

NO. D-1-GN-19-001846

IN THE MATTER OF  
  
STATE OF TEXAS,  
    Petitioner,  
  
And  
  
CMDA INC.  
DBA HANS TEXACO,  
    Respondent.

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IN THE DISTRICT COURT  
  
  
  
TRAVIS COUNTY, TEXAS  
  
  
**261ST** JUDICIAL DISTRICT

**ASSURANCE OF VOLUNTARY COMPLIANCE**

This Assurance of Voluntary Compliance (“Assurance”) is made and entered into by and between Texas Attorney General Ken Paxton (“Attorney General”) acting in the name of the State of Texas (“State”), Petitioner, and CMDA Inc. d/b/a Hans Texaco, Respondent, pursuant to the Texas Business and Commerce Code section 17.58.

**A. DEFINITIONS**

As used in this Assurance, the following terms are defined as follows:

1. “**Claims Administrator**” means the entity selected by the State of Texas to administer the restitution claims for this settlement;
2. “**Effective Date**” means the date on which this Assurance is approved by the Court;
3. “**Eligible Consumer**” shall mean any consumer who paid \$3.99 per gallon or more for fuel at 12920 Preston Road, Dallas, Texas 75230, on August 31, 2017, September 1, 2017, September 2, 2017, September 5, 2017, September 6, 2017, September 7, 2017, or September 8, 2017, and who timely and correctly fills out and submits a claim form to the Claims Administrator;

4. **“Respondent,” “You,” or “Yours”** means CMDA Inc. d/b/a Hans Texaco, its officers, agents, servants, employees, and attorneys, and any other persons in active concert or participation with CMDA Inc. d/b/a Hans Texaco who receive actual notice of the Assurance by personal service or otherwise;
5. **“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 Respondent on August 30, 2017; and
6. **“State of Disaster”** means the period designated by the Texas Governor’s disaster declaration pursuant to Chapter 418 of the Government Code.

**B. PARTIES**

1. The signatories to this Assurance are Respondent, CMDA Inc. d/b/a Hans Texaco, and Petitioner, the State.
2. This action is brought by the Consumer Protection Division of the Office of the Attorney General of Texas in the name of the State as authorized under the Texas Deceptive Trade Practices – Consumer Protection Act (“DTPA”), Texas Business and Commerce Code section 17.41, *et seq.*

**C. FACTUAL BACKGROUND**

1. 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).
2. On August 25, 2017, Hurricane Harvey made landfall on the Texas Gulf Coast.
3. 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.”

4. Respondent operates a fuel station located in Dallas, Texas, that sold fuel to consumers on August 31, 2017, September 1, 2017, September 2, 2017, September 5, 2017, September 6, 2017, September 7, 2017, and September 8, 2017, which was during the Harvey State of Disaster.

5. The Attorney General’s Consumer Protection Division has been made aware that Respondent was charging \$3.99 per gallon of premium (Supreme) grade gasoline during the Harvey State of Disaster.

**D. VIOLATIONS OF TEXAS DECEPTIVE TRADE PRACTICES ACT**

The State alleges that Respondent’s conduct violated the DTPA. Specifically, the violations that have occurred include taking advantage of a disaster declared by the Governor of Texas under Chapter 418 of the Government Code by:

1. Selling fuel at an exorbitant or excessive price; or
2. Demanding an exorbitant or excessive price in connection with the sale of fuel.

**E. STIPULATIONS**

The parties hereby agree and stipulate that:

1. The State has jurisdiction over the subject matter and the parties in this matter under the DTPA;
2. The venue of this cause is proper in Travis County, Texas, pursuant to DTPA section 17.58(a);

3. This Assurance does not constitute an approval of Respondent's business practices by the State or the Court and Respondent shall make no representation or claim to the contrary;
4. Respondent and the State represent and warrant, each to the other, that each has the authority to enter into and make this Assurance, and to bind themselves to this Assurance;
5. This Assurance is being entered into by the parties for the sole purpose of compromising disputed claims without the necessity for protracted and expensive litigation, and this Assurance does not constitute an admission by Respondent of any violation of law or regulation; and
6. The State and Respondent agree to and do not contest the entry of this Assurance by this Court.

**F. RESPONDENT'S ASSURANCES**

Respondent voluntarily assures the State it will comply with the following terms:

1. Respondent shall not demand an exorbitant or excessive price for fuel or sell fuel at an exorbitant or excessive price during a State of Disaster. Respondent's price for fuel is presumed exorbitant or excessive when the price per gallon during a State of Disaster is greater than 125 percent of the Respondent's 30-day average price per gallon prior to the State of Disaster, unless Respondent can demonstrate through its written records that the price increase is attributable to additional fuel supply costs incurred by Respondent; and

2. During any future State of Disaster and for a minimum of six months following the expiration of such State of Disaster, Respondent 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 Respondent.

**G. CONSUMER RESTITUTION**

Respondent shall pay restitution as follows:

1. If Respondent is able to identify and segregate credit/debit card payments from cash transactions for fuel, Respondent 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 Assurance, Respondent 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
2. If Respondent is not able to identify and segregate credit/debit card payments from cash transactions for fuel, and/or if Respondent has additional consumers who made cash payments for their fuel transactions, Respondent shall disgorge to the State of Texas the amount of ONE THOUSAND NINE HUNDRED THIRTY-EIGHT AND 54/100 DOLLARS (\$1,938.54) for these consumers and Respondent shall make such payment to the State on the Effective Date. This payment will be referred to as the Restitution Payment. Respondent's 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# CX6916865141, 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.

The procedures for the distribution of the Restitution Payment are as follows:

3. The State will remit the Restitution Payment to the Claims Administrator to pay refunds and the costs of administration;
4. 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 April 15, 2019. The Claims Administrator will not accept claim forms later than June 30, 2019, which will be the Claims Deadline Date. No refunds will be distributed by the Claims Administrator until after the Claims Deadline Date passes. Consumers who properly complete the claim form will be eligible to receive a refund payment;
5. 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;
6. Eligible Consumers may receive pro rata Refund Amounts, if full payment is not available for all Eligible Consumers;

7. 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;
8. After the Claims Deadline Date, the Claims Administrator will prepare such report as the State may require; and
9. Checks returned to the Claims Administrator shall be treated in accordance with the State of Texas' unclaimed property laws.

#### **H. GENERAL PROVISIONS**

1. Respondent and the State agree that they will submit this Assurance to a district court of competent jurisdiction in Travis County and request that the court approve this Assurance, pursuant to the terms set forth herein and the DTPA section 17.58.

2. Nothing in this Assurance shall create any private rights, causes of action or remedies against Respondent and nothing in the Assurance shall be construed as a waiver of any private rights, causes of action, or remedies of any person against Respondent with respect to the practices or conduct described herein.

3. Respondent and the State agree that nothing in this Assurance shall be constructed to affect any action or proceeding by any regulatory body or state agency, whether such action or proceeding is related to any issue addressed by this Assurance or otherwise.

4. To the extent that the provisions of this Assurance 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 Assurance shall apply. For the purpose of this Assurance, such conflict exists if conduct prohibited by this Assurance is required or expressly permitted by such Texas, local, or

federal law or regulation, or if conduct required by this Assurance is prohibited by such Texas, local or federal law or regulation.

5. This Assurance is governed by section 17.58 of the DTPA. The parties agree that, should any clause, provision, or section of this Assurance, 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 Assurance, and this Assurance shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or provision had not been contained herein.

6. This Assurance sets forth the entire agreement between the parties. Respondent represents that it has fully read and understands this Assurance, accepts the legal consequences involved in signing this Assurance, and that there are no other representations or agreements between the parties not stated in writing herein.

7. It is also understood by Respondent that the subsequent failure to comply with the terms of this Assurance is *prima facie* evidence of a violation of the Deceptive Trade Practices – Consumer Protection Act.

8. The terms of this Assurance are not intended to alter Respondent's lawful contractual obligations with its fuel distributor(s) and suppliers.

9. The Parties agree that this Assurance shall not be modified or terminated except by written agreement signed by the parties and filed with the Court.

EXECUTED this 4<sup>th</sup> day of April 2019.

**AGREED AS TO FORM AND SUBSTANCE:**

KEN PAXTON  
Attorney General of Texas



JEFFREY C. MATEER  
First Assistant Attorney General

DARREN L. MCCARTY  
Deputy Attorney General for Civil Litigation

PAUL SINGER  
Chief, Consumer Protection Division

*/s/ Lucas Wollenzien*  
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**ATTORNEYS FOR PETITIONER  
STATE OF TEXAS**

**RESPONDENT**

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HANS TEXACO

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**ATTORNEY FOR RESPONDENT,  
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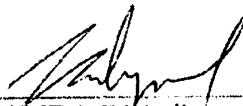
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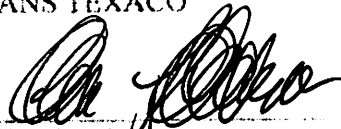
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ATTORNEYS FOR PETITIONER  
STATE OF TEXAS

**RESPONDENT**

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**ATTORNEY FOR RESPONDENT,  
CMDA Inc. d/b/a Hans Texaco**

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 June 30, 2019.**

**Distribution of restitution is estimated to be made by August 1, 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**