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THE STATE OF TEXAS,
Plaintiff,

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IN THE DISTRICT COURT

v.

SUN MACRO CORPORATION D/B/A BIG
WILLY’S; MR. GROUP, INC. D/B/A
BIG WILLY’S; AND STAR IMPEX, INC.
D/B/A BIG WILLY’S, HAPPY HILL
GROCERY, and LUCKY MART,
Defendants.

JOHNSON COUNTY, TEXAS

_____ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff the State of Texas, acting by and through its Attorney General, KEN PAXTON, and complains of Defendants Sun Macro Corporation d/b/a Big Willy’s; Mr. Group, Inc. d/b/a Big Willy’s; and Star Impex, Inc. d/b/a Big Willy’s, Happy Hill Grocery and Lucky Mart (hereinafter “Defendants”). Plaintiff alleges that, following the Texas Governor’s disaster declaration due to Hurricane Harvey, Defendants violated Texas law by engaging in price gouging, charging consumers \$3.99 per gallon of unleaded regular gasoline at numerous stations and as much as \$4.99 for regular unleaded at other gas stations.

I. DISCOVERY

1.1 Pursuant to TEX. R. CIV. P. 190.3, discovery is intended to be conducted under a Level 2 discovery control plan.

1.2 This case is not subject to the restrictions of expedited discovery under TEX. R. CIV. P. 169 because:

A. The relief sought by the State includes non-monetary injunctive relief; and

- B. The State's claims for monetary relief, including penalties, consumer redress, and attorney's fees and costs, are in excess of \$100,000.00 and could exceed \$1,000,000.00.

II. JURISDICTION

2.1 This action is brought by Attorney General KEN PAXTON, through his Consumer Protection 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. § *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 the DTPA, sections 17.46(a) and (b).

2.2 In enforcement suits filed pursuant to § 17.47, the Attorney General, acting by and through his Consumer Protection Division, is further authorized to seek civil penalties of up to \$20,000 per violation, restitution for identifiable consumers, and injunctive relief to enjoin Defendants from further violations of the DTPA.

III. DEFENDANTS

3.1 Defendant Sun Macro Corporation is a Texas corporation. Defendant may be served with process by serving its registered agent, Prem Suhalka, at 2812 Pinnacle Drive, Burleson, Texas 76028, or wherever he may be found. The president of Sun Macro Corporation is Prem Suhalka. Defendant Sun Macro Corporation owns and operates Big Willy's #8 in Mansfield, Texas; Big Willy's #9 in Arlington, Texas; Big Willy's #10 in Lake Worth, Texas; Big Willy's #11 in Burleson, Texas; Big Willy's #12 in Joshua, Texas; and Big Willy's #15 in Whitney, Texas.

3.2 Defendant Mr. Group, Inc., is a Texas corporation. Defendant may be served

with process by serving its registered agent, Prem Suhalka, at 2812 Pinnacle Drive, Burleson, Texas 76028, or wherever he may be found. The president of Mr. Group, Inc., is Prem Suhalka. Defendant Mr. Group, Inc. owns and operates Big Willy's #17 in Cleburne, Texas, and Big Willy's #18 in Mineral Wells, Texas.

3.3 Defendant Star Impex, Inc., is a Texas corporation. Defendant may be served with process by serving its registered agent, Prem Suhalka, at 2812 Pinnacle Drive, Burleson, Texas 76028, or wherever he may be found. The president of Star Impex, Inc., is Prem Suhalka. Defendant Star Impex, Inc. owns and operates Big Willy's #6 in Joshua, Texas; Lucky Mart in Alvarado, Texas; and Happy Hill Grocery in Alvarado, Texas.

IV. VENUE

4.1 Venue for this suit lies in Johnson County, Texas, because Defendants' principal place of business is in Johnson County, Texas. *See* Tex. Bus. & Com. Code § 17.47.

V. 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 in accordance with DTPA § 17.47(a).

5.2 Pursuant to Texas law, it is illegal to take advantage of a disaster declared by the Governor by selling necessities, such as food, fuel, and medicine, at excessive or exorbitant prices. DTPA § 17.46(b)(27). On August 23, 2017, pursuant to Tex. Gov't Code § 418.014, the Texas Governor declared a state of disaster for thirty counties due to the threat of imminent disaster from Tropical Depression Harvey. *See Exhibit A* (Governor's Proclamation dated August 23, 2017), attached and incorporated herein for all purposes. On August 25, 2017,

pursuant to Tex. Gov't Code § 418.020, the Texas Governor suspended all laws authorizing or requiring the collection of state or local hotel or motel occupancy taxes from the victims of Hurricane Harvey, or personnel participating in relief operations, for a period from August 23, 2017, to September 6, 2017. In this proclamation, the Governor stated that Hurricane Harvey was likely to make landfall in Texas as a major hurricane, and that the threat of imminent disaster was creating a temporary housing emergency in the State. *See Exhibit B* (Governor's Proclamation dated August 25, 2017), attached and incorporated herein for all purposes. On September 1, 2017, the Governor issued a proclamation reiterating that the price gouging laws in Texas apply throughout the State of Texas following a disaster declaration. *See Exhibit C* (Governor's Proclamation dated September 1, 2017), attached and incorporated herein for all purposes. The Executive order, proclamations, and regulations issued by the Governor have the force and effect of law. *See Tex. Gov't Code § 418.012.*

5.3 State officials urged residents of certain counties to evacuate their homes for higher, safer ground. On the evening of Friday, August 25, 2017, Hurricane Harvey made landfall on the Texas coast between Port Aransas and Port O'Connor as a Category 4 hurricane. The hurricane brought winds of 130 mph and dropped approximately 50 inches of rain in parts of Texas. While flood waters from the historic rainfalls were still rising, multitudes of Texans were rescued from flooding homes that were no longer habitable.

5.4 Almost immediately, incredible stories of compassion and heroism emerged – reporters rescued citizens on live television and local business owners opened their doors to provide shelter to evacuees and first responders. Unfortunately, also almost immediately consumers began contacting the Texas Attorney General with reports of excessive and exorbitant pricing. Before the storm even made landfall, consumers trying to prepare for the imminent

devastation seeking to buy necessities such as water faced prices of \$40-50 per case and those seeking emergency lodging were forced at some hotels to pay nearly triple the hotels' customary rate. After the storm, some gas stations exploited the fear of gas shortages by more than doubling their prices – in some instances charging \$6-10 per gallon. Since the Governor's original disaster declaration, the Attorney General has received thousands of consumer complaints and thousands more emails and phone calls relating to illegal price gouging throughout Texas.

VI. TRADE AND COMMERCE

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

VII. ACTS OF AGENTS

7.1 Whenever in this Petition 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 or participated in such act or thing and were authorized to do so by Defendants.

VIII. STATEMENT OF FACTS

8.1 Defendants operate numerous gasoline stations with convenience stores in and around Johnson County, Texas, which is located south/southwest of the Dallas-Ft. Worth metroplex. Almost all of these gasoline stations operate under the name "Big Willy's."

8.2 Defendants' corporate headquarters is located at 2812 Pinnacle Dr., in Burleson, Texas, and Prem Suhalka is the president of each of the Defendants.

8.3 Defendants' gasoline stations sell and offer to sell regular, mid-grade, and supreme-grade unleaded. Beginning at least on August 31, 2017, and continuing until an

unknown date, but at least until September 2, 2017, numerous stations owned by Defendants raised their gasoline prices to \$3.99 for regular unleaded and at some of the stations raised their prices to \$4.99 for regular unleaded. Prior to the August 31st timeframe, Defendants charged over \$1.50 less for a gallon of regular unleaded. During this same time period, Defendants' gasoline stations sold mid-grade and supreme-grade unleaded for prices well beyond what they charged for regular unleaded. (See **Exhibits D, E, and F**, attached and incorporated herein for all purposes, which are pictures of receipts from purchases made at Defendants' stations and/or pictures of the signs at Defendants' stations, during the relevant time period when they offered to sell regular unleaded for \$3.99 or \$4.99).

8.4 Defendants' price increases took place at a time when the Governor's disaster declaration was in place. These gasoline price increases were excessive and exorbitant and were in violation of the DTPA.

8.5 Nearly 200 consumer complaints have been filed against Defendants alleging that Defendants' gasoline stations engaged in price gouging of gasoline during the time when the Governor's disaster declaration was in effect.

IX. VIOLATIONS

9.1 Plaintiff incorporates Paragraphs 1.1 through 8.5, as if fully set forth herein.

9.2 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).

9.3 Defendants have taken advantage of a disaster declared by the Governor under Chapter 418, Government Code, by selling or leasing fuel, food, medicine, or another necessity at an exorbitant or excessive price, in violation of DTPA § 17.46(b)(27)(A).

9.4 Defendants have taken advantage of a disaster declared by the Governor under Chapter 418, Government Code, by demanding an exorbitant or excessive price, in violation of DTPA § 17.46(b)(27)(B).

X. INJURY TO CONSUMERS

10.1 Defendants' acts and practices were unlawful and have caused harm to the disaster victims and consumers of Texas.

XI. DISGORGEMENT

11.1 Defendants' assets are subject to the equitable remedy of disgorgement. Defendants should be ordered to disgorge all monies fraudulently taken from individuals, together with all of the proceeds, profits, income, interest, and accessions thereto. Such disgorgement should be for the benefit of victimized consumers and the State of Texas.

XII. TRIAL BY JURY

12.1 Plaintiff herein requests a jury trial and tenders the jury fee to the Johnson County District Clerk's office pursuant to TEX. R. CIV. P. 216 AND TEX. GOV'T. CODE ANN. § 51.604.

XIII. PRAYER

13.1 WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that after due notice and hearing, a TEMPORARY INJUNCTION be issued; and that after due notice and trial, a PERMANENT INJUNCTION be issued. Plaintiff prays that the Court will issue an ORDER enjoining Defendants, their officers, agents, servants, employees, and any other person in active concert or participation with Defendants from the following:

- A. Demanding an excessive or exorbitant price for fuel or selling fuel at an excessive or exorbitant price during a state of disaster;

- B. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, or other written or computer-generated materials relating to Defendants' businesses currently or hereafter in Defendants' possession, custody, or control except in response to further orders or subpoenas in this cause; and
- C. During a state of disaster and for a minimum of six months following the expiration of a state of disaster, failing to cease any ongoing or scheduled document or data destruction and preserving records reflecting:
 - 1. Each individual fuel sale transaction including price per gallon and gallons purchased;
 - 2. The dates, times, and amounts of changes in fuel prices [and the signage posted to disclose those changes to consumers]; and
 - 3. All fuel supply costs incurred by Defendants.

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, pursuant to DTPA § 17.47(c)(1);
- B. Pre-judgment and post-judgment interest on all awards of restitution, damages, or civil penalties, as provided by law; and
- C. All costs of Court, costs of investigation, and reasonable attorney's fees pursuant to Texas Government Code § 402.006(c).

13.4 Plaintiff prays for all further relief, at law or in equity, to which it is justly

entitled.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

PAUL SINGER
Chief, Consumer Protection Division

/s/ Pedro Perez, Jr.

PEDRO PEREZ, JR.

State Bar No. 00788184

Assistant Attorney General

Pedro.Perez@oag.texas.gov

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Assistant Attorney General

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Gabriella.Gonzalez@oag.texas.gov

Office of the Attorney General

Consumer Protection Division

P.O. Box. 12548

Austin, Texas 78711

Telephone: (512) 475-4656

Facsimile: (512) 463-1267

ATTORNEYS FOR THE STATE OF TEXAS

Exhibit A

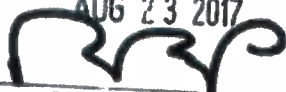


GOVERNOR GREG ABBOTT

August 23, 2017

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
4pm O'CLOCK

The Honorable Rolando B. Pablos
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

AUG 23 2017

Secretary of State

Dear Mr. Secretary:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation declaring a state of disaster in the counties of Aransas, Austin, Bee, Calhoun, Chambers, Colorado, Brazoria, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton, and Wilson, beginning August 23, 2017, due to the threat of imminent disaster posed by Tropical Depression Harvey.

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,



Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that Tropical Depression Harvey poses a threat of imminent disaster, including severe flooding, storm surge and damaging winds, in the counties of Aransas, Austin, Bee, Calhoun, Chambers, Colorado, Brazoria, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton, and Wilson, beginning August 23, 2017.

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 in the previously listed counties based on the existence of such threat.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared 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 23rd day of August, 2017.


GREG ABBOTT
Governor

Exhibit B




GOVERNOR GREG ABBOTT

August 25, 2017

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
5:15 PM O'CLOCK

The Honorable Rolando B. Pablos
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

AUG 25 2017

Secretary of State

Dear Mr. Secretary:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation that suspends all laws authorizing or requiring the collection of state or local hotel or motel occupancy taxes from the victims of Hurricane Harvey or personnel participating in relief operations.

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

PROCLAMATION
BY THE
Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, did issue a disaster proclamation on August 23, 2017, certifying that Tropical Depression Harvey poses a threat of imminent disaster in specified counties; and

WHEREAS, Tropical Depression Harvey has since been upgraded to a hurricane and is likely to make landfall in Texas as a major hurricane; and

WHEREAS, the threat of imminent disaster caused by Hurricane Harvey is creating a temporary housing emergency in the state.

THEREFORE, in accordance with the Disaster Proclamation and with the authority vested in me by Section 418.020(c) of the Texas Government Code, I do hereby suspend all laws authorizing or requiring the collection of state or local hotel or motel occupancy taxes from the victims of Hurricane Harvey or personnel participating in relief operations, for a period of 14 days, beginning August 23, 2017, and ending September 6, 2017.

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 25th day of August, 2017.


GREG ABBOTT
Governor

ATTESTED BY:



ROLANDO B. PABLOS
Secretary of State

Exhibit C



GOVERNOR GREG ABBOTT

September 1, 2017

FILED IN THE OFFICE OF THE
SECRETARY OF STATE

3:00 PM O'CLOCK

The Honorable Rolando B. Pablos
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

SEP 01 2017

Secretary of State

Dear Mr. Secretary:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation relating to price gouging violations of subsection 17.46(b)(27) of the Texas Business and Commerce Code to be investigated and prosecuted by the attorney general anywhere throughout the state during the disaster created by Hurricane Harvey.

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "GSD", with a long horizontal flourish extending to the right.

Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

PROCLAMATION
BY THE
Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, did issue a series of proclamations declaring a state of disaster in 58 counties of Texas as a result of the catastrophic damage caused by Hurricane Harvey; and

WHEREAS, millions of Texans have been impacted by this disaster, including many who have been displaced from their homes and have temporarily relocated to other parts of the state that are not a part of the declared disaster area; and

WHEREAS, many Texans impacted by this disaster are particularly vulnerable to economic exploitation during this challenging time; and

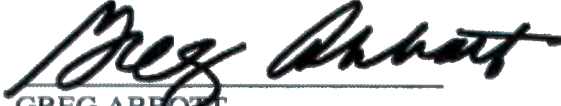
WHEREAS, Texas law prohibits price gouging and gives the attorney general the authority to prosecute anyone throughout Texas who takes advantage of a declared disaster by charging an exorbitant or excessive price for fuel, food, medicine, or any other necessity; and

WHEREAS, I am assured that the Attorney General and other law enforcement officials throughout Texas will seek to identify and vigorously prosecute those who use price-gouging to take advantage of the victims of Hurricane Harvey;

NOW, THEREFORE, be it known that price gouging is unlawful throughout Texas and that violations of subsection 17.46(b)(27) of the Texas Business and Commerce Code may be investigated and prosecuted by the attorney general anywhere throughout the state.



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 1st day of September, 2017.



GREG ABBOTT
Governor

ATTESTED BY:



Exhibit D



Exhibit E

*** REPRINT *** REPRINT *** REPRINT ***

Big Willys #6

00376269

420 N Broadway

Joshua, TX

09/01/2017

07:53:15 AM

XXXXXXXXXXXX

VISA

INVOICE E/6969777

AUTH

PUMP# 4

P51 0.072G

PRICE/GAL \$4.999

FUEL TOTAL \$ 0.36

*** REPRINT *** REPRINT *** REPRINT ***

CREDIT \$ 0.36

*** REPRINT *** REPRINT *** REPRINT ***

Learn how to
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or Texaco
Credit Card
See application
for details

Exhibit F

HAPPY HILL GROC
FG48104376001
8101 E FM 917
ALVARADO, TX
76009
08/31/2017
05:56:48 PM

XXXXXXXXXXXXXXXXX
Debit
INVOICE 024175
AUTH

PUMP# 7
Regular 10.485G
PRICE/GAL \$3.999
FUEL TOTAL \$ 41.93
DEBIT \$ 41.93

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Customer-activated Purchase/Capture
Site #: 000000009606047
Shift Number 2
Sequence Number 45080
Swiped
APPROVED
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