

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

THE STATE OF TEXAS  
Plaintiff,

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IN THE DISTRICT COURT

v.

HIDALGO COUNTY, TEXAS

BINNING HOSPITALITY, L.L.C.  
d/b/a COMFORT INN- EDINBURG  
Defendant

\_\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION  
AND APPLICATION FOR PERMANENT INJUNCTION**

COMES NOW THE STATE OF TEXAS, hereinafter referred to as plaintiff, acting by and through Attorney General of Texas GREG ABBOTT, complaining of BINNING HOSPITALITY, L.L.C. d/b/a COMFORT INN - EDINBURG, hereinafter referred to as defendant, and for cause of action would respectfully show:

**DISCOVERY**

1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. Civ. P. 190.2(b)(3).

**NATURE OF THIS SUIT**

2. The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection and Public Health Division against defendant for violations of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.* (hereinafter “DTPA”). The DTPA grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions. TEX. BUS. & COM. CODE ANN. § 17.47.

**DEFENDANT**

3. Defendant BINNING HOSPITALITY, L.L.C. is a Texas corporation who may be served with process by serving its registered agent Balvir Singh Binning at 4001 South U.S. Business Hwy. 281, Edinburg, Texas 78539.

**JURISDICTION**

4. This Court has jurisdiction over this action pursuant to Section 17.47(b) of the DTPA.

**VENUE**

5. Venue of this suit lies in Hidalgo County, Texas, for the following reasons:

- a. Under TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(a)(1), venue is proper because all or a substantial part of the events or omissions giving rise to the claim occurred in the county of suit; and
- b. Under DTPA § 17.47(b), venue is proper because defendant has done business in the county of suit.

**PUBLIC INTEREST**

6. Plaintiff, STATE OF TEXAS, has reason to believe that defendant has engaged in and will continue to engage in the unlawful acts or practices set forth below, and that defendant has, by means of these unlawful acts and practices, caused damage to or acquired money or property from persons, and that defendant adversely affected legitimate business enterprises which lawfully conduct trade and commerce in this State. Therefore, the Consumer Protection and Public Health Division of the

Office of the Attorney General of the State of Texas believes and is of the opinion that these

proceedings are in the public interest.

### **TRADE AND COMMERCE**

7. Defendant has, at all times described below, engaged in conduct which constitutes “trade” and “commerce,” as those terms are defined by Section 17.45(6) of the DTPA.

### **ACTS OF AGENTS**

8. Whenever in this petition it is alleged that defendant did any act, it is meant that defendant performed or participated in the act, or that the officers, agents, or employees of defendant performed or participated in the act on behalf of and under the authority of defendant.

### **NOTICE BEFORE SUIT**

9. The Consumer Protection and Public Health Division contacted defendant in writing to inform it in general of the alleged unlawful conduct at least seven days before this suit was filed, as may be required by Section 17.47(a) of the DTPA.

### **FACTUAL ALLEGATIONS**

10. Defendant owns and operates a Comfort Inn at 4001 Closner (also known as State Highway Business 281), Edinburg, Hidalgo County, Texas.

11. On July 22, 2008, the Governor of the State of Texas, pursuant to the authority vested in him under Section 481.014 of the Texas Government Code, declared a state of disaster in South Texas counties, including Hidalgo County, based on the existence of a threat of imminent disaster along the Texas Coast posed by Tropical Storm Dolly. A true and correct copy of the Governor’s Proclamation is attached to this petition as State’s Exhibit 1.

12. Before making landfall, Tropical Storm Dolly was upgraded to hurricane status, was expected to produce high rainfall accumulations and coastal storm surge conditions above normal

tide levels, and was likely to cause widespread flooding across portions of South Texas. For this reason, state and federal officials urged persons residing or staying in flood prone areas to relocate from their homes and/or accommodations. On July 23, 2008, Hurricane Dolly made landfall and caused widespread flooding and damage to residences in many areas in the Rio Grande Valley. As a result of the flood warnings, and because of flooding and damage left in the aftermath of Hurricane Dolly's landfall, high numbers of persons sought safety, shelter, and lodging in hotels and motels away from their homes and/or accommodations.

13. After and during the declared state of disaster, defendant took advantage of the disaster caused by Hurricane Dolly by demanding prices in excess of defendant's standard rate for its motel rooms. For example, the standard rate charged by defendant for a room with a king bed was \$69.99 per night before the declared state of disaster and \$94.99 per night after the declared state of disaster; for a room with two queen beds was \$69.99 per night before the declared state of disaster and \$124.99 per night after the declared state of disaster; and for a room with two queen/one sofa beds was \$79.99 per night before the declared state of disaster and \$149.99 per night after the declared state of disaster.

14. In addition, after and during the declared state of disaster, defendant took advantage of the disaster caused by Hurricane Dolly by selling and/or leasing lodging at an exorbitant or excessive price. For example, defendant was paid \$139.99, \$109.99, \$104.99, and \$99.99 per night by certain motel guests for lodging in rooms defendant normally provided for compensation of \$69.99 per night.

### **DTPA VIOLATIONS**

15. Defendant, as alleged above, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §§ 17.46(a) and (b) of the DTPA as follows:

a. By engaging in false, misleading or deceptive acts or practices in the course of trade or commerce, in violation of DTPA § 17.46(a);

b. By taking advantage of a disaster declared by the Governor under Chapter 418, Government Code by demanding an exorbitant or excessive price in connection with the sale or lease of lodging, in violation of DTPA §17.46(b)(27); and

c. By taking advantage of a disaster declared by the Governor under Chapter 418, Government Code, by selling or leasing lodging at an exorbitant or excessive price, in violation of DTPA §17.46(b)(27).

### **INJURY TO CONSUMERS**

16. Defendant has, by means of the unlawful act(s) or practice(s) alleged, caused actual damages to identifiable persons who should be compensated for such damages, or in the alternative, acquired money or property from persons to whom such money or property should be restored.

17. Because defendant has engaged in the unlawful acts and practices described above, defendant has violated the law as alleged in this petition, or will continue to violate the law, and should be restrained by this Honorable Court.

### **PRAYER**

18. WHEREFORE, plaintiff prays that defendant be cited according to law to appear and answer herein; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining defendant, defendant's successors, assigns, officers, agents, servants, employees and attorneys and

any other person in active concert or participation with defendant, from engaging in the following acts or practices:

- a. Charging or demanding from consumers an exorbitant price, or a price in excess of the standard or existing rate, for lodging or accommodation at any of its motels or hotels after a state of disaster has been declared by the Governor under Section 481.014 of the Texas Government Code for the county at which said hotel/motel is situated;
- b. Accepting or receiving exorbitant compensation, or compensation in excess of the standard or existing rate, for the sale or lease of lodging or accommodation at any of its motels or hotels after a state of disaster has been declared by the Governor under Section 481.014 of the Texas Government Code for the county at which said hotel/motel is situated;
- c. Failing to post a sign or card in a conspicuous place in each room with the daily room rate and the date the sign or card was posted as required by TEX. OCC. CODE ANN. §2155.001(a);
- d. Concealing, withholding, destroying, mutilating, altering, falsifying, or removing from the jurisdiction of this Court any books, records, documents, invoices, receipts, or other written materials relating to the business of defendant currently or hereafter in defendant's possession, custody or control except in response to further orders or subpoenas in this cause; and
- e. Representing, directly or by implication, that this Court, or the Office of the Attorney General has approved any good or service sold or offered for sale by defendant, or approved of any of defendant's business practices.

19. In addition, plaintiff, STATE OF TEXAS, respectfully prays that this Court will:
- a. Adjudge against defendant civil penalties in favor of plaintiff, STATE OF TEXAS, in the amount not to exceed more than \$20,000.00 per violation of the DTPA;
  - b. Adjudge against defendant civil penalties in favor of plaintiff, STATE OF TEXAS, in the amount of not more than \$250,000.00 for violations of the DTPA if the consumer was 65 years of age or older;
  - c. Order defendant to restore all money or other property acquired by means of unlawful acts or practices, or in the alternative, to compensate identifiable persons for actual damages;
  - d. Adjudge against defendant reasonable attorney's fees and court costs pursuant to TEX. GOV'T. CODE ANN. § 402.006;
  - e. Adjudge against defendant pre-judgment and post-judgment interest at the highest lawful rate;
  - f. Appoint a receiver or sequester defendant's assets if defendant has been ordered by this Court to make restitution and defendant has failed to do so within three months after the order to make restitution has become final and nonappealable; and

g. Adjudge that all fines, penalties or forfeitures payable to and for the benefit of the State are not dischargeable under bankruptcy pursuant to 11 U.S.C. §523(a)(7).

20. Further, plaintiff, STATE OF TEXAS, respectfully prays for all other relief to which plaintiff, STATE OF TEXAS, may be justly entitled.

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

KENT C. SULLIVAN  
First Assistant Attorney General

JEFF L. ROSE  
Deputy First Assistant Attorney General

PAUL D. CARMONA  
Chief, Consumer Protection and  
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Attorney for Plaintiff

## **VERIFICATION**

STATE OF TEXAS §

COUNTY OF HIDALGO §

BEFORE ME, the undersigned authority, on this day personally appeared affiant Rozanne N. Lopez, who proved to me through current Texas Driver License to be the person whose name is subscribed to this Verification and who acknowledged to me that she executed the same, and after she was duly sworn, upon her oath, she deposed and said that the affiant is an investigator for the Office of Attorney General, and is authorized to make this affidavit, that the affiant has carefully read the “Factual Allegations” in the foregoing PLAINTIFF’S ORIGINAL PETITION AND APPLICATION FOR PERMANENT INJUNCTION, and has reason to believe that each and all said factual allegations are true and correct; and affiant signs this Verification, pursuant to Rule 682 of the TEXAS RULES OF CIVIL PROCEDURE.

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ROZANNE N. LOPEZ  
INVESTIGATOR

SUBSCRIBED AND SWORN TO before me on the \_\_\_\_\_ day of August, 2008.

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NOTARY PUBLIC IN AND  
FOR THE STATE OF TEXAS