

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

FILED  
NOV 2: 06

BRAD BIRGE', individually and on behalf )  
of persons similarly situated, )  
Plaintiffs, )  
v. )  
NICOR GAS COMPANY and NICOR )  
SERVICES, )  
Defendants. )

Case No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

11 CH06556  
CLERK

**CLASS ACTION COMPLAINT**

Plaintiff Brad Birge', individually and on behalf of all other similarly situated people, brings this action against Defendants Nicor Gas and Nicor Services and alleges, based on personal knowledge with respect to himself, on his own actions and on information and belief, and in part through investigation of counsel, as follows:

**Nature of the Case**

1. This action is based on two deceptive practices, involving two separate charges for two separate services imposed on the natural gas bills of Plaintiff and the two Classes he represents, Classes A and B. Plaintiff brings this action for violations of the Illinois Consumer Fraud Act, Common Law Fraud, and Unjust Enrichment.

2. The first deceptive practice is a classic case of cramming. Cramming is the practice of tacking on extra fees for services that either don't exist or were not ordered by a billing company's customers. In the relevant situation, Defendants have imposed a \$19.95 per month charge that appears on the Plaintiff and Class' gas bills titled "Nicor Service Charge." This charge was never disclosed nor was any "Service" offered to or accepted by Plaintiff or the

Class. The misleading Nicor Service Charge appears monthly on Plaintiff's and the Class' bills, without any explanation, disclosure, or proper and significant notice. Upon information and belief, this service is an appliance or service plan billed out by Nicor Services and/or Nicor gas for repair of HVAC systems, stoves, washers, dryers and refrigerators. Plaintiff would not have agreed to the Nicor Services warranty plan had he been presented with option to pay for the service. The name, "Nicor Service Charge" is facially misleading and inconspicuous on Plaintiff and the Class' gas bill and would appear, on its face, to be a charge related to the delivery of natural gas. (See Plaintiff's Gas bill at Exhibit A). It is merely tacked on and no conclusions can be conceived to the very nature of what the charge even represents.

3. Defendants participated and perpetuated in the deceptive and systemic practice known as cramming by adding "Nicor Service Charge" to the bills of the consumers of Defendants' product without notice, information, or agreement for such services.

4. Plaintiff brings this action on behalf of all Defendants' customers who, within the applicable limitations period, were charged the Nicor Service Charge services (the "Nicor Service charge Class Period"), and/or had the Nicor Service Charge added to their Nicor Gas accounts as a direct result of Defendants fraudulent or deceptive practices, through affirmative, misleading and/or omitted material fact.

5. The second of the Defendants' deceptive practices relates to the marketing and sale of Nicor's Gas Line ComfortGuard service plan (referred to hereafter as "ComfortGuard") to Plaintiff and members of the Class. At \$4.95 per month, ComfortGuard, marketed by Defendants and offered by Nicor gas and/or Nicor Services, is a service or warranty which allegedly covers the cost of inspection and repair of potential internal gasline leaks for up to \$600.00 per incident. ComfortGuard ceiling is vastly overstated and excessively used in its

marketing as deceptive and misleading giving the wrongful impression the repair could be costly and a customer would be protected by an inexpensive monthly charge. Upon information and belief, the plan's annual cost is far more expensive than the average repairs for the services it warrants.

6. ComfortGuard is a gas pipe repair program offered by Nicor Services that purportedly protects customers against the cost of repairing gas leaks inside the Defendants' customers' homes, dwellings, suites, businesses and/or units. Nicor Gas is responsible for repairing gas pipes up to and including the gas meters that services Defendants' relevant customers. The ComfortGuard program is marketed as an additional service plan to protect Defendants' customers against repair costs for problems that may occur in a customer's internal piping for which Nicor Gas is not responsible. However, upon information and belief, Defendants are already obligated by law or duty to perform many of the services the ComfortGuard service represents to warrant, hence creating a large monetary benefit to the detriment of Plaintiff and the Class.

7. Defendants falsely, deceptively and knowingly market and sell the ComfortGuard plan to those Nicor Gas customers who were and/or are covered by an existing homeowners insurance plan, renters insurance plan, or an insurance plan for commercial dwelling, and other relevant equivalents, which cover repairs for internal gas piping within their residences. Plaintiff and the Class therefore have no need for the protection and derive no benefits in return for the additional monthly cost for ComfortGuard. Moreover, on information and belief, internal studies conducted by Defendants, but not disclosed to Plaintiff or the Class, show that the average repair bill for internal gas piping is \$47 per occurrence and that internal gas leaks are extremely rare. Thus Plaintiff and the Class, even assuming the ComfortGuard coverage is not subsumed in their

own insurance policies, are paying, over the course of one year, more than the full price of a potential repair which they will probably never need. On information and belief, Defendants have received a windfall by fraudulently selling their customers overpriced insurance for a contingency which most likely will never occur.

8. Plaintiff brings this action on behalf of all of Defendants customers who, within the applicable limitations period (the "ComfortGuard Class Period"), have been billed monthly for ComfortGuard on their Nicor Gas accounts as a direct result of Defendants' fraudulent, misleading or deceptive practices.

9. Plaintiff contends that both these deceptive controversies are violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.* (the "CFA"). Further, Defendants are liable for their conduct under the theory of common law fraud, and for unjust enrichment for monetary benefits unrightfully gained to the unlawful detriment of the Plaintiff and the Class.

#### **Parties**

10. Plaintiff Brad Birge resides in Wilmette, which is located in Cook County, Illinois. Defendants provided the gas and other relevant services to Plaintiff's residence, including charges for the Nicor Services Charge and the ComfortGuard service, entitling him to be the Class representative for both Classes.

11. Defendant Northern Illinois Gas Company (doing business as Nicor Gas Company), purportedly one of the nation's largest distributors of natural gas. Defendant Nicor Gas, a regulated natural gas distribution utility, serves two million customers in a service territory that encompasses most of the northern third of Illinois, including the city of Chicago.

Defendant Nicor Gas' corporate headquarters are located at 1844 Ferry Road, Naperville, Illinois 60563-9600.

12. Defendant Nicor Services is an affiliate and subsidiary of Defendant Nicor Gas and is not regulated by the Illinois Commerce Commission. According to its web site, "Nicor Services offers a broad range of home solutions that help homeowners maximize their indoor air quality and comfort, protect and maintain their home systems, and control their energy costs. As a single-source home services provider, Nicor Services also offers solutions that can improve energy efficiency and help conserve energy, including high-efficiency heating and air conditioning equipment and duct sealing services." Nicor Services' corporate headquarters is located at 2019 Corporate Lane Naperville, Illinois 60563.

13. Nicor Gas is a subsidiary company to their parent company, Nicor, Inc. Nicor, Inc. is an Illinois corporation with its principal executive offices at 1844 Ferry Road, Naperville, Illinois 60563-9600. Nicor, Inc. is a holding company and is currently not a Defendant in this lawsuit.

### **Jurisdiction and Venue**

14. Jurisdiction in Illinois and venue in this Court are proper pursuant to 735 ILCS 5/2-209 and 5/2-201 of the Code of Civil Procedure. The deceptive practices that are the subject of this action occurred within Defendants' service area, which includes, but is not limited, to Cook County, Illinois.

### **Factual Background**

#### **Nicor Services Charge for \$19.95 Per Month**

15. Defendants have a deceptive practice and systematically failed to disclose or materially hidden a charge on the gas bills of Plaintiff and the Class. This is a monthly fee for \$19.95 or \$239.40 per year. This charged is referred to on the Plaintiff's bill as "Nicor Service Charge." Upon information and belief, there is a \$400 cap on each claim that is made.

16. Upon information and belief, this charge seems to be an appliance warranty or service charge for HVAC systems, stoves, washer, dryer or refrigerator.

17. Defendants have failed to properly disclose terms or even the existence of such a service, before and after imposing this charge on the gas bills of Plaintiff and the Class. Neither Plaintiff, nor the Class, ever consented to this charge. Plaintiff contends that if he had prior knowledge of the purpose and nature of this charge, he would have never agreed to the charge or the services the charge allegedly represents. Plaintiff does not even own an HVAC system, the primary appliance covered by the Nicor Service Charge. This charge has been called a "warranty plan," but is actually an insurance policy issued by a company not licensed to sell insurance in the State of Illinois. This warranty plan is expensive and neither Plaintiff nor the Class would have agreed to the plan had Defendants disclosed the existence of the charge, the price of the charge, limited benefits for the charge, and the concept of the services and the alternatives to the service that are in the marketplace at large. Instead, this charge is inconspicuously included in the gas bill, it appears to be a charge related to the delivery of natural gas and is automatically added to the gas bills of Plaintiff and the Class without any sort of agreement, notice or attempt to explain the nature of the charge. No separate bill for the Nicor Service Charge is or was ever sent, leaving the impression that it is a charge for the delivery of natural gas, not for insurance of undisclosed appliances. Defendants are charging Plaintiff and the Class for a warranty plan or an insurance policy on products which they may not even own

and for a service they do not know exists, or they never needed in the first place, and did not accept.

18. Defendants utilize a practice considered "cramming," an unlawful practice of tacking on extra fees for services that either don't exist or were not ordered by the customer.

19. Without the consent of Plaintiff or the Class, Defendants nevertheless charged Plaintiffs and the Class an additional \$19.95 per month on their gas bills, all to the monetary benefit for Defendants.

20. Neither Plaintiff nor the Class agreed to purchase the Nicor Service Charge and did not sign any contract authorizing the addition of the Nicor Service Charge to be added to their gas bills. Neither Plaintiff nor the Class were given notice of or consented to the imposition of this \$19.95 monthly charge.

#### **ComfortGuard Charge of \$4.95 Per Month**

21. Defendants promote the Gas Line ComfortGuard program as a service provided by Nicor Services that will, repair internal leaks in a customer's exposed gas piping and inspect for and, if necessary, replace non-leaking, uncoated brass appliance connectors covering up to \$600 per incident. It is a monthly fee of \$4.95 a month, equating to \$59.40 a year per house hold.

22. Upon information and belief, thousands of customers pay for this service. There is evidence in that while the service collects revenue of more than \$2 million dollars a month, it is so rarely useful to customers that its monthly repair benefits have averaged less than \$.10 per home when even needed.

23. Upon information and belief, The ComfortGuard Service is unconscionably overpriced and its marketing is misleading. The \$600 maximum is designed to be materially misleading by creating the impression that the service charge would be expensive.

24. Upon information and belief, Nicor Gas, the regulatory utility, largely promotes the service. Nicor Gas sells the service through an unregulated arm and improperly diverts ComfortGuard's abundant revenue to its affiliate. This tactic prevents the revenue from reducing rate hikes proposed by the utility.

25. Upon Information and belief, evidence available shows that in 2009:

- a. 20 percent of Nicor Gas customers, about 440,000 people, were enrolled in ComfortGuard, yet less than two percent of the enrollers had repairs preformed under the program.
- b. The annual cost to ComfortGuard customers is \$59.40, but the average cost of a repair for non-ComfortGuard customers was only an estimated \$47.00. Less than three percent of gas leak repairs made by Nicor Gas for non-ComfortGuard customers were more than \$100.00.
- c. Nicor Services brought in more than \$2 million a month in ComfortGuard revenue, but spent less than \$50,000 per month- or under \$0.10 per month per ComfortGuard customers- on actual repairs.

26. David J. Effron, a Hew Hampshire consultant on utility regulation, estimated that the actual price of ComfortGuard should be just \$0.30 per month, based on estimates of the costs of providing the service.

27. Upon information and belief, Defendants composed and ordered their employees to read scripts that Nicor Gas call center employees use to promote ComfortGuard. It is believed that customers are mislead into believing that gas leaks will not be inspected and repaired by the utility unless they are enrolled in the ComfortGuard service. In reality, most gas leaks are required by law to be investigated with or without the ComfortGuard service and Nicor Gas is

obligated to inspect such leaks even without the ComfortGuard service. Further any repairs are often covered in homeowner's insurance policies and other similar and relevant insurance/warranty agreements.

28. In fact, upon information and belief, Nicor gas is legally obligated to immediately investigate any reports of gas leaks for free, and shut off the gas, if necessary. Customers are responsible for the cost of any inside leak repairs-either done by a Nicor Gas technician or another contractor- only if they own the residence or dwelling and/or renters but the company must cover the cost of repairs to problems outside the home.

#### Class Allegations

29. Pursuant to section 5/2-801 *et seq.* of the Code of Civil Procedure, 735 ILCS 5/2-801, Plaintiff brings this action on behalf of two classes of similarly situated persons injured by Nicor's unfair and deceptive practices. The Classes are defined as follows:

Class A. All Defendants' customers who were charged and/or are charged the "Nicor Service Charge" of \$19.95 per month on their natural gas bills.

Class B. All of Defendants' customers who paid and/or pay for ComfortGuard protection and were/are charged \$4.50 per month on their natural gas bills.

30. Plaintiff is a member of Classes A and B. Plaintiff was Defendants' customer in the past and is also presently receiving the same gas services. Plaintiff has been and continues to be charged for both the "Nicor Service Charge" and the ComfortGuard charge on his monthly gas bill. (See Exhibit A).

31. The members of Class A and Class B are so numerous that joinder of all members is impractical. While the exact number of Class members is unknown to the Plaintiff at this time, it is ascertainable through appropriate discovery methods. Plaintiff believes that thousands of

Defendants customers have been victimized by Defendants' unfair and deceptive practices with respect to the \$4.95 per month ComfortGuard charge and the \$19.95 per month "Nicor Service Charge" during the relevant class period.

32. There are questions of law and fact common to the Classes, and these common questions predominate over any questions affecting individual members.

33. Plaintiff will fairly and adequately protect the interest of the Classes.

34. Plaintiff's counsel are experienced class action attorneys with many years of experience and a impressive track record of settlements and favorable trial decisions.

35. A class action is an appropriate method for the fair and efficient adjudication of this dispute.

36. Common issues related to the Classes A and B include:

- a. Whether Defendants engaged in the act of "cramming" by their enclosure of the \$19.95 per month Nicor Service Charge;
- b. Whether the \$19.95 per month Nicor Services Charge is misleading on its face and whether Defendants disclosed that members of Class A had the option to reject the charge;
- c. Whether Defendants misrepresented the existence of the Nicor Service Charge and the services provided for the \$19.95 per month charge;
- d. Whether the imposition and collection of Defendants' \$19.95 per month Nicor Service Charge constitutes violations of the Illinois Consumer Fraud Act;
- e. Whether the imposition and collection of Defendants' \$19.95 per month Nicor Service Charge imposes liability for common law fraud;

- f. Whether the imposition and collection of Defendants' \$19.95 per month Nicor Service Charge imposes liability for Unjust Enrichment;
- g. Whether the name "Nicor Service Charge" and its inconspicuous positioning and inclusion in the gas bills of Plaintiff and the members of Class A is facially deceptive, misleading, and an omission of material facts;
- h. Whether Defendants fully disclosed all material facts relating to the sale of ComfortGuard;
- i. Whether Defendants' marketed its ComfortGuard services in a proper manner;
- j. Whether Defendants' billing practices and marketing of ComfortGuard charge constitutes violations of the Illinois Consumer Fraud Act;
- k. Whether Defendants' billing practices and marketing of ComfortGuard charge constitutes common law fraud;
- l. Whether Defendants' billing practices and marketing of ComfortGuard charge constitutes Unjust Enrichment;
- m. Whether Defendants' misrepresented, misled and/or did not disclose material facts regarding ComfortGuard;
- n. Whether Plaintiff and the Classes have been damaged in Defendants' conduct; and
- o. Whether Plaintiff and the Classes deserve injunctive relief to halt or modify Defendants relevant unlawful and deceptive acts.

37. The claims of the representative party are typical of the claims of both Classes.
38. Defendants have acted, or refused to act, on grounds generally applicable to the Classes, thereby making appropriate declaratory, final injunctive and/or corresponding compensatory or declaratory relief with respect to the Classes as a whole.
39. Defendants' deceptive and unlawful practices are systemic, demonstrating degrees of typicality and commonalty that is worthy of class treatment.
40. As a direct and proximate result of the conduct of Defendants as alleged herein, Plaintiff and the Classes, were injured in that they paid for services for which they were not aware of for which they should have been provided all material facts upon which to make an informed choice on whether to purchase the services offered by Defendants. Also, the charges imposed by Defendants should have been significantly less and, if accepted by Plaintiff and the Classes, been based on truthful disclosures of all material facts.

### **Count I**

#### **Violations of the Illinois Consumer Fraud Act for the Nicor Service Charge**

41. Plaintiff re-alleges the allegations set forth above in paragraphs 1-4, 9-20, and 29-40.
42. Count I is a class action claim brought under the Illinois Consumer Fraud and Deceptive Business Practices Act (the "CFA"), 815 ILCS 501 *et seq.*
43. Section 2 of the Illinois Consumer Fraud Act, 815 ILCS 505/2 provides, in pertinent part:
- Sec. 2 Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretenses, false promise, misrepresentation or the concealment suppression or

omission of any material fact, with intent that others rely upon the concealment , suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”, approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

44. 815 ILCS 510/2, which is incorporated into 815 ILCS 505/2 defines certain conduct as deceptive, including conduct where a defendant:

(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have;

...

(12) engages in other conduct which similarly creates a likelihood of confusion or of misunderstanding.

45. Defendants violated the CFA by:

- a. Making misrepresentations or misleading statements regarding the \$19.95 per month Nicor Services Charge;
- b. Concealing or failing to materially disclose material facts that would have caused renters and home owners covered by existing warranties to understand that the \$19.95 Nicor Services Charge was a charge for a service which would provide a benefit to them;
- c. Adding the \$19.95 per month Nicor Services Charge to the accounts of Nicor Gas customers without obtaining consent, giving proper notice and/or an explanation of their benefits, limitations and choices.

- d. Disguising the \$19.95 per month Nicor Services Charge as a charge a customer would assume was a charge made in connection with the delivery of natural gas rather than an insurance policy or warranty plan that the customer never agreed to.
- e. This charge appears monthly on the Plaintiff's and the Class A members' bills, without proper explanation, disclosure, or notice. Neither Plaintiff nor the Class would have agreed to the Nicor Services insurance policy/warranty plan had they been presented with this option.

46. Defendants have violated the Illinois Consumer Fraud Act by engaging in the unfair, deceptive and systematic failure to disclose and/or improperly concealed charges on its gas bill. This is a monthly fee for \$19.95 or \$239.40 per year. Upon information and belief, this charge is an "appliance warranty" charge. Defendants never gave Plaintiff proper notice or disclosure, let alone had an oral or written agreement for the Nicor Services Charge.

47. Defendants intended that Plaintiff and Class A rely on its deceptive actions and material omissions as described above in order benefit monetarily from their Nicor Service Charge.

48. As a direct and proximate result of Defendants' deceptive, misleading, unfair or unconscionable practices set forth above, Plaintiff and Class A were and are being materially harmed and/or were denied the proper material facts and circumstances which would allow them to make an informed decision as consumers protected under the act. Defendants' actions, omissions of material facts and inactions were done, and are still being perpetrated, with the intent of causing many Nicor Gas customers to unnecessarily pay for the \$19.95 per month Nicor Services Charge and the services such a charge represents or represented, that were not ordered.

Moreover, Defendants did not give notice of the services it provided or that the services provided charge even existed.

49. Defendants engaged and engage in such conduct in the course of trade and commerce as defined in 815 ILCS 505/1(f).

50. Plaintiff and Class A are consumers under the Illinois Consumer Fraud Act as defined in 815ILCS 591/1 (e).

51. Defendants' deceptive, misleading, unfair, or unconscionable practices set forth above were done willfully, wantonly and maliciously entitling Plaintiff and the members of Class A to be awarded actual damages, punitive damages and equitable relief.

## Count II

### **Violations of the Illinois Consumer Fraud Act for the ComfortGuard Charge**

52. Plaintiff re-alleges the allegations set forth above in paragraphs 1, 5-14, and 21-40.

53. Count II is a class action claim also brought under the Illinois Consumer Fraud and Deceptive Business Practices Act (the "CFA"), 815 ILCS 501 *et seq.*

54. Section 2 of the Illinois Consumer Fraud Act, 815 ILCS 505/2, provides, in pertinent part:

- a. Sec. 2 Unfair methods of competition and unfair or deceptive acts o practices, including but not limited to the use or employment of any deception fraud, false pretenses, false promise, misrepresentation or the concealment suppression or omission of any material fact, with intent that others rely upon the concealment , suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act",

approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damages thereby.

55. 815 ILCS 510/2, which is incorporated into 815 ILCS 505/2 defines certain conduct as deceptive, including conduct where Defendants:

(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have;

...

(12) engages in other conduct which similarly creates a likelihood of confusion or of misunderstanding.

56. Defendants violated the CFA by:

a. Charging an unconscionably high fee for their ComfortGuard services compared to the services that ComfortGuard actually provides and Defendants receives an enormous monetary benefit from this deceptive practice.

b. Publicly available documents reflect that in 2009:

1. 20 percent of Nicor Gas customers, about 440,000 people, were enrolled in ComfortGuard and less than two percent of these people had repairs preformed under the program.

2. The annual cost to ComfortGuard customers is \$59.40, but the average cost of a repair for non-ComfortGuard customers was only an estimated \$47.00, a fact not disclosed to Plaintiff or members of Class B.

3. Nicor Services brought in more than \$2 million a month in ComfortGuard revenue by charging a monthly fee of \$4.95 per customer per month, but spent less than \$50,000 per month- or under \$0.10 per month per ComfortGuard customers- on actual repairs.
  4. While Defendants' representatives, selling the insurance pursuant to a script, imply that without ComfortGuard, Nicor Gas will not respond to a call where the customer smells gas fumes in his or her home, Nicor Gas is legally obligated to immediately investigate any reports of gas leaks for free and shut off the gas, if necessary. Defendants are not only legally required to inspect leak complaints inside customers' homes, which are extremely rare, they generally make repairs and charge \$50 to \$100 for their services.
- c. Marketing and disclosures for the ComfortGuard is materially misleading, deceptive, and/or material facts have been undisclosed to Plaintiff and members of Class B that are significant for a consumer to know when making the decision on whether such a service is needed or desired.
  - d. In marketing ComfortGuard, Defendants failed to disclose that ComfortGuard services may be covered by Plaintiff and the Class' homeowner's insurance policies and thereby have induced class members to pay for a service they do not need.

- e. By offering a \$600 ceiling for repairs relevant to the service. Defendants' induced the payment of the \$4.95 per month charge by implying that repairs could be much more costly than experience has demonstrated

57. As a direct and proximate result of Defendants' deceptive misleading, unfair or unconscionable practices set forth above, Plaintiff and Class B were injured by their payment of \$4.95 per month for ComfortGuard.

58. Defendants engaged and engage in such conduct in the course of trade and commerce as defined in 815 ILCS 505/1(f).

59. Plaintiff and Class B are consumers under the Illinois Consumer Fraud Act as defined in 815 ILCS 591/1 (e).

60. Defendants' deceptive, misleading, unfair, and/or unconscionable practices set forth above were done willfully, wantonly and maliciously, entitling Plaintiff and the members of Class B to be awarded actual damages, punitive damages and equitable relief.

### Count III

#### **Common Law Fraud for the Nicor Service Charge**

61. Plaintiff re-alleges the allegations set forth above in paragraphs 1-4, 9-20, and 29-40.

62. Defendants did not disclose the Nicor Service Charge to its customers before, or in most cases even during, their agreement for Defendants' services and/or products. This non-disclosure is a systematic practice that fails to disclose or give proper notice about the Nicor Service Charge and what benefits even come with such a service. In fact, Defendants disguised the charge on the bills of Plaintiff and the members of Class A so it would appear to be a charge related to the delivery of natural gas.

63. Defendants are obligated to disclose the charges they intend to actually bill their customers. The failure to disclose all material facts relating to the Nicor Service Charge or the benefits or detriments of such any services provided for this charge prohibited Plaintiff and members of Class A from making an informed choice as to whether to purchase any services provided pursuant to the charge.

64. Plaintiffs and members of Class A relied to their detriment upon Defendants' material omissions and/or misrepresentations relating to the Nicor Service Charge and their reliance on Defendants to properly disclose the nature of such charges was justified.

65. As a result of Defendants' actions, Plaintiff and members of Class A were damaged in the amount of \$19.95 per month for each month in which they were required to pay the Nicor Service Charge.

66. Defendants' deceptive, misleading, unfair, or unconscionable practices set forth above were done willfully, wantonly and maliciously entitling Plaintiff and the members of Class A to be awarded actual damages, punitive damages, and equitable relief.

#### **Count IV**

#### **Common Law Fraud for ComfortGuard**

67. Plaintiff re-alleges the allegations set forth above in paragraphs 1, 5-14, and 21-40.

68. Defendants did not disclose all material facts relating to ComfortGuard as set forth above. This non-disclosure is a systematic practice which resulted from a script used by Defendants' employees to sell ComfortGuard.

69. Defendants are obligated to disclose all material facts relating to the charges they intend to actually bill their customers. The failure to disclose all material facts relating to the

Nicor Service Charge or the benefits or detriments of such any services provided for this charge prohibited Plaintiff and members of Class B from making an informed choice as to whether to purchase any services provided pursuant to the charge.

70. Plaintiffs and members of Class B relied to their detriment upon Defendants' material omissions and/or misrepresentations relating to ComfortGuard and their reliance on Defendant to properly disclose the nature of such charges was justified.

71. As a result of Defendants' actions, Plaintiff and members of Class B were damaged in the amount of \$4.95 per month for each month in which they were required to pay for ComfortGuard.

72. Defendants' deceptive, misleading, unfair, or unconscionable practices set forth above were done willfully, wantonly and maliciously entitling Plaintiff and the members of Class B to be awarded actual damages, punitive damages and equitable relief.

### **Count V**

#### **Unjust Enrichment for the Nicor Service Charge**

73. Plaintiff re-alleges the allegations set forth above in paragraphs 1-4, 9-20, and 29-40.

74. Defendants have charged and received monies, and continue to charge and receive \$19.95 per customer per month for the Nicor Services Charge.

75. It is inequitable for Defendants to retain the relevant Nicor Services Charge they have received, and continue to receive, from Plaintiff and members of Class A. As a result of its tortious conduct, Defendants' retention of such funds constitutes unjust enrichment under Illinois law.

76. Defendants' were and continue to be unjustly enriched at the expense of its customers, causing damage to Plaintiff and members of Class A and a constructive trust on the monies wrongly taken should be imposed upon Defendants for the benefit it received to the detriment of the Plaintiff and Class A.

77. Allowing Defendants to retain the benefit gained from deceiving Plaintiffs and the members of Class A violates the fundamental principles of justice, equity and good conscience.

78. Defendants' deceptive, misleading, unfair, and/or unconscionable practices set forth above were done willfully, wantonly and maliciously, entitling Plaintiff and members of Class A to be awarded appropriate damages and injunctive relief

#### **Count VI**

#### **Unjust Enrichment for ComfortGuard**

79. Plaintiff re-alleges the allegations set forth above in paragraphs 1, 5-14, and 21-40.

80. Defendants have charged and received monies, and continue to charge and receive \$4.95 per customer per month for ComfortGuard.

81. It is inequitable for Defendants to retain the relevant fees for ComfortGuard they have received, and continue to receive, from Plaintiff and members of Class B. As a result of its tortious conduct, Defendants' retention of such funds constitutes unjust enrichment under Illinois law.

82. Defendants' were and continue to be unjustly enriched at the expense of its customers, causing damage to Plaintiff and members of Class B and a constructive trust on the monies wrongly taken should be imposed upon Defendants for the benefit it received to the detriment of the Plaintiff and Class B.

83. Allowing Defendants to retain the benefit gained from deceiving Plaintiffs and the members of Class B violates the fundamental principles of justice, equity and good conscience.

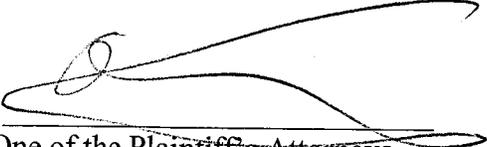
84. Defendants' deceptive, misleading, unfair, and/or unconscionable practices set forth above were done willfully, wantonly and maliciously, entitling Plaintiff and members of Class B to be awarded appropriate damages, injunctive relief, a constructive trust, costs and other relief the Court deems appropriate.

WHEREFORE, Plaintiff prays that the Court:

- A. Certify Classes A and B, appoint Plaintiff as representative of Classes A and B and appoint Plaintiff's counsel as counsel for Classes A and B;
- B. Enter judgment against Nicor Services and Nicor Gas and for Plaintiff and Class A in an amount at least equal to the total Nicor Service Charge paid by Plaintiff and Class A;
- C. Enter judgment against Nicor Services and Nicor Gas and for Plaintiff and Class B in an amount equal to the total ComfortGuard charge paid by Plaintiff and Class B;
- D. Assess punitive damages against Nicor Gas and Nicor Services collectively or individually, whichever the Court deems necessary;
- E. Award Plaintiff and the Classes A and B a constructive trust for monies Defendants received unjustly to the detriment of their Plaintiff and the Classes;
- F. Award Plaintiff and the Classes reasonable costs and attorney fees;
- G. Grant injunctive relief to end Defendants' unlawful and deceptive practices;
- H. Grant such additional relief as the Court finds proper and just.

Plaintiff demands a trial by jury

Dated: February 22, 2011

By: 

One of the Plaintiff's Attorneys

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