and/or customers within 24 hours, if necessary to resolve a problem.

122. In its offering for sale and sale of electric generation service and/or gas supply service, Defendant has violated the Energy Licensing and Registration Regulations, N.J.A.C. 14:4-5.2, by:

a. Failing to maintain an office in New Jersey, as required by N.J.A.C. 14:4-5.2(b);

b. Failing to make itself accessible to customers by maintaining a customer service representative who was available by toll-free telephone during normal New Jersey business hours, as required by N.J.A.C. 14:4-5.2(c)(2);

c. Failing to make itself accessible to customers by maintaining a regulatory affairs representative available by telephone during normal New Jersey business hours to facilitate the resolution of billing complaints and other problems, as required by N.J.A.C. 14:4-5.2(c)(3)(ii); and

d. Failing to maintain a customer service representative to whom consumers could speak, within 24 hours, if necessary, to resolve a problem, as required by N.J.A.C. 14:4-5.2(d).

123. Each violation by Defendant of the Energy Licensing and Registration Regulations, N.J.A.C. 14:5.2, comprises a per se violation of the EDECA, specifically, N.J.S.A. 48:3-78(c)(1)(e), (3), (6), N.J.S.A. 48:3-79(c)(1)(e), (3), (6) and N.J.S.A. 48:3-83.

COUNT II

**VIOLATION OF THE EDECA AND RETAIL CHOICE CONSUMER
PROTECTION REGULATIONS BY DEFENDANT
(FAILING TO ADHERE TO MARKETING STANDARDS)**

124. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 123 above as if more fully set forth herein.

125. The EDECA authorized the Board to adopt consumer protection standards for electric power suppliers and/or gas suppliers including, but not limited to, marketing and advertising. N.J.S.A. 48:3-85(a).

126. The Retail Choice Consumer Protection Regulations, specifically N.J.A.C. 14:4-7.4, concern marketing standards and provide, in relevant part:

(a) In marketing materials provided by the TPS to residential customers for the purpose of persuading the customer to authorize a switch to the TPS for electric generation service or gas supply service, whether such materials are in hardcopy form, electronically or via internet websites, the following information, and that in either (b)1 or 2 below, shall be provided:

5. The TPS's license number;

6. The LDC(s) in whose service territory(ies) the TPS is offering the advertised services. If the TPS offers its services throughout New Jersey, the materials may state this fact, rather than listing all New Jersey LDCs;

.....

8. A clear statement indicating whether or not the TPS offers budget billing.

(b) The marketing materials provided by the TPS to residential customers shall also include either of the following:

1. The estimated percentage savings on the total bill which a customer will realize under the advertised price relative to the customer taking basic generation service or basic gas supply service from the LDC; or

2. If a TPS does not offer a fixed price or guaranteed price electric generation service or gas supply service, the TPS shall describe in clear and conspicuous language the mechanism or formula by which the price is determined, and provide detailed customer bill comparison, which demonstrates for a residential customer for

250 kWh, 500 kWh, 1,000 kWh and 2,000 kWh plus any monthly fixed and/or variable charge(s) for each month of the year, the customer's total electric bill under the proposed contract with the customer's total electric bill at the same electricity usage levels for each month of the year if the customer were to remain on basic generation service; and for 50 therms, 100 therms, 150 therms and 200 therms plus any monthly fixed and/or variable charge(s) for each month of the year, the customer's total gas bill under the proposed contract with the customer's total gas bill at the same gas usage levels for each month of the year if the customer were to remain on basic gas supply service, for the term of the contract being offered, such TPS shall also clearly indicate the period of time for which the savings offer is valid, and the term (duration) of the contract being offered.

.....

(f) The TPS shall clearly state in its solicitations to the customer, and in its marketing materials, whether in hardcopy, electronically or via internet website, that switching to a competitive third-party supplier is not mandatory, and the customer has the option of remaining with the LDC for basic generation service or basic gas supply service.

127. In its offering for sale and sale of electric generation service and/or gas supply service, Defendant has violated the Retail Choice Consumer Protection Regulations, N.J.A.C. 14:4-7.4, by:

- a. Failing to include on the HIKO Website a reference to HIKO Energy's electric generation supplier license or gas supplier license, as required by N.J.A.C. 14:4-7.4(a)(5);
- b. Failing to include on the HIKO Website a statement as to the LDC(s) in whose service territories(ies) HIKO Energy is offering advertised services, as required by N.J.A.C. 14:4-7.4(a)(6);
- c. Failing to include on the HIKO Website a statement indicating whether or not HIKO Energy offers budget billing, as required by N.J.A.C. 14:4-7.4(a)(8);
- d. Failing to include on the HIKO Website any pricing information, for electric generation service and/or gas supply service, as required by N.J.A.C. 14:4-7.4(b)(1) and (2); and
- e. Failing to include on the HIKO Website a statement that switching to a competitive third-party supplier is not mandatory and that the consumer has the option of remaining with the LDC, as required by N.J.A.C. 14:4-7.4(f).

128. Each violation by Defendant of the Retail Choice Consumer Protection Regulations, specifically, N.J.A.C. 14:4-7.4, comprises a per se violation of the EDECA, N.J.S.A. 48:3-83 and N.J.S.A. 48:3-85(a).

COUNT III

VIOLATION OF THE EDECA AND RETAIL CHOICE CONSUMER PROTECTION REGULATIONS BY DEFENDANT (FAILING TO ADHERE TO CONTRACT STANDARDS)

129. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 128 above as if more fully set forth herein.

130. The EDECA, N.J.S.A. 48:3-85(a), authorized the Board to adopt contract standards for electric power suppliers and/or gas supplier as follows:

(1) Contract standards shall include, but not be limited to, requirements that electric power supply contracts or gas supply contracts must conspicuously disclose the duration of the contract; state the price per kilowatt hour or per therm or other pricing determinant approved by the board; have the customer's written signature; the customer's electronic signature; and audio recording of a telephone call initiated by the customer; independent, third-party verification, in accordance with section 37 of P.L. 1999, c.23 (C. 48:3-86), of a telephone call initiated by an electric power supplier, gas supplier or private aggregator; or such alternative forms of verification as the board, in consultation with the Division of Consumer Affairs, may permit for switching electric power suppliers or gas suppliers and for contract renewal; and include termination procedures, notice of any fees, and toll-free or local telephone numbers for the electric power supplier or gas supplier and for the board.

131. The Retail Choice Consumer Protection Regulations, specifically N.J.A.C. 14:4-7.6, concern contract standards and provide, in relevant part:

(a) A TPS shall not provide electric generation service or gas supply service to a retail customer without the customer's written signature on a contract or such alternative forms of verification identified in N.J.A.C. 14:4-2.3 and as the Board may permit to initiate such service(s), for switching TPSs or for renewal thereof. On or before the date the TPS submits a change order to an LDC, and within one business day of when a customer authorizes a contract renewal, the TPS shall send a copy of the TPS contract to the customer. The TPS may do this by an electronic method or by regular mail, at the option of the customer, or if the customer signed up in person, the TPS may hand deliver the contract to the customer.

(b) A TPS contract shall clearly and conspicuously state that the purpose of the document is to authorize a change in the customer's TPS, and include explicit terms and conditions, which shall include, at a minimum:

1. A clear statement of the duration of the contract;
2. The price per kWh or therm or, if a fixed pricing arrangement is not made, a clear and unambiguous statement of the precise mechanism or formula by which the price will be determined; if the contract contains no particular pricing terms, but rather, expresses the charges for service rendered on a percentage savings basis, the contract language shall clearly and conspicuously state that percentage savings being guaranteed, as well as the price or charges to which the percentage savings is being compared;

....

4. A statement of the residential customer's rights, which shall provide that the customer will receive a confirmation notice of its choice of supplier and that, at a minimum, the customer will have seven calendar days from the date of the confirmation notice to contact its LDC and rescind its selection. Furthermore, that a contract for electric generation or gas supply service shall not be legally binding upon the residential customer until the seven-day confirmation period has expired, and the customer has not, directly or indirectly, rescinded his or her selection;

....

6. No statement that asks any customers to waive any rights they have under New Jersey or Federal Consumer Protection laws.

132. In its offering for sale and sale of electric generation service and/or gas supply service, Defendant has violated the Retail Choice Consumer Protection Regulations, N.J.A.C. 14:4-7.6, by:

- a. Providing electric generation and/or gas supply service to a retail customer without a customer's written signature on the HIKO Contract or other approved verification, as required by N.J.A.C. 14:4-7.6(a);
- b. Including on the HIKO Contract a signature of a person who is not the account holder and is not authorized by the account holder to switch from the account holder's LDC to HIKO Energy, in violation of N.J.A.C. 14:4-7.6(a);
- c. Switching consumers who have authorized a switch to HIKO Energy for electric generation service to gas supply service as well, without proper authorization for the gas supply switch, as required by N.J.A.C. 14:4-7.6(a);

- d. Failing to provide to consumers the Terms and Conditions in a timely manner, or at all, as required by N.J.A.C. 14:4-7.6(a);
- e. Including in the HIKO Contract and the Terms and Conditions inconsistent provisions as to contract duration, in violation by N.J.A.C. 14:4-7.6(b)(1);
- f. Expressing charges for services on a percentage savings basis in the HIKO Contract, but failing to clearly and conspicuously state the price or charges to which the percentage savings is being compared, as required by N.J.A.C. 14:4-7.6(b)(2);
- g. Including in the HIKO Contract and the Terms and Conditions reference to fixed rate plans and fixed rate pricing, when HIKO Energy does not offer any fixed rate plans, in violation of N.J.A.C. 14:4-7.6(b)(2);
- h. Failing to charge consumers a price equal to the First Six Months Savings Guarantee included on the HIKO Contract, in violation of N.J.A.C. 14:4.7.6(b)(2);
- i. Including in the HIKO Contract, the statement that “unless otherwise agreed to in writing, the price each month maybe lower or higher than the LDC Price” in contradiction to the Six Months Savings Guarantee included in the HIKO Contract, in violation of N.J.A.C. 14:4-7.6(b)(2);
- j. Including in the Terms and Conditions a statement that there is a three (3) business day right of rescission, which is inconsistent with the seven (7) day right of rescission required by N.J.A.C. 14:4-7.6(b)(4);
- k. Including in the HIKO Contract and the Terms and Conditions a “Liability” provision that states that the “remedy available to consumers in any claim or suit is limited to direct actual damages” and that “[a]ll other remedies at law or in equity are hereby waived,” in violation of N.J.A.C. 14:4-7.6(b)(6); and
- l. Including in the HIKO Contract and the Terms and Conditions a “Choice of Law” provision that requires the application of New York Law, in violation of N.J.A.C. 14:4-7.6(b)(6).

133. Each violation by Defendant of the Retail Choice Consumer Protection Regulations, specifically, N.J.A.C. 14:4-7.6, comprises a per se violation of the EDECA, N.J.S.A. 48:3-83 and N.J.S.A. 48:3-85(a).

COUNT IV

**VIOLATION OF THE EDECA AND RETAIL CHOICE CONSUMER
PROTECTION REGULATIONS BY DEFENDANT
(FAILING TO ADHERE TO CUSTOMER BILL STANDARDS)**

134. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 133 above as if more fully.

135. The EDECA authorized the Board to adopt consumer protection standards for electric power suppliers and/or gas suppliers including, but not limited to, customer billing standards N.J.S.A. 48:3-85(a)(5).

136. The Retail Choice Consumer Protection Regulations, specifically N.J.A.C. 14:4-7.7, concern customer bill standards and provide, in relevant part:

(a) All TPS bills shall be in clear and conspicuous language and shall contain sufficient information to enable a customer to accurately calculate the correct bill amount.

(b) All TPS bills shall include, at a minimum, all of the following:

1. The billing period and billing date;
2. The number of kWhs or therms used;
3. The unit price for each kWh or therm;
4. If the number of kWhs or therms is based on estimates or averages, or on information from a remote reading device, the bill shall clearly indicate the basis of the number of kWhs or therms;

.....

(c) If a TPS does not issue separate bills for its services, the TPS shall provide to the LDC all of the following information for inclusion in the LDC's consolidated bills:

1. For all customers except for commercial and industrial electricity customers, the information required at (b)(3) above;

137. In its offering for sale and sale of electric generation service and/or gas supply service, Defendant has violated the Retail Choice Consumer Protection Regulations, N.J.A.C. 14:4-7.7, by:

- a. Failing to provide the LDC with the unit price for each kWh for electric generation service provided to a consumer, in violation of N.J.A.C. 14:4-7.7(c)(1); and
- b. Failing to provide the LDC with the unit price for each therm supplied by HIKO Energy for gas supply service, provided to a consumer, in violation of N.J.A.C. 14:4-7.7(c)(1).

138. Each violation by Defendant of the Retail Choice Consumer Protection Regulations, specifically, N.J.A.C. 14:4-7.7, comprises a per se violation of the EDECA, N.J.S.A. 48:3-83 and N.J.S.A. 48:3-85(a).

COUNT V

VIOLATION OF EDECA AND THE RETAIL CHOICE CONSUMER PROTECTION REGULATIONS BY DEFENDANT (FAILING TO ADHERE TO COMPLAINT STANDARDS)

139. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 138 above as if more fully set forth herein.

140. The Retail Choice Consumer Protection Regulations, specifically N.J.A.C. 14:4-7.9, concern complaint standards and provide, in relevant part:

(a) A TPS shall use good faith efforts to respond to and resolve all complaints promptly.

(b) If a TPS has been advised that the customer is not satisfied with the TPS's response, the TPS shall advise the customer that the customer can contact the Board, at 1-800-624-0241, to request an alternate dispute resolution procedure or to file a formal complaint.

141. In its offering for sale and sale of electric generation service and/or gas supply service, Defendant has violated the Retail Choice Consumer Protection Regulations, N.J.A.C. 14:4-7.9, by:

- a. Failing to use good faith efforts to respond to and resolve all complaints promptly, as required by N.J.A.C. 14:4-7.9(a);
- b. Failing to respond to complaining consumers' e-mails and/or voice mails, in violation of N.J.A.C. 14:4-7.9(a);
- c. Failing to adequately staff customer service as to provide a "live" representative for consumers to speak with concerning billing questions, in violation of N.J.A.C. 14:4-7.9(a);
- d. Failing to adhere to its own dispute resolution protocol as stated in the HIKO Contract and the Terms and Conditions, in violation of N.J.A.C. 14:4-7.9(a); and
- e. Failing to adequately notify complaining consumers who are dissatisfied with HIKO Energy's response to their complaints, that the consumer can contact the Board to request an alternate dispute resolution procedure or to file a formal complaint, in violation of N.J.A.C. 14:4-7.9(b).

142. Each violation by Defendant of the Retail Choice Consumer Protection Regulations, specifically, N.J.A.C. 14:4-7.9, comprises a per se violation of the EDECA, N.J.S.A. 48:3-83 and N.J.S.A. 48:3-85(a).

COUNT VI

VIOLATION OF THE EDECA AND THE ENERGY ANTI-SLAMMING REGULATIONS BY DEFENDANT (FAILING TO ADHERE TO CHANGE ORDER STANDARDS)

143. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 142 above as if more fully set forth herein.

144. The EDECA, N.J.S.A. 48:3-86(a), authorized the Board to adopt standards "to prevent and establish penalties for unauthorized changes of a consumer's electric power supplier or gas supplier, a practice commonly known as 'slamming'" and provides in relevant part:

(b) Standards for the prohibition of unauthorized changes in a customer's electric power supplier or gas supplier shall include:

(1) An electric power supplier, an electric public utility, as gas supplier or a gas public utility shall not cause an unauthorized change in a customer's electric power supplier or gas supplier, a practice known as "slamming." A change in a customer's electric power supplier or gas supplier shall be deemed to be unauthorized unless the customer has done so affirmatively and voluntarily and the supplier has obtained the customer's approval, which approval shall be evidence by the customer's written signature; the customer's electronic signature; an audio recording of a telephone call initiated by the customer; independent, third-party verification, in accordance with paragraph (2) of this subsection, of a telephone call initiated by an electric power supplier, electric public utility, gas supplier or gas public utility;

[N.J.S.A. 48:3-86(b)(1).]

145. The Energy Anti-Slamming Regulations, specifically N.J.A.C. 14:4-2.1, provide as follows:

(a) This subchapter is intended to protect against unauthorized changes or 'switches' in a customer's electric power supplier or natural gas supplier, as required by the [EDECA], N.J.S.A. 48:3-86 *et seq.*

(b) This subchapter applies to local distribution companies (LDCs) and third-party suppliers (TPSs), as these terms are defined in N.J.A.C. 14:4-1.2.

(c) This subchapter applies to the switching of a customer in either of the following situations:

1. A switch from one TPS to another TPS; or
2. A switch from an LDC to a TPS.

(d) In advertising and marketing to customers, and in switching customers from one TPS to another, or from an LDC to a TPS, a TPS shall comply with the Board's consumer protection standards for electric power suppliers and natural gas suppliers at N.J.A.C. 14:4-7.

146. Further, the Energy Anti-Slamming Regulations, specifically N.J.A.C. 14:4-2.2, define "change order" as a "request, submitted by a TPS to an LDC, to switch the customer from one provider of electric generation service or gas supply service to another provider."

147. In addition, the Energy Anti-Slamming Regulations, specifically N.J.A.C. 14:4-2.3,

concern the change order required for a switch to a TPS and provide, in relevant part:

(a) No TPS shall submit a change order to an LDC, unless the change order complies with this subchapter.

(b) To comply with this subchapter, a change order shall meet all of the following requirements:

1. The change order shall be transmitted from the TPS to the LDC through an Electronic Data Interchange (EDI) transaction, or through another electronic information exchange system with equivalent speed and security. Information on EDI may be found at the Board's website at <http://www.nj.gov/bpu/about/divisions/energy/edi.html>; and

2. The change order shall demonstrate, through compliance with the verification requirements at (c) below, that the customer has authorized the switch affirmatively and voluntarily.

(c) The change order shall be verified through one of the following:

.....

2. An audio recording made by an independent third party or by a TPS of a customer agreeing to switch verbally on a telephone call. The questions and statements of the independent third party or the TPS may be recorded or electronic. However, all customer responses shall be made verbally in real time. The verification shall:

i. Include a statement by the customer of record, or person authorized to make the switch, of their first name, last name and the account service address;

ii. Verify that the person speaking is the customer of record, or is authorized to make the switch;

iii. Indicated the date of the recording;

iv. Confirm that the person speaking voluntarily wishes to make the switch;

v. Identify the name of the TPS to which the customer is switching;

vi. Indicate the customer's LDC account number and the type of service to be switched;

vii. State the price per kwh or therm, whether the price is fixed for a period of time or variable, and if fixed, for what period of time;

viii. The amount of any cancellation fees and/or any other charges not included in the per unit price under (c)2vii above; and

ix. Include a recording of the entire duration of the call, from the first contact with the customer to the disconnection of the call. This requirement may be waived with the customer's consent.

3. A signature in ink on a paper form, showing that the customer voluntarily authorized the switch. This form shall:

i. Identify the customer;

ii. Verify that the signatory is the customer of record or is authorized to make the switch;

iii. Indicate the date upon which the document was signed;

iv. Confirm that the signatory voluntarily wishes to make the TPS switch;

v. Identify the name of the TPS to which the customer is switching;

vi. Indicate the account number of the LDC and the type of service to be switched; and

vii. Include a statement that the customer acknowledges receipt of a copy of the terms and conditions of service; or

4. An electronic record of an internet transaction that meets the requirements of N.J.A.C. 14:4-2.5.

.....

(e) A TPS that switches a customer without complying with this subchapter shall be subject to enforcement in accordance with N.J.A.C. 14:4-2.8.

148. In its offering for sale and sale of electric generation service and/or gas supply service, Defendant has violated the Energy Anti-Slamming Regulations, specifically N.J.A.C. 14:4-2.3, by:

a. Switching consumers from their current LCD to HIKO Energy without a written contract or other approved verification, as required by N.J.A.C. 14:4-2.3(b), (c)(2) and (3);

- b. Switching consumers who have authorized a switch to HIKO Energy for electric generation service to gas supply services as well, without proper authorization, as required by N.J.A.C. 14:4-2.3(b), (c)(2)(vi) and (3)(vi); and
- c. Including on the HIKO Contract a signature of a person who is not the account holder and has no authority to authorize a switch from the account holder's LDC to HIKO Energy, in violation of N.J.A.C. 14:4-2.3(b), (2)(c)(2)(ii) and (3)(ii).

149. The Energy Anti-Slamming Regulations, specifically N.J.A.C. 14:4-2.8(c), provide that “[i]n considering violation of EDECA or this subchapter, the Board may consider every day of each violation against each customer as a separate offense.”

150. Each violation by Defendant of the Energy Anti-Slamming Regulations, specifically, N.J.A.C. 14:4-7.9, comprises a per se violation of the EDECA, N.J.S.A. 48:3-83 and N.J.S.A. 48:3-86.

COUNT VII

VIOLATION OF THE CFA BY DEFENDANT (UNCONSCIONABLE COMMERCIAL PRACTICES, KNOWING OMISSIONS AND DECEPTION AND/OR FALSE PRETENSES)

151. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 150 above as if more fully set forth herein.

152. The EDECA, specifically N.J.S.A. 48:3-84, provides as follows:

- a. The rights, remedies and prohibitions accorded by the provisions of this act are in addition to and cumulative of any right, remedy or prohibition accorded by the common law or any statute of this State and nothing contained herein shall be construed to deny, abrogate or impair any such common law or statutory right, remedy or prohibition. The Attorney General and the Division of Consumer Affairs in the Department of Law and Public Safety shall continue to have the authority to enforce civil and criminal violations of the consumer fraud act, P.L.1960, c. 39 (C. 56:8-1 et seq.) of any other applicable law, rule or regulation in connection with the activities of electric power suppliers and gas suppliers.

153. The CFA, N.J.S.A. 56:8-2, 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. . . .

154. 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).

155. The electric generation and gas supply services advertised, marketed, offered for sale and sold by Defendant comprise merchandise within the meaning of the CFA.

156. In the operation of HIKO Energy, Defendant has engaged in the use of unconscionable commercial practices, knowing omissions, deception and/or false pretenses.

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

- a. Switching consumers to HIKO Energy electric and/or gas supply services without the consumer’s knowledge and/or authorization;
- b. Switching consumers to HIKO Energy gas supply service when the consumer has authorized a switch to HIKO Energy only for its electric generation service;
- c. During Door-to-Door and Telephone Solicitations, convincing persons who are other than the named customer on the account or a person authorized to make decisions on the account, to sign the HIKO Contract or otherwise authorize the switch to HIKO Energy;
- e. During Door-to-Door Solicitations, misleading consumers to believe that the HIKO Energy sales representative is from PSE&G, or that the sales representative or HIKO Energy is in some way affiliated with PSE&G;
- f. During Door-to-Door Solicitation, instructing consumers to just “say yes” to all of the questions during the verification call to HIKO Energy;
- g. Failing to provide the Six Months Savings Guarantee or other discounted rates represented by HIKO Energy sales representatives during Door-to-Door

and Telephone Solicitations, in the HIKO Contract and in Welcome Letters;

- h. Failing to provide competitive pricing as represented by HIKO Energy sales representatives during Door-to-Door and Telephone Solicitations, in the HIKO Contract and in Welcome Letters;
- i. Sending consumers a HIKO Contract, Terms and Conditions and/or Welcome Letter with contradictory provisions;
- j. Sending consumers a Terms and Conditions that references that the agreement is between HIKO Energy and the “undersigned consumer” when there is no signature block on the document;
- k. Failing to send to consumers all relevant documents or to provide such documents in a timely manner;
- l. Failing to provide PSE&G with the price per therm or per kWh to include on consumers’ bills;
- m. Failing to provide to potential customers a mechanism to determine the average price per therm or kWh that HIKO Energy charged;
- n. Failing to maintain a New Jersey office where consumers can have access to customer service;
- o. Providing consumers with the Teaneck Address in the HIKO Contract, the Terms and Conditions and the Terms and Conditions accessible through the HIKO Website, when this address is a private residence and not a HIKO office;
- p. Providing consumers with the Hackensack Address in the Terms and Conditions and the Terms and Conditions accessible through the HIKO Website, when this address is a public relations firm and not a HIKO office;
- q. Failing to adequately staff customer service as to provide a “live” representative for consumers to talk with concerning slamming, billing questions, cancellation requests and/or complaints;
- r. Providing an automated phone message on its customer service line instructing consumers to leave a message and that a supervisor will return their call in twenty-four (24) hours and then after the consumer leaves a message, failing to have a HIKO Energy representative return the call;
- s. Providing an automated phone message on its customer service line instructing consumers to leave a message and that a supervisor will return their call within twenty-four (24) hours and then transferring consumers to a

full voice-mail box;

- t. For consumers who were able to reach a “live” representative, instructing them to leave a voice mail message so that a supervisor could return their call within twenty-four (24) hours, and then, after the consumer leaves a message, failing to have a HIKO Energy representative return the call;
- u. For consumers who were able to reach a “live” representative, instructing them to leave a voice mail message so that a supervisor could return their call within twenty-four (24) hours, and then transferring the consumer to a full voice-mail box;
- v. Failing to respond to consumer e-mails;
- w. Failing to adhere to its Dispute Resolution policy/procedure as stated in the HIKO Contract and/or the Terms and Conditions;
- x. Failing to provide a mechanism whereby consumers could timely cancel their electric and/or gas supply services, as a result of inadequate staffing of customer service, thus enabling HIKO Energy, to continue to overcharge consumers;
- y. Mischaracterizing to the BBB and/or to consumers complaining about pricing that the 1-7% or 10% six-month guarantees stated in the HIKO contracts, Welcome Letters and sales solicitations were “variable rate plans with up to 1-7% or 10% savings over the course of the year,” contrary to the representations included in those documents; and
- z. Requiring New Jersey consumers switching to HIKO Energy through the HIKO Website, to acknowledge that they have read the terms and conditions and the consumer bill of rights, when the corresponding links provide the New York Terms and Conditions and the New York Consumer Bill of Rights.

158. Defendant’s conduct in violation of the CFA includes, but is not limited to, the following knowing omissions, concealment and/or suppression of material facts:

- a. In Door-to-Door Solicitations and Telephone Solicitations, failing to adequately disclose to consumers that the contract was one for a variable rate program;
- b. In Door-to Door Solicitations and Telephone Solicitations, failing to adequately disclose to consumers that they would continue to receive delivery charges from their current electric and/or gas supplier; and

- c. In Door-to-Door Solicitations and Telephone Solicitations, failing to disclose to consumers that it takes between one to two billing cycles or thirty (30) to sixty (60) days, to cancel electric and/or gas supply service from HIKO Energy and to restore such service from a consumer's original supplier.

159. Defendant's conduct in violation of the CFA includes, but is not limited to, the following deceptive practices and/or false pretenses:

- a. Conducting Door-to-Door Solicitations, where HIKO Energy sales representatives state that they are employee or otherwise affiliated with PSE&G;
- b. Conducting Door-to-Door Solicitations, where HIKO Energy sales representatives state that PSE&G is reducing consumers' bills because it is changing its gas supplier from a Texas company to a local Teaneck company, i.e., HIKO Energy; and
- c. Conducting Door-to-Door Solicitations, where HIKO Energy sales representatives carry identification badges with the PSE&G logo.

160. Each unconscionable commercial practice, and/or deception and knowing omission, concealment and/or suppression of a material fact by Defendant constitutes a separate violation under CFA, N.J.S.A. 56:8-2.

COUNT VIII

VIOLATION OF THE CFA, EDECA AND THE RETAIL CHOICE CONSUMER PROTECTION REGULATIONS BY DEFENDANT (MISREPRESENTATIONS)

161. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 160 above as if more fully set forth here

162. The Retail Choice Consumer Protection Regulations, specifically N.J.A.C. 14:4-7.4, concern marketing standards and provide, in relevant part:

- (i) The TPS shall not make misrepresentation, in its solicitations or marketing materials or any way, in violation of any standards implemented by the Board pursuant to the Act, of any other consumer protection laws or rules implemented or enforced by the Division of Consumer Affairs, or of the mechanics of the customer enrollment process adopted by the Board.

163. Defendant's conduct in violation of the CFA and the Retail Choice Consumer

Regulations includes, but is not limited to, the following misrepresentations:

- a. During Door-to-Door and Telephone Solicitations, and in the HIKO Contract, representing to that, for the first six (6) months of service with HIKO Energy, they would receive a guaranteed 10% savings on the price their current electric and/or gas supplier charged, when such was not the case;
- b. During Door-to-Door and Telephone Solicitations, and in the HIKO Contract and the Welcome Letter, representing to consumers that, for the first six (6) months of service with HIKO Energy, they would receive a guaranteed 1-7% savings on the price their current electric and/or gas supplier charged, when such was not the case;
- c. During Door-to-Door and Telephone Solicitations, representing to consumers that, by switching to HIKO Energy, they would receive savings or guaranteed savings on the price their current electric and/or gas supplier charged, when such was not the case;
- d. During Door-to-Door and Telephone Solicitations, representing to consumers that after the six (6) month guarantee period was over, the price charged for electric and/or gas supply through HIKO would be lower than their current supplier, when such was not the case;
- e. During Door-to-Door and Telephone Solicitations, representing to consumers that after the six (6) month guarantee period was over, the price charged for electric and/or gas supply through HIKO might be the same as or would never would be more than what consumers were charged through their current supplier, when such was not the case;
- f. During Door-to-Door and Telephone Solicitations, and on the HIKO Website, representing to consumers that HIKO Energy offers "competitive pricing," when such was not the case;
- g. During Door-to-Door and Telephone Solicitations, representing to consumers that they can "opt out" or that they can "cancel the contract at any time" thereby misleading consumers to believe that any charges from HIKO Energy would immediately cease;
- h. Representing on the HIKO Website that "Our goal is to provide excellent customer service. . . .", when such is not the case;
- k. Representing on the HIKO Website that with "HIKO you will still get: •

Superior customer service,” when such is not the case;

1. Representing on the HIKO Website that HIKO Energy “is committed to lowering the cost for energy consumers,” that “ we strive to offer the most competitive pricing in the marketplace,” that HIKO is “a great first step in making your energy bills more manageable” that HIKO “offer[s] various plans to lower electric bill, lower gas bill and reduce utility bill of our customers” and that “we have the greatest incentive to procure your gas and electricity at the best prices,” when, to the contrary, consumers who switched their energy supply to HIKO saw their bills, in some cases, more than triple.

164. Each misrepresentation by Defendant comprises a violation of the Retail Choice Consumer Protection Regulations, specifically N.J.A.C. 14:4-7.4, which is a per se violation of EDECA, N.J.S.A. 48:3-83 and 48:3-85(a), as well as the CFA, N.J.S.A. 56:8-2.

COUNT IX

VIOLATION OF THE ADVERTISING REGULATIONS BY DEFENDANT

165. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 164 above as if more fully set forth herein.

166. The Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., promulgated pursuant to the CFA, among other things, govern general advertising practices.

167. The Advertising Regulations define “Advertisement” as:

any attempt by an advertiser . . . to directly or indirectly induce the purchase or rental of merchandise at retail, appearing in any newspaper, magazine, periodical, catalog, circular, in-store or out-of-store sign or other written matter placed before the consuming public, or in any radio broadcast, television broadcast, electronic medium or delivered to or through any computer.

[N.J.S.A.] 13:45A-9.1.]

168. Specifically, the Advertising Regulations provide, in pertinent part:

- (a) Without limiting the application of N.J.S.A. 56:8-1 et seq., the following practices shall be unlawful with respect to all advertisements:

. . . .

9. The making of false or misleading representations concerning the reasons for, existence or amounts of price reductions, the nature of an offering or the quantity of advertised merchandise available for sale.

[N.J.A.C. 13:45A-9.2(a)(9).]

169. In its advertisement, marketing and offering for sale of contracts, Defendant has engaged in conduct in violation of the Advertising Regulations including, but not limited to, the following:

- a. Representing on the HIKO Website that “Our goal is to provide excellent customer service” when such is not the case;
- b. Representing on the HIKO Website that with “HIKO you will still get: • Superior customer service,” when such is not the case; and
- c. Representing on the HIKO Website that HIKO Energy “is committed to lowering the cost for energy consumers,” that “we strive to offer the most competitive pricing in the marketplace,” that HIKO is “a great first step in making your energy bills more manageable” that HIKO “offer[s] various plans to lower electric bill, lower gas bill and reduce utility bill of our customers” and that “we have the greatest incentive to procure your gas and electricity at the best prices,” when, to the contrary, consumers who switched their energy supply to HIKO Energy saw their bills, in some case, more than triple.

170. Each violation of the Advertising Regulations by Defendant constitutes a per se violation of the CFA, N.J.S.A. 56:8-2.

COUNT X

VIOLATION OF THE PLA BY DEFENDANT

171. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 170 above as if more fully set forth herein.

172. The PLA provides that:

A consumer contract . . . shall be written in a simple, clear, understandable and easily readable way. In determining whether a consumer contract has been written in a simple, clear, understandable and easily readable way as a

whole, a court[] . . . shall take into consideration the guidelines set forth in section 10 [] of this act.”

[N.J.S.A. 56:12-2.]

173. The PLA defines a “consumer contract” as “written agreement in which an individual[],” among other things, “[c]ontracts for services including professional services, for cash or on credit and the money, property or services are obtained for personal, family or household purposes.” N.J.S.A. 56:12-1.

174. The guidelines set forth in the PLA are as follows:

a. To insure that a consumer contract shall be simple, clear, understandable and easily readable, the following are examples of guidelines that a court[] . . . may consider in determining whether a consumer contract as a whole complies with this act:

- (1) Cross references that are confusing;
- (2) Sentences that are of greater length than necessary;
- (3) Sentences that contain double negatives and exceptions to exceptions;
[and]
- (4) Sentences and sections that are in a confusing or illogical order[.]

....

b. The following are examples of guidelines that a court[] . . . may consider in determining whether the consumer contract as a whole complies with this act:

- (1) Sections shall be logically divided and captioned; [and]
- (2) A table of contents or alphabetical index shall be used for all contracts with more than 3,000 words[.]

[N.J.S.A. 56:12-10 (emphasis added).]

175. The PLA also provides:

No consumer contract shall contain a waiver of any right under this act. A violation of this act will not render any consumer contract void or voidable, or serve as a defense in an action to enforce the consumer contract for breach thereof.

[N.J.S.A. 56:12-11.]

176. Through the use of the HIKO Energy, Defendant has violated the PLA by, among other things:

- a. Including inconsistent provisions as to contract duration in the HIKO Contract and the Terms and Conditions;
- b. Including in the HIKO Contract and the Terms and Conditions a “Pricing, Billing and Termination” provision that fails to include a clear and unambiguous statement of the precise mechanism or formula by which the price for electric and/or gas supply will be determined;
- c. Expressing charges for services on a percentage savings basis in the HIKO Contract, but failing to clearly and conspicuously state the price or charges to which the percentage savings is being compared;
- d. Including in the HIKO Contract and the Terms and Conditions reference to fixed rate plans and fixed rate pricing, when HIKO Energy does not offer any fixed rate plans;
- e. Including in the first paragraph of both the NJ ELECTRIC SUPPLY AGREEMENT and the NATURAL GAS SUPPLY AGREEMENT within the Terms and Conditions, “[t]his is an agreement between HIKO Energy, LLC . . . and the undersigned customer. . . .”, without including a signature block in the Terms and Conditions;
- f. Including in the HIKO Contract, the statement that “unless otherwise agreed to in writing, the price each month maybe lower or higher than the LDC Price” in contradiction to the Six Months Savings Guarantee included in the HIKO Contract;
- g. Requiring the consumer to reference and/or piece together the contents of more than one document to create the total agreement between HIKO Energy and the consumer;
- h. Including in the HIKO Contract and the Terms and Conditions a “Liability” provision that states that the “remedy available to consumers in any claim or suit is limited to direct actual damages” and that “[a]ll other remedies at law or in equity are hereby waived”; and
- m. Including in the HIKO Contract and the Terms and Conditions a “Choice of Law” provision that requires the application of New York Law.

177. Taken as a whole, the HIKO Contract is not written in a simple, clear, understandable or easily readable way.

178. Accordingly, Defendant's use of the HIKO Contract constitutes a violation of the PLA, N.J.S.A. 56:12-2.

PRAYER FOR RELIEF


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

- (a) Finding that the acts and omissions of Defendant constitute multiple instances of unlawful practices in violation of the EDECA, N.J.S.A. 48:3-49 et seq., the Energy Licensing and Registration Regulations, N.J.A.C. 14:4-5.1 et seq., the Retail Choice Consumer Protection Regulations, N.J.A.C. 14:4-7.1 et seq., the Energy Anti-Slamming Regulations, N.J.A.C. 14:4-2.1 et seq., the CFA, N.J.S.A. 56:8-1 et seq., the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq. as well as the PLA, N.J.S.A. 56:12-1 et seq.;
- (b) Permanently enjoining Defendant and its owners, officers, directors, shareholders, founders, members, managers, agents, servants, employees, representatives, independent contractors and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the EDECA, N.J.S.A. 48:3-49 et seq., the Energy Licensing and Registration Regulations, N.J.A.C. 14:4-5.1 et seq., the Retail Choice Consumer Protection Regulations, N.J.A.C. 14:4-7.1 et seq., the Energy Anti-Slamming Regulations, N.J.A.C. 14:4-2.1 et seq., the CFA, N.J.S.A. 56:8-1 et seq., the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq. as well as the PLA, N.J.S.A. 56:12-1 et seq., including, but not limited to, the acts and practices alleged in this Complaint;
- (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 alleged practice herein to be unlawful and found to be unlawful, as authorized by the EDECA, N.J.S.A. 48:3-82, and the CFA, N.J.S.A. 56:8-8; N.J.A.C. 14:4-2.7(e) and/or N.J.A.C. 14:4-2.8(d);
- (d) Assessing the maximum civil penalties against Defendant for each and every violation of the EDECA, in accordance with N.J.S.A. 48:3-82(a)(2) and 48:3-83, and 48:3-86(e), the Energy Anti-Slamming Regulations, in accordance with N.J.A.C. 14:4-2.8, and the CFA, in accordance with N.J.S.A. 56:8-13;
- (e) Directing the assessment of costs and fees, including attorneys' fees, against

Defendant for the use of the State of New Jersey, as authorized by the EDECA, N.J.S.A. 48:3-82(c), and 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.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs


By: 
Cathleen O'Donnell
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: May 23, 2014
Newark, New Jersey

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, N.J.S.A. 56:8-1 et seq., and the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., is not the subject of any other action pending in any other court of this State. I am aware that private contract and other actions have been brought against the Defendant, but have no direct information that any such actions involve consumer fraud allegations. I further certify 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.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

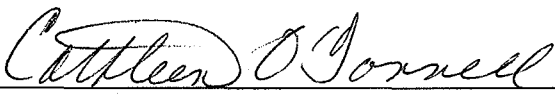
By 
Cathleen O'Donnell
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: May 23, 2014
Newark, New Jersey

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).

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs


By: 
Cathleen O'Donnell
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: May 23, 2014
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Deputy Attorney General Cathleen O'Donnell is hereby designated as trial counsel on behalf of Plaintiffs in this action.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Cathleen O'Donnell
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: May 23, 2014
Newark, New Jersey