

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

AUDREY BOGDANSKI, on behalf of  
herself and all others similarly situated,

Plaintiff,

v.

HIKO ENERGY, LLC

Defendant.

NO. \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

Plaintiff, Audrey Bogdanski (“Plaintiff”) files this class action complaint on behalf of herself and all others similarly situated, by and through the undersigned attorneys, against Defendant HIKO Energy (“HIKO” or “Defendant”) and alleges as follows upon personal knowledge as to herself and her own acts and experiences and, as to all other matters, upon information and belief based upon, *inter alia*, investigation conducted by her attorneys.

**NATURE OF THE CASE**

1. Plaintiff brings this class action individually and on behalf of the Class defined below against Defendant to obtain relief, including, among other things, damages and declaratory relief. This class action is brought to remedy violations of law in connection with Defendant's fraudulent and deceptive bait-and-switch sales model with their variable rate customers. Defendant represents to potential customers, that if they switch to HIKO from their local utilities or other energy suppliers, they will receive a low introductory rate on their energy bill, followed by competitive market-based rates and savings on their energy bills. However, these representations are a bait-and-switch scheme. Following the low introductory rate, Defendant's energy rates increase dramatically, causing HIKO customers' electricity bills to rise substantially.

2. Defendant's sales pitch is in reality false and misleading in that the rates actually charged to consumers are not competitive and bear little relation to prevailing market conditions. As a consequence of this scheme, consumers across the nation are essentially being scammed out of millions of dollars in exorbitant charges for electricity.

**JURISDICTION AND VENUE**

3. This is a proposed class action covering the states of Connecticut, Illinois, Maryland, New Jersey, New York, Ohio, and Pennsylvania. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(d)(2), because Plaintiff and Defendant are of diverse citizenship and the aggregate amount in controversy exceeds \$75,000.00 exclusive of interest and costs. Likewise, this court has jurisdiction under 28. U.S.C. §1332(d)(2), members of the putative class (each individual member a "Class member" and collectively the "Class

members”) are of diverse citizenship from the Defendant and the aggregate amount in controversy exceeds \$5,000,000.00 exclusive of interest and costs. There are 100 or more members of the proposed Plaintiff Class.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred here, a substantial part of the property that is the subject of this action is situated in this district, and Defendant is subject to personal jurisdiction in this district.

### **PARTIES**

5. Plaintiff Audrey Bogdanski is a resident of Moscow, Pennsylvania. On or around September 2013, Plaintiff switched her energy supplier to HIKO Energy with the promise of energy cost savings and competitive market rates.

6. Defendant HIKO Energy, LLC, a corporation with its principal place of business in Monsey, New York, is a retail electricity and natural gas provider.

### **FACTUAL ALLEGATIONS**

7. Until recently, electricity and natural gas were supplied and distributed by local utility companies. Over the last several years however, states have begun to change the regulations in the energy industry to enhance competition between energy providers.

8. In theory, the deregulation of energy allows consumers to shop around for the best energy rates. But, as the Defendant has demonstrated, the deregulation has also provided energy companies with the opportunity to gouge unsuspecting consumers. Specifically, HIKO has exploited deregulated markets by engaging in a bait-and-switch sales scheme with potential consumers.

9. Defendant lures consumers away from their local utility companies or other energy suppliers by falsely suggesting that they will lower their energy costs. The Defendant's misleading scheme promises consumers low introductory rates, followed by a competitive market rate. But in reality, after the teaser rate, consumers' energy bills skyrocket.

10. Energy rates subject to market fluctuations, like those offered by Defendant, are higher than the rates previously paid by Plaintiff and other Class members for their electricity, a material fact that Defendant does not disclose.

11. Adding to the fraudulent scheme, Defendant makes the cancellation process lengthy and difficult. Defendant requires a 30 day notice prior to cancellation. It can take up to two billing cycles for a disgruntled customer who wishes to switch to another company to do so.

12. HIKO consistently and repeatedly represents its rates as both low and competitive, and guarantees customer satisfaction. Misleading statements on their website and in their marketing materials include the following:

“HIKO Energy, LLC is committed to lowering the cost for energy consumers in all markets we serve”

“[W]e strive to offer the most competitive pricing in the marketplace”

“[W]e work to ensure more money stays where it belongs - in your pocket”<sup>1</sup>

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<sup>1</sup> <http://www.hikoenergy.com/index.html>

13. These statements are materially misleading, because by switching to HIKO, consumers receive energy services that are substantially more costly.

14. At a minimum, the Defendant exploits ambiguities in their representations by creating an illusory expectation of competitive pricing.

15. Defendant's misrepresentations and omissions caused injury to Plaintiff and Class members. Had Plaintiff and the Class known that they would be charged substantially more for their energy supply by switching to HIKO, they would not have enrolled with HIKO.

16. Plaintiff and the Class have sustained economic injury and damages as a result of Defendant's wrongful conflict.

#### **Facts Specific to Plaintiff**

17. After viewing HIKO's above described website and marketing materials, Plaintiff switched to HIKO as her energy supplier.

18. Plaintiff received an introductory rate guaranteeing an electric rate 1-7% less than her local utility company's price for the first 6 months, but following the introductory period, HIKO substantially increased its electric rates and charged Plaintiff substantially higher than her local utility provider was charging their customers each month.

19. In fact, the amount that Plaintiff was charged by HIKO for electricity during the month of February 2014 was over 70 percent higher than she would have paid her local utility company during the same period.

#### **Online Customer Complaints**

20. Numerous complaints about Defendant's deceptive and misleading marketing and pricing schemes have been raised on the Internet.

21. Consumers regularly complain that they were lured into switching energy suppliers to HIKO with the promise of energy bill savings, but following a low promotional rate, their energy bills skyrocketed, sometimes even doubling in price from their previous local utility provider.

22. Below is a small sample of customer complaints made on the Internet regarding Defendant's fraudulent sales and marketing scheme:

- I was told they could give me a better price for my electric and when I got my bill for 1/\*\*/14 \$206.30, My February bill was even higher \$ 971.33, this is for one month, how could that be?
- Representative came to front door to advertise the energy supplier selected without great detail to pricing. The representative said that our bills would be a certain percentage cheaper if we switched to HIKO Energy and that we would receive a check in the mail for our highest bill after 12 months with this supplier. She also didn't tell us that HIKO Energy used variable rates. After we signed up, for the months of February - May our bills were insanely high. For those 4 months PPL Electric charged us a total of \$330.77 but HIKO Energy charged us \$1597.41 in that same amount of time.
- Our electric service was changed to HIKO in June of 2013. The representative stated that this service would be less expensive and the prices were competitive with our current service provider. They explained how we would still have our current service as the delivery charge and they would represent the electric charge. During the summer months we did not keep track of our services charges, so did not realize that their charges were actually more than our current provider. I will only go back for 3 bills, from from 11/\*\*to 12/\*\*/13, 12/24 to 1/\*\*/13 and 1/24 to 2/\*\*/2013 to compare what the energy charges would have been if we stayed with NYSEG and what our charges WERE with HIKO Our meter was read on October \*\*, December \*\*, 2013 and again on 2/\*\*/2013. It is read every other month. I will give only the energy charges to simplify this. 11/\*\*/2014 to 12/\*\*/2014 2547 kwh used @ 0.15900 billed for \$404.98 (from HIKO). With NYSEG their cost was 0.076 kwh the cost would have been 193.57. The difference being \$211.41. 12/\*\*/2014 to 1/\*\*/2014 - 1818 kwh used @ 0.16525 billed for \$300.42 (from HIKO) With NYSEG their cost was 0.076 kwh, the cost would have been \$138.16. The difference being \$162.26. This last bill is where HIKO increased their price. My feeling is that they knew that this actually read of the meter would be extremely high due to the frigid winter and they increased their prices considerably. There was no notice of this extreme increase. We are

requesting the differences refunded for the past 3 months, but if we can't get all 3 months, we would like this past month of 1/\*\*to 2/\*\*to be refunded. 1/\*\*/2014 to 2/\*\*/2014 - 3630 kwh used @ 0.24174 billed for \$877.53 (from HIKO). With NYSEG their actual cost was 0.076 kwh, the cost would have been \$275.88. The difference being \$601.65. We are so disturbed by this and cannot afford this bill. We realize that we should have been keeping better track of the prices, but unfortunately, trusted the sales pitch and didn't notice until our bill was pheonominally high. I don't have much trust that I will reach a \*\*\*\*\* or anyone at HIKO that will do anything about this. I called HIKA on Tuesday morning and reached a message machine, which stated they would return the call within 24 hours. Called a few more times trying to reach a live person. When I did reach a phone representative I asked for a \*\*\*\*\* after I saw the conversation was going nowhere. Someone else came on the phone and basically just grunted. He did not even introduce himself. I was told after asking what his name was and who he was, that he was not a \*\*\*\*\*, "just a customer representative". I asked for the \*\*\*\*\*, again, and he said that she would not be in until Thursday. I called again on Wednesday, and again reached a recording, left a message, and have so far not received a call back from Tuesday or today. It is peculiar that there is no \*\*\*\*\* available.

- Recently I was convinced by HIKO Energy representative Travis to choose them as a third party gas and electric supplier. Travis came to my home and was very persevering, he promised me guaranteed savings and one month free. On my signed agreement with HIKO Energy stated that they guarantee 1-7% lower price than my local utility. On the first bill I received instead of savings I was charged 2 times higher price for the gas supply portion comparing to what PSE&G would charge me (\$142 comparing to \$71) and slightly overcharged for the electric part. I cancelled their service but it takes 2-3 billing circles to switch. On my second bill they charged me 3 times higher price. I still have two more months to pay them. For some reasons PSE&G cannot terminate contract immediately even though it's an emergency. HIKO Energy don't answer the phone, do not return messages. Board of Public Utilities said they receive countless calls from the customers like me, but they can't help. They licensed HIKO Energy but they don't regulate them. I don't know where to seek help. I'm a single mother living in an apartment with a little child and they just rip me off. Last bill was \$415! Its cold months now and the hitting system works on gas. And of course I never received promised one month free.
- My wife made a change to HIKO Energy from \*\*\*\*\* May of last year. The reason for the change was due to lower prices. When the salesperson was on the phone with my wife they never mentioned a variable rate. For the first six months the rate did not change. Two months ago the rate increased from 8 cents per KwH to 13 cents per KwH. This past month the rate increased from 13 cents per KwH to 29 cents per KwH which increased our bill to over \$500 when we used less

electric than we have in the past six months. This increased our bill by over \$350. We attempted to call them to dispute the fact that the governor called a state of emergency in PA in early February which should have frozen increases as well as dispute the fact that they did not inform us originally that this was a variable rate. We have tried to contact the company over twenty times in the last week and left messages many time since we got dumped straight into voicemail but no one has called us back. We have sent the required paperwork to the attorney general and as a last resort now sending this to the BBB.

- This company offers to give the customer the lowest possible rates on energy supply. I was told by the representative that my electric bill would be lower if I used HIKO Energy instead of my current provider. This was never the case. For the first few months my rates stayed the same and then this month I get my bill and it was over .20kwh when PP&L is offering 0.08754. I stay current and check my bill consistently using PP&L's website. My bill that I just received was projected to be appr. \$600 give or take some change because of the fees and taxes. This was not the case. My bill was \$1442.20. I used 4303 khW and was charged over .20 khw. This resulted in my bill being \$871 more than it would be with PP&L. HIKO Energy states that the bill will be less not more than double. I attempted several times to contact them to cancel the service and find out about these charges. Every time I called I received an automated service where I left my name and number and did not receive a return call. I finally sent an email and received a response saying that it will be canceled by not for 30-60 days and I am assuming this will be at their outrageous prices resulting in thousands of dollars. At this rate I would owe them \$4326 for 3 months of electric?? I asked to have this financial matter resolved, I was also told in the email that it would be forwarded to a manager and I would receive a return phone call to resolve this matter. That was one week ago and still no call. HIKO Energy mislead me and told me I would SAVE money, not that they would wait until your bill was higher in the winter and then change the rate and COST you money.
- I SIGNED UP FOR HIKO BECAUSE THEY GUARANTEED ME THAT I WOULD SAVE MONEY AND I WOULD BE PAYING LESS ON MY BILLS. LITTLE DID I KNOW THE OUTRAGEOUS BILLS THAT I WOULD BE RECEIVING. MY BILLS HAVE GOTTEN SO HIGH THAT LAST MONTH MY BILL CAME OUT TO OVER \$1800. I TRIED CONTACTING HIKO ON SEVERAL OCASSIONS AND WAS UNSUCCESSFUL TILL JUST A FEW DAYS AGO. I HAVE A DISABLED HUSBAND AND SHOULD NOT HAVE TO CHOOSE BETWEEN BUYING HIS MEDICINE (THAT WILL KEEP HIM ALIVE) OR PAYING THE UTILITY BILL THAT WILL KEEP HIM WARM (SINCE A SIMPLE COLD CAN SEND HIM STRAIGHT TO THE HOSPITAL OR WORSE). THIS COMPANY IS A COMPLETE DISGRACE AND THEY SHOULD BE ASHAMED! TO HAVE TO WAIT 60DAYS (2 BILLING CYCLES) TO BE REMOVED FROM THIS PROGRAM IS ABSURD. I'M

TRULY AFRAID TO SEE WHAT THESE TWO BILLING CYCLES WILL BRING. THIS BUSINESS SHOULD BE SHUT DOWN! PLEASE HELP.<sup>2</sup>

23. These complaints reflect the false and misleading course of conduct that HIKO is engaged in, resulting in damages to consumers across the nation.

24. Government action has already been taken against the Defendant. The Pennsylvania Office of Attorney General's Bureau of Consumer Protection and the Office of Consumer Advocate filed a Formal Complaint against HIKO Energy with the Pennsylvania Public Utility Commission after consumers complained about their electricity cost increasing by as much as 300%.<sup>3</sup>

#### **CLASS ACTION ALLEGATIONS**

25. Plaintiff brings this suit as a class action on behalf of herself and all HIKO Energy customers with variable-rate plans from January 1, 2010 to the present. The proposed class (the "Class") is defined as follows:

All variable-rate customers in Connecticut, Illinois, Maryland, New Jersey, New York, Ohio, and Pennsylvania, who used HIKO as their electricity supplier. Excluded from the Class are (a) any Judge or Magistrate presiding over this action and members of their families; (b) HIKO Energy, and their subsidiaries and affiliates; and (c) all persons who properly execute and file a timely request for exclusion from the Class.

26. Plaintiff reserves the right to redefine the Class(es) prior to class certification.

27. The exact number of Class members is unknown as such information is in the exclusive control of the Defendant. Plaintiff, however, believes that the Class encompasses thousands of individuals who are geographically dispersed throughout

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<sup>2</sup> <http://www.bbb.org/new-york-city/Business-Reviews/energy-service-companies/hiko-energy-llc-in-monsey-ny-129091/Complaints#breakdown>

<sup>3</sup> See *Commonwealth of Pennsylvania v. Hiko Energy LLC*, docket number C-2014-2427652.

the nation. Therefore, the number of persons who are members of the Class described above are so numerous that joinder of all members in one action is impracticable.

28. Questions of law and fact that are common to the entire Class predominate over individual questions because the actions of Defendant's complained of herein were generally applicable to the entire Class. These legal and factual questions include, but are not limited to:

- a. The nature, scope and operations of Defendant's wrongful practices;
- b. Whether Defendant engaged in fraudulent practices as to Class members;
- c. Whether Defendant's conduct amounts to a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law;
- d. Whether Defendant breached its contracts with consumers;
- e. Whether Defendant breached the covenant of good faith and fair dealing with Class members;
- f. Whether Defendant negligently misrepresented the true nature of its energy rates;
- g. Whether Defendant has been unjustly enriched;
- h. Whether Plaintiff and the Class suffered damages as a result of Defendant's misconduct and, if so, the proper measure of damages.

29. Plaintiff's claims are typical of the members of the Class because Plaintiff and Class members were injured by the same wrongful practices. Plaintiff's claims arise from the same practices and course of conduct that gives rise to the claims

of the Class members, and are based on the same legal theories. Plaintiff has no interests that are contrary to or in conflict with those of the Class she seeks to represent.

30. Questions of law or fact common to Class members predominate; a class action is superior to other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. While the Class members' aggregate damages are likely to be in the millions of dollars, the individual damages incurred by each Class member are, as a general matter, too small to warrant the expense of individual suits. The likelihood of individual Class members prosecuting separate claims is remote, and even if every Class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials on the same factual issues. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. Certification of the Class under Rule 23(b)(3) is proper.

31. Relief concerning Plaintiff's rights under the laws herein alleged and with respect to the Class would be proper. Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive

relief or corresponding declaratory relief with regard to Class members as a whole and certification of the Class under Rule 23(b)(2) proper.

**COUNT I**  
**VIOLATION OF PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW**

32. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

33. Plaintiff asserts this cause of action on behalf of herself and the other members of the Class.

34. This cause of action is brought pursuant to Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* ("UTPCPL").

35. UTPCPL declares unlawful all unfair and deceptive acts or practices in or affecting commerce.

36. Under UTPCPL, Defendant's misleading representations regarding energy cost savings and competitive market rates are unfair, deceptive and unconscionable.

37. In the course of soliciting and promoting energy cost savings and competitive market rates to consumers and in entering into agreements with consumers to provide such purported services, Defendant has engaged in unfair and deceptive acts and practices in trade or commerce in violation of the UTPCPL.

38. Defendant violated the UTPCPL by engaging in a fraudulent and deceptive bait-and-switch- sales model of inducing customers to switch from their energy suppliers to HIKO

Energy with a low promotional rate offer and energy savings, and then charging the consumer exorbitant non-competitive energy rates following the promotional period.

39. Defendant violated the UTPCPL by falsely representing that consumers would save money on their energy bills by switching to HIKO.

40. Defendant violated the UTPCPL by failing to disclose that on a consistent basis, HIKO's regular rates are substantially higher than its competitors and not competitive in the market.

41. Defendant violated the UTPCPL by failing to disclose to consumers that after the initial promotional period, energy rates were almost guaranteed to increase substantially.

42. Defendant violated the UTPCPL by failing to adequately inform consumers that HIKO's energy rates generally increase and will rarely ever be lower than the competitive market price.

43. Defendant's acts and practices as alleged in the foregoing paragraphs were false, misleading, deceptive, and unfair to consumers, in violation of the UTPCPL.

44. Plaintiff and Class members relied on Defendant's misrepresentations. Had HIKO disclosed in its marketing and sales statements that a consumer's energy bills would more likely than not substantially increase, Plaintiff and Class members would not have switched to HIKO for their energy supply.

45. As a direct and proximate result of Defendant's deceptive, fraudulent, and unfair practices, Plaintiff and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

46. Plaintiff, on behalf of herself and all others similarly situated, demands judgment against Defendant for damages and declaratory relief.

**COUNT II**  
**BREACH OF CONTRACT**

47. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

48. Where the relevant agreements between HIKO and its customers do not specify the applicable price, to prevent the contract from being too indefinite or from placing Plaintiff and the Class at Defendant's mercy, the agreements should be deemed to contain an implied contractual term mandating a reasonable price. In this case, a reasonable price would be the prevailing market rates in effect during the applicable class period. The best approximation of such a reasonable market price is the rates charged by the Plaintiff and Class members' local public utility companies.

49. Defendant breached this implied contractual term by charging Plaintiffs and Class members unreasonable and exorbitant energy rates well above market prevailing rates.

50. As a direct and proximate result of Defendant's wrongful conduct, the Plaintiff and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

51. Plaintiff, on behalf of herself and all others similarly situated, demands judgment against Defendant for damages and declaratory relief.

**COUNT III**  
**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

52. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

53. HIKO has a duty of good faith and fair dealing with respect to its dealings with consumers, including Plaintiff and the Class members.

54. There is an implied duty of good faith and fair dealing in every contract, and the Defendant had an implied duty to ensure that their marketing materials and other representations regarding electricity and gas rates were not false and misleading with respect to energy consumers.

55. When a contract contains an unspecified price term such as in the HIKO agreement, the seller does not have unlimited discretion to set the prices. Rather, under the covenant of good faith and fair dealing, the seller must set the prices reasonably and in good faith.

56. Defendant knows that the possibility of energy savings is the primary incentive to induce consumers to switch to HIKO.

57. Defendant breached the covenant of good faith and fair dealing by engaging in deceptive and misleading representations of energy cost savings and failing to set rates at a competitive market rate, and instead, charging customers excessive energy rates that generally far exceed the market rate. In so doing, Defendant acted recklessly, maliciously, in bad faith, and without good cause, thereby preventing Plaintiff and the Class from receiving their reasonably expected benefits under the services agreements.

58. Under the covenant of good faith and fair dealing, the court should read in the applicable price properly paid by the Class for HIKO's services as a reasonable, market-based

rate, which is the rate charged by the Class members' local public utilities companies during the class period. All monies paid above this reasonable amount should be restored to the Class as damages.

59. Plaintiff and Class members relied to their detriment upon misleading assertions and conduct of Defendant's and such reliance may be presumed based on the Defendant's unlawful conduct.

60. As a direct and proximate result of Defendant's deceptive, fraudulent, and unfair practices, Plaintiff and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

61. Plaintiff, on behalf of herself and all others similarly situated, demands judgment against Defendant for damages and declaratory relief.

**COUNT IV**  
**COMMON LAW FRAUD, INCLUDING FRAUDULENT INDUCEMENT, AND**  
**FRAUDULENT CONCEALMENT**

62. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

63. Defendant made several false and fraudulent representations of material fact to Plaintiff and Class members regarding the cost savings benefits of switching to HIKO, and concealed certain material information regarding the upward trend of their energy rates from the Plaintiff and Class members.

64. Among those representations, Defendant fraudulently represented to consumers that they would save money on their energy bills by switching to HIKO.

65. Defendant fraudulently represented to consumers that their energy rates were competitive in the market when in fact, on a consistent basis, their rates are not competitive and more often than not, higher than the market rate.

66. Defendant fraudulently concealed from consumers that after the initial promotional period, their energy rates were almost guaranteed to increase substantially, generally higher than the rates at local utility companies.

67. Defendant's misrepresentations and concealments of material facts concerning their energy rates and alleged savings were made purposefully, willfully, wantonly, and recklessly to induce Plaintiff and the Class to switch to HIKO as their energy supplier.

68. At the time Defendant made these misrepresentations and concealments, and at the time Plaintiff and consumers switched to HIKO, Plaintiff and consumers were unaware of the falsity of these representations, and reasonably believed them to be true.

69. In making these representations, Defendant knew they were false and intended that the Plaintiff and Class members would rely upon such misrepresentations.

70. Plaintiff and Class members did in fact rely upon such misrepresentations.

71. Defendant's misrepresentations fraudulently induced Plaintiff and Class members to switch to HIKO, only to have their energy bills increase.

72. Plaintiff and Class members' reliance was reasonable as they trusted that Defendant would act honestly and in good faith.

73. As a direct and proximate result of Defendant's deceptive, fraudulent, and unfair practices, Plaintiff and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

74. Plaintiff, on behalf of herself and all others similarly situated, demands judgment against Defendant for damages and declaratory relief.

**COUNT V**  
**NEGLIGENT MISREPRESENTATION**

75. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

76. Under the circumstances alleged, Defendant owed a duty to Plaintiff and the Class to provide them with accurate information regarding the true nature of HIKO's energy rates and lack of energy cost savings.

77. Defendant represented to Plaintiff and Class members that by switching to HIKO, they would enjoy savings with competitive market rates.

78. Defendant's representations were false, negligent and material.

79. Defendant negligently made these false misrepresentations with the understanding that Plaintiff and Class members would rely upon them.

80. Plaintiff and Class members did in fact reasonably rely upon these misrepresentations and concealments made by Defendant.

81. As a direct and proximate result of Defendant's negligent actions, Plaintiff and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

82. Plaintiff, on behalf of herself and all others similarly situated, demands judgment against Defendant for damages and declaratory relief.

**COUNT VI**  
**UNJUST ENRICHMENT**

83. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

84. Plaintiff and the Class have conferred substantial benefits on Defendant by switching to HIKO as their energy supplier, and Defendant have consciously and willingly accepted and enjoyed these benefits.

85. Defendant knew or should have known that consumers' payments for HIKO energy were given and received with the expectation that consumers would be saving money on their energy bills as represented by Defendant.

86. Because of the deliberate fraudulent misrepresentations, concealments, and other wrongful activities described above, including but not limited to, inducing consumers to switch to HIKO with representations of energy cost savings, and charging consumers exorbitant undisclosed rates grossly out of line with market conditions, Defendant have been unjustly enriched by their wrongful receipt of Plaintiff and Class members' monies.

87. As a direct and proximate result of Defendant's wrongful conduct and unjust enrichment, Plaintiff and Class members have suffered damages in an amount to be determined at trial.

88. Defendant should be required to disgorge all monies, profits and gains which they have obtained or will unjustly obtain in the future at the expense of consumers.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this case be certified and maintained as a class action and for a judgment to be entered upon Defendant as follows:

- A. Appointing Plaintiff as the representative of the Class and their counsel as Class counsel;
- B. For economic and compensatory damages on behalf of Plaintiff and all Class members;
- C. For actual damages sustained;
- D. For treble damages pursuant to law, and all other actual, general, special, incidental, statutory, punitive, and consequential damages to which Plaintiff and Class members are entitled;
- E. For injunctive relief, compelling Defendant to cease their unlawful actions;
- F. For reasonable attorneys' fees, reimbursement of all costs for the prosecution of this action, and pre-judgment and post-judgment interest; and
- G. For such other and further relief this Court deems just and appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff respectfully demands a trial by jury on all issues within the instant action so triable.

Dated: October 7, 2014

By: s/Michelle R. O'Brien

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
 Bogdanski, Audrey

**(b) County of Residence of First Listed Plaintiff** Lackawanna County, PA  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c) Attorneys (Firm Name, Address, and Telephone Number)**  
 See Attachment

**DEFENDANTS**  
 HIKO Energy, LLC

**County of Residence of First Listed Defendant** Rockland County, NY  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District (specify)     6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):  
Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. 201-1, et seq.

Brief description of cause:  
Misleading representations regarding energy cost savings and competitive market rates

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: October 7, 2014    SIGNATURE OF ATTORNEY OF RECORD: /s/ Michelle R. O'Brien

**FOR OFFICE USE ONLY**

RECEIVED # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPROVED BY \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**ATTACHMENT TO CIVIL COVER SHEET**

**AUDREY BOGDANSKI, on behalf of herself and all others similarly situated  
V.  
HIKO Energy, LLC**

**Question 1(c) Attorneys:**

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