

NO. 2008V-300

STATE OF TEXAS,
Plaintiff,

v.

JAGDISH JAJAL, and ASHA JAJAL,
D/B/A COTTONWOOD INN MOTEL
Defendants.

§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

FAYETTE COUNTY, TEXAS

155th JUDICIAL DISTRICT

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

TO THE HONORABLE DISTRICT JUDGE:

COMES NOW, Plaintiff The State of Texas, acting by and through its Attorney General, GREG ABBOTT ("State" or "Plaintiff"), and complains of Defendants JAGDISH JAJAL and ASHA JAJAL, doing business as COTTONWOOD INN MOTEL ("Defendants"), and for cause of action would respectfully show as follows:

1. DISCOVERY

1.1 Pursuant to Tex. R. Civ. P. 190.3, discovery is intended to be Level 2.

2. AUTHORITY

2.1 This action is brought by Attorney General GREG ABBOTT, through his Consumer Protection and Public Health Division, in the name of the STATE OF TEXAS, and in the public interest under the authority granted him by section 17.47, Texas Deceptive Trade Practices – Consumer Protection Act, Tex. Bus. & Com. Code Ann. §§ 17.41, *et seq.* ("DTPA"), alleging that Defendants have engaged in false, misleading, or deceptive acts or practices in the conduct of trade and commerce as defined in, and declared unlawful by, DTPA sections 17.46(a) and (b).

2.2 Plaintiff seeks reasonable attorney's fees and court costs for prosecuting this action, as authorized by Texas Government Code § 402.006(c).

2.3 Pursuant to DTPA section 17.47(c)(1), Plaintiff seeks civil penalties up to \$20,000 per violation. Pursuant to section 17.47(c)(2), Plaintiff seeks civil penalties up to \$250,000 per violation for acts or practices calculated to acquire or deprive money or other property from a consumer aged 65 years or older when the act or practice occurred.

3. DEFENDANTS

3.1 Defendant JAGDISH JAJAL is an individual doing business as co-owner of the Cottonwood Inn Motel. *See Exhibit A* (Assumed Name Record). He may be served with process at: 1494 W. Hwy. 71, La Grange Texas 78945. **SERVICE OF PROCESS IS HEREBY REQUESTED.**

3.2 Defendant ASHA JAJAL is an individual doing business as co-owner of the Cottonwood Inn Motel. *See Exhibit A* (Assumed Name Record). She may be served with process at: 1494 W. Hwy. 71, La Grange Texas 78945. **SERVICE OF PROCESS IS HEREBY REQUESTED**

4. VENUE

4.1 Venue lies in Fayette County, Texas, for the following reasons:

- A. The violations alleged occurred in Fayette County. *See Tex. Civ. Prac. & Rem. Code § 15.002.*
- B. Defendants are doing business in Fayette County. *See Tex. Bus. & Com. Code § 17.47(b).*

5. PUBLIC INTEREST

5.1 Defendants have caused injury, loss and damage to the State of Texas and have caused adverse effects to legitimate business enterprises, which lawfully conduct trade and commerce in this State. The Attorney General is of the opinion and believes that these proceedings are in the public interest.

6. TRADE AND COMMERCE

6.1 Defendant has, at all times described below, engaged in conduct which constitutes "trade" and "commerce" as those terms are defined by DTPA § 17.45(6).

7. PRE-SUIT NOTICE

7.1 Pursuant to DTPA section 17.47(a), at least seven days prior to filing suit, Defendants were contacted and informed of the unlawful conduct alleged herein.

8. AGENCY

8.1 When it is alleged that Defendants did any act, it is meant that Defendants performed or participated in such act or thing or Defendants' officers, agents or employees performed the acts and were authorized to do so.

9. STATEMENT OF FACTS

9.1 On September 8, 2008 and pursuant to Tex. Gov't Code section 481.014, the Texas Governor declared a state of disaster because of Hurricane Ike. *See Exhibit B* (Governor's Proclamations).

9.2 State and federal officials urged residents of certain Texas counties to evacuate their homes, and an estimated two- million people heeded the warning, resulting in thousands of evacuees

seeking lodging in hotels and motels. The collection of state and local taxes by hotels and motels was suspended by the Governor's disaster proclamations. *See Exhibit B.*

9.3 Defendants own and operate a motel in La Grange, Texas called the Cottonwood Inn Motel. One consumer complained to law enforcement officers that a clerk behind the counter had told her that there was currently a "special event" at the motel. While investigating complaints about Defendants' pricing, law enforcement officials discovered that Defendants have a sign outside of their hotel advertising room rates of \$29.99 and up, excluding "special events." *See Exhibit C.* Defendants' check-in forms indicate that there are few consumers who actually receive a room for \$29.99 a day. Law enforcement officials also discovered that no room rates were posted on the back of the motel room doors, as required by law. *See Exhibit D* (pictures of the back of the door in room 249).

9.4 Defendants claim that they collect state and local taxes in an amount of 13% on each room. However, Defendants' check-in forms indicate that they collect taxes irregularly and at different rates. Defendants continued to collect taxes after the state of disaster had begun, in violation of the Governor's disaster proclamation.

10. VIOLATIONS

10.1 Plaintiff incorporates Paragraphs 1.1 through 9.4, as if fully set forth herein.

10.2 Defendants have engaged in false, misleading, or deceptive acts or practices in the conduct of trade or commerce, in violation of DTPA § 17.46(a).

10.3 Defendants, as alleged and detailed above, have represented that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do

not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not, in violation of DTPA § 17.46(b)(5).

10.4 Defendants, as alleged and detailed above, have advertised goods or services with the intent not to supply a reasonable expectable public demand, because the advertisements failed to disclose a limitation of quantity, in violation of DTPA § 17.46(b)(10).

10.5 Defendants, as alleged and detailed above, have represented that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of DTPA § 17.46(b)(12).

11. INJURY TO CONSUMERS

11.1 Because Defendants have engaged in the unlawful acts and practices described above, they have violated the law as alleged in this petition.

12. CONDITIONS PRECEDENT

12.1 All conditions precedent to Defendants' liability and Plaintiff's right to recover have occurred or have been waived.

13. PRAYER

13.1 WHEREFORE, Plaintiff prays that a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, their officers, agents, servants, employees and attorneys and any other person in active concert or participation with the Defendants from:

- A. Taking advantage of a disaster declared by the Governor under Chapter 418 of the Government Code by offering accommodations or other necessities at an exorbitant or excessive price, to wit: charging in excess of ten percent (10%) of the normal

price, for the two-month period immediately preceding the disaster for those goods and services.¹

- B. Taking advantage of a disaster declared by the Governor under Chapter 418 of the Government Code by demanding an exorbitant or excessive price in connection with the sale of accommodations or lodging, to wit: charging in excess of ten percent (10%) of the normal price, for the two-month period immediately preceding the disaster for those goods and services.
- C. Collecting state and local taxes from evacuees during a disaster declared by the Governor of Texas when such taxes have been waived by the Governor.
- D. Failing to obtain a sales-tax-exemption certificate from evacuees.
- E. Failing to post a clear and conspicuous sign by the check-in desk listing the standard rates for each type of room, pet fees, and fees for additional persons in the rooms.
- F. Failing to post a sign or card in a conspicuous place in each room, containing the daily room rate and the date the sign or card was posted as required by Texas Occupations Code section 2155.001(a).
- G. Failing to maintain a registration system to record the identity and contact information from guests of the hotel or motel including the guests' names, addresses, the length of their stay, and the price charged per day.
- H. Altering, destroying or mutilating records ordered to be kept pursuant to Subparagraph G above for a three year period after the event, provided the matter is

¹ "Normal price" means the average price charged over the two-month period immediately preceding the Governor's declaration.
State of Texas v. Jagdish Jajal, et al.,
Plaintiff's Original Petition and Application for
Permanent Injunction

not in litigation. If the matter is in litigation, records shall not be altered, destroyed or mutilated until a three year period following the entry of a final judgment, not subject to further appeal.

13.2 Plaintiff further requests that this Court award damages and restitution of monies paid by consumers.

13.3 Plaintiff further requests that Defendants be ordered to pay to the State of Texas:

- A. Civil penalties of up to \$20,000.00 per violation of the DTPA;
- B. Civil penalties of up to \$250,000 per violation of the DTPA, when the act or practice that acquired or deprived money or other property from consumers who were 65 years of age or older when the act or practice occurred;
- C. Pre-judgment and post-judgment interest on all awards of restitution, damages, or civil penalties, as provided by law;
- D. All costs of Court, costs of investigation, and reasonable attorney's fees pursuant to Texas Government Code section 402.006(c); and
- E. Decree that all fines, penalties or forfeitures are not dischargeable in bankruptcy. *See* 11 U.S.C. Section 523(a)(7).

13.4 Plaintiff prays for all further relief, at law or inequity, to which it is justly entitled.

14. JURY DEMAND

14.1 Plaintiff hereby requests a trial by jury.

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 & Public Health
Division



PAT TULINSKI
SBN 20283485
Assistant Attorney General
Consumer Protection & Public Health Division
Capitol Station, P.O. Box 12458
Austin, Texas 78711-2548
Tel: (512) 463-2185
Fax: (512) 473-8301

Attorneys for Plaintiff

10B1 - ASSUMED NAME CERTIFICATE (UNINCORPORATED BUSINESS OR PROFESSION)

ASSUMED NAME RECORDS
CERTIFICATE OF OWNERSHIP FOR UNINCORPORATED BUSINESS OR PROFESSION

[VOL] 7 PAGE 101

4289

NOTICE: "CERTIFICATES OF OWNERSHIP" ARE VALID ONLY FOR A PERIOD NOT TO EXCEED 10 YEARS FROM THE DATE FILED IN THE COUNTY CLERK'S OFFICE. (Chapter 36, Sect. 1, Title 4 - Business and Commerce Code)

(This certificate properly executed is to be filed immediately with the County Clerk)

NAME IN WHICH BUSINESS IS OR WILL BE CONDUCTED

Cottonwood Inn Motel
(print or type)

BUSINESS ADDRESS 1494 W. HWY 71

CITY: La Grange STATE: TX ZIP CODE: 78945

PERIOD (not to exceed 10 years) DURING WHICH ASSUMED NAME WILL BE USED: _____

BUSINESS IS TO BE CONDUCTED AS (Check Which One):
 Proprietorship _____ Sole Practitioner _____ Joint Venture
 General Partnership _____ Limited Partnership _____ Joint Stock Company
 Real Estate Investment Trust _____ Other (name type) _____

CERTIFICATE OF OWNERSHIP

I/We, the undersigned, are the owner of the above business and my/our name and address given is/are true and correct, and there is/are no ownership(s) in said business other than those listed herein below.

Name JAGDISH M. JAJAL Signature J M. Jajal

Address 1494 W. HWY 71, La Grange TX Zip Code 78945
(Residence)

Name ASHA J. JAJAL Signature Asha J. Jajal

Address 1494 W. HWY 71, La Grange TX Zip Code 78945
(Residence)

Name _____ Signature _____
Address _____ Zip Code _____
(Residence)

FILED
Feb 5 10:00 P.M.
FEB - 5 1999

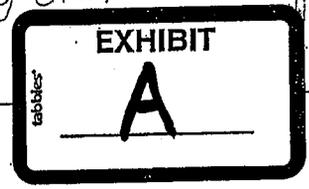
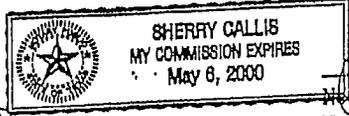
\$9.00 PD.
Filed by and Return to:
Jagdish M. Jajal
1494 W. Hwy. 71.
La Grange, Texas 78945

(Acknowledgment)
Carolyn Kubos Roberts m w
CAROLYN KUBOS ROBERTS
CO. CLERK, FAYETTE CO., TEXAS

STATE OF TEXAS
COUNTY OF Fayette

This instrument was acknowledged before me on the 5th day of February, 1999,
by Jagdish M. Jajal and Asha J. Jajal

My commission expires: May 6, 2000
Notary Public, State of Texas
Notary's printed name: SHERRY CALLIS



PROCLAMATION
BY THE
Governor of the State of Texas

41-3159

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby certify that Hurricane Ike poses a threat of imminent disaster along the Texas Coast and in the counties of Anderson, Angelina, Aransas, Archer, Austin, Bee, Bell, Bexar, Bowie, Brazoria, Brazos, Brooks, Calhoun, Cameron, Cass, Chambers, Cherokee, Collin, Colorado, Comal, Dallas, Denton, DeWitt, Ellis, El Paso, Fort Bend, Franklin, Galveston, Goliad, Grayson, Gregg, Hardin, Harris, Harrison, Henderson, Hidalgo, Hill, Hopkins, Hunt, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Kaufman, Kenedy, Kleberg, Lamar, Lavaca, Liberty, Lubbock, Matagorda, McLennan, Montgomery, Nacogdoches, Navarro, Newton, Nueces, Orange, Panola, Parker, Polk, Potter, Randall, Refugio, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Starr, Tarrant, Titus, Tom Green, Travis, Trinity, Tyler, Van Zandt, Victoria, Waller, Walker, Webb, Wharton, Willacy, Williamson, Wise and Wood beginning September 7, 2008 and continuing.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster based on the existence of such threat and direct that all necessary measures both public and private as authorized under Section 418.017 of the code be implemented to meet that threat.

As provided in Section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.



IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 8th day of September, 2008.

Rick Perry
RICK PERRY
Governor

Attested by:

Esperanza Andrade
ESPERANZA "HOPE" ANDRADE
Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
O'CLOCK

SEP 08 2008



PROCLAMATION

BY THE

Governor of the State of Texas

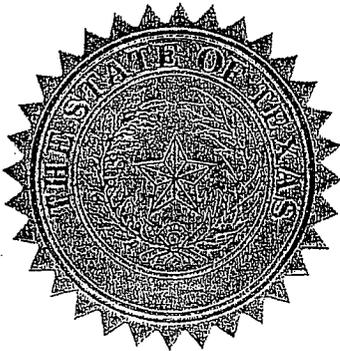
41-3160

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, did issue an Emergency Disaster Proclamation on September 8, 2008, which certifies that Hurricane Ike poses a threat of imminent disaster along the Texas Coast and in specified Texas counties.

WHEREFORE, the threat of imminent disaster caused by Hurricane Ike is creating a temporary housing emergency in the State of Texas.

THEREFORE, in accordance with the Emergency Disaster Proclamation and with the authority vested in me by Section 418.020 of the Texas Government Code, I do hereby suspend the collection of all state and local hotel and motel taxes under Chapters 156, 351 and 352 of the Texas Tax Code from the victims of Hurricane Ike for a period of 14 days, beginning September 8, 2008.



IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 11th day of September, 2008.

Rick Perry
RICK PERRY
Governor

Attested by:

Esperanza Andrade
ESPERANZA "HOPE" ANDRADE
Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
O'CLOCK

SEP 11 2008

COTTONWOOD
INN

\$29⁹⁵
2 UP

PER ROOM PER NIGHT

MOTEL

EXHIBIT

C

tabbles

EXHIBIT
D
tabbles

