

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA**

**STATE OF FLORIDA,
OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LEGAL AFFAIRS,**

Plaintiff,

CASE NO. :

vs.

SWIFTY STARS, INC. #1

Defendant.

**COMPLAINT FOR INJUNCTION, DAMAGES,
CIVIL PENALTIES AND OTHER STATUTORY RELIEF**

This is an action for injunctive relief, damages, costs, attorneys fees, and civil penalties brought under the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2004). The State of Florida, Office of the Attorney General, Department of Legal Affairs (Attorney General), sues the Defendant, Swifty Stars, Inc. #1., and alleges:

THE PARTIES

1. The Office of the Attorney General, Department of Legal Affairs, is an enforcing authority for Florida's Deceptive and Unfair Trade Practices Act. § 501.203(2), Fla. Stat.
2. Section 501.160(8), Fla. Stat. specifically empowers the Department of Legal Affairs to enforce the prohibition against unconscionable pricing of commodities during a state of emergency declared by the Governor.
3. Attorney General Charlie Crist has reviewed this matter and determined that this enforcement action serves the public interest. A copy of the determination of public

interest is attached hereto as Exhibit "A".

4. The Defendant, Swifty Stars, Inc. #1 (Swifty) is engaged in trade and commerce within Florida, within the meaning of Section 501.203(8), Fla. Stat. Swifty is in the gas station/convenience store business.
5. Swifty is located at 4550 Capital Circle N.W., Tallahassee, Leon County, Florida. Swifty is an active Florida domestic corporation incorporated on or about June 12, 2003.
6. Swifty offers goods, services, and other things of value to consumers in the State of Florida. During the State of Emergency declared August 24, 2005 by Governor Bush, Swifty has offered motor fuels for sale to consumers in Leon County, Florida.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to §§ 501.207 and 26.012, Fla. Stat.
8. This court has personal jurisdiction over Swifty because it is located in, incorporated in, and does business in the State of Florida. § 48.193, Fla. Stat.
9. This action seeks equitable relief, penalties, damages, costs and attorney's fees.

BACKGROUND, THE STATE OF EMERGENCY

10. On August 24, 2005, the Governor of the State of Florida, Jeb Bush, signed Executive Order 05-176 (copy of Executive Order No. 05-176, attached as Exhibit "B"), establishing a sixty day State of Emergency throughout the State of Florida, declaring that then Tropical Storm Katrina, alone and in combination with the destruction caused by Hurricane Dennis, threatened the State of Florida with a major disaster. § 501.160(1)(b),

Fla. Stat. is designed to prohibit unconscionable increases in price in the rental or sale of essential commodities during a declared state of emergency (commonly referred to as “price gouging”).

11. On the evening of August 25, 2005, Hurricane Katrina struck south Florida as a Category 1 (on the Saffir-Simpson scale) hurricane. According to the National Hurricane Center of the U.S. National Weather Service, the storm then moved southwestward across Florida dumping over a foot of rain, toppling trees and power lines, and damaging homes and businesses in Miami-Dade and Broward counties before exiting the state into the Gulf of Mexico. The storm eventually turned to the northwest and having greatly intensified in its track across the Gulf of Mexico, Hurricane Katrina made landfall in Plaquemines Parish, Louisiana as a Category 4 hurricane with sustained winds of 140 m.p.h. on the morning of August 29, 2005. The storm moved north-northeast through Louisiana and Mississippi causing nearly indescribable destruction and devastation before weakening to a Tropical Depression near Clarksville, Tennessee on August 30, 2005. Although spared the most catastrophic effects of the storm, counties in the western panhandle of the State of Florida suffered damage and destruction from high winds and flooding, and hundreds of thousands of western panhandle Florida residents were without electric power as a result of Hurricane Katrina. At the peak of power outages, approximately 1.3 million customers in south Florida and in the western panhandle were without electric power. That same day (August 30, 2005) Governor Bush signed Executive Order 05-177 (copy attached as Exhibit “C”), amending Executive Order 05-176 to, among other things, recognize the damage and destruction caused in neighboring

states, and authorize the State Coordinating Officer to provide assistance to neighboring states invoking the Emergency Management Assistance Compact.

12. Persons evacuating portions of Louisiana, Mississippi, Alabama, and the western Florida panhandle have traveled to and through Leon County, Florida seeking refuge from the effects of Hurricane Katrina. In the course of that evacuation, those persons have purchased lodging, goods, and services, including, but not limited to motor fuels.
13. During a State of Emergency, commodities such as motor fuels and other petroleum products are necessary consumables as a result of the emergency. § 501.160(1)(a), Fla. Stat.

DEFENDANT'S UNLAWFUL COURSE OF BUSINESS

14. During this State of Emergency, Swifty has engaged, and continues to engage in unconscionable pricing practices, and unconscionable, deceptive and unfair acts and practices in trade and commerce by falsely advertising the price of motor fuels, and by implementing unconscionable price increases for motor fuels.
15. At approximately 8:30 p.m. on August 31, 2005, Mr. Kenneth Deemer stopped to purchase gas at Swifty's location at 4550 Capital Circle N.W., Tallahassee, Leon County, Florida. He observed that the price for regular unleaded gasoline advertised on Swifty's outdoor sign was \$2.899 per gallon. However, when he used his debit card to pre-pay at the pump, the price charged was \$3.299 per gallon, 40-cents per gallon higher than the price advertised on the sign. Mr. Deemer spoke to an attendant inside the Swifty store and was told by the attendant that he (the attendant) had not had time to change the sign,

and that Mr. Deemer was “out of luck”.

16. On September 1, 2005, Financial Investigator Thomas Vlasak of the Economic Crimes Division of the Office of the Attorney General, Department of Legal Affairs visited the Swifty location. He reported that the exterior sign which normally advertises the prices for Swifty’s gas products was blank. At the pumps the prices posted were \$3.499 for regular unleaded, \$3.699 for middle grade unleaded, and \$3.799 for premium unleaded, however, the only grade available was premium unleaded. The posted price for regular unleaded was 60-cents per gallon higher than the price advertised the previous evening, and 20-cents per gallon higher than the actual price paid when Mr. Deemer purchased gas that previous evening.
17. Investigator Vlasak interviewed a store employee who identified himself as Mohammed Al Helow. While Mr. Al Helow informed Investigator Vlasak that he was “only a clerk”, a subsequent review of the corporate records of Swifty Stars, Inc. #1 on file with the Florida Division of Corporations reveals that the Articles of Incorporation of Swifty Stars, Inc. #1 were amended on August 31, 2005 to list Mohammed Al Helow as a Vice President of the corporation.
18. With Investigator Vlasak present, Mr. Al Helow contacted by telephone a person named Al Khalil, who identified himself as “the owner”. When asked about the price increases Mr. Al Kahlil indicated that there were too many people coming into his station, and that he raised the prices to reduce the volume of customers. He further indicated that he wanted to save some gas for himself. He further stated that he had not received a delivery of gasoline for several days, possibly four days. Subsequently, documents and

information provided by Mr. Al Khalil reflect the following: On **August 24, 2005**, before the state of emergency was declared, Swifty was selling regular unleaded gasoline for **\$2.769** per gallon, and premium unleaded for **\$2.979** per gallon. The last delivery of fuel to Swifty during the time relevant to this complaint was on **August 25, 2005**, when Swifty received 5,000 gallons of regular unleaded and 1,000 gallons of premium unleaded. The price paid by Swifty was **\$2.443** per gallon for regular unleaded and **\$2.578** per gallon for premium unleaded. The prices charged by Swifty after receiving that delivery were **\$2.799** for regular unleaded, and **\$2.999** for premium unleaded. On **August 31, 2005**, having received no further deliveries, and therefore having incurred no additional costs, Swifty raised the pump prices **\$2.999** for regular unleaded and **\$3.199** for premium unleaded. On **September 1, 2005**, again having received no further deliveries of fuel, Swifty again raised the pump prices to **\$3.299** for regular unleaded and **\$3.499** for premium unleaded. As referenced in paragraph 16, above, by the time Investigator Vlasak arrived at the station on **September 1, 2005**, the pump prices were **\$3.499** for regular unleaded, **\$3.699** for middle grade unleaded, and **\$3.799** for premium unleaded.

COUNT I - PRICE GOUGING

19. The Department of Legal Affairs re-alleges and incorporates by reference paragraphs 1 through 18.
20. Florida's Deceptive and Unfair Trade Practices Act, in Section 501.204(1), Florida Statutes (2004), declares unconscionable acts in the conduct of any trade or commerce

unlawful.

21. Florida's Price Gouging law, Section 501.160 (2), Fla. Stat. makes it unlawful for:

a person or her or his agent or employee to rent or sell or offer to rent or sell at an unconscionable price within the area for which the state of emergency is declared, any essential commodity including, but not limited to, supplies, services, provisions, or equipment that is necessary for consumption or use as a direct result of the emergency. This prohibition remains in effect until the declaration expires or is terminated.
22. "'Commodity" means any goods, services, materials, merchandise, supplies, equipment, resources, or other article of commerce, and includes, without limitation, food, water, ice, chemicals, petroleum products, and lumber necessary for consumption or use as a direct result of the emergency." Sec. 501.160(1)(a), Fla. Stat.
23. Gasoline is a "commodity" during the State of Emergency.
24. The price for a "commodity" is *prima facie* unconscionable if the amount charged grossly exceeds the average price at which the same or similar "commodity" was readily obtainable in the trade area during the 30 days immediately prior to a declaration of a state of emergency, and the increase in the amount charged is not attributable to additional costs incurred in connection with the sale of the commodity or national or international market trends. §501.160(1)(b), Fla. Stat.
25. Swifty's increases in gasoline prices over the two-day period were not attributable to higher costs, as Swifty had not purchased or taken delivery of additional gasoline for several days prior to the price increases.
26. Swifty's conduct in charging unconscionable prices violates Florida's anti-price gouging law.

27. Unless this court enjoins Swifty from charging unconscionable prices during the State of Emergency, Swifty's continued activities will result in irreparable injury to the consuming public.

WHEREFORE, the State of Florida, Office of the Attorney General, Department of Legal Affairs, prays for judgment:

A. Permanently enjoining Swifty from charging or attempting to charge unconscionable prices for commodities during the State of Emergency. More specifically, the Department of Legal Affairs asks the court to temporarily and permanently enjoin Swifty from charging a price for gasoline that exceeds the average price at which the same or similar grade of gasoline was readily obtainable in the North Florida trade area during the 30 days immediately prior to a declaration of a state of emergency; unless the increase in such price is attributable to additional costs incurred by Swifty in obtaining such gasoline

B. Awarding the Department of Legal Affairs actual damages and interest on behalf of consumers injured by the unfair competition or deceptive or unfair acts or practices of Defendants in accordance with section 501.207(1)(c), Florida Statutes;

C. Assessing against Defendant Swifty civil penalties in the amount of one thousand dollars (\$1,000) for each violation of section 501.160, Florida Statutes in accordance with section 501.164, Florida Statutes;

D. Awarding reasonable attorney's fees and costs to the Department of Legal Affairs pursuant to sections 501.2105, and 501.2075, Florida Statutes;

E. Awarding restitution for consumers injured by Swifty's unlawful actions;

F. Requiring that Defendant Swifty disgorge all revenue generated as a result of the

unconscionable, unfair and deceptive practices set forth in this complaint;

G. Declaring the practices described in this complaint unlawful; and

H. Granting such other relief as this court deems just and proper.

**COUNT II - DECEPTIVE AND UNFAIR TRADE PRACTICES (FALSE
ADVERTISING)**

28. The Department of Legal Affairs re-alleges and incorporates by reference paragraphs 1 through 27.

29. Swifty's advertising of regular gasoline at \$2.899 per gallon, while actually selling the same grade of gasoline at the pump for \$3.299 per gallon constitutes misleading advertising in violation of § 817.41, Fla. Stat., and a deceptive or unfair trade practice pursuant to § 501.204, Florida Statutes.

30. Unless this court enjoins Swifty from charging prices in excess of the prices advertised on its exterior signs, its continued activities will result in irreparable injury to the consuming public.

WHEREFORE, the State of Florida, Office of the Attorney General, Department of Legal Affairs, prays for judgment:

A. Permanently enjoining Swifty from charging or attempting to charge prices for gasoline which exceed the prices advertised on its signs;

B. Assessing against Defendant Swifty civil penalties in the amount of ten thousand dollars (\$10,000) for each violation of Chapter 501, Part II, pursuant to section 501.2075, Florida Statutes and civil penalties in the amount of fifteen thousand dollars (\$15,000) for each violation

victimizing a senior citizen;

C. Awarding the Department of Legal Affairs actual damages and interest on behalf of consumers injured by the unfair competition or deceptive or unfair acts or practices of Defendants in accordance with section 501.207(1)(c), Florida Statutes;

D. Awarding reasonable attorney's fees and costs to the Department of Legal Affairs pursuant to sections 501.2105, and 501.2075, Florida Statutes;

E. Awarding restitution for consumers injured by Swifty's unlawful actions;

F. Requiring that Defendant Swifty disgorge all revenue generated as a result of the unconscionable, unfair and deceptive practices set forth in this complaint;

G. Declaring the practices described in this complaint unlawful; and

H. Granting such other relief as this court deems just and proper.

Respectfully submitted,

CHARLES J. CRIST, JR
Attorney General

J. Mark Kraus
Assistant Attorney General
Florida Bar No. 0612936
Office of the Attorney General
Department of Legal Affairs
Economic Crimes Division
The Capitol, PL-01
Tallahassee, Florida 32399-1050
(850) 414-3300