

NO. DC-C201700674

THE STATE OF TEXAS,  
Plaintiff,

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.

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IN THE DISTRICT COURT

JOHNSON COUNTY, TEXAS

18<sup>TH</sup> JUDICIAL DISTRICT

**AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

On this 11 day of Dec, 2018, came on to be heard the above-entitled and numbered cause wherein the STATE OF TEXAS (State) is Plaintiff and 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, are Defendants (hereinafter "Defendants"). In this action, the State alleges that following the Texas Governor's disaster declaration due to Hurricane Harvey, Defendants engaged in price gouging by charging consumers up to \$4.99 per gallon of regular unleaded grade gasoline in violation of § 17.46 of the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code (DTPA). Specifically, the State alleges that Defendants violated the DTPA because they took advantage of a disaster declared by the governor under Chapter 418 of the Government Code by selling fuel at an exorbitant or excessive price or by demanding an exorbitant or excessive price in connection with the sale of fuel. The parties, by and through their attorneys of record, have made the following stipulations and agree to the entry of this Agreed Final

Judgment and Permanent Injunction (Agreed Judgment) as a compromise and settlement of disputed claims.

### **STIPULATIONS**

1. The Court has jurisdiction over the subject matter and parties in this action under the DTPA;
2. This Agreed Judgment does not constitute approval by the State or the Court of Defendants' business practices, and Defendants shall make no representation or claim to the contrary;
3. The parties agree to and do not contest the entry of this Agreed Judgment and agree that the Court has continuing jurisdiction to enforce this Agreed Judgment;
4. This Agreed Judgment sets forth the entire agreement between the parties, and there are no other representations or agreements between the parties not stated in writing herein;
5. Defendants are aware of the terms and duties placed upon them by the Agreed Judgment, acknowledge that they have fully read and understand this Agreed Judgment, accept the legal consequences involved in signing this Agreed Judgment, and represent that they are desirous and capable of carrying out the terms and duties of this Agreed Judgment in full;
6. Defendants acknowledge receipt of copies of this Agreed Judgment;
7. The parties have compromised and settled all claims alleged by the State in this cause without the necessity of a trial, and this Agreed Judgment does not constitute an admission by Defendants of any violation of law or regulation;
8. The parties agree that nothing in this Agreed Judgment shall be constructed to affect any action or proceeding by any regulatory body or other state agency, whether such action or proceeding is related to any issue addressed by this Agreed Judgment or otherwise; and

9. The parties agree that, should any clause, provision, or section of this Agreed Judgment, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Agreed Judgment, and this Agreed Judgment shall be construed and enforced as if such illegal, invalid, or unenforceable clause, provision, or section had not been contained herein.

### **FINDINGS**

10. Having reviewed the pleadings in this case and the stipulations of the parties, the Court hereby finds as follows:

- a. The Court has jurisdiction over the parties;
- b. The Court has jurisdiction over the subject matter of this action;
- c. Venue is proper in Johnson County, Texas;
- d. Entry of this Agreed Judgment is in the public interest; and
- e. The issuance and service of a writ of injunction are waived.

### **FACTUAL BACKGROUND**

11. On August 23, 2017, Governor Greg Abbott declared a State of Disaster under Texas Government Code § 418.014 anticipating the landfall of then Tropical Storm Harvey (Harvey State of Disaster).

12. On August 25, 2017, Hurricane Harvey made landfall on the Texas Gulf Coast.

13. On September 1, 2017, Governor Abbott issued a price gouging declaration emphasizing the unlawful practice of price gouging: “Texans impacted by this disaster are particularly vulnerable to economic exploitation during this challenging time . . . 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.”

14. Defendants operate fuel stations located in multiple cities in Texas, namely, Burleson, Mansfield, Arlington, Lake Worth, Joshua, Cleburne, Mineral Wells, and Alvarado, that sold fuel to consumers during the Harvey State of Disaster.

15. The Attorney General's Consumer Protection Division received complaints from consumers that Defendants were charging up to \$4.99 per gallon of regular unleaded grade gasoline during the Harvey State of Disaster.

### DEFINITIONS

16. **IT IS ORDERED** that, as used in this Agreed Judgment, the following terms are defined as follows:

- a. "Claims Administrator" means the entity selected by the State of Texas to administer the restitution claims for this settlement;
- b. "Defendants," "You," or "Yours" means 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, their officers, agents, subcontractors, servants, employees, and attorneys, and any other persons in active concert or participation with Defendants;
- c. "Effective Date" means the date on which this Agreed Judgment is entered by the Court;
- d. "Eligible Consumer" shall mean any consumer who paid \$3.99 per gallon or more for fuel from August 31, 2017, through September 6, 2017, at Defendants' facilities located at the following addresses, and who timely and correctly fills out and submits a claim form to the Claims Administrator:
  - i. 1595 East Broad Street, Mansfield, Texas 76063;

- ii. 4500 South Bowen Road, Arlington, Texas 76017;
  - iii. 6051 Lake Worth Boulevard, Lake Worth, Texas 76135;
  - iv. 216 NW Renfro Street, Burleson, Texas 76028;
  - v. 500 South Broadway Street, Joshua, Texas 76058;
  - vi. 707 East Jefferson Avenue, Whitney, Texas 76692;
  - vii. 710 South Main Street, Cleburne, Texas 76033;
  - viii. 1703 E Hubbard Street, Mineral Wells, Texas 76067;
  - ix. 420 North Broadway Street, Joshua, Texas 76058;
  - x. 3841 Cummings Drive, Alvarado, Texas 76009; and
  - xi. 8101 E FM 917, Alvarado, Texas 76009;
- e. “Refund Amount” shall be the difference between the price paid by an Eligible Consumer and the average price for the same grade of fuel charged by Defendants on August 30, 2017; and
- f. “State of Disaster” means the period designated by the Governor’s disaster declaration pursuant to Chapter 418 of the Government Code.

**PERMANENT INJUNCTION**

17. **IT IS FURTHER ORDERED** that Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Defendants who receive actual notice of the Agreed Final Judgment and Permanent Injunction by personal service or otherwise, are hereby permanently ENJOINED from the following:

- a. Demanding an exorbitant or excessive price for fuel or selling fuel at an exorbitant or excessive price during a State of Disaster. Defendants’ price for fuel is presumed exorbitant or excessive when the price per gallon during a State of Disaster is

greater than 125 percent of Defendants' 30-day average price per gallon immediately prior to the State of Disaster, unless Defendants can demonstrate through their written records that the price increase is attributable to additional fuel supply costs incurred by Defendants.

18. **IT IS FURTHER ORDERED** that during any future State of Disaster and for a minimum of six months following the expiration of such State of Disaster, Defendants shall cease any ongoing or scheduled document or data destruction and shall preserve records reflecting:

- a. Each individual fuel sale transaction, including price per gallon and gallons purchased;
- b. The dates, times, and amounts of changes in fuel prices; and
- c. All fuel supply costs incurred by Defendants.

#### **CONSUMER RESTITUTION**

19. **IT IS FURTHER ORDERED** that Defendants shall pay restitution as follows:

- a. If Defendants are able to identify and segregate credit/debit card payments from cash transactions for fuel, Defendants shall issue a chargeback or other automatic refund of the Refund Amount directly to each Eligible Consumer. Within 14 days of the Effective Date of this Agreed Judgment, Defendants will provide the State a list of consumers who received chargebacks under this provision. Such information shall include the Refund Amounts and the names of the persons receiving the chargebacks; and
- b. If Defendants are not able to identify and segregate credit/debit card payments from cash transactions for fuel, and/or if Defendants have additional consumers who made cash payments for their fuel transactions, Defendants shall disgorge to the

State of Texas the amount of TWENTY-SEVEN THOUSAND FOUR AND NO/100 DOLLARS (\$27,004.00) for these consumers. The State shall have Judgment against Defendants, jointly and severally, in the amount of \$27,004.00. This \$27,004.00 payment will be referred to as the Restitution Payment. Defendants' payment to the State of Texas shall be made by certified check or wire transfer, payable to the "STATE OF TEXAS," bearing the reference AG# CX4753181818 and if not by wire transfer, delivered/mailed to the Office of the Attorney General, ATTN: Accounting Division, 300 W. 15th St., MC-003, Austin, TX 78701.

20. **IT IS FURTHER ORDERED** that the procedures for the distribution of the Restitution Payment are as follows:

- a. The State will remit the Restitution Payment to the Claims Administrator to pay refunds and the costs of administration;
- b. The parties have agreed to the use of the attached claim form or a substantially similar form agreed to by the parties. The Claims Administrator may begin accepting claim forms by December 1, 2018. The Claims Administrator will not accept claim forms later than January 31, 2019, which will be the Claims Deadline Date. No refunds will be distributed by the Claims Administrator until after the Claims Deadline Date passes. Eligible Consumers who properly complete the claim form will be eligible to receive a refund payment;
- c. The Claims Administrator will have discretion, in consultation with the State of Texas, to determine if the claim form has been properly completed and timely submitted, and to determine the specific Refund Amount each Eligible Consumer

will receive. Once all Eligible Consumers have received their Refund Amounts, and once the administration costs have been paid, the Claims Administrator, in consultation with the State of Texas, may pay additional Refund Amounts to other consumers filing claims, and may also pay additional Refund Amounts to Eligible Consumers in other price gouging settlements the State has entered into;

- d. Eligible Consumers may receive pro rata Refund Amounts, if full payment is not available for all Eligible Consumers;
- e. Once all Refund Amounts and costs of administration have been deducted from the Restitution Payment, any residual amounts will be allocated to the Supreme Court Judicial Fund as a civil penalty pursuant to § 402.007(b)(1) of the Texas Government Code;
- f. After the Claims Deadline Date, the Claims Administrator will prepare such report as the State may require; and
- g. Checks returned to the Claims Administrator shall be treated in accordance with the State of Texas' unclaimed property laws.

#### **ATTORNEY'S FEES**

21. **IT IS FURTHER ORDERED** that the State shall have judgment against Defendants, jointly and severally, for attorney's fees and court costs in the amount of NINE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$9,500.00).

22. **IT IS FURTHER ORDERED** that Defendants' payments to the State for attorney's fees and court costs shall be made by certified check or wire transfer, payable to the "STATE OF TEXAS," bearing the reference AG# CX4753181818, and if not by wire transfer, delivered/mailed to the Office of the Attorney General, ATTN: Accounting Division, 300 W. 15<sup>th</sup>



St., MC-003, Austin, TX 78701.

**MISCELLANEOUS PROVISIONS**

23. **IT IS FURTHER ORDERED** that Defendants' payments to the State for restitution and attorney's fees and court costs, referenced in paragraphs 19.b and 22, respectively, shall be made in accordance with the following schedule: Defendants shall pay SIX THOUSAND AND NO/100 DOLLARS (\$6,000.00) to the State within 10 days of the Effective Date; Defendants shall pay the remaining THIRTY THOUSAND FIVE HUNDRED FOUR AND NO/100 DOLLARS (\$30,504.00) in four installments of SEVEN THOUSAND SIX HUNDRED TWENTY-SIX AND NO/100 DOLLARS (\$7,626.00) with the first installment due within ninety (90) days after the Effective Date, the second installment due within one hundred and eighty (180) days after the Effective Date, the third installment due within two hundred and seventy (270) days after the Effective Date, and the remainder due within three hundred and sixty-five (365) days after the Effective Date.

24. **IT IS FURTHER ORDERED** that nothing in the Agreed Judgment shall be construed as a waiver of any private rights, causes of action, or remedies of any person against Defendants with respect to the practices or conduct described herein.

25. **IT IS FURTHER ORDERED** that to the extent that the provisions of this Agreed Judgment conflict with any Texas, local, or federal law or regulation that now exists, or is later enacted or amended, such law or regulation, and not this Agreed Judgment shall apply. For the purpose of this Agreed Judgment, such conflict exists if conduct prohibited by this Agreed Judgment is required or expressly permitted by such Texas, local, or federal law or regulation, or if conduct required by this Agreed Judgment is prohibited by such Texas, local, or federal law or regulation.

26. **IT IS FURTHER ORDERED** that the terms of this Agreed Judgment are not intended to alter Defendants' lawful contractual obligations with their fuel distributor(s) and supplier(s).

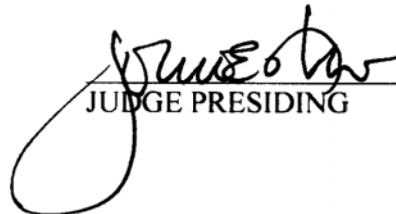
27. **IT IS FURTHER ORDERED** that Defendants' indebtedness to the State identified above is for alleged violations of the DTPA.

28. **IT IS FURTHER ORDERED** that payment to the State will be allocated in the following order until each is fully paid: (1) restitution; and (2) attorney's fees and court costs.

29. **IT IS FURTHER ORDERED** that Defendants, by the signature below of their legal representative, hereby acknowledge notice of this Agreed Judgment and acceptance of the same. Plaintiff may enforce the Agreed Judgment through any procedure or process available under the laws of the State of Texas.

30. **IT IS FURTHER ORDERED** that this Agreed Judgment is final as to all parties and disposes of all claims asserted by the parties in this instant case. All relief asserted or which could have been asserted among the parties to this Agreed Judgment hereto based on the legal and factual allegations in this underlying cause for alleged violations of the DTPA not expressly granted herein is denied. The State hereby fully releases, waives, and discharges Defendants and their officers, agents, representatives, and employees from any claims arising out of or related to facts alleged in this underlying cause for alleged violations of the DTPA prior to the date this Agreed Judgment is entered by the Court. This Agreed Judgment does not, however, affect the rights of or remedies available to any third party that is not subject to this order.

SIGNED this 11 day of Dec 2018.

  
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JUDGE PRESIDING

**AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:**

Respectfully submitted,

KEN PAXTON  
Attorney General of Texas

JEFFREY C. MATEER  
First Assistant Attorney General

BRANTLEY STARR  
Deputy First Assistant Attorney General

DARREN L. MCCARTY  
Deputy Attorney General for Civil Litigation

PAUL SINGER  
Division Chief, Consumer Protection Division

/s/ Pedro Perez, Jr.

PEDRO PEREZ, JR.

State Bar No. 00788184

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Office of the Attorney General

Consumer Protection Division

P.O. Box. 12548

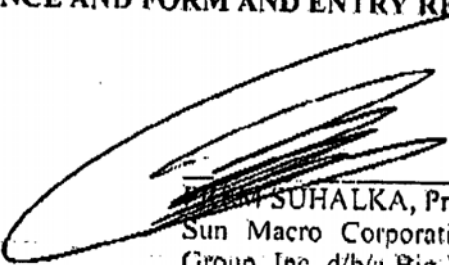
Austin, Texas 78711

Telephone: (512) 475-4656

Facsimile: (512) 463-1267

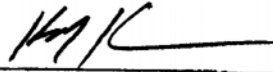
**ATTORNEYS FOR THE STATE OF TEXAS**

**AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:**



SUN MAHARAJ SUHALKA, President for:  
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**



KOY R. KILLEN  
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kkillen@kdlawpc.com  
DANAE COUCH  
State Bar No. 24073483  
dcouch@kdlawpc.com  
KILLEN & DENNIS, P.C.  
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Burleson, Texas 76028  
Telephone: (817) 447-0053  
Facsimile: (817) 447-0052

**ATTORNEYS FOR DEFENDANTS**

**CLAIM FORM FOR PRICE-GOUGING RESTITUTION FOR FUEL PURCHASES  
DURING HURRICANE HARVEY DISASTER PROCLAMATION PERIOD**

**NOTE: This claim form must be emailed or mailed and postmarked on or before January 31, 2019.**

**Distribution of restitution is estimated to be made by March 15, 2019.**

Please provide your name and address:

1. Name: \_\_\_\_\_  
(First) (Middle) (Last)
2. Current address: \_\_\_\_\_  
Street Name and Number (include apartment number, if applicable)  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_
3. Email address: \_\_\_\_\_

**Instructions:** To be eligible for restitution, please provide the information below. If you have a receipt from this transaction, please **attach the original receipt** and you need fill out only those items below which are not included in the receipt; otherwise, fill out the entire form. Submit separate forms if you purchased fuel on more than one day or at more than one station. Final determination of eligibility will be made based upon the requirements set out in the settlement agreement between the State and the gas station where you made your purchase. Note that your refund may be made on a pro rata basis if claims exceed the restitution funds available, which means you may only receive a portion of the amount that you were overcharged.

- a. The name of the gas station where you purchased the fuel: \_\_\_\_\_  
Address of that station \_\_\_\_\_  
Street Name and Number  
City: \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_
- b. Date of purchase: \_\_\_\_\_
- c. Price you paid per gallon for the fuel: \$ \_\_\_\_\_
- d. Number of gallons of fuel purchased: \_\_\_\_\_
- e. Amount of total sale: \$ \_\_\_\_\_
- f. Make and model of vehicle for which the fuel was purchased: \_\_\_\_\_

**Please affirm that you are the individual who paid for fuel as shown on your receipt by dating and signing here:**

Date: \_\_\_\_\_ (Sign Here)

If you have any questions, call the settlement information line at 1-888-755-9508 (toll free), or write to the Hurricane Harvey Price-Gouging Claims Administrator at the address below:

**Mail this form along with your receipt to: Hurricane Harvey Price-Gouging Claims Administrator  
c/o Dahl Administration  
PO Box 3614  
Minneapolis, MN 55403-0614**

**Or email this form and your receipt to: [HarveyClaim@DahlAdministration.com](mailto:HarveyClaim@DahlAdministration.com)**