

NICHOLS KASTER, PLLP  
Paul J. Lukas (MN Bar No. 22084X)\*  
Kai H. Richter (MN Bar No. 0296545)\*  
Rebekah L. Bailey (MN Bar No. 0389599)\*  
(*pro hac vice* application forthcoming)  
4600 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402  
Telephone: (612) 256-3200  
Fax: (612) 338-4878

SCHALL & BARASCH L.L.C.  
Patricia Barasch, NJ Bar No. (PAB 4660)  
Moorestown Office Center  
110 Marter Ave., Suite 302  
Moorestown, New Jersey 08057  
Telephone: (856) 914-9200  
Fax: (856) 914-9420

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

ROBERT SLACK, CAROLINE MOAT, and  
MICHAEL FARBER, individually, and on  
behalf of all others similarly situated,

Plaintiffs,

v.

SUBURBAN PROPANE PARTNERS, L.P.  
and SUBURBAN PROPANE, L.P.

Defendants.

---

) Civil Action No:

) **CLASS ACTION COMPLAINT**

) **(JURY TRIAL DEMANDED)**

**STATEMENT OF ADDRESSES PER LOCAL RULE 10.1**

1. The post office addresses of the named parties to this action are as follows:
  - a. Plaintiff Robert Slack: 48 Dineen Road, Lake George, NY 12845.
  - b. Plaintiff Caroline Moat: 5 Phillips Manor Road, Towaco, NJ 07082.

- c. Plaintiff Michael Farber: 3199 Sunrise Lake, Milford, PA 18337.
- d. Defendant Suburban Propane Partners, L.P.: 240 Route 10 West, Whippany, NJ 07981.
- e. Defendant Suburban Propane, L.P.: 240 Route 10 West, Whippany, NJ 07981.

### **PRELIMINARY STATEMENT**

2. Plaintiffs Robert Slack, Caroline Moat, and Michael Farber (“Plaintiffs”), bring this action as a class action, on behalf of themselves and on behalf of the Nationwide Class and Alternative Statewide Classes indentified below, against Defendants Suburban Propane Partners, L.P. (“Suburban Parent Company”) and Suburban Propane, L.P. (“Suburban Operating Company”) (collectively “Defendants”, “Suburban Propane” or “Company”), for engaging in unconscionable, fraudulent, deceptive, misleading and unlawful conduct — and for concealing, suppressing, and omitting material terms from Suburban Propane’s customers — in connection with the marketing and sale of propane and related equipment and services, as set forth below.

3. This Complaint does not challenge a propane company’s right to receive premium profits based on lawful factors driven by the free market. Rather, these allegations challenge Suburban Propane’s unlawful pattern and practice of unfairly gouging customers by means of (1) secretive pricing and fee formulas; (2) the use of deceptive and unconscionable practices and fees designed to create a captive customer base; (3) the deliberate failure to disclose pricing and fees prior to fully delivering propane; and (4) mischaracterizing certain fees.

4. Plaintiffs are residential customers of Suburban Propane who were fraudulently and deceptively charged unreasonable, arbitrary, and exorbitant prices and fees by Suburban Propane without proper and adequate advance notice of such prices and fees and without their consent.

5. Plaintiffs bring this action on behalf of a Nationwide Class of all of Suburban Propane's residential customers in the United States who were charged for propane or propane-related services or equipment at any time on or after May 17, 2004 (the "Class Period"), and were not employed by Suburban Propane at the time they incurred such charges. In the alternative, Plaintiffs bring this action on behalf of statewide classes of Suburban Propane customers in their home states ("Alternative Statewide Classes").

6. Plaintiffs seek, for themselves and all class members, reimbursement of all unlawfully charged prices and fees, other monetary relief permitted by law (including but not limited to treble damages, other statutory damages, civil penalties, costs, filing fees, and attorneys' fees), injunctive relief, declaratory relief, and any other relief available at law or in equity.

### **THE PARTIES**

7. Defendants Suburban Parent Company and Suburban Operating Company are Delaware limited partnerships, headquartered in Whippany, New Jersey (the "Corporate Office"). Suburban Parent Company is a nationwide marketer and distributor of energy products, and according to its most recent Annual Report, conducts its business principally through Suburban Operating Company.

8. Plaintiff Robert Slack ("Slack") is a resident of Lake George, New York. Slack and his wife were residential propane customers of Suburban Propane during the Class Period. Slack is a member of both the Nationwide Class and the Alternative New York Class specified below.

9. Plaintiff Caroline Moat ("Moat") is a resident of Montville Township, New Jersey, with a post office address in Towaco, New Jersey. Moat and her husband were

residential propane customers of Suburban Propane during the Class Period. Moat is a member of both the Nationwide Class and the Alternative New Jersey Class specified below.

10. Plaintiff Michael Farber (“Farber”) is a resident of Milford, Pennsylvania, and was a residential propane customer of Suburban Propane during the Class Period. Farber is a member of both the Nationwide Class and the Alternative Pennsylvania Class specified below.

### **JURISDICTION AND VENUE**

11. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d)(2). The amount in controversy in this action exceeds \$5,000,000, exclusive of interest and costs, there are over 100 class members, and some class members, including Plaintiffs Slack and Farber, are citizens of states different from Suburban Propane’s home state of New Jersey.

12. Venue is proper in the United States District Court, District of New Jersey, pursuant to 28 U.S.C. § 1391, because Suburban Propane resides in this District and because a substantial part of the events and omissions giving rise to the claims occurred in this District.

### **FACTUAL ALLEGATIONS**

13. According to Department of Energy statistics, 12.6 million households in the United States depend on propane for various uses. In residential markets, propane is used primarily for space heating, water heating, clothes drying, and cooking.

14. Propane is the only practical option for most of these residential customers, due to the unavailability of natural gas and other energy alternatives at their geographic locations.

15. Suburban Propane is the fourth-largest retail marketer of propane in the United States, measured by retail gallons sold, and services residential propane customers in at least 30 states: New Jersey, New York, Pennsylvania, Maine, New Hampshire, Vermont, Massachusetts,

Connecticut, Rhode Island, Maryland, Delaware, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Tennessee, Kentucky, Ohio, Colorado, Wyoming, Idaho, Washington, Oregon, California, Nevada, Utah, Arizona, and Alaska. The Nationwide Class includes residential propane customers from each of these states and any other states where Suburban Propane does business. According to Suburban Propane's website, the Company's "geographically diverse markets are linked by a national supply and support organization." <https://www.suburbanpropane.com/becomecust.html>. (last visited March 14, 2010).

16. Suburban Propane sold approximately 343.9 million gallons of propane to retail customers during its most recent fiscal year. Approximately 44% of this product was sold to residential customers, its largest customer segment.

17. Suburban Propane charges its residential customers higher margins for propane than its other customers. Although residential customers accounted for 44% of Suburban Propane's retail propane sales by volume, they accounted for 61% of Suburban Propane's margins on retail propane sales during the most recent fiscal year.

18. These higher margins are reflected, in part, by the exorbitant prices charged by Suburban Propane to its residential propane customers, which can exceed \$7.00 per gallon. Although the price of propane is not regulated like natural gas prices or electric rates, Suburban Propane has acknowledged that the relative inability of residential customers to negotiate prices and other terms of sale requires that such residential customers be afforded greater consumer protections than other types of customers. *See* 41 N.J. Reg. 78(a) (comments received from Joseph E. Priddy, Esq., Suburban Propane) ("Commercial customers are much more likely to be able to negotiate terms of sale than residential customers and therefore likely do not need the same level of consumer protection.").

19. Suburban Propane's residential customers are particularly vulnerable to being exploited and charged high prices and fees for propane because of certain features of Suburban Propane's residential propane business.

20. Most of Suburban Propane's residential customers receive their propane supply through an automatic delivery system. These "automatic" deliveries are unilaterally scheduled by Suburban Propane, through the use of computer technology that, on information and belief, was developed by or at the behest of Suburban Propane's Corporate Office in New Jersey. According to Suburban Propane's 2009 Annual Report, this automatic delivery system "eliminates the customer's need to make an affirmative purchase decision."

21. Another feature of Suburban Propane's residential propane business is that it owns a significant portion of the storage tanks located on its customers' premises, and "rents" these tanks to its customers. Suburban Propane does not allow competitors to fill these rented tanks, even if its customers would prefer to use a different vendor. Suburban Propane also does not allow its customers to later purchase the tanks. These policies force Suburban Propane's customers to have the tanks removed (often times requiring costly excavation) before they can cease use of the Company's services, and substantially inhibit competition in the marketplace. *See* Suburban Propane 2009 Annual Report ("[O]ur existing fuel oil customers, unlike our existing propane customers, generally own their own tanks, which can result in intensified competition for these customers.").

22. Suburban Propane knowingly and willfully engages in fraudulent, deceptive, unconscionable, and unlawful business practices that are purposely designed to exploit and mislead its residential customers, unfairly enhance its ability to charge them excessive prices, and hinder the ability of such customers to comparison shop.

23. For example, Suburban Propane typically does not disclose the price per gallon that it charges for propane until after it already has delivered the propane. The price is not made available until after their tank is filled. As a result, Suburban Propane's residential customers often are surprised (after-the-fact) by the prices that Suburban Propane charges them for propane deliveries, which frequently exceed competitors' prices and industry averages by significant amounts.

24. Suburban Propane also has established a fee structure that is designed to inhibit the ability of its residential customers to reject propane deliveries once the cost of the delivered propane is disclosed to them. For example, Suburban Propane charges its residential customers significant restocking or pump out fees to return any propane that already has been delivered to them. In addition, Suburban Propane charges its residential customers a separate fee to pick up their propane tank, if they wish to return a rented tank in order to switch service to a competitor.

25. Suburban Propane also affirmatively misrepresents the cost of the propane that it sells to its residential customers. For example, on its company website, Suburban Propane claims that "When you shop at Suburban Propane, you get ... the best value!" <http://www.suburbanpropane.com/delivery.html> (last visited May 5, 2010). Notwithstanding this representation and other similar representations to customers and prospective customers, Suburban Propane's prices are generally higher – and in many cases significantly higher – than the prevailing market price for propane.

26. The excessive and unconscionable amount of these prices and fees is illustrated by the experiences of the named Plaintiffs below. In addition, numerous other customers of Suburban Propane have reported being charged excessive prices and fees, in some cases 2 or 3 times the prevailing market price. *See, e.g.,* CBS Channel 6 News, *The Bottom Line:*

*Suburban Propane, Still Paying the Price for Propane* (Albany, New York, April 7, 2010), available at

<http://www.cbs6albany.com/video/?videoId=76285935001&lineupId=45314895001&play=now>

(last visited May 5, 2010).

27. Suburban Propane also has knowingly and willfully engaged in deceptive, misleading, unconscionable, and unlawful conduct with respect to the fees that it charges to its residential customers for propane service and equipment.

28. Suburban Propane has imposed various fees, separate and apart from its propane prices, on residential customers during the Class Period, including but not limited to so-called regulatory fees, transportation fuel surcharges, delivery fees, tank rental fees, tank pick up fees, tank pump out fees, restocking fees, and late fees.

29. Suburban Propane has not provided members of the Class proper and adequate advance notice of these fees, the amount of these fees, or the basis for these fees.

30. Even when invoicing residential consumers for these fees, Suburban Propane frequently fails to provide any explanation of the fees that are being charged. For example, on about October 31, 2009, Suburban Propane issued a statement to Plaintiff Robert Slack, containing itemized charges for a “REGFE” in the amount of \$5.62 and a “TFSCH” in the amount of \$0.55. These fees are not explained anywhere else on the statement.

31. To the extent that Suburban Propane does explain the fees that appear on its statements and invoices, these explanations are inadequate, and in any event, do not cure Suburban Propane’s failure to provide notice of such fees prior to the time that they allegedly are incurred. For example, Plaintiff Robert Slack received an invoice in January of 2010, which instructed him to see the reverse side of the invoice “for safety information.” On the reverse side

of the bill, under a header referring to “**IMPORTANT SAFETY INFORMATION**”, Suburban Propane included the following disclosure regarding fees, near the bottom:

FEES - The invoice for this delivery may include a REG Fee, Transportation Fuel Surcharge, Emergency/Special Delivery fee and other fees, under appropriate circumstances and when not prohibited by law. The REG fee is charged to recover regulatory compliance costs for implementing policies and procedures, employees training and equipment charges to comply with federald [sic] and state requirements. The REG Fee is being charged instead of including it in the price per gallon of propane. The REG Fee is not being collected on behalf of any government agency.

32. This cryptic fee disclosure, buried in fine print on the back of a statement in a section addressing safety information, is deceptive, misleading, inadequate, unconscionable, and unlawful, and conceals and omits material terms relating to Suburban Propane’s fees. In addition, it is fraudulent, deceptive, misleading, unconscionable, and unlawful for Suburban Propane to characterize certain fees as “regulatory fees,” when in fact, such fees were not collected on behalf of any governmental agency.

33. As a matter of general corporate practice, Suburban Propane does not properly and adequately disclose the prices and fees that it charges to its residential consumers, or obtain meaningful consent to charge them such prices and fees.

34. Suburban Propane’s business practices described in this Complaint, separately and in combination with one another, are fraudulent, deceptive, misleading, unconscionable, and unlawful, and knowingly conceal, suppress, and omit material terms relating to Suburban Propane’s prices, fees, and service.

35. As a result of these and other fraudulent, deceptive, misleading, unconscionable, and unlawful business practices – and Suburban Propane’s knowing concealment, suppression, and omission of material terms relating to its prices, fees, and service – Plaintiffs and other class

members have suffered ascertainable damages and losses well in excess of \$5,000,000 during the Class Period.

### **NAMED PLAINTIFF ALLEGATIONS**

#### ***Robert Slack***

36. Plaintiff Robert Slack and his wife, Donna (the “Slacks”), own two residential properties in Lake George, New York (the “Slack Properties”). The Slacks personally reside in one of these properties (the “Homestead Property”), and lease the other property (the “Rental Property”) to other residents. The Slacks rely on propane for heating and other purposes at both of these properties.

37. The Slacks are former customers of Suburban Propane, and purchased a substantial amount of propane from Suburban Propane during the Class Period, for use at the Slack Properties. During the time that the Slacks did business with Suburban Propane, the Slacks rented their propane tanks from Suburban Propane, and were “auto-fill” customers.

38. Suburban Propane did not have a written contract with the Slacks, did not provide the Slacks with a price chart that that would allow the Slacks to compare its prices with other companies, and did not affirmatively disclose its propane prices to the Slacks in advance of delivering propane.

39. On several occasions, Suburban Propane fraudulently and deceptively charged the Slacks unreasonable and/or unconscionable prices for propane that exceeded the statewide industry average price for New York, as reported by the United States Energy Information Administration (“EIA”). Over time, these overcharges became increasingly unreasonable and/or unconscionable. For example, Robert Slack paid the following amounts for propane at the

Homestead Property, in comparison to the statewide average price for New York reported by the EIA from January 2008 – January 2010 (rounded to the nearest penny):

Date	Slack Price	NY Avg	Difference
1/23/2008	\$3.93	\$2.93	\$1.00
3/12/2008	\$3.93	\$2.99	\$0.94
9/17/2008	\$3.87	no data	
12/18/2008	\$3.80	\$2.74	\$1.06
2/3/2009	\$3.72	\$2.78	\$0.94
4/2/2009	\$3.72	no data	
10/7/2009	\$3.94	\$2.46	\$1.48
11/4/2009	\$3.96	\$2.59	\$1.37
1/6/2010	\$5.29	\$3.09	\$2.20

40. Suburban Propane charged the Slacks exorbitant and unconscionable prices for other deliveries as well. Suburban Propane did not properly and adequately disclose its prices to the Slacks in advance, and the Slacks never consented to being charged these prices for propane. To the contrary, the Slacks reasonably expected that Suburban Propane would charge them a fair and reasonable market price in good faith.

41. In addition, Suburban Propane also charged the Slacks various fees for propane-related services and equipment, including but not limited to regulatory fees, transportation fuel surcharges, equipment rental charges, late-payment charges, and restock fees. Suburban Propane never provided the Slacks with a contract, agreement, or fee schedule disclosing these fees. None of these fees were properly or adequately disclosed to the Slacks prior to the time that they allegedly were incurred, and the Slacks did not consent to these fees.

42. For example, in January of 2010, the Slacks received an invoice from Suburban Propane for \$5.2890 per gallon, plus a regulatory fee and transportation fuel surcharge. Upon complaining and informing the Company that they planned to take their patronage to another company, the Slacks were threatened with a previously undisclosed and exorbitant per gallon

“pump out” fee if they chose to cease their relationship with Suburban Propane. Shortly thereafter, the Slacks discontinued their propane service with Suburban Propane, due to frustration over the Company’s unconscionable, fraudulent, deceptive, misleading, and unlawful business practices.

43. Upon cancelling their service with Suburban Propane, the Slacks were charged a \$100 restock fee for the Homestead Property (plus tax), and a \$160.49 restock fee for the Rental Property. As noted above, these restock fees were not properly or adequately disclosed to the Slacks prior to the time that the fees allegedly were incurred, and the Slacks did not consent to these fees.

44. Suburban Propane’s actions, omissions, and conduct with respect to the Slacks, as described above and elsewhere in this Complaint, were fraudulent, deceptive, misleading, unconscionable, and unlawful, and knowingly concealed, suppressed, and omitted material terms relating to Suburban Propane’s prices, fees, and service. The Slacks have suffered ascertainable damages and losses due to such acts, omissions, and conduct.

45. As a result of the Slacks’ negative experience with Suburban Propane, Plaintiff Robert Slack launched a grassroots website, [www.suburban-propane-class-action.com](http://www.suburban-propane-class-action.com), in or around January of 2010, to express his concern with the Company’s business practices. The response to this website has been significant, and many of Suburban Propane’s customers from across the country have submitted written comments to this website reporting similar experiences.

*Caroline Moat*

46. Plaintiff Caroline Moat and her husband (the “Moats”) have been both “will call” and “auto-fill” customers of Suburban Propane. During the Class Period, the Moats purchased a substantial amount of propane from the Company for household use at their home in Montville Township, New Jersey.

47. Suburban Propane does not have a written contract with the Moats, did not provide them with a price chart that would allow them to compare its prices with other companies, and did not affirmatively disclose its propane prices to them in advance of delivering propane.

48. On several occasions, Suburban Propane fraudulently and deceptively charged the Moats unreasonable and/or unconscionable prices for propane that exceeded the statewide industry average price for New Jersey, as reported by the United States Energy Information Administration (“EIA”).

49. For example, in November of 2009, Suburban Propane attempted to charge the Moats approximately \$6.00 per gallon for a propane delivery. This price was nearly double the highest New Jersey statewide average price for propane reported by the EIA for the month of November, and the Moats did not consent to being charged this price. After Moat complained about the exorbitant price, Suburban Propane later reduced its price to approximately \$4.50 per gallon (plus various fees), but this “reduced” price still exceeded the New Jersey statewide average price by approximately 50%. Prior to this delivery, Suburban Propane also charged the Moats exorbitant and unconscionable prices for other deliveries as well, and progressively increased the price that they were charged for propane.

50. The Moats reasonably expected that Suburban Propane would charge them a fair and reasonable market price in good faith, and never voluntarily agreed to being charged excessive and unconscionable prices for propane.

51. In addition, Suburban Propane charged the Moats various fees for propane-related services and/or equipment, including but not limited to regulatory fees, transportation fuel surcharges, and tank rental charges. Suburban Propane never provided the Moats with a contract, agreement, or fee schedule disclosing these fees. None of these fees were properly or adequately disclosed to the Moats prior to the time that they allegedly were incurred, and the Moats did not consent to these fees.

52. For example, on December 18, 2009, Suburban Propane charged the Moats a so-called “regulatory fee” of \$5.82 and a transportation fuel surcharge of \$0.55. In addition, Suburban Propane recently charged the Moats a substantial tank rental fee. None of these fees properly disclosed or authorized.

53. Suburban Propane’s actions, omissions, and conduct with respect to the Moats, as described above and elsewhere in this Complaint, were fraudulent, deceptive, misleading, unconscionable, and unlawful, and knowingly concealed, suppressed, and omitted material terms relating to Suburban Propane’s prices, fees, and service. Moat has suffered ascertainable damages and losses due to such acts, omissions, and conduct.

***Michael Farber***

54. Plaintiff Michael Farber is an “auto-fill” customer of Suburban Propane. During the Class Period, Farber purchased a substantial amount of propane from the Company for household use at his home in Milford, Pennsylvania.

55. Suburban Propane does not have a written contract with Farber, did not provide him with a price chart that that would allow him to compare its prices with other companies, and did not affirmatively disclose its propane prices to him in advance of delivering propane.

56. On several occasions, Suburban Propane fraudulently and deceptively charged Farber unreasonable and/or unconscionable prices for propane that exceeded the statewide industry average price for Pennsylvania, as reported by the United States Energy Information Administration (“EIA”).

57. For example, on January 7, 2010, Suburban Propane charged Farber \$5.09 per gallon for 189.2 gallons propane, plus various fees. During this time, the Pennsylvania statewide average price for propane reported by the EIA was \$3.21 (rounded up to the nearest penny). After Farber complained about the exorbitant price, which was not disclosed to him in advance of the delivery, Suburban Propane agreed to lower his price for the delivery. However, even this “reduced” price was still well above the statewide average price.

58. On March 3, 2010, Suburban Propane charged Farber an even higher amount – \$5.25 per gallon – for 173 gallons of propane. During this time, the Pennsylvania statewide average price for propane reported by the EIA was \$3.36. Farber also complained to Suburban Propane about the charge for this delivery (which was not disclosed to him in advance), but this time Suburban Propane refused to reduce its per gallon price.

59. Suburban Propane charged Farber exorbitant and unconscionable prices for other deliveries as well, without disclosing such prices in advance. Suburban Propane did not properly and adequately disclose its prices to Farber, and Farber never consented to being charged these prices for propane. To the contrary, Farber reasonably expected that Suburban Propane would charge him a fair and reasonable market price in good faith.

60. In addition, Suburban Propane charged Farber various fees for propane-related services and/or equipment, including but not limited to regulatory fees, transportation fuel surcharges, tank rental charges, and late-payment charges. Suburban Propane never provided Farber with a contract, agreement, or fee schedule disclosing these fees. None of these fees were properly or adequately disclosed to Farber prior to the time that they allegedly were incurred, and Farber did not consent to these fees.

61. For example, on January 7, 2010, Farber was charged a so-called “regulatory fee” of \$5.62 and a transportation fuel surcharge of \$0.55. On March 3, 2010, Farber was charged an increased “regulatory fee” of \$9.62 and another transportation fuel surcharge. The following month, on April 14, 2010, Farber was charged a so-called “tank rent” fee of \$72, plus tax, even though he owns his own propane tank and does not rent a tank from Suburban Propane.

62. Suburban Propane’s actions, omissions, and conduct with respect to Farber, as described above and elsewhere in this Complaint, were fraudulent, deceptive, misleading, unconscionable, and unlawful, and knowingly concealed, suppressed, and omitted material terms relating to Suburban Propane’s prices, fees, and service. Farber has suffered ascertainable damages and losses due to such acts, omissions, and conduct.

### **CLASS ALLEGATIONS**

63. With respect to Counts 1 and 4, the named Plaintiffs bring this action as a class action pursuant to Fed. R. Civ. P. 23 on behalf of a Nationwide Class consisting of “all of Suburban Propane’s residential customers in the United States who were charged for propane or propane-related services or equipment at any time on or after May 17, 2004, and were not employed by Suburban Propane at the time they incurred such charges.”

64. In the alternative, Plaintiffs bring their claims on behalf of the following Alternative Statewide Classes as follows:

- a. Plaintiff Caroline Moat alternatively brings Count 1 on behalf of an Alternative New Jersey Class consisting of “all of Suburban Propane’s residential customers in New Jersey who were charged for propane or propane-related services or equipment at any time on or after May 17, 2004, and were not employed by Suburban Propane at the time they incurred such charges.”
- b. Plaintiff Robert Slack alternatively brings Count 2 on behalf of an Alternative New York Class consisting of “all of Suburban Propane’s residential customers in New York who were charged for propane or propane-related services or equipment at any time on or after May 17, 2004, and were not employed by Suburban Propane at the time they incurred such charges.”
- c. Plaintiff Michael Farber alternatively brings Count 3 on behalf of an Alternative Pennsylvania Class consisting of “all of Suburban Propane’s residential customers in Pennsylvania who were charged for propane or propane-related services or equipment at any time on or after May 17, 2004, and were not employed by Suburban Propane at the time they incurred such charges.”
- d. Plaintiffs Slack, Moat, and Farber alternatively bring Count 4 on behalf of the Alternative Statewide Classes of their resident states (e.g., the Alternative New Jersey Class, the Alternative New York Class, and the Alternative Pennsylvania Class).

65. Numerosity: The Nationwide Class and Alternative Statewide Classes are so numerous that joinder of all class members is impracticable. Although the precise number of class members is not known at this time, hundreds of thousands of individuals fall within the definition of the Nationwide Class, and many thousands of individuals fall within the definitions of each of the Alternative Statewide Classes.

66. Commonality: There are numerous questions of law and fact common to members of the Nationwide Class and Alternative Statewide Classes, including but not limited to:

- a. Whether the class members’ claims are governed by New Jersey law or the law of their states of residence;

- b. Whether Suburban Propane's customer policies and company-wide practices as described herein constitute violations of the New Jersey Consumer Fraud Act ("NJCFA") or other applicable law;
- c. Whether Suburban Propane has a policy or systematic practice of refusing and/or failing to disclose its price for propane prior to delivery, and if so, whether this policy or practice violated the NJCFA or other applicable law;
- d. Whether class members who were charged in excess of a reasonable price for propane gas are entitled to receive restitution of amounts they were charged in excess of a reasonable price;
- e. Whether Suburban Propane included all material terms in its contracts with consumers, and if so, whether such terms were clearly, conspicuously, and timely disclosed;
- f. Whether Suburban Propane's advertisements and other representations to class members were fraudulent, deceptive, or misleading;
- g. Whether Suburban Propane had a policy or systematic practice of charging class members fees for propane-related services or equipment that were not disclosed in advance, and if so, whether this policy or practice violated the NJCFA or other applicable law; and
- h. Whether Suburban Propane failed to properly and adequately explain charges on customers' bills, invoices, and/or statements, and if so, whether this policy or practice violated the NJCFA or other applicable law.

67. Typicality: Each of the named Plaintiffs are members of the Nationwide Class and the Alternative Statewide Classes in their resident states, and their claims are typical of other class members. Each of the named Plaintiffs are current or former residential customers of Suburban Propane. Each of the named Plaintiffs were treated consistent with Suburban Propane's policies and practices relating to its residential customers. Each of the named Plaintiffs were charged in accordance with those policies and practices during the Class Period, and received standard statements, invoices, and delivery receipts or notices from Suburban Propane. Each of the named Plaintiffs were charged prices and fees by Suburban Propane that

were unconscionable, fraudulent, deceptive, and/or misleading. Each of the named Plaintiffs were charged prices and fees by Suburban Propane that were not properly and adequately disclosed in advance of the time that such charges purportedly were incurred. Each of the named Plaintiffs also have suffered ascertainable damages and losses as a result of Suburban Propane's acts, omissions, and conduct described herein.

68. Adequacy: The named Plaintiffs will fairly and adequately protect the interests of the Nationwide Class and Alternative Statewide Classes, and have retained counsel experienced in class action litigation.

69. This action is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because prosecution of separate actions by or against individual members of the proposed classes would create a risk of inconsistent or varying adjudications and create the risk of incompatible standards of conduct for Suburban Propane. Further, adjudication of each individual class member's claim a separate action would, as a practical matter, substantially impair or impede the ability of other class members to protect their interests.

70. This action is maintainable as a class action under Fed. R. Civ. P. 23(b)(2) because Defendants have acted or refused to act on grounds that apply generally to the proposed classes, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the classes as a whole.

71. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the proposed classes predominate over any questions affecting only individual members of such classes, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

72. Predominance: The common questions of law and fact identified above in Paragraphs 66(a)-(h) predominate over any questions affecting only individual class members. The violations of law specified in this Complaint result from uniform customer policies and company-wide practices that were developed and/or approved by Suburban Propane's Corporate Office. These unlawful policies and practices were applied generally to Suburban Propane's customers without regard to their individual circumstances, and resulted in similar injuries to members of the class. The predominance of common fact and legal issues is underscored, among other things, by the consistent and common allegations of Company abuse reported by other class members to Plaintiff Slack's website. (*See infra* at ¶45.) To the extent that individual class members suffered differing amounts or degrees of damage or loss due to Suburban Propane's unlawful conduct, these damages and losses are readily calculable from Suburban Propane's business records.

73. Superiority: A class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Members of the proposed classes do not have an interest in pursuing separate actions against Suburban Propane, as the amount of each class member's individual claims is too small to effectively pursue on a separate basis. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all class members' claims in a single forum in New Jersey, as Suburban Propane is headquartered in New Jersey, the unlawful conduct arose in New Jersey, named Plaintiff Caroline Moat is a resident of New Jersey, thousands of proposed class members are from New Jersey, and the most significant contacts relating this action are in New Jersey for these and other reasons. Moreover, management of this action as a class action will not present any likely difficulties.

## CHOICE OF LAW

74. The substantive law of New Jersey applies to the consumer fraud and unjust enrichment claims asserted by the Nationwide Class. *See, e.g., In re Mercedes-Benz Tele Aid Contract Litig.*, 257 F.R.D. 46 (D.N.J. 2009), *motion for decertification denied*, \_\_\_ F.R.D. \_\_\_, 2010 WL 931865 (D.N.J. Mar. 15, 2010).

75. There is a presumption in favor of applying the substantive law of the forum state – in this case, New Jersey – to non-federal claims asserted in federal court.

76. Application of New Jersey substantive law to the claims of the Nationwide Class is consistent with constitutional principals. New Jersey has significant contacts to the claims asserted by each member of the Nationwide Class, and application of New Jersey substantive law would not be arbitrary or unfair. Moreover, there is no conflict in state laws with respect to Plaintiffs' unjust enrichment claim.

77. New Jersey's contacts to this action and the claims of the Nationwide Class include, but are not limited to, the following:

- a. Plaintiff Caroline Moat is a citizen of New Jersey.
- b. A significant number of Nationwide Class members – on information and belief, totaling in the thousands – are citizens of New Jersey and were injured by Suburban Propane's unlawful conduct in New Jersey.
- c. Suburban Propane's corporate headquarters and principal place of business is in New Jersey.
- d. Suburban Propane operates at least 10 regional service centers in New Jersey.
- e. Suburban Propane's field operations in New Jersey and other states are directed and supervised, directly or indirectly, by its corporate managers and executives in New Jersey, including Stephen C. Boyd, Suburban Propane's Director of Field Operations.
- f. The acts and omissions that give rise to Plaintiffs' claims arose in New Jersey and were systematic in nature.

- g. Suburban Propane's executives in New Jersey failed to take proper, appropriate, and necessary measures to stop and remedy the acts and omissions that give rise to Plaintiff's claims.
- h. Suburban Propane's billing, delivery, and/or pricing systems are driven and controlled, on information and belief, by Suburban Propane's Applications, Systems, and Programming Department at its Corporate Office in New Jersey.
- i. Suburban Propane seeks to impose the substantive law of New Jersey on its customers, regardless of their state of residence. For example, Suburban Propane's Terms and Conditions for Electronic and Automatic Payment provide: "These terms and conditions shall be governed by the laws of the State of New Jersey, without regard to the conflict of law rules thereof." <http://www.suburbanpropane.com/terms.html> (last visited May 6, 2010). In addition, Suburban Propane's Terms of Use for its website provide: This website, and the use thereof, is governed by and construed in accordance with the domestic laws of the State of New Jersey without giving effect to any choice or conflict of laws provision or rule (whether of the State of New Jersey or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New Jersey. Any action or proceeding asserting any claim relating to or arising out of this website or the information set forth herein may only be brought in the courts of the State of New Jersey ..." *Id.*
- j. Suburban Propane invites its customers to file complaints with the Company in New Jersey at the following address: Suburban Propane, One Suburban Plaza, 240 Route 10 West, P.O. Box 206, Whippany, New Jersey 07981-0206. *See* <https://www.suburbanpropane.com/contactus.html> (last visited May 6, 2010).

78. On information and belief, additional relevant contacts with New Jersey exist which will be discovered by Plaintiffs through the course of discovery in this action.

79. For the foregoing reasons, among others, New Jersey has the most significant relationship to the claims asserted by the Nationwide Class and the strongest governmental interest in this action. Application of New Jersey substantive law is consistent with the choice-of-law rules of New Jersey, which apply in this action because New Jersey is the forum state. In addition, application of New Jersey substantive law would not offend the choice-of-law rules of other states or the governmental interests of other states.

80. Application of New Jersey law is also consistent with the New Jersey Consumer Fraud Act and judicial precedent.

81. In the alternative, the claims of the Alternative Statewide Classes are governed by the substantive law of the states where the members of those Alternative Statewide Classes reside.

**COUNT ONE: VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD**

**ACT, N.J. REV. STAT. § 56:8-1 et seq.**

*Asserted On Behalf of the Nationwide Class or, in the alternative, on behalf of the Alternative New Jersey Class*

82. Plaintiffs re-allege and incorporate by reference the above paragraphs as if fully set forth herein.

83. Because Suburban Propane is headquartered in New Jersey and has other significant contacts with New Jersey, Suburban Propane's transactions and business interactions with its customers are subject to the requirements of New Jersey law, including the NJCFA, N.J. Rev. Stat. § 56:8-1 et seq.

84. N.J. Rev. Stat. § 56:8-2 provides, in relevant part, as follows:

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

85. Suburban Propane is a "person" as defined by the NJCFA. See N.J. Rev. Stat. § 56:8-1(d).

86. The term "merchandise," as defined by the NJCFA, includes propane gas and related services and equipment. See N.J. Rev. Stat. § 56:8-1(c).

87. Suburban Propane committed multiple, separate, and repeated violations of § 56:8-2 of the NJCFA during the Class Period, and continues to violate the NJCFA, by virtue of its unconscionable, deceptive, fraudulent, and/or misleading actions, statements, and omissions in connection with the sale and advertisement of propane gas and related services and equipment, including but not limited to:

- a. Charging customers unreasonable, excessive, arbitrary, unconscionable, inflated, and/or exorbitant prices for propane, without making proper and adequate price disclosures and without obtaining meaningful consent to such prices;
- b. Charging customers arbitrary, unreasonable, and/or unconscionable fees for propane-related services and equipment, without properly and adequately disclosing such fees and without obtaining meaningful consent to such fees;
- c. Falsely and deceptively characterizing certain charges as “regulatory fees,” when in fact, such fees were not collected on behalf of any government agency;
- d. Structuring its fees in a manner purposely designed to hinder competition by punishing consumers for switching to a competitor, and charging anti-competitive tank removal fees, tank pump-out fees, re-stocking fees, and other fees;
- e. Misrepresenting, on its website and via other means, the true cost to consumers of its propane gas and related services and equipment; and
- f. Failing to properly and adequately explain charges on customers’ bills, invoices, and/or statements.

88. Suburban Propane knowingly and willfully engaged in such unlawful conduct and the other conduct described above in bad faith.

89. Suburban Propane engaged in such conduct for the purpose of (i) inducing its residential customers to do business with Suburban Propane, (ii) deceiving them about its prices and fees, and (iii) unfairly and unconscionably maximizing its revenue from such customers.

90. Plaintiffs and the Nationwide Class have suffered an ascertainable loss as a result of Suburban Propane’s violations of the NJCFA.

91. Plaintiffs and the Nationwide Class are entitled to relief for Suburban Propane's violations of the NJCFA, *see* N.J. Rev. Stat. § 56:8-19, including but not limited to restitution/damages, treble damages, costs, filing fees, attorneys' fees, injunctive relief, and other appropriate legal or equitable relief. *See* N.J. Rev. Stat. §§ 2.11, 2.12, and 19. Plaintiffs further seek civil penalties for Suburban Propane's violations.

92. In the alternative, Plaintiff Caroline Moat and the Alternative New Jersey Class are entitled to the foregoing relief for Suburban Propane's violations of the NJCFA.

**COUNT TWO: VIOLATIONS OF THE NEW YORK DECEPTIVE ACTS AND PRACTICES STATUTE, N.Y. GEN. BUS. LAW § 349**

*Asserted, in the Alternative, on behalf of the Alternative New York Class*

93. Plaintiffs re-allege and incorporate by reference the above paragraphs as if fully set forth herein.

94. In the alternative, Suburban Propane's transactions and business interactions with its New York customers are subject to the requirements of New York law, including N.Y. Gen. Bus. Law § 349.

95. N.Y. Gen. Bus. Law § 349(a) provides that "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful."

96. Suburban Propane committed multiple, separate, and repeated violations N.Y. Gen. Bus. Law § 349(a) during the Class Period, and continues to violate this statute, by virtue of its deceptive acts and practices in the conduct of its propane business and in the furnishing of propane gas and related services and equipment, including but not limited to the deceptive acts and practices specified above in Paragraphs 87(a)-(f) and elsewhere in this Complaint.

97. Suburban Propane knowingly and willfully engaged in such violations of in bad faith.

98. Suburban Propane engaged in such conduct for the purpose of (i) inducing its residential customers to do business with Suburban Propane, (ii) deceiving them about its prices and fees, and (iii) unfairly and unconscionably maximizing its revenue from such customers.

99. Plaintiff Robert Slack and the Alternative New York Class have suffered actual damages as a result of Suburban Propane's violations of N.Y. Gen. Bus. Law § 349(a).

100. Plaintiff Robert Slack and the Alternative New York Class are entitled to relief for Suburban Propane's violations of N.Y. Gen. Bus. Law § 349(a), including but not limited to actual damages, statutory damages of \$50 per violation, treble damages, costs, attorneys' fees, injunctive relief, declaratory relief, and other appropriate legal or equitable relief. *See* N.Y. Gen. Bus. Law § 349(h).

**COUNT THREE: VIOLATIONS OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW, 73 PA. CONS. ST. § 201-1 et seq.**

*Asserted, in the Alternative, on behalf of the Alternative Pennsylvania Class*

101. Plaintiffs re-allege and incorporate by reference the above paragraphs as if fully set forth herein.

102. In the alternative, Suburban Propane's transactions and business interactions with its Pennsylvania customers are subject to the requirements of Pennsylvania law, including the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. Cons. St. § 201-1 *et seq.* (PAUTP-CPL).

103. Pa. Cons. St. § 201-3 provides that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as defined by subclauses (i) through (xxi) of clause (4) of section 2 of this act [Pa. Cons. St. § 201-2] and regulations

promulgated under section 3.1 of this act [Pa. Cons. St. § 201-3.1 ] are hereby declared unlawful.”

104. “Unfair methods of competition” and “unfair or deceptive acts or practices,” as defined by clause 4 of Pa. Cons. St. § 201-2, include (among other things) the following:

- (ix) Advertising goods or services with intent not to sell them as advertised; or
- (xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

105. Suburban Propane committed multiple, separate, and repeated violations of the PAUTP-CPL during the Class Period, and continues to violate this statute, by virtue of its fraudulent, unfair, unconscionable and deceptive acts and practices in the conduct of its propane business, including but not limited to the material misrepresentations, omissions, and other acts and practices specified above in Paragraphs 87(a)-(f) and elsewhere in this Complaint.

106. Suburban Propane knowingly and willfully engaged in such acts and practices in violation of the PAUTP-CPL in bad faith and with fraudulent intent, for the purpose of (i) inducing its residential customers to do business with Suburban Propane, (ii) deceiving them about its prices and fees, and (iii) unfairly and unconscionably maximizing its revenue from such customers.

107. Plaintiff Michael Farber and the Alternative Pennsylvania Class purchased propane and/or propane-related services or equipment from Suburban Propane primarily for personal, family, or household use, and reasonably and justifiably relied on Suburban Propane to (among other things) fully and honestly disclose its prices and fees and charge them reasonable prices for propane where such prices were not disclosed in advance.

108. As a result of Suburban Propane's violations of the PAUTP-CPL, Plaintiff Michael Farber and the Alternative Pennsylvania Class have suffered ascertainable losses and damages.

109. Plaintiff Michael Farber and the Alternative Pennsylvania Class are entitled to relief for Suburban Propane's violations of the PAUTP-CPL, including but not limited to actual damages, statutory damages of \$100 per violation, treble damages, costs, attorneys' fees, injunctive relief, declaratory relief, and additional legal or equitable relief as necessary or proper. *See Pa. Cons. St. § 201-9.2.*

**COUNT FOUR: UNJUST ENRICHMENT**

*Asserted on Behalf of the Nationwide Class, or in the Alternative, on behalf of each of the Alternative Statewide Classes*

110. Plaintiffs re-allege and incorporate by reference the above paragraphs as if fully set forth herein.

111. New Jersey and other states (including New York and Pennsylvania) recognize a cause of action for unjust enrichment. There is no conflict in state law with respect to this claim.

112. Suburban Propane has been unjustly enriched as a result of the conduct described in this Complaint and other inequitable conduct.

113. Suburban Propane received a benefit from Plaintiffs and the other class members in the form of payment for propane and/or propane-related services or equipment.

114. Retention of these payments by Suburban Propane would be unjust and inequitable where Suburban Propane

- a. charged customers unreasonable, excessive, arbitrary, unconscionable, inflated, and/or exorbitant prices for propane, without making proper and adequate price disclosures and/or without obtaining meaningful consent to such prices;
- b. charged customers arbitrary, unreasonable, and/or unconscionable fees for propane-related services or equipment, without properly and adequately

disclosing such fees and/or without obtaining meaningful consent to such fees;  
or

- c. received payment by virtue of other inequitable conduct, including but not limited to the wrongful and inequitable described elsewhere in this Complaint.

115. Because it would be unjust and inequitable for Suburban Propane to retain such payments, Plaintiffs and other class members are entitled to restitution of all monies unjustly and inequitably retained.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and the Nationwide Class – or in the alternative, on behalf of the Alternative Statewide Classes – pray for judgment against Suburban Propane as follows:

- a. Determining that this action may proceed as a class action pursuant to Fed. R. Civ. P. 23(b)(1), (2), and (3), that Plaintiffs' counsel be appointed as counsel for the class, and that proper notice be distributed to members of the Nationwide Class, or in the alternative, the Alternative Statewide Classes;
- b. Declaring that Suburban Propane committed multiple, separate violations of N.J. Rev. Stat. § 56:8-2, or in the alternative, each of the consumer protection statutes enumerated in Counts 1-3;
- c. Enjoining Suburban Propane from engaging in further violations of N.J. Rev. Stat. § 56:8-2, or in the alternative, each of the consumer protection statutes enumerated in Counts 1-3;
- d. Awarding Plaintiffs their damages or losses as provided by N.J. Rev. Stat. § 56:8-2.11 and 2.12, or in the alternative, as provided by each of the consumer protection statutes enumerated in Counts 1-3;
- e. Awarding Plaintiffs treble damages as provided by N.J. Rev. Stat. § 56:8-19, or in the alternative, as provided by each of the consumer protection statutes enumerated in Counts 1-3;
- f. Awarding Plaintiffs their attorneys' fees as provided by as provided by N.J. Rev. Stat. § 56:8-19, or in the alternative, as provided by each of the consumer protection statutes enumerated in Counts 1-3;
- g. Awarding Plaintiffs their costs of suit;

- h. Awarding Plaintiffs civil penalties and/or statutory damages as provided by law;
- i. Ordering restitution of all payments unjustly accepted and/or retained by Suburban Propane from Plaintiffs or other class members;
- j. Awarding all other appropriate legal and equitable relief.

**DEMAND FOR A JURY TRIAL**

116. Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs, on behalf of themselves and all others similarly situated, demand a trial by jury.

Dated: May 17, 2010

**SCHALL & BARASCH L.L.C.**

s/Patricia A. Barasch

Patricia Barasch, NJ Bar No. (PAB 4660)  
Moorestown Office Center  
110 Marter Ave., Suite 302  
Moorestown, New Jersey 08057  
Telephone: (856) 914-9200  
Fax: (856) 914-9420

**NICHOLS KASTER, PLLP**

Paul J. Lukas (MN Bar No. 22084X)  
Kai H. Richter (MN Bar No. 0296545)  
Rebekah L. Bailey (MN Bar No. 0389599)  
4600 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402  
Telephone (612) 256-3200  
Fax (612) 338-4878

**ATTORNEYS FOR PLAINTIFFS**