

No. DC-17-11872

STATE OF TEXAS,
Plaintiff,

v.

BAINS BROTHERS, LLC,
Defendant.

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IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

14TH JUDICIAL DISTRICT

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION NUNC PRO TUNC

TO THE HONORABLE JUDGE OF SAID COURT:

On this _____ day of _____, 2018, came on to be heard the above-entitled and numbered cause wherein the STATE OF TEXAS (State) is Plaintiff and BAINS BROTHERS, LLC (Bains Brothers) is Defendant. In this action, the State alleges that following the Texas Governor's disaster declaration due to Hurricane Harvey, Bains Brothers engaged in price gouging by charging consumers up to \$6.99 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 Bains Brothers violated the DTPA because it advertised fuel with intent not to sell it as advertised and 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 State and Bains Brothers, 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 Nunc Pro Tunc (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 an approval of Bains Brothers' business practices by the State or the Court and Bains Brothers 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. Bains Brothers is aware of the terms and duties placed upon it by the Agreed Judgment, acknowledges that it has fully read and understands this Agreed Judgment, accepts the legal consequences involved in signing this Agreed Judgment, and represents that it is desirous and capable of carrying out the terms and duties of this Agreed Judgment in full;
6. Bains Brothers acknowledges 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 Bains Brothers 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;
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, section or provision had not been contained herein; and

10. The parties agree to waive the thirty (30) day period in which to file a Motion for New Trial and waive any and all rights to appeal this Agreed Judgment.

FINDINGS

11. 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 Dallas 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

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

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

14. 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."

15. Defendant operates fuel stations located in multiple cities in Texas, namely, Carrollton, Arlington, Richardson, Duncanville, and Lake Dallas that sold fuel to consumers on August 30, 2017 through September 1, 2017, which was during the Harvey State of Disaster.

16. The Attorney General's Consumer Protection Division received complaints from consumers that Defendant was charging up to \$6.99 per gallon of regular grade unleaded gasoline during the Harvey State of Disaster.

DEFINITIONS

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

- a. "Defendant," "You," or "Yours" means Bains Brothers, LLC, its officers, agents, subcontractors, servants, employees, and attorneys, and any other persons in active concert or participation with Bains Brothers, LLC;
- b. "State of Disaster" means the period designated by the Governor's disaster declaration pursuant to Chapter 418 of the Government Code;
- c. "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 Defendant on August 30, 2017;
- d. "Claims Administrator" means the entity selected by the State of Texas to administer the restitution claims for this settlement;
- e. "Effective Date" means the date on which this Agreed Judgment is entered by the Court; and
- f. "Eligible Consumer" shall mean any consumer who paid \$3.99 per gallon or more for fuel on August 31, 2017, at Defendant's facilities located at:
 - i. 3600 Huffines Boulevard, Carrollton, Texas, 75010;
 - ii. 2809 NW Green Oaks Boulevard, Arlington, Texas, 76012; and

who timely and correctly fills out and submits a claim form to the Claims Administrator.

PERMANENT INJUNCTION

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

- a. Collecting or attempting to collect a price per gallon of fuel that is other than the price posted at the fuel pump;
- b. Collecting or attempting to collect a price per gallon of fuel other than the price posted on signage located at or near the dispensing pump or visible from the street; and,
- c. Demanding an exorbitant or excessive price for fuel or selling fuel at an exorbitant or excessive price during a State of Disaster. Bains Brothers price for fuel is presumed exorbitant or excessive when the price per gallon during a State of Disaster is greater than 125 percent of Bains Brothers 30-day average price per gallon immediately prior to the State of Disaster, unless Bains Brothers can demonstrate through its written records that the price increase is attributable to additional fuel supply costs incurred by Defendant.

19. **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, Bains Brothers 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 Bains Brothers.

CONSUMER RESTITUTION

20. **IT IS FURTHER ORDERED** that Bains Brothers shall pay restitution as follows:
- a. If Bains Brothers is able to identify and segregate credit/debit card payments from cash transactions for fuel, Bains Brothers shall issue a chargeback or other automatic refund of the Refund Amount directly to each consumer. Within 14 days of the Effective Date of this Agreed Judgment, Bains Brothers 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 Bains Brothers is not able to identify and segregate credit/debit card payments from cash transactions for fuel, and/or if Bains Brothers has additional consumers who made cash payments for their fuel transactions, Bains Brothers shall disgorge to the State of Texas the amount of TWENTY-SIX THOUSAND TWO HUNDRED FIFTY DOLLARS AND 00/100 (\$26,250.00) for these consumers and Bains Brothers shall make such payment to the State within 30 days of the Effective Date. This payment will be referred to as the Restitution Payment. Bains Brothers' 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# CX1858401275 and if not by wire transfer, deliver/mailed to the Office of the Attorney General, ATTN: Accounting Division, 300 W. 15th St., MC-003, Austin, TX 78701.

21. **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 November 1, 2018. The Claims Administrator will not accept claim forms later than December 31, 2018, 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 Amount, 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 Sec. 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

22. **IT IS FURTHER ORDERED** that the State shall have judgment from Bains Brothers for attorney's fees and court costs in the amount of TEN THOUSAND DOLLARS AND 00/100 (\$10,000.00).

23. **IT IS FURTHER ORDERED** that Bains Brothers' payments to the State, for attorney's fees and court costs, shall be paid within 30 days after the Effective Date, and shall be made by certified check or wire transfer, payable to the "STATE OF TEXAS," bearing the reference AG# CX1858401275 and if not by wire transfer, deliver/mailed to the Office of the Attorney General, ATTN: Accounting Division, 300 W. 15th St., MC-003, Austin, TX 78701.

MISCELLANEOUS PROVISIONS

24. **IT IS FURTHER ORDERED** that nothing in this Agreed Judgment shall create any private rights, causes of action, or remedies against Bains Brothers and nothing in the Agreed Judgment shall be construed as a waiver of any private rights, causes of action, or remedies of any person against Bains Brothers 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 Bains Brothers' lawful contractual obligations with its fuel distributor(s) and supplier(s).

27. **IT IS FURTHER ORDERED** that Bains Brothers' indebtedness to the State identified above are 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; (2) attorney's fees and court costs; and (3) civil penalties.

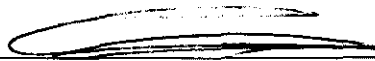
29. **IT IS FURTHER ORDERED** that Bains Brothers, by its signature below, hereby acknowledges notice of this Agreed Judgment and acceptance of the same. Plaintiff may enforce the Agreed Judgment through any procedure or process available under the laws of the State of Texas.

30. **IT IS FURTHER ORDERED** that Bains Brothers shall not represent to the public that this Agreed Judgment constitutes approval by the State or this Court of any of Bains Brothers' alleged actions or business practices.

31. **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 Bains Brothers and its 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 4 day of December 2018.



JUDGE PRESIDING

AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:

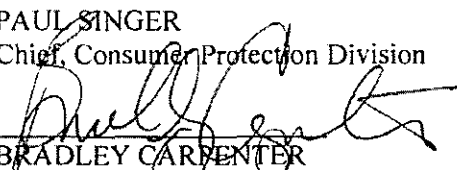
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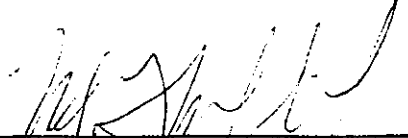
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**ATTORNEY FOR DEFENDANT,
BAINS BROTHERS, LLC.**

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 December 31, 2018.

Distribution of restitution is estimated to be made by February 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