

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

STATE OF FLORIDA,
DEPARTMENT OF LEGAL AFFAIRS,
OFFICE OF THE ATTORNEY GENERAL,
and THE OFFICE OF THE STATE ATTORNEY
FOR THE ELEVENTH JUDICIAL CIRCUIT
OF FLORIDA,

Plaintiffs,

v.

CASE NO. _____

DAVID MEDINA,

Defendant.

COMPLAINT

Plaintiffs, STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, OFFICE OF THE ATTORNEY GENERAL, and THE OFFICE OF THE STATE ATTORNEY FOR THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA (herein referred to collectively as “the State”) bring this action against Defendant DAVID MEDINA for injunctive relief, civil penalties and other statutory relief pursuant to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2005), and Section 501.160, Florida Statutes (2005), which prohibits the charging of unconscionable prices for essential commodities during a State of Emergency, and alleges:

THE PARTIES

1. The State as defined is authorized to bring this action pursuant to Florida Statutes Sections 501.207 and 501.160(8) and to seek injunctive and other statutory relief pursuant to those statutes.

2. Defendant DAVID MEDINA is a resident of Miami-Dade County, Florida.

JURISDICTION

3. This court has jurisdiction pursuant to the Florida Deceptive and Unfair Trade Practices Act and Section 501.160(8).

4. The State has investigated this matter and determined that an enforcement action serves the public interest, as required by Section 501.207.

5. At all times material hereto, Defendant DAVID MEDINA engaged in "trade or commerce" in Miami-Dade County, Florida, as that term is defined in Florida Statute Section 501.203(8).

DEFENDANT'S UNLAWFUL COURSE OF BUSINESS

6. On October 19, 2005, Florida Governor Jeb Bush signed Executive Order 05-219, in which he declared a State of Emergency in Florida in connection with Hurricane Wilma. A copy of the Executive Order is attached as Exhibit A.

7. On October 24, 2005, Hurricane Wilma struck South Florida, including Miami-Dade County, with winds exceeding 100 miles per hour, crossing the state from coast to coast and causing substantial damage. Several people were killed. Many homes were destroyed. Thousands of Floridians evacuated. More than six million people were left without electricity or water. Property damage has been estimated to be at least \$9 billion.

8. During the State of Emergency, essential commodities such as generators, gasoline and food have been urgently needed by consumers.

9. Florida law prohibits deceptive, unfair and unconscionable trade practices and makes selling essential commodities at unconscionable prices during a State of Emergency unlawful.

10. By advertising, selling and offering generators for sale at grossly inflated prices during the State of Emergency, Defendant DAVID MEDINA engaged in deceptive, unfair and unconscionable trade practices and price-gouging.

11. On or about October 25, 2005, as Hurricane Wilma devastated South Florida, Defendant DAVID MEDINA traveled from Miami-Dade County to the town of Matthews, North Carolina, where he purchased 24 Nikato 3500W generators for \$279.99 each and 11 Coleman Powermate 6500W generators for \$529.99 each at a Costco store.

12. Defendant DAVID MEDINA returned to Miami-Dade County and on October 27, 2005, advertised, sold and offered the generators for sale off the back of a U-Haul truck at the intersection of Coral Way and S.W. 87th Avenue.

13. Defendant DAVID MEDINA had attached a hand-written sign reading "Generators" to the U-Haul truck.

14. Defendant DAVID MEDINA offered to consumers the Nikato generators for \$600 that he had purchased for \$279.99 each, and the Coleman generators for \$900 that he had purchased for \$529.99 each.

15. The price demanded by Defendant DAVID MEDINA for the Nikato generators constituted an increase over the initial purchase price of 114 percent, and for the Coleman generators an increase of 70 percent.

16. As of 1 p.m. on October 27, 2005, Defendant DAVID MEDINA had sold approximately 17 of the Nikato generators and eight of the Coleman generators, at an increase over the prices of these goods that he paid at the Costco store of approximately \$8,400.

17. The sale of all the generators at the prices demanded by Defendant DAVID MEDINA would have netted a profit of \$10,809 over the prices of these goods he paid at Costco.

18. Defendant DAVID MEDINA did not have an occupational license to sell generators.
19. Defendant DAVID MEDINA did not collect state sales tax on the generators he sold.
20. Defendant DAVID MEDINA kept no record of the expenses he incurred as a result of obtaining the generators in North Carolina, except a sales receipt showing he paid \$941.22 in sales taxes.
21. The cost of renting a U-Haul truck for a trip from North Carolina to Miami-Dade County is approximately \$350, and the cost of gas for a two-way trip is approximately \$300.
22. Defendant DAVID MEDINA's expenses in connection with the sale of the generators in Miami-Dade County, not including the price of the generators, were approximately \$1591.

COUNT I
UNCONSCIONABLE PRICING DURING
DECLARED STATE OF EMERGENCY
(VIOLATIONS OF SECTION 501.160, FLORIDA STATUTES)

23. The State re-alleges and incorporates by reference paragraphs 8 to 22.
24. Florida's price-gouging law, Section 501.160, 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.

Section 501.160(2).

25. "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." Section 501.160(1)(a).

26. A generator is a “commodity.”

27. The price of 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 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. Section 501.160(1)(b).

28. By engaging in the activities described in paragraphs 8 to 22, Defendant DAVID MEDINA violated Section 501.160.

29. As provided by Section 501.160(3), charging unconscionable prices in a declared state of emergency is a violation of the Florida Deceptive and Unfair Trade Practices Act, Section 501.204. By undertaking the activities described in paragraphs 8 to 22, Defendant DAVID MEDINA engaged in unconscionable, unfair and deceptive acts and practices in violation of Florida Statute Section 501.204.

30. These above-described acts and practices of Defendant DAVID MEDINA have injured and will likely continue to injure and prejudice the public.

31. Defendant DAVID MEDINA willfully engaged in the acts and practices when he knew or should have known that said acts and practices were unfair or deceptive or prohibited by law.

32. Unless Defendant DAVID MEDINA is permanently enjoined from engaging further in the acts and practices herein complained of, the continued activities of Defendant DAVID MEDINA will result in irreparable injury to the public for which there is no adequate remedy at law.

COUNT II
UNFAIR AND DECEPTIVE TRADE PRACTICES (VIOLATIONS
OF THE STANDARDS OF DECEPTION AND UNFAIRNESS)

33. The State realleges and incorporates by reference paragraphs 8 to 22.

34. Section 501.204(1) of the Florida Deceptive and Unfair Trade Practices Act declares unconscionable or deceptive acts or practices in the conduct of any trade or commerce to be unlawful.

35. As set forth in paragraphs 8 to 22, Defendant DAVID MEDINA engaged in trade practices that are deceptive, unfair and unconscionable, material and likely to mislead consumers acting reasonably under the circumstances. Defendant committed trade practices that offend established public policy and are unethical, oppressive, unscrupulous and substantially injurious to consumers. Defendant engaged in practices in violation of Section 501.204(1).

36. These above-described acts and practices of Defendant DAVID MEDINA have injured and will likely continue to injure and prejudice the public.

37. Defendant DAVID MEDINA willfully engaged in the acts and practices when he knew or should have known that said acts and practices were unfair or deceptive or prohibited by law.

38. Unless Defendant DAVID MEDINA is permanently enjoined from engaging further in the acts and practices herein complained of, the continued activities of Defendant DAVID MEDINA will result in irreparable injury to the public for which there is no adequate remedy at law.

RELIEF REQUESTED

39. WHEREFORE, Plaintiffs, State of Florida, Department of Legal Affairs, Office of the Attorney General, and the Office of the State Attorney for the Eleventh Judicial Circuit of Florida, ask for judgment:

- a. Permanently enjoining Defendant DAVID MEDINA, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with him who receive actual notice of the injunction, from engaging in the acts and practices in violation of provisions of the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2005) and Section 501.160, Florida Statutes (2005), prohibiting price-gouging, as specifically alleged above.
- b. Assessing against Defendant DAVID MEDINA civil penalties in the amount of Ten Thousand Dollars (\$10,000) for each violation of the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, and Fifteen Thousand Dollars (\$15,000) for each such violation that victimizes or attempts to victimize, a senior citizen or handicapped person, in accord with Section 501.2077.
- c. Awarding to Plaintiff reasonable attorney's fees and costs pursuant to Section 501.2105.
- d. Awarding actual damages caused to consumers by Defendant' acts and practices pursuant to Section 501.207(1).
- e. Assessing against Defendant DAVID MEDINA civil penalties in the amount of One Thousand Dollars (\$1,000) for each violation of Section 501.160.
- f. Granting such other relief as this court deems proper and just.

JURY TRIAL DEMAND

40. Plaintiff demands a jury trial on all issues triable by jury.

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