

IN THE CIRCUIT COURT FOR KNOX COUNTY, TENNESSEE

2013 NOV 20 PM 2 59

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MOORE FREIGHT SERVICE, INC.

Plaintiff,

v.

PILOT CORPORATION,
PILOT TRAVEL CENTERS, LLC
d/b/a PILOT FLYING J and
JAY STINNETT,

Defendants.

KNOX COUNTY)
SESSIONS ROOM)
CATHERINE) CLERK

CIVIL ACTION NO.

2663-13

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES

COMES NOW MOORE FREIGHT SERVICE, INC., Plaintiff herein, and alleges as its complaint and demand for jury trial the following:

I. PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Moore Freight Service, Inc., is a for-profit corporation with its principal place of business located in Tennessee.

2. Defendant Pilot Corporation, f/k/a Pilot Oil Corporation, is a Tennessee corporation with its principal place of business located at 5508 Lonas Dr., Knoxville, Tennessee, 37909, and may be served via its registered agent: CT Corporation System, 800 S. Gay St., Ste 2021, Knoxville, Tennessee 37929.

3. Defendant Pilot Travel Centers, LLC, d/b/a Pilot Flying J is a Delaware corporation with its principal place of business located at 5508 Lonas Dr., Knoxville, Tennessee

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37909, and may be served via its registered agent: CT Corporation System, 800 S. Gay St., Ste 2021, Knoxville, Tennessee 37929.

4. Defendant Jay Stinnett is a former Pilot regional sales manager who also assisted with the operation of Pilot's direct sales division. Defendant Stinnett is a citizen of Tennessee and resides at 1518 Laurens Glen, Knoxville, Tennessee, 37923. On June 11, 2013, Defendant Stinnett pled guilty to conspiracy to commit mail fraud in connection with the illegal activities described herein.

5. Venue and jurisdiction are proper in this Court.

II. FACTUAL ALLEGATIONS

6. Plaintiff Moore Freight Services, Inc., (hereinafter "Moore"), is a Tennessee-based corporation doing business in Tennessee as well as other states in the United States.

7. Defendants Pilot Corporation, and Pilot Travel Centers, LLC, d/b/a Pilot Flying J (hereafter, collectively "Pilot") have adopted, promulgated, represented and benefitted from inaccurate, fraudulent rebate procedures and pricing structures for certain customers, including the Plaintiff.

8. At all times relevant to this Complaint, Defendant Stinnett was the Pilot account representative who oversaw the pricing and discounts that Plaintiff would receive.

9. Defendant regularly, purposely and intentionally understated the amount owed to Moore and other similar companies, promised by Defendant Stinnett and other Pilot sales representatives as a rebate for purchase of their diesel fuel.

10. Moore received rebate checks in varying amounts from Pilot for several years.

11. Pilot owners, executives, directors, principals, sales agents and administrative staff, including Defendant Stinnett, conspired to manually reduce the amount of rebate payments due to Moore, and numerous other customers, in order to increase Pilot profits and increase sales commissions of its sales agents, without the consent or knowledge of Moore or other affected customers.

12. On April 18, 2013, the affidavit of FBI Special Agent Robert Root, filed in support of his search warrant application, was unsealed by the U.S. District Court for the Eastern District of Tennessee at Knoxville. (See Case No. 3:13-MJ-2028, Doc. 4, attached hereto as Exhibit "A").

13. On information and belief, Pilot through its employees, including Defendant Stinnett, represented to Moore and numerous other Pilot customers, that Pilot would provide them with a rebate on diesel fuel purchased at their truck care facilities and travel centers operating throughout the country, pursuant to terms of the diesel price discount deal and agreement between Pilot and the customer.

14. Customers such as Moore would receive the rebate amount either via check on a monthly or quarterly basis, or via a direct discount on the invoice for "direct bill" customers to whom Pilot had extended credit for the purchase of diesel fuel.

15. Beginning in May 2011, the Federal Bureau of Investigation entered into an agreement with confidential sources to obtain information about Pilot's rebate fraud scheme, including Moore.

16. Over the course of the investigation, it was determined that Pilot employees, including Defendant Stinnett, had been intentionally defrauding some of its customers by

deliberately charging a higher price than the contractually agreed upon price, and then concealing the fact and nature of this increased price from victimized customers.

17. The federal investigation included use of concealed recording devices carried with the consent of confidential informants to records conversations the informant had with Pilot employees concerning the rebate fraud scheme.

18. These recordings reveal that Pilot maintained at its corporate offices in Knoxville, Tennessee, spreadsheets showing the amount owed to customers under their rebate agreements versus the amount actually paid.

19. These informants also recorded information shared at sales seminars in which sales representatives were advised by managers, including Defendant Stinnett, to commit rebate fraud by sending Moore and other customers less than was owed, and training sales representatives on how to determine which customers such as Moore would have difficulty discovering the price discrepancies.

20. Pilot staff, including Defendant Stinnett, intentionally withheld relevant pricing information from its customers, including Moore, who made inquiries about the rebate amounts they received.

21. If a customer caught the discrepancy, Pilot blamed it on a computer glitch.

22. The recorded conversations between the FBI informant, a Pilot sales representative, and his co-workers revealed that these actions were taken with the awareness and consent of Pilot executives, including Chief Executive Officer James A. "Jimmy" Haslam, III, President Mark Hazelwood, and Chief Financial Officer Mitch Steenrod.

23. These conversations also reveal that Pilot owners, executives, directors, principals, sales agents and/or administrative staff, including Defendant Stinnett, took active steps to conceal their activities from their customers and from law enforcement officials.

24. Plaintiff Moore has been damaged by Pilot's misrepresentations, concealment, and non-disclosure of correct rebate amounts because it was induced to purchase diesel fuel at a rate different than what was promised, and paid substantially more than the agreed-upon rate.

25. As a result of Pilot's misconduct and Plaintiff Moore's failure to receive the fuel rebates that were promised, Plaintiff Moore was required to incur additional debt and interest associated therewith.

26. Plaintiff Moore is aware of and understands the terms of the proposed class action settlement that has been preliminarily approved in the case of National Trucking Reclamation Services, Inc. et al. v. Pilot Corporation, et al. pending in the Eastern District of Arkansas, Case No. 4:13-cv-00250-JMM. Plaintiff does not wish to participate in the proposed settlement and, per stipulation of the parties in the Arkansas case, has opted out of it.

III. CAUSES OF ACTION

COUNT I - *Conversion*

27. Plaintiff reiterates all foregoing paragraphs as if fully incorporated herein.

28. Defendants wrongfully converted consumer rebate funds owed to Moore to its own use. Facts in support of the allegations against Defendants are set out with great specificity in Exhibit "A," which is included and incorporated herein.

29. Moore is entitled to the rebate funds withheld by Defendant pursuant to Defendants' agreements and promises to fully and faithfully pay rebate funds to Moore.

30. Plaintiff is entitled to return of these rebate funds and pre-judgment interest.

COUNT II - *Fraud/Violation of
Tennessee Consumer Protection Act of 1977*

31. Plaintiff reiterates all foregoing paragraphs as if fully incorporated herein.

32. As set out above, Defendants knowingly entered into a fraudulent scheme in which its intent was to deceive the Plaintiff and fraudulently cheat Moore out of funds owed to Moore by Pilot. The Defendants' scheme used fraudulent misrepresentation and intentional deception to deceive the Plaintiff to the Plaintiff's detriment.

33. As a result of the above mentioned scheme and fraudulent activity, the Plaintiff was injured to its detriment and caused significant damages when Moore was forced to assume additional debt and financing it would otherwise not have had to do.

34. The Defendant's activity amounted to fraud, which would entitle Moore to punitive damages, as well as a violation of the Tennessee Consumer Protection Act of 1977, which would entitle Moore to treble damages and attorney fees.

COUNT III - *Breach of Contract*

35. Plaintiff reiterates all foregoing paragraphs as if fully incorporated herein.

36. Defendants entered an agreement with Moore and other consumers to provide rebates for purchase of diesel fuel at a set amount.

37. Moore and other consumers purchased diesel fuel from Pilot travel centers rather than from Defendants' competitors in the diesel fuel market, in reliance on this agreement.

38. Defendants partially performed its portion of the agreement by sending rebates.

39. Defendants breached their duties under the contract by willfully failing to provide the full amount of the agreed upon rebate to Moore and other costumers.

40. Moore and other consumers who have suffered economic losses as a result of Defendants' willful conduct are entitled to recovery of the amounts owed under the contract and other consequential damages caused by its breach.

41. Moore has suffered economic losses as a result of Defendants' willful conduct and is entitled to recovery of the amounts owed under the contract as well as other consequential damages caused by said breach.

COUNT IV - *Liability for Conduct of Defendant Stinnett*

42. Defendants Pilot Corp. and Pilot Flying J are liable under the doctrines of *respondeat superior* and/or agency for the above-described wrongful acts committed by Defendant Stinnett during the course and scope of his employment by, or representation of, Pilot and Pilot Flying J. More specifically, Pilot Corp. and Pilot Flying J are liable because such wrongful acts were committed by Defendant Stinnett a) within their general authority, ii) in furtherance of their business, and iii) to accomplish the objective for which Defendant Stinnett was hired – all of which directly and/or proximately caused Plaintiff to suffer damages to its business and/or property to Defendants financial benefit.

43. Alternatively, Defendants Pilot Corp. and Pilot Flying J have previously plead in related litigation that “any conduct of Pilot’s employees described in the complaint was not within the course and scope of the employment with Pilot.” To the extent Defendant Stinnett’s wrongful actions were not performed in the course and scope of his employment with Defendants Pilot or Pilot Flying J, as they

contend, Defendant Stinnett is personally and individually liable for such conduct and the damages prayed herein.

COUNT V - Punitive Damages

44. Plaintiff reiterates all foregoing paragraphs as if fully incorporated herein.
45. At all times relevant herein, Defendants acted willfully and with reckless disregard of Plaintiff's rights, as described in Exhibit "A," and incorporated herein.
46. Plaintiff is entitled to punitive damages for damages sustained as a result of Defendants' actions.

COUNT VI - Attorneys' Fees

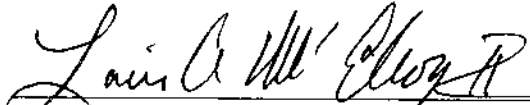
47. Plaintiff reiterates all foregoing paragraphs as if fully incorporated herein.
48. Defendants have acted in bad faith and in violation of the Tennessee Consumer Protection Act of 1977, warranting an award of attorneys' fees to Plaintiff, in an amount to be determined at trial.

WHEREFORE, premises considered, Plaintiff prays for the following relief:

- (1) That Judgment be entered against the Defendants for all appropriate damages;
- (2) For a trial by jury of twelve persons;
- (3) For an award of actual damages due to conversion and breach of contract in an amount to be proven at trial;
- (4) For an award of punitive damages as determined by an impartial jury;
- (5) For treble damages pursuant to the Tennessee Consumer Protection Act of 1977;
- (6) For an award of attorney's fees in an amount determined by this Court; and
- (7) For all other relief this Court deems equitable and just.

Respectfully submitted, this 20th day of November, 2013.

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