IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

ASHBRITT, INC.,
a Florida corporation,

Petitioner,
vs.

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

Respondent
_____/

CASE NO.:

PETITION TO QUASH THE INVESTIGATIVE SUBPOENA DUCES TECUM ISSUED BY THE OFFICE OF THE FLORIDA ATTORNEY GENERAL OR, ALTERNATIVELY, MODIFYING THE SUBPOENA

Petitioner, ASHBRITT, INC., a Florida corporation ("Petitioner" and/or "Ashbritt"), petitions the Court, pursuant to Fla. Stat. §501.206(1), for the entry of an Order: (A) quashing the Investigative Subpoena Duces Tecum (the "Subpoena"), issued on October 2, 2017 by Respondent, STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS ("Respondent" and/or the "Attorney General"); or (B) ordering an evidentiary hearing and requiring the Attorney General to introduce some legally sufficient predicate evidence of a violation of Fla. Stat. §501.160 (Florida's "Price Gouging law"), by Ashbritt, and then conduct a hearing on Ashbritt's objections to the Subpoena, and states the following in support:

I. OVERVIEW/INTRODUCTION

1. Ashbritt - one of the nation's leading disaster-recovery contractors - is now engaged in a massive, time-sensitive hurricane clean-up effort in cities and counties across the State of Florida. The Attorney General, however, has issued a subpoena that would sidetrack those efforts, divert Ashbritt's finite resources from the important public service now underway, and exacerbate the public health and safety hazards associated with the accumulation of debris.

2. While the Attorney General vaguely - and *wrongly* - accuses Ashbritt of price gouging, the facts reveal no foundation for the Subpoena or for the Attorney General's unreasonable demand for an enormous production of tens of thousands of documents. Far from seeking "unconscionable" prices from the cities and counties that it serves, Ashbritt's prices are well below the State-approved price for debris removal (ROW; DMS; and Grinding),[1] and are consistent with market conditions created by the State's own unforeseen actions.

3. **First**, in a recent procurement, the State itself approved a price of $23.00/cubic yard for ROW debris-removal; DMS; and Grinding services - approximately $4.00/cubic yard *more* than Ashbritt's highest price for such services to any of the eight (8) cities where temporary price increases were obtained in contract modifications as discussed in further detail below. On one hand, the State investigates

[1] "ROW" refers to right of way cleanup which involves picking up and removing debris that has been dropped or pushed up against or into a right of way. "DMS" refers to debris management sites which are temporary sites to which the debris is brought, managed, and reduced before being hauled out of the DMS for final disposal. Grinding is a process by which debris is reduced and is a method of debris reduction which is frequently selected by municipalities.

Ashbritt for price gouging; on the other, it has approved and agreed to prices incomparably greater than Ashbritt's. Because Ashbritt's prices are all *substantially less* than those approved by the State, Ashbritt, by definition, did not engage in price gouging.

4. **Second**, while the eight (8) cities responded to market distortions caused by the State's procurement by approving increased prices for Ashbritt's services - prices still far less than the State-approved price of $23 per cubic yard - Ashbritt has not invoiced (and will not invoice), those cities at the increased prices, but has declined the price increases and it will invoice those cities at their traditional contract rates.

5. To require Ashbritt to turn aside from imperative debris-removal services across Florida - and instead divert its resources to the collection of documents sought in an ill-conceived investigation - would violate Ashbritt's rights and harm the public interest. For these reasons, and as explained below, the Court should quash the Subpoena outright or require the Attorney General to present some legally sufficient predicate evidence to support the proposed fishing expedition against Ashbritt.

II. BACKGROUND

A. Ashbritt's Background & Proven Reliability As One Of The Nation's Leading And Time-Tested Natural Disaster Recovery Companies.

6. For the past twenty-five (25) years, Ashbritt has proven itself to be one of the nation's leading and most reliable rapid response disaster recovery and special environmental services contractors. Since its inception in 1992, Ashbritt has managed and executed more than 230 disaster recovery missions throughout the United States, successfully serving its clients in their time of desperate need. This includes 45 federally

declared major disasters in 18 states dating back to 1992 (when Hurricane Andrew hit Florida), and many of such recovery missions have been conducted under the authority and oversight of the Federal Emergency Management Agency ("FEMA"). Ashbritt has been integrally involved in the nation's recovery efforts after many of the worst natural disasters on record.

7. After Hurricane Katrina devastated parts of Louisiana and Mississippi in August of 2005, Ashbritt was the initial response prime contractor (from September, 2005 through August, 2006), for the United States Army Corps of Engineers ("USACE"). Ashbritt performed Katrina debris removal operations in eleven (11) jurisdictions in Louisiana and sixteen (16) jurisdictions in Mississippi covering more than 8,400 square miles. In total, Ashbritt removed in excess of 21 million cubic yards of debris and received special recognition from the USACE for the services it performed during the nation's largest debris removal mission ever awarded (as of that time period), to a single contractor after a natural disaster event.

8. After Hurricane Charley made landfall on the coastline of Charlotte County, Florida as a Category 4 hurricane in August of 2004, Ashbritt's management arrived on site within hours after landfall and began immediately moving resources into the area. Ashbritt was tasked with immediate missions of emergency road clearance, temporary roofing, and debris management. For ROW collections, Ashbritt deployed over 250 vehicles. In total, Ashbritt removed approximately 1.8 million cubic yards of debris.

9. After Hurricane Wilma slammed into South Florida in October of 2005, Ashbritt collected and processed more than 5 million cubic yards of vegetative debris; managed over 30 temporary debris processing sites; provided emergency power to 12 clients; and conducted emergency response for petroleum releases in Collier County, Florida.

10. After the massive devastation caused by Hurricane Sandy in New Jersey in October of 2012, Ashbritt performed debris cleanup for the State of New Jersey and fifty-three (53) of its municipalities. Ashbritt removed in excess of 3 million cubic yards of debris from November, 2012 through March, 2013.

11. After Hurricane Matthew hit Florida, Georgia, and South Carolina last year, Ashbritt removed more than a combined 5.6 million cubic yards of debris in these states. Time and time again throughout the years, Ashbritt has proven itself to be one of the most reliable natural disaster recovery companies upon which the nation can (and does) rely.

B. Ashbritt's Stand-By Contracts With Governmental Agencies And Secondary Contracts With Subcontractors.

12. There are two layers of contracts generally utilized in the performance of Ashbritt's work. The stand-by main/primary contracts which Ashbritt enters into with various governmental agencies (i.e. - states, counties, cities, etc.), *prior to* a natural disaster event, and the secondary/subcontracts which Ashbritt enters into with various companies *after* the natural disaster occurs to perform the disaster recovery work including, but not limited to, debris collection, removal, hauling, and disposal. **The**

availability of these subcontractors *after* a hurricane or other natural disaster occurs (and the performance of the recovery work by such subcontractors), is <u>essential</u> for Ashbritt to perform under its primary contracts.

13. In terms of the subcontracts, it is simply not an economically feasible or viable business model for natural disaster contractors like Ashbritt (or its competitors), to have a standing army of equipment and personnel waiting in the wings for the next natural disaster to strike. If trucks and self-loaders were parked and just waiting around for the next disaster to take place (along with the manpower required to maintain and operate such equipment), it would result in the price for debris removal increasing by several multiples. As such, the prevailing business model is for experienced disaster response prime contractors like Ashbritt (and its competitors), to leverage a network of capable subcontractors (whose equipment is normally dedicated to tasks such as timber operations, energy-related work, waste collection and environmental services), and to only enter into disaster recovery subcontracts with them *after* a natural disaster occurs.

14. In prior disasters, Ashbritt has always been able to call upon its registered network of operators throughout the United States to quickly mobilize in response to a major debris event and for such subcontractors to charge prices that are customary in the market for such services. However, as discussed at length below, the circumstances of the **<u>unprecedented</u>** and devastating back-to-back-to-back punches of Category 4 Hurricanes Harvey, Irma, and Maria, **all within a mere one (1) month period,** transferred all pricing leverage to subcontractors leading to a significant disruption in the market for their services. That disruption was caused, in large part, by the unforeseeable

governmental actions of the Florida Department of Transportation, District VI (the "DOT"), and by Miami-Dade County, Florida - both of which drastically increased the rates paid to subcontractors as discussed at length in Section "II.E" below.

15. It goes without saying that neither Ashbritt (or its competitors), nor any of its many public customers could have possibly anticipated that three (3) of the most devastating Atlantic hurricanes in recorded history would strike the United States in a one (1) month period, affecting Texas, nearly every county in Florida, numerous counties in Georgia, and completely overwhelming the network of subcontractor resources which are essential to performing emergency debris removal operations. It also goes without saying that Ashbritt could not anticipate the unforeseeable actions by the Florida DOT and Miami-Dade County in terms of their having dramatically re-set the market as a result of the significantly increased rates they agreed to pay subcontractors.

C. The Back-To-Back-To-Back Catastrophic Category 4 Punches Of Hurricanes Harvey, Irma & Maria.

16. The 2017 Hurricane Season has unfortunately proven to be one of the worst on record that the country has been forced to endure. Three (3) major Category 4 hurricanes (Harvey, Irma, and Maria), had an incredibly devastating impact upon various areas of the United States and the Caribbean (including the U.S. Virgin Islands and Puerto Rico), **all in an extremely short period of time between the latter part of August, 2017 through mid-September, 2017**. As if that was not enough, on October 7-8, 2017, Hurricane Nate hit the Gulf Coast near Biloxi, Mississippi.

(i). Hurricane Harvey Devastates Texas.

17. Hurricane Harvey slammed into Texas as a Category 4 hurricane and estimates suggest that the storm dumped in excess of 20 trillion gallons of water on Texas, causing historical record setting flooding and making Harvey the wettest Atlantic hurricane that has been measured to date. On the morning of August 27, 2017, the National Weather Service's Twitter account read: "This event is unprecedented & all impacts are unknown & beyond anything experienced…".[2] Weather reporters covering Harvey in the days that followed continued to grasp for words to describe the storm's never-before-seen impacts.[3] Citing to an analysis performed by the University of Wisconsin's Space and Engineering Center, the Washington Post reported that Harvey "is **a 1-in-1,000 year flood event** that has overwhelmed an enormous section of Southeast Texas equivalent in size to New Jersey."[4] [Emphasis added].

18. It goes without saying that the recovery efforts in Texas quickly became, and remain, one of the largest on record. Attached hereto as Exhibit "B" is a copy of FEMA's Texas Disaster Declaration showing the affected areas designated within the declaration. The magnitude of the disaster recovery efforts required in Texas resulted in untold numbers of subcontractors, of all experience levels from all around the country (including many from Florida), who perform disaster recovery work mobilizing with their trucks and equipment to Texas to respond to what was expected to be the largest disaster

[2] Twitter @NWS at 8:44 am, Aug. 27, 2017, available at: https://twitter.com/NWS/status/901832717070983169/photo/1?ref_src=twsrc%5Etfw&ref_url=https%3A%2F%2Fwww.nytimes.com%2F2017%2F08%2F29%2Fus%2Fhurricane-harvey-warnings-unprecedented.html

[3] Christine Hauser, *As Harvey Raged, Meteorologists Grasped for Words to Describe It*, N.Y. TIMES, Aug. 29.2017, available at: https://www.nytimes.com/2017/08/29/us/hurricane-harvey-warnings-unprecedented.html?mcubz=3

[4] See, Washington Post article dated August 31, 2017 by Jason Samenow a copy of which is attached hereto as Exhibit "A".

recovery effort, at least since Katrina, and maybe ever. The clean-up effort in Texas was barely underway when meteorologists began predicting that Hurricane Irma was going to be a second major hurricane that would also strike the United States – only this time in Florida.

(ii). Hurricane Irma Devastates Florida.

19. A week after Harvey's devastation in Texas, as Hurricane Irma tracked toward Florida, one meteorologist warned "The U.S. has never been hit, since we started collecting records in 1851, by two Category 4 or stronger hurricanes in the same season."[5] On September 10, 2017, Irma hit the Florida Keys as a Category 4 hurricane and then plowed its way northward over almost the entire Florida peninsula, causing massive amounts of damages throughout nearly the entire state. Attached hereto as Exhibit "C" is a copy of FEMA's Florida Disaster Declaration showing all of the affected areas designated within the declaration. **FEMA made an unprecedented designation of no less than forty-two (42) counties being eligible for its Public Assistance Program**.

20. Irma then worked its way into Georgia where it continued to cause extensive damages throughout that state. Attached hereto as Exhibit "D" is a copy of FEMA's Georgia Disaster Declaration showing all of the affected areas designated within the declaration. Like Hurricane Harvey, Irma similarly caused large numbers of the remaining available subcontractors (who did not previously go to Texas), to head into several of the most significantly affected areas, including the Florida Keys (portions of

[5] Nsikan Akpan, *First Harvey, now Irma. Why are so many hurricanes hitting the U.S.*?, PBS NEWSHOUR, Sep. 5, 2017, available at: http://www.pbs.org/newshour/updates/first-harvey-now-irma-many-hurricanes-hitting-u-s/

which were devastated by Irma); Miami-Dade County (which also sustained extensive damages); Collier and Lee Counties on the Southwest Florida coast; Duval County (where Jacksonville suffered substantial flood damage); and also into many counties in Georgia.

(iii). Hurricane Maria Devastates Puerto Rico.

21. As if Hurricanes Harvey and Irma were not enough, ten (10) days after Hurricane Irma hit Florida, on September 20, 2017, Hurricane Maria (another incredibly intense Category 4, and almost Category 5, storm), slammed directly into Puerto Rico causing catastrophic damages from which the island likely will not recover for years. The extent of the recovery efforts that are now required there are staggering. The three (3) punches of Hurricanes Harvey, Irma, and Maria have taxed the nation's ability to conduct emergency debris removal operations in ways that have never before been experienced.

D. The Significant And Unprecedented Effects Of Hurricanes Harvey, Irma & Maria On The Availability Of Resources To Perform Disaster Recovery Work.

22. The severity of the above described hurricanes, and the magnitude of damages they caused in such a short period of time is important to bear in mind. When the skies cleared after Harvey hit Texas; immediately followed by Irma hitting Florida; immediately followed by Maria hitting Puerto Rico (most recently followed by Nate having just hit the Gulf Coast), **there was a desperate need for all the companies that serve as subcontractors who perform disaster recovery work including their trucks, loaders, other equipment, and manpower, in a multitude of different places all at the**

same time. This includes Texas; the Florida Keys; nearly all counties throughout Florida; multiple counties throughout Georgia; all of Puerto Rico (and now in the Gulf Coast after Nate). In short, **there simply has never been such a widespread, simultaneous demand for disaster recovery services including debris removal in the wake of any storm.**

23. Immediately before Hurricane Irma hit Florida, Ashbritt's contracts with numerous governmental agencies in Florida were activated. Ashbritt was already fully engaged in the process of seeking out subcontractors required to perform the massive amounts of recovery work under all those activated contracts. However, given the massive and widespread back-to-back impacts and catastrophic damages initially caused by Harvey and then by Irma, Ashbritt (and all the other major disaster recovery companies), faced tremendous difficulties in obtaining such scarce resources – which only became even more scarce after Hurricane Maria then hit Puerto Rico.

24. As a result of these **completely unprecedented circumstances,** which no one could have ever possibly predicted (three major devastating hurricanes hitting three different widespread areas all within less than a one month period), the market for disaster recovery work and the subcontractors' services exploded. Demand for these subcontractors simply, and drastically, vastly exceeded supply. The scarce number of remaining subcontractors, and their equipment, that were still available could follow the market and go to the multitude of areas that also desperately needed such recovery work where they could be paid at much higher rates that were way beyond the market norms and pricing for such services.

E. The Significant And Unprecedented Effects Of These Hurricanes And The Florida DOT And Miami-Dade County's Actions On The Market And Pricing For Disaster Recovery Services.

25. The events in Florida in the wake of Hurricane Irma cannot be understood without recognizing the emergency actions that were initially taken by Houston; then by the Florida DOT and Miami-Dade County, Florida; and by a handful of other jurisdictions - **all of which established a new and vastly increased market rate for debris removal services in the unprecedented wake of these hurricanes**. As Hurricane Irma was plowing its way up the Florida peninsula on September 11th, the Mayor of Houston was faced with a dilemma created by the unprecedented demand for resources. He decided the negotiated rate for debris removal of $7.69/cy would not be sufficient to keep the subcontractors with critical self-loader equipment in Texas. So, despite the risk that FEMA would decline to reimburse Houston in full, he directed his legal team **to renegotiate rates for debris removal services.**[6]

26. By September 12th, Irma was done wreaking its havoc in Florida and went on to cause further damage in Georgia, South Carolina, and elsewhere. The race was then on to attract the vital trucks and self-loaders necessary to perform debris removal work.[7] As mentioned above, Houston's Mayor directed his legal staff to negotiate higher rates, **and FEMA subsequently agreed to increase Houston's reimbursement rate to**

[6] Mike Morris, *Competition for trucks, better pay from Irma could slow Harvey debris removal*, HOUSTON CHRON., Sept. 12, 2017, available at: http://www.chron.com/news/politics/houston/article/Competition-for-trucks-better-pay-from-Irma-12193048.php

[7] According to FEMA guidelines, debris must be loaded by self-loader, not by hand. Thus, beyond being efficient, having these hard-to-source self-loaders is a mandatory pre-requisite to FEMA reimbursement of debris removal costs.

almost $12/cy.[8] Even at that increased rate, Houston's Mayor said he was told "you have to be in the upper teens, in order to bring [additional contractors]." *Id.* **Miami-Dade County, Florida (eager to begin its debris removal), conducted its own emergency procurement which resulted in increased rates ranging from $14.75/cy to $18.75/cy.**

27. On September 12th, the Florida DOT, District VI (covering the counties of Miami-Dade and Monroe), also began an emergency procurement for, among other things, debris removal on impacted roadways. In doing so, the DOT ignored pre-existing contracts at lower rates with six (6) firms, including Ashbritt. The next day (September 13th), **the DOT awarded contracts at a combined rate for ROW debris removal, DMS, and Grinding of $23.00/cy.** Notably, the DOT rejected Ashbritt's bid which had offered a combined rate of under $14.00/cy, which was less than its pre-existing contract price.[9]

28. To illustrate the significant disruption in the market caused by the DOT's emergency procurement, **DOT agreed to prices of $969.00 and $250.00,** respectively, for the two (2) contractors who went to work in Monroe County after Irma for removal of white goods (refrigerators/freezers, etc.), to the temporary debris management sites. In the pre-position contracts that the DOT ignored, the average price for removal of white goods to the temporary debris management sites, including all six (6) contractors, **was $98.00**.

[8] Cameron Langford, *Houston Leaders Spar Over Harvey Debris Cleanup*, Courthouse News, Sep. 20, 2017, available at: https://www.courthousenews.com/houston-leaders-spar-harvey-debris-cleanup/

[9] Most discussion of debris removal cost focuses on the ROW number alone rather than adding the usually more stable DMS cost. In the DOT emergency bid, however, the successful offeror spread its increases over both ROW and DMS and, therefore, the true picture of the extent of the increase comes only from considering the combined number.

29. One aspect of DOT's emergency procurement that was extremely disruptive to the marketplace is found in the pricing of putrescent debris removal from the DMS locations to permitted final disposal sites. In every major disaster of the severity and magnitude of Hurricane Irma, catastrophic damages and power outages lasting for days would be expected in the hardest hit communities. Power outages lead to putrescent debris in every such instance from food spoilage in all the refrigerators and freezers that are not being powered by generators. As such, bid prices for this particular contract line item must be carefully analyzed for cost reasonableness against previously submitted prices for the same contract line item.

30. Hurricane Irma resulted in the collection of more than 1,500 putrescent food-containing refrigerators and freezers by each of the two (2) contractors performing this function in Monroe County. The amount of putrescent food resulting from those 1,500 units brought to the DMS locations will be 40,000 pounds (or more), which enables a cost reasonableness analysis. **In the DOT emergency procurement, DOT agreed to a price of $194.00 and $50.00 per pound of putrescent food taken to final disposal**.

31. The calculations resulting from the above, which have been confirmed on the ground in Monroe County, are as follows:

CONTRACTOR #1 DOT EMERGENCY BID:

REMOVE PUTRESCENT FOOD 40,000 LBS X $194.00 PER POUND = $7,760,000.00

COLLECT 1,500 REFRIGERATORS AND FREEZERS
1,500 COLLECTED X $969.00 = $1,453,500.00

TOTAL FOR DOT EMERGENCY CONTRACTOR #1 = $9,213,500.00

CONTRACTOR #2 DOT EMERGENCY BID:

REMOVE PUTRESCENT FOOD 40,000 LBS X $50.00 PER POUND = $2,000,000.00

COLLECT 1,500 REFRIGERATORS AND FREEZERS
1,500 COLLECTED X $250.00 = $375,000.00

TOTAL FOR DOT EMERGENCY CONTRACTOR #2 = $2,375,000.00

AVERAGE OF ALL SIX (6) DOT DISTRICT VI PRE-POSITION CONTRACTS WHICH DOT IGNORED:

REMOVE PUTRESCENT FOOD 40,000 LBS X $6.16 PER POUND = $246,400.00

COLLECT 1,500 REFRIGERATORS AND FREEZERS
1,500 COLLECTED X $98.00 = $147,000.00

TOTAL FOR ALL SIX (6) DOT DISTRICT VI
PRE STORM CONTRACTORS = $390,400.00

32. The foregoing reflects how DOT's actions were an integral part of how and why the market and pricing for subcontractors' services was completely disrupted, and how the market exploded as a result of such unforeseeable actions. Several Florida news sources reported the bidding war over resources that erupted in the first week following the aftermath of Irma's landfall:

- Sarasota County had standing contracts with a debris collection rate of about $8/cy with a different prime contractor (Crowder Gulf), but Sarasota's Emergency Services Director, Rich Collins, acknowledged for **"emergency contracts put in place down south, that rate is up to $15, $18 a cubic yard**."[10] [Emphasis added].

[10] Zach Murdock, *Sarasota County scrambling after clean-up crews ride south*, HERALD-TRIBUNE, Sep. 22, 2017, available at: http://www.heraldtribune.com/news/20170922/sarasota-county-scrambling-after-clean-up-crews-ride-south

- Tampa Bay's Public Works Administrator, Brad Baird, said its debris removal contractor (Ceres) had a contracted rate of $9.77/cy **but south Florida rates of $15/cy were impacting Tampa Bay's clean-up effort as well**.[11] **Tampa later raised its rates to $11/cy.**[12]

- Largo lodged the same complaint. According to its Public Works Director, Brian Usher, Largo's debris removal contractor (DRC Emergency Services) "**struggles to find subcontractors. Many have gone to Houston, Miami or Fort Myers**."[13] [Emphasis added]

- Among the Florida jurisdictions that chose to raise pre-negotiated prices was Seminole County which revised its agreement with Ceres Environmental that was initially at a contracted rate of $7.49/cy, **increasing the rate to more than double to $15.48/cy**.[14]

33. In light of the foregoing, Ashbritt faced significant challenges in obtaining the scarce number of available subcontractors unless it agreed to pay them at the substantially higher rates established as a result of the total disruption in the market due to the never before seen levels of demand for their services and resulting price increases.[15] Frustrated elected officials and administrators throughout Florida complained loudly to the State about these circumstances but many of these same officials and administrators acknowledged that they were in competition with their sister jurisdictions **for the same scarce subcontract resources**.

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[11] Ryan Smith, *Debris pickup trucks ditch Tampa for South Florida*, ABC ACTION NEWS, Sep. 22, 2017, available at: http://www.abcactionnews.com/news/region-tampa/debris-pickup-trucks-ditch-tampa-for-south-florida

[12] Richard Danielson, *Tampa hires second contractor to pick up Hurricane Irma debris*, TAMPA BAY TIMES, Oct. 2, 2017, http://www.tampabay.com/news/weather/hurricanes/tampa-hires-second-contractor-to-pick-up-hurricane-irma-debris/2338950

[13] Richard Danielson *et al*., *South Florida poaches debris pickup trucks once headed to Tampa Bay*, TAMPA BAY TIMES, Sep. 22, 2017, available at: http://www.tampabay.com/news/weather/hurricanes/south-florida-poaches-debris-pickup-trucks-once-slotted-for-tampa/2338455

[14] Stephen Hudak, *FEMA rules about gated communities muddle cleanup of Hurricane Irma debris*, ORLANDO SENTINEL, Sep. 26, 2017, available at: http://www.orlandosentinel.com/news/hurricane-irma-recovery/os-irma-debris-gated-communities-20170926-story.html

[15] It was not just difficulty in "obtaining" the subcontractors but once obtained, the ability to "retain" them when several other cities and jurisdictions were offering to pay much higher rates for their services.

34. Apopka Mayor Joe Kilsheimer noted that Hurricane Harvey had "**sucked up a lot of the resources.**"[16] [Emphasis added]. Mayor Kilsheimer also said "**cities in South Florida were paying <u>double the prices</u> and so that's where all the sub-contractors are going**."[17] [Emphasis added]. Sarasota County's emergency operations chief, Rich Collins, said subcontractors came through Sarasota County and said "We're moving south, **where we can make more money**."[18] [Emphasis added].

F. Ashbritt's *Temporary* Contract Modifications With Eight (8) <u>Cities</u>.

35. Ashbritt's contracts in Florida were negotiated at prices generally ranging from $5.00 to $7.50/cy for ROW debris removal. These rates were consistent with those in the industry generally and based upon widely accepted projections of future needs for emergency debris removal work. The rates were informed by experience with major storms of all sizes, including some of the biggest storms on record, such as Hurricanes Katrina, Wilma, Ike, Sandy, and Matthew. Emergency debris removal work has always relied on a network of free-agent subcontractors that emerge with the trucks and equipment necessary to clean-up after hurricanes.

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[16] Stephen Hudak, *Hurricane Irma: Cities, counties scramble to find crews to pick up mess after contractors bail*, ORLANDO SENTINEL, Sep. 21, 2017, available at: http://www.orlandosentinel.com/news/hurricane-irma-recovery/os-hurricane-irma-storm-debris-contractor-problems-20170921-story.html

[17] Mark Lehman, *Gov. Scott: Debris removal stalemate must end*, Sep. 22, 2017, CLICK ORLANDO, available at: https://www.clickorlando.com/news/gov-scott-calling-for-debris-removal-companies-to-honor-contracts

[18] Steve Bousquet, *Looks like there's a bidding war for Irma debris removal. South Florida is winning.*, MIAMI HERALD, Sep. 21, 2017, Available at: http://www.miamiherald.com/news/weather/hurricane/article174685051.html

36. However, when Ashbritt negotiated its Florida contracts, neither Ashbritt nor the municipalities it serves could have ever possibly anticipated the unprecedented strain on subcontractor resources caused by Hurricanes Harvey and Irma, back-to-back, followed shortly thereafter by Maria and most recently Nate. **The shocking combination of impacts caused by these hurricanes created more demand for debris removal resources all at one time than ever before.**

37. The unavoidable economic consequences triggered by demand of this unprecedented magnitude were exacerbated **when the Florida DOT (District VI), and Miami-Dade County effectively re-set the entire market rate for debris removal at $15/cy and above; essentially DOUBLING the pre-existing contract rates.** Despite this, Ashbritt continued to perform its work at its original contract prices in existing pre-position agreements when Irma hit.

38. The only exceptions are a handful of Ashbritt's clients in South Florida who reacted to the DOT and Miami-Dade County's actions as more particularly described hereinabove. Within seven (7) to ten (10) days after DOT and Miami-Dade County's actions, the cities of Key Biscayne; Pompano Beach; Delray Beach; Deerfield Beach; Boca Raton; Miami Beach; Tamarac; and Parkland all made decisions to adjust their pre-existing contract rates with Ashbritt.[19]

[19] Recognizing the scarcity of resources and the need to prevent subcontractors from being poached and their fleeing to other areas where they could be paid more money, numerous cities throughout Florida have been increasing the rates they are paying including, by way of example, the cities of Miramar and Sunrise. The City of Sunrise recently entered into an amendment of its contract with the Crowder-Gulf Joint Venture, Inc. disaster recovery company which expressly recognizes this very problem as the amendment states the following, in pertinent part: "WHEREAS, Broward County and City [Sunrise] followed FEMA rules and had pre-positioned contracts that established a particular rate for storm debris collection and disposal. Miami Dade County did not and had a pre-qualified list and just had an emergency bid. **They are now paying vendors approximately DOUBLE what**

39. Fearful that the subcontractors performing work within their communities would leave to seek the higher rates in Miami-Dade County and other jurisdictions, these cities concluded, **after holding public hearings**, that the only way to prevent a mass exodus was to modify their existing contracts with Ashbritt to match the new and higher going market rate. **All of these modifications were approved by the applicable city managers, city attorneys, and City Commissions by unanimous approval after holding public hearings and were the result of the above discussed governmental actions of increasing prices and disrupting the marketplace.**

40. The price increases in these modifications never exceeded the $15.00/cy price set by Miami Dade, County. Critically, these increases were in direct response to these particular cities concern that they not lose critical debris removal assets. These cities believed that they needed to address the inevitable rate shopping that was already occurring and further likely to take place among equipment owner-operators and subcontractors, who were effectively free agents willing to go to any area that would pay them the most.

Broward's approved/restricted FEMA contracts allow. All of the sub-contractors are fleeing Broward to work in Miami. Further, DOT has Emergency Debris contracts that also pay much higher rates to vendors, which DOT utilized in Monroe County and again everyone left Broward. Georgia by Executive Order is using an Army Corp. contract that is even paying more **so again sub-contractors are fleeing for more pay**…". [Emphasis added]

G. Ashbritt's Promise To The Eight (8) Cities To Roll Back All Pricing To The Original Pricing Once Market Stabilization Was Achieved.

41. During the discussions and public hearings with these eight (8) cities, Ashbritt informed them that it was hopeful that the market for equipment and personnel necessary to perform debris cleanup would stabilize in the near future. In the event the market did stabilize, Ashbritt would work with the cities to reduce any price increase to which they were agreeing. In keeping with this promise, **Ashbritt appeared before the City Commissions of Parkland and Tamarac on Wednesday, October 11th and informed each that the market and supply of equipment and resources have stabilized sufficiently such that Ashbritt was unilaterally rolling back any price increases. As Ashbritt has not yet rendered any invoices to these cities, they will only be billed at the original contract rates and will not be billed any increased prices. The remaining six (6) cities will be receiving the same notification from Ashbritt over the next few days; meaning that no city will have been billed, let alone paid, anything above the original agreed contract rates.**

III. PROCEDURAL BACKGROUND

42. Despite all of the foregoing, on October 2, 2017 the Attorney General issued and served the Subpoena upon Ashbritt a copy of which is attached hereto as Exhibit "E." The Subpoena states that it is "*issued pursuant to Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes, and Section 501.160, Florida Statutes, Rental or Sale of Essential Commodities During a Declared State of*

Emergency: Prohibition Against Unconscionable Prices, in the course of an official investigation." [See, Page #1].

43. The Subpoena reflects that the nature of the Attorney General's investigation is whether Ashbritt violated Florida's Deceptive And Unfair Trade Practices Act as set forth in Part II of Chapter 501 of the Florida Statutes ("FDUTPA"). Specifically, the Attorney General is, apparently, investigating whether Ashbritt's contract modifications with the above discussed eight (8) cities violated the Price Gouging law, and thus, violated FDUTPA. **That is the <u>only</u> violation of FDUTPA which the Subpoena reflects is being investigated by the Attorney General**. For the reasons set forth in this Petition, the Subpoena must be quashed as a matter of law.

IV. <u>SUMMARY OF ARGUMENT</u>

44. The Subpoena must be quashed, *as a matter of law*, for the following reasons:

- The Attorney General's investigation cannot proceed **<u>since it lacks the required foundation</u>** – legally sufficient evidence leading the Attorney General to reasonably believe that Ashbritt violated the Price Gouging law;

- The contract modifications do not violate the Price Gouging law **<u>since they were all approved</u>** by the applicable governmental agencies - the eight (8) cities discussed above. As such, the Price Gouging law was not violated and therefore there is no violation of FDUTPA;

- The contract modifications were only on a *temporary basis* as Ashbritt advised the eight (8) cities that prices would be rolled back to the original pricing once the market stabilized (which has now occurred). As a result, Ashbritt has rolled back the pricing to the original prices and none of these cities have been (nor will they be), invoiced by Ashbritt for any increased pricing;

- The price increases in the contract modifications with the eight (8) cities were not "unconscionable", as a matter of law, since they are *lower* than the price increases established by the Florida DOT and Miami-Dade County in their post Hurricane Irma emergency procurements;

- The Subpoena seeks information and documents focusing on whether Ashbritt breached its contracts with the eight (8) cities by obtaining the contract modifications. While Ashbritt maintains that it committed no such breaches (as all modifications were approved by the eight (8) cities), nonetheless, a breach of contract claim is not converted into a FDUTPA claim/violation merely by virtue of characterizing the alleged breach as being "unfair" and/or "deceptive";

- The Attorney General's Subpoena reflects that its investigation arises out of and focuses on alleged price gouging in the eight (8) cities. As the Price Gouging law contains an exception that is controlling (the governmental agencies **approved the price increase**), the more general provisions of FDUTPA cannot now be used by the Attorney General as a "substitute" to pursue these same issues; and

- Before requiring Ashbritt to respond to <u>any</u> portion of the Subpoena, the Court should order an evidentiary hearing and require the Attorney General to introduce some legally sufficient predicate evidence of a violation of the Price Gouging law which can serve as a basis for the Attorney General's FDUTPA violation investigation.

45. While the Subpoena must be quashed, *as a matter of law*, for the above reasons, in the event it is not quashed, it must be substantially modified and narrowed in scope since it is extremely overbroad; unduly burdensome; seeks documents which are confidential, proprietary, and/or trade secrets of Ashbritt; seeks thousands upon thousands of pages of documents which are matters of Public Record which the Attorney General can readily obtain directly from the counties/cities; and many of the categories seek documents which are simply irrelevant to the Attorney General's alleged FDUTPA

investigation which the Subpoena reflects is only based upon an alleged violation of Florida's Price Gouging law as relating to the eight (8) cities discussed above.[20]

V. ARGUMENT

A. The Attorney General's Subpoena Is Fully Subject To The Jurisdiction Of This Court Which Has The Power To Quash Or Modify The Subpoena.

46. Fla. Stat. §501.206(1) authorizes the Attorney General to "administer oaths and affirmations, subpoena witnesses or matter, and collect evidence" if the Attorney General "has reason to believe that a person has engaged in, or is engaging in, an act or practice that violates" FDUTPA. However, that investigatory power is not boundless. Accordingly, §501.206(1) expressly permits this Court to review and quash (or modify), a subpoena issued by the Attorney General:

> Within 5 days, excluding weekends and legal holidays, after the service of a subpoena or at any time before the return date specified therein, whichever is longer, **the party served may file in the circuit court in the county in which he or she resides or in which he or she transacts business and serve upon the enforcing authority a petition for an order modifying or setting aside the subpoena.** The petitioner may raise any objection or privilege which would be available under this chapter or upon service of such subpoena in a civil action. [Emphasis added]

[20] By way of example, the Attorney General does not limit its Subpoena to just the eight (8) cities where price increases were approved. Rather, the Subpoena covers ALL cities and counties in Florida where Ashbritt has pre-position contracts. Producing these documents would take months to gather and would be comprised of tens of thousands of pages – many of which are Public Records which the Attorney General can readily obtain directly from the cities.

47. While conducting such a review, this Court must be cognizant that "[t]he Fourth Amendment . . . limit[s] the scope of investigatory power exercised by federal and state agencies." *Major League Baseball v. Crist,* 331 F.3d 1177, 1187 (11th Cir. 2001). *See also, Check 'n Go of Florida, Inc. v. State,* 790 So.2d 454, 459 (Fla. 5th DCA 2001) ("Overbroad or unreasonable subpoenas, including investigative subpoenas, violate the Fourth Amendment protection against unreasonable searches and seizures"). While Congress and state legislatures may permissibly grant broad investigative authority to agencies, that power does not extend to "fishing expeditions" predicated on "a mere intuition that illegal activity is afoot." *Major League Baseball,* 331 F.3d at 1187. *See also, Brasky v. City of New York Dept. of Investigation,* 40 A.D.3d 531, 533 (N.Y. App. Div 2007) ("no agency of government may conduct an unlimited and general inquisition into the affairs of persons within its jurisdiction solely on the prospect of possible violations of the law being discovered, especially with respect to subpoenas duces tecum") (internal citation omitted). Accordingly, an agency cannot issue an investigative subpoena unless "a reasonably prudent person would be warranted in the belief that a person or other enterprise who is the subject of the subpoena has engaged in, or is engaging in, activity in violation of the [law]." *Check 'n Go of Florida, Inc.,* 790 So.2d at 458.

48. The *Major League Baseball* decision is instructive. The Attorney General issued investigatory subpoenas to Major League Baseball, its commissioner, and the owners of two professional baseball teams. *Id.* at 1180. The subpoenas were issued pursuant to the Attorney General's authority under Florida's antitrust statute and sought a

wide range of information and documentation related to a vote in favor of eliminating several teams from the league. *Id.* The recipients responded by filing an action wherein they challenged the subpoenas, arguing that professional baseball's antitrust exemption gave the recipients a "federal right" to be free from such an investigation. *Id.* The district court agreed and entered a judgment in favor of the recipients. *Id.* at 1182-1183. The Eleventh Circuit subsequently affirmed that ruling, albeit for a different reason – it held the Attorney General's subpoenas violated the recipients' right to be free from baseless investigations. *Id.* at 1186-1188.

49. The Eleventh Circuit began its analysis by noting that the "business of baseball" is immune from prosecution under federal and state antitrust laws. *Id.* at 1183-1187. Since the vote to eliminate several teams fell squarely within the "business of baseball," the Eleventh Circuit determined that such conduct could not "possibly violate state or federal antitrust laws." *Id.* at 1189. Absent such a potential violation of the law, "an investigation based solely upon contraction is baseless and therefore violates the Fourth Amendment and Florida law – both which limit the scope of the Attorney General's authority to issue investigative subpoenas." *Id.* In so ruling, the Eleventh Circuit rejected the Attorney General's contention that his subpoenas were proper because they might reveal illegal activity by unknown non-baseball entities, stating in relevant part:

> The Attorney General's brief reveals his broad (and incorrect) view of the investigatory discretion vested in his Office . . . [T]he Attorney General has no idea what illegal activity might have occurred, or who might have engaged in this conduct. Even so, the Attorney General believes he has the

> power to commence a full-blown investigation. Although the Attorney General need not have absolute proof of a violation prior to commencing an investigation (otherwise, what would be the point of conducting an investigation in the first place?), Florida law and the Constitution clearly require that the Attorney General have *something. Id* at 1187 n. 23 (emphasis in original).

See also, Check 'n Go of Florida, Inc., 790 So.2d at 457-478 ("The level of proof required of the investigative agency must suggest something more than a fishing expedition, and something less than probable cause").

50. Since federal and state agencies are not allowed to engage in "fishing expeditions," any investigatory subpoena issued by such an agency must be closely scrutinized to ensure that it complies with the reasonableness standard compelled by the Fourth Amendment. *See, e.g., Check 'n Go of Florida, Inc.*, 790 So.2d at 458-459; *Major League Baseball*, 331 F.3d at 1187; *U.S. v. Gurley*, 384 F.3d 316, 321 (6th Cir. 2004); *EEOC v. Nucor Steel Gallatin*, 184 F.Supp.3d 561, 568 n. 7 (E.D. Ky. 2016). The reasonableness standard requires a court to examine: (1) whether the agency issuing the subpoena was authorized by law to do so; (2) whether the materials requested are relevant to an authorized investigation; and (3) whether the items sought are described with particularity and definiteness. *See, e.g., Check 'n Go of Florida, Inc.*, 790 So.2d at 459; *Gurley*, 384 F.3d at 321; *Nucor Steel Gallatin*, 184 F.Supp.3d at 568 n. 7; *Dean v. State*, 478 So.2d 38, 40 (Fla. 1985); *Fla. Dept. of Insurance and Treasurer v. Bankers Insurance Co.*, 694 So.2d 70, 73 (Fla. 1st DCA 1997). Since relevancy and adequacy or excess in breadth of a subpoena are matters variable in relation to the nature, purposes

and scope of inquiry, "each investigatory subpoena must be evaluated on its own merits." *Check 'n Go of Florida, Inc.*, 790 So.2d at 460.

51. In this instance, the Attorney General issued the Subpoena to Ashbritt pursuant to Fla. Stat. §501.206(1). Thus, ***as a threshold matter***, this Court must determine "whether under the circumstances a reasonably prudent person would be warranted in the belief that [Ashbritt] has engaged in, or is engaging in, activity in violation of [FDUTPA]." *Check 'n Go of Florida, Inc.*, 790 So.2d at 458. *See also, State Office of Attorney General v. Shapiro & Fishman, LLP*, 59 So.3d 353, 356 (Fla. 4th DCA 2011) (explaining "there . . . has to be a statutory basis for the issuance of a subpoena that is moored to a particular statute, that being FDUTPA in this case"); *Law Office of David J. Stern, P.A. v. State*, 83 So.3d 847, 849 (Fla. 4th DCA 2011). If a reasonable person would conclude that Ashbritt's alleged conduct does not violate FDUTPA, the Attorney General lacked authority to issue the Subpoena and it must be quashed. *See, e.g., Shapiro & Fishman, LLP*, 59 So.3d at 356-357 (affirming order that quashed investigatory subpoena issued by the Attorney General because law firm's conduct did "not fall within the rubric of 'trade or commerce' as required for civil investigative subpoenas under FDUTPA"); *Law Office of David J. Stern, P.A.*, 83 So.3d at 849 (reversing denial of law firm's petition to quash investigatory subpoena issued by the Attorney General on same grounds). For the reasons set forth in Sections V.B – G below, the Subpoena must be quashed, as a matter of law, since there is no reason to believe that Ashbritt violated FDUTPA since it did not engage in conduct proscribed by the Price Gouging law.

52. However, in the event this Court determines that the Attorney General had the statutory authority to issue the Subpoena, this Court must then examine whether the Subpoena is "properly limited in scope, relevant in purpose, and specific in directive." *Check 'n Go of Florida, Inc.*, 790 So.2d at 460 (*quoting Dean*, 478 So.2d at 40). *See also Bankers Insurance Co.*, 694 So.2d at 73 (explaining that "the circuit court must also determine, in a case where a resisting party properly raises such issues, whether an agency's investigatory subpoena is overly broad or otherwise unduly burdensome, and whether enforcement would violate some privilege or constitutional right"); *Imparato v. Spicola*, 238 So.2d 503, 511 (Fla. 2nd DCA 1970) ("A subpoena duces tecum may not lawfully require production of a mass of books and papers, merely so that one may search through all of them to gather evidence; and an omnibus subpoena for all, or even a substantial part, of the books and records of the subpoenaed party is invalid").

53. If the Subpoena is overbroad, unduly burdensome, indefinite, or violates some privilege or constitutional right, it must be modified prior to enforcement. *See, e.g., Check 'n Go of Florida, Inc.*, 790 So.2d at 460 (holding investigatory subpoena issued by Attorney General was overbroad and could not be enforced as written); *Advance America v. State of Florida, Office Of The Attorney General, Department Of Legal Affairs*, 801 So.2d 310 (Fla. 1st DCA 2001) (same); *Brasky*, 40 A.D.3d at 533 (affirming denial of motion to quash investigatory subpoena but modifying subpoena on the grounds it was overbroad and would violate petitioner's federal and state privilege against self-incrimination). In the event that the Subpoena is not quashed for all of the reasons set

forth in Sections V.B – G below, then its scope must be substantially narrowed in accordance with Ashbritt's objections as discussed in Section V.H below.

B. Ashbritt Did Not Violate The Price Gouging Law (And Therefore No FDUTPA Violation Exists) As The Contract Modifications Were All Approved By The Applicable Governmental Agencies – The Eight (8) Cities.

54. The very first page of the Subpoena reflects that it has been issued by the Attorney General to investigate whether Ashbritt violated the Price Gouging law as a predicate to a violation of FDUTPA. To this end, the Price Gouging statute states the following in sub-section two (2):

> Upon a declaration of a state of emergency by the Governor, **it is unlawful *and a violation of s. 501.204*[21] 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 is effective not to exceed 60 days under the initial declared state of emergency as defined in s. 252.36(2) and shall be renewed by statement in any subsequent renewals of the declared state of emergency by the Governor. [Emphasis added]

55. As the above quoted statutory language reflects, there can be no violation of FDUTPA if a violation of the Price Gouging law does not exist. Here, the Attorney General's Subpoena seeks a myriad of documents from Ashbritt relating to the pricing modifications in Ashbritt's contracts with the eight (8) cities discussed above, presumably

[21] Section 501.204 is within the FDUTPA and states the following in sub-division one (1): "Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

to examine whether or not they constitute an "unconscionable price" within the meaning of the Price Gouging law.

56. First and foremost, the contract modifications cannot be characterized as constituting "unconscionable prices" based on: **(i) the significantly increased rates that were set by the Florida DOT and Miami-Dade County as discussed at length above;** (ii) all of the unprecedented circumstances relating to the back-to-back devastating hurricanes discussed above; and (iii) such pricing only being on a temporary basis which has now been unilaterally rolled back by Ashbritt due to stabilization of the market such that the cities will **not** even be charged/invoiced for a penny of increased pricing.

57. Even more obviously, there can be no violation of the Price Gouging law, as a matter of law, **because all of the contract modifications were approved by unanimous votes of the eight (8) City Commissions after public hearings all as more particularly discussed in Section II above**. In light of such approvals, there can be no cognizable violation of the Price Gouging law, which clearly states in sub-section four (4):

> **A price increase approved by an appropriate government agency shall not be a violation of this section.** [Emphasis added]

58. The Florida Legislature was crystal clear in the words it chose in sub-section four (4) of the Price Gouging law. If a price increase is approved by the appropriate governmental agency **then it is not a violation of the Price Gouging law - period.** Sub-section four (4) is clear and unambiguous and in no need of any type of statutory construction. "Legislative intent must be derived primarily from the words

expressed in the statute. If the language of the statute is clear and unambiguous, courts enforce the law according to its terms and there is no need to resort to rules of statutory construction. [footnote omitted] Even where a court is convinced that the Legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity." *See, Florida Department of Revenue v. Florida Municipal Power Agency*, 789 So.2d 320, 323 (Fla. 2001); *Hill v. State of Florida*, 688 So.2d 901 (Fla. 1996) (Judge Anstead's Concurrence) ("Accordingly, where a statute is clear and unambiguous, a court must enforce the law according to its terms and is precluded from construing the statute differently").

59. In light of the foregoing, the Subpoena must be quashed as a matter of law. It strains logic and reason to even try and characterize the price increases in the contract modifications as constituting "unconscionable prices" for the reasons set forth above. Moreover, there can be no violation of the Price Gouging law based on sub-section four (4) of the statute - **since all eight (8) of the contract modifications were approved by unanimous votes of the City Commissions after public hearings.** Accordingly, there is no legally cognizable FDUTPA violation for the Attorney General to investigate, via the Subpoena, **since there is no predicate violation of the Price Gouging law upon which the investigation is based**.

C. Ashbritt Did Not Violate The Price Gouging Law (And Therefore No FDUTPA Violation Exists) As Ashbritt Has Already Rolled Back The Approved Increased Prices For The Eight (8) Cities To The Original Pre-Position Contract Prices.

60. The price increases in the contract modifications were a temporary measure as Ashbritt informed the eight (8) cities that the prices would be rolled back to the original pre-position contract prices once the market was stabilized and there was enough equipment and resources in the State to handle the cleanup. In keeping with Ashbritt's representations to these cities whose contracts were temporarily modified, **the market has since stabilized** and earlier this week, Ashbritt appeared before the cities of Parkland and Tamarac and advised and confirmed that the price increases have been rolled back **and that they will not be charged for any increased pricing**. Ashbritt is now in the process of contacting the remaining cities to advise them of the same - that all pricing has been rolled back to the original pricing **and that they will not be charged for any increased pricing.** Notably, Ashbritt has not yet issued any invoices to any of these eight (8) cities for any portion of the recovery work it has performed to date.

61. In light of the foregoing, the Subpoena must be quashed, *as a matter of law*, since Ashbritt has not charged any pricing amounts, and will not charge any pricing amounts, **other than the pricing set forth in the original pre-position contracts**. As such, there has been no violation of the Price Gouging law and thus no violation of FDUTPA requiring any investigation.

D. Ashbritt's Contract Modifications Do Not Constitute "Unconscionable Prices", As A Matter Of Law, As They Are *Lower* Than The Price Increases Established By The Florida DOT And Miami-Dade County In Their Post Hurricane Irma Emergency Procurements.

62. Sub-section two (2) of the Price Gouging law states that there must be an "unconscionable price" in order for a violation to exist: "Upon a declaration of a state of emergency by the Governor, it is unlawful and a violation of s. 501.204 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...". [Emphasis added]. The Attorney General's Subpoena seeks documents that focus on the price increases in Ashbritt's contract modifications with the eight (8) cities as part of its investigation of whether Ashbritt violated FDUTPA by violating the Price Gouging law. Yet, all of these price increases, **were *lower* than the price increases that were agreed to/established by the Florida DOT and Miami-Dade County via their post Hurricane Irma emergency procurements as explained in detail in Section II above.**

63. As stated in *ExxonMobil Oil Corporation v. State of Florida, Department Of Agriculture And Consumer Services*, 50 So.3d 755, 757 (Fla. 1st DCA 2010), the Price Gouging law "...prohibits unconscionable price increases, which it defines as a 'gross disparity' between the average cost of the commodity 30 days prior to a declared state of emergency and the current price of the commodity." It strains reason to suggest that Ashbritt's pricing increase in the contract modifications was in any way improper (much

less "unconscionable"), **when such pricing did not even rise to the current level of increased pricing in the market as set by the Florida DOT and Miami-Dade County, Florida as a result of their post Hurricane Irma emergency procurements.**

64. The Subpoena must be quashed since the contract modifications cannot and do not involve "unconscionable prices", as a matter of law, within the meaning of the Price Gouging law.

E. The Price Increases In The Contract Modifications Are Purely Matters Of Contract Law Which Cannot Be Converted Into Alleged FDUTPA Violations.

65. The Subpoena reflects that the Attorney General's investigation focuses on Ashbritt's having requested that the (8) cities temporarily modify their existing contracts to allow for increased pricing in light of the market explosion and disruption that occurred after Hurricane Irma. Although couched under the label of *a FDUTPA violation investigation,* the essence of the investigation boils down to the Attorney General's suggestion *that Ashbritt's requests for the modifications were breaches of its contracts with these eight (8) cities and that such breaches constitute unfair and deceptive conduct by Ashbritt.*

66. However, the law is clear that alleged breaches of a contract are not subject to nor do they constitute violations of FDUTPA. *See, Rebman v. Follet Higher Education Group, Inc.*, 575 F.Supp.2d 1272, 1279 (M.D. Fla. 2008). As stated, in pertinent part, by the court in *Rebman*:

> **"…In this instance, the Court agrees with Follett's assessment of the FDUTPA claims**; Brandner and Rebman do not challenge Follett's rounding practices *per se*; instead, they challenge them only to the extent that rounding leads to a used textbook price that is inconsistent with the express terms of the Agreement. **In other words, Brandner and Rebman challenge the act of breaching the Agreement as unfair or deceptive rather than the act giving rise to the breach. This is precisely the type of breach of contract claim that cannot be converted to a claim under FDUTPA.** *See PNR*, 842 So.2d at 777 n. 2 ("[T]his opinion does not operate to convert every breach of contract or breach of lease case into a claim under the Act. indeed, such a construction would be precluded by the FDUTPA, which only reaches conduct that is unfair or deceptive as judged by controlling case law."). [Emphasis added]

67. The Subpoena must be quashed, as a matter of law, since as in *Rebman*, the Attorney General is similarly suggesting that Ashbritt breached its contracts with the eight (8) cities (by requesting and obtaining contract modifications), and the Attorney General is challenging those alleged breaches as constituting unfair and deceptive acts. However, *Rebman* makes clear that such a claim/challenge does not convert what is, at best, a breach of contract claim into a FDUTPA claim/violation.[22]

[22] There is no viable cause of action against Ashbritt for breach of contract since all eight (8) cities held public hearings and the respective City Commissions unanimously approved the price increases and agreed to the modifications of their respective contracts. There is also no viable claim for breach of contract since the price increases have all been rescinded and all pricing has been rolled back to the original pricing in the pre-position contracts such that none of the cities have been charged (nor will they be charged), for any increased pricing.

F. The Subpoena Must Be Quashed, As A Matter Of Law, As The Attorney General's Investigation Is Based Upon *A Specific Statute* (The Price Gouging Law) Which Governs And Is Controlling Over The More *General Provisions* Set Forth In FDUTPA.

68. The law is well settled that where one statute sets forth the law that applies **to a specific and narrow/particular wrong**, **then a more general statute cannot be invoked in its place**. The more specific/narrow statute sets forth the Legislature's will and is controlling as to that particular wrong. *See, Adams v. Culver*, 111 So.2d 665, 667 (Fla. 1959) ("It is a well settled rule of statutory construction, however, that a special statute covering a particular subject matter is controlling over a general statutory provision covering the same and other subjects in general terms"); *Read v. MFP, Inc*., 85 So.3d 1151, 1154 (Fla. 5th DCA 2012) ("'[I]t is a well settled rule of statutory construction ... that a special statute covering a particular subject matter is controlling over a general statutory provision covering the same and other subjects in general terms.'" *McDonald v. State,* 957 So.2d 605, 610 (Fla.2007) (quoting *Adams v. Culver,* 111 So.2d 665, 667 (Fla.1959)); *see also Sch. Bd. of Palm Beach Cnty. v. Survivors Charter Sch., Inc.,* 3 So.3d 1220, 1233 (Fla.2009) (**noting that "specific statutes covering a particular subject area will control over a statute covering the same subject in general terms**") [Emphasis added]. *Also See*, *Rochester v. State*, 95 So.3d 407, 409 (Fla. 4th DCA 2012) (stating that a specific statute is controlling over a more general statute covering the same general subject, as the former is considered to be an exception to the latter).

69. The Subpoena must be quashed based upon this well settled principle of law/statutory construction since it reflects that the Attorney General's investigation arises out of and focuses **on alleged price gouging** in the eight (8) cities discussed above. As the Price Gouging law contains an exception that is controlling (that the governmental agencies approved the price increase), the more general provisions of FDUTPA cannot now be used as a "substitute" to pursue these same issues.

G. The Court Should Order An Evidentiary Hearing And Require The Attorney General To Introduce Some Legally Sufficient Predicate Evidence Of A Violation *Before* Requiring Ashbritt To Produce Any Documents.

70. For all of the reasons set forth in this Petition, there is no legal and/or credible basis for the Attorney General to have any reason to believe (much less *a reasonable belief*), that Ashbritt has violated the Price Gouging law and/or otherwise violated FDUTPA as relating to the price increases in the contract modifications.[23] Accordingly, now that Ashbritt has filed this Petition thereby placing the Attorney General's investigation (and Subpoena), under this Court's jurisdiction, control and discretion,[24] **the Court should order an evidentiary hearing and require the Attorney General to introduce some legally sufficient predicate evidence of a violation of the Price Gouging law before requiring Ashbritt to produce any document(s) in response to the Subpoena**.

[23] See, Fla. Stat. §501.206(1) – "If, by his or her own inquiry or as a result of complaints, ***the enforcing authority has reason to believe*** that a person has engaged in, or is engaging in, an act or practice that violates this part, he or she may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence…". [Emphasis added].

[24] See, Section V.A above.

71. Requiring such an evidentiary hearing is precisely what the Honorable John C. Cooper ordered in *WAM IT Technologies, LLC d/b/a WAM IT, LLC ("WAM IT"), Petitioner v. State of Florida, Office Of The Attorney General, Department Of Legal Affairs, Respondent",* Leon County, Circuit Court Case # 2013 CA 002063. In that case, the Attorney General issued an investigative subpoena **pursuant to the same statute as here - §501.206** - in connection with its attempt to investigate whether WAM IT violated FDUTPA as relating to its internet based business. Attached hereto as Exhibit "F" is a copy of the Attorney General's investigative subpoena.

72. WAM IT filed a petition seeking to quash the investigative subpoena and requested an evidentiary hearing requiring the Attorney General to introduce some evidence reflecting that it sold any products or services which the Attorney General had a good faith and reasonable basis to believe were false and deceptive and thus in violation of FDUTPA. Judge Cooper agreed and entered an order setting an evidentiary hearing and requiring the Attorney General to "..come forward with sufficient evidence to establish the enforcing authority [the Attorney General] has reason to believe that a person has engaged in, or is engaging in, an act or practice in violation of Chapter 501, Part II, Florida Statutes [i.e. – FDUTPA]." A copy of the order requiring the evidentiary hearing is attached hereto as Exhibit "G".

73. Requiring Ashbritt to devote the incredible amount of manpower and resources and do all of the work that would be necessary to locate and compile what literally will be **tens upon tens of thousands of pages** of documents that respond to the Subpoena (**a substantial amount of which are matters of Public Record which the**

Attorney General can obtain directly from the various cities/counties), would require Ashbritt to either shut down for a significant period of time or dramatically reduce its active/ongoing disaster recovery work in all of the areas where it is so desperately needed to clean up the debris and waste before it becomes even more of a serious health and safety hazard than it already is. Ashbritt would have to step away from all such recovery efforts and re-assign its personnel to the herculean task of searching for and compiling these tens upon tens of thousands of pages of documents. **None of this should be required of Ashbritt unless and until the Attorney General offers some legally sufficient predicate evidence of a violation of the Price Gouging law by Ashbritt (of which there is none).**

H. The Subpoena Must Be Substantially Modified And Narrowed Prior To Requiring Ashbritt To Produce Any Documents.

74. In the event the Subpoena is not quashed, Ashbritt alternatively requests that the Subpoena be substantially modified and narrowed, and that the time for Ashbritt to produce any documents be significantly extended in light of its full-time commitment to the active and ongoing disaster recovery efforts and work it is presently performing. The Subpoena, as presently issued, includes **no less than twenty-four (24) separate categories of documents** and is what can only be described as a massive fishing expedition by the Attorney General. *See, General Electric Capital Corp. v. Nunziata*, 124 So.3d 940, 943 (Fla. 2d DCA 2013) ("a subpoena duces tecum is not the equivalent of a search warrant and should not be used as a fishing expedition to require a witness to

produce broad categories of documents which the party can search to find what may be wanted").

75. The Subpoena is overreaching, overly broad, voluminous, unduly burdensome, and in many instances, seeks documents which are not relevant to the investigation of whether Ashbritt violated the Price Gouging law in any way. Tens upon tens of thousands of pages of documents are potentially responsive to the Subpoena that would require months for Ashbritt to locate, compile, and produce. In order to comply in any time frame over the next several months, Ashbritt would either have to shut down or significantly reduce its ongoing disaster recovery and clean up efforts and operations in order to assign its personnel to the onerous and burdensome task of locating and compiling the documents requested in the Subpoena. That, in turn, would preclude Ashbritt from being able to continue performing under its contracts and place it in breach of such contracts as well as delay completion of its ongoing disaster recovery and clean up operations.

76. The public is clearly better served right now by getting the disaster recovery and cleanup work completed as quickly as possible instead of requiring Ashbritt to gather and produce the tens upon tens of thousands of pages of documents implicated by the Subpoena. Ashbritt should not be compelled or ordered to do anything that jeopardizes the health, safety and welfare of the public in terms of requiring the immediate production of all these documents as it does not involve an emergency situation - unlike the disaster recovery and cleanup work Ashbritt is presently doing which clearly does involve an emergency situation. Moreover, a significant number of

the categories of documents the Attorney General seeks in the Subpoena **are matters of Public Record which are readily obtainable by the Attorney General simply by making a request for such documents directly from the applicable cities and/or counties. Given the counter-balancing considerations relating to the disaster recovery work Ashbritt is presently performing, the Attorney General should direct its requests for most of what it seeks in the Subpoena to the cities/counties since they have many of the documents.**

77. In addition to all the foregoing arguments, Ashbritt would ask this Court, or in the alternative a Special Master appointed by the Court, to conduct a full hearing on the twenty-four (24) separate categories of documents requested in the Subpoena and Ashbritt's numerous objections thereto, including, but not limited to the following:

A. **Public Records** - Those documents that are public records and are readily available for the Attorney General to obtain from the cities/counties. Furthermore, requiring such production from Ashbritt would be unduly burdensome (they would amount to tens of thousands of pages and would take Ashbritt away from all of the ongoing disaster recovery work it is presently doing), especially when the Attorney General can readily obtain them directly from the cities/counties;

B. **Overbroad** – Several of the document requests seek "all" information (documents; communications, etc.) on several subject matters. These types of overly broad and unspecified requests must be narrowed in order for it to even be possible for anyone to identify and locate such documents;

C. **Confidential, Proprietary, and /or Trade Secrets** – Financial statements have been requested (which are exempt under Chapter 119), and pricing and profit structure documents have also been requested which are private and confidential internal and proprietary business information. The Court should require the Attorney General to make the

required showing of necessity to override Ashbritt's privacy rights in all such confidential, proprietary, and/or trade secret information. *See, CAC-Ramsay Health Plans, Inc. v. Johnson*, 641 So.2d 434, 435 (Fla. 3d DCA 1994), quoting from, *Higgs v. Kampgrounds Of America*., 526 So.2d 980, 981 (Fla. 3d DCA 1988) ("[T]he party seeking discovery of confidential information must make a showing of necessity which outweighs the countervailing interest in maintaining the confidentiality of such information"). Even assuming, *arguendo*, that the Court found that the required showing of necessity was established by the Attorney General sufficient to override Ashbritt's privacy rights, these types of document requests would, nonetheless, still have to be significantly narrowed in order to protect and preserve Ashbritt's privacy rights in such information; including the Court entering a Confidentiality Order;

D. **Relevancy** – Based on the evidentiary hearing that must be conducted by the Court, there are likely many documents that are not relevant to whatever areas of inquiry may be allowed by the Court. Examples of such documents (at this juncture *before* the evidentiary hearing), would be documents *relating to breach of contract issues* which are not subject to FDUTPA as a matter of law, such as the amount of debris collected and remaining to be collected - there is no possible relevancy of such documents to anything except *the level of contract performance*; and

E. **Documents From 2016 Storm Debris Removal** – relating to Tropical Storm Colin; Hurricane Hermine; Tropical Storm Julia; and Hurricane Matthew. Every single objection referenced above would be applicable to the Attorney General's requests for such documents.

VI. CONCLUSION

78. For all of the reasons set forth in this Petition, the Subpoena must be quashed as a matter of law. If it is not quashed, then ***before*** the Court enters any order requiring Ashbritt to produce ***any documents***, the Court should first schedule and conduct an evidentiary hearing during which it requires the Attorney General to introduce some legally sufficient predicate evidence of a violation of the Price Gouging law and then conduct a hearing on Ashbritt's objections to the twenty-four (24) categories of documents in the Subpoena. Finally, the time for Ashbritt to produce any documents must be significantly extended since there is no emergency involved in the Attorney General's investigation, whereas there is an emergency situation which Ashbritt is presently devoting its full personnel and manpower to - performing and completing the disaster recovery work as a result of the catastrophic damages caused by Hurricane Irma.

WHEREFORE, Petitioner, ASHBRITT, INC., a Florida corporation, respectfully requests entry of an Order, pursuant to Fla. Stat. §501.206: (A) quashing the Subpoena issued by Respondent, STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS; or (B) ordering an evidentiary hearing and requiring the Attorney General to introduce some legally sufficient predicate evidence of a violation of the Price Gouging law by Petitioner and then conduct a hearing on Petitioner's objections to the documents requested in the Subpoena and modifying and

narrowing the Subpoena's scope in accordance with Petitioner's objections, and grant such other and further relief as the Court deems just, equitable, and proper.

Respectfully submitted,

MOSKOWITZ, MANDELL,
SALIM & SIMOWITZ, P.A.
Counsel For Petitioner,
Ashbritt, Inc.
800 Corporate Drive, Suite #500
Fort Lauderdale, FL 33334
Tel: (954) 491-2000
Fax: (954) 491-2051

By:*/s/ Michael W. Moskowitz*
MICHAEL W. MOSKOWITZ
Fla. Bar No. 254606

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that the foregoing document was filed via the Florida Court E-File Portal on this 12th day of October, 2017. I also certify the foregoing document is being served on this day on counsel for the Office of Attorney General, Department of Legal Affairs, by electronic mail.

MOSKOWITZ, MANDELL,
SALIM & SIMOWITZ, P.A.
Counsel For Petitioner,
Ashbritt, Inc.
800 Corporate Drive, Suite #500
Fort Lauderdale, FL 33334
Tel: (954) 491-2000
Fax: (954) 491-2051

By:*/s/ Michael W. Moskowitz*
MICHAEL W. MOSKOWITZ
Fla. Bar No. 254606

SERVICE LIST

Julia A. Harris, Esquire
Assistant Chief Assistant Attorney General
Office Of The Attorney General
Department Of Legal Affairs
3507 East Frontage Road, Suite #325
Tampa, FL 33607
E-Mail: julia.harris@myfloridalegal.com

The Washington Post

Capital Weather Gang

Harvey is a 1,000-year flood event unprecedented in scale

By Jason Samenow August 31

As Harvey's rains unfolded, the intensity and scope of the disaster were so enormous that weather forecasters, first responders, the victims, everyone really, couldn't believe their eyes. Now the data are bearing out what everyone suspected: This flood event is on an entirely different scale than what we've seen before in the United States.

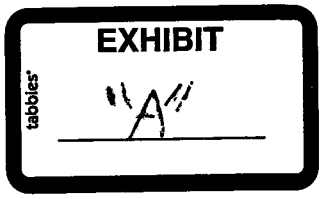
A new analysis from the University of Wisconsin's Space Science and Engineering Center has determined that Harvey is a 1-in-1,000-year flood event that has overwhelmed an enormous section of Southeast Texas equivalent in size to New Jersey.

There is nothing in the historical record that rivals this, according to Shane Hubbard, the Wisconsin researcher who made and mapped this calculation. "In looking at many of these events [in the United States], I've never seen anything of this magnitude or size," he said. "This is something that hasn't happened in our modern era of observations."

Hubbard made additional calculations that accentuate the massive scale of the disaster:

- At least 20 inches of rain fell over an area (nearly 29,000 square miles) larger than 10 states, including West Virginia and Maryland (by a factor of more than two).
- At least 30 inches of rain fell over an area (more than 11,000 square miles) equivalent to Maryland's size.

A 1,000-year flood event, as its name implies, is exceptionally rare. It signifies just a 0.1 percent chance of such an event happening in any given year. "Or, a better way to think about it is that 99.9 percent of the time, such an event will never happen," Hubbard said.



Apart from Harvey, there's simply no record of a 1,000-year event occupying so much real estate.

While no one questions the exceptional nature of Harvey's rainfall, the concept of a 1,000-year flood event has been criticized by some academics and flood planners. For one, rainfall and flood data generally go back only 100 years or so, so statistical tricks must be applied to determine what 500-year and 1,000-year events actually represent. Furthermore, the climate is

changing and precipitation events have become more intense in recent decades, so what constitutes different return frequencies (100-year, 500-year, 1,000-year and so forth) is probably changing.

Climate change studies have found that what's considered a 500-year flood today may become much more frequent in coming decades.

But Hubbard, who analyzes geographic information to help decision-makers plan for floods, stands by the use of these return interval metrics despite their shortcomings. "For a community, they help put these events into perspective and understand the impact of a flood," he said.

He added that they have "tremendous" value for flood planning and designing infrastructure to be able to withstand events up to a certain intensity. "Decision-makers have to be able to pick a number and say this is the number we need to be prepared for," he said. "If we debate and belabor the accuracy of these estimates, the community will not have a value to plan for."

Hubbard agrees that the climate is changing and precipitation is becoming more intense in some areas, but he said it would be complicated to adapt the flood return frequencies. "The challenge is trying to separate when you have these 500-year events happening all the time, what part is a changing climate, what part is changes in urbanization and agriculture and what part is the lack of understanding of what's happened in the past," he said.

In any event, Harvey puts an exclamation mark on the pattern of disastrous rain events in recent years and may be a harbinger of more such events in the coming decades.

"Expect #HarveyFlood record will be broken in 5, 15, 25 years from now — sooner rather than later," tweeted David Titley, professor of meteorology at Penn State.

Read more

Harvey has unloaded 24.5 trillion gallons of water on Texas and Louisiana

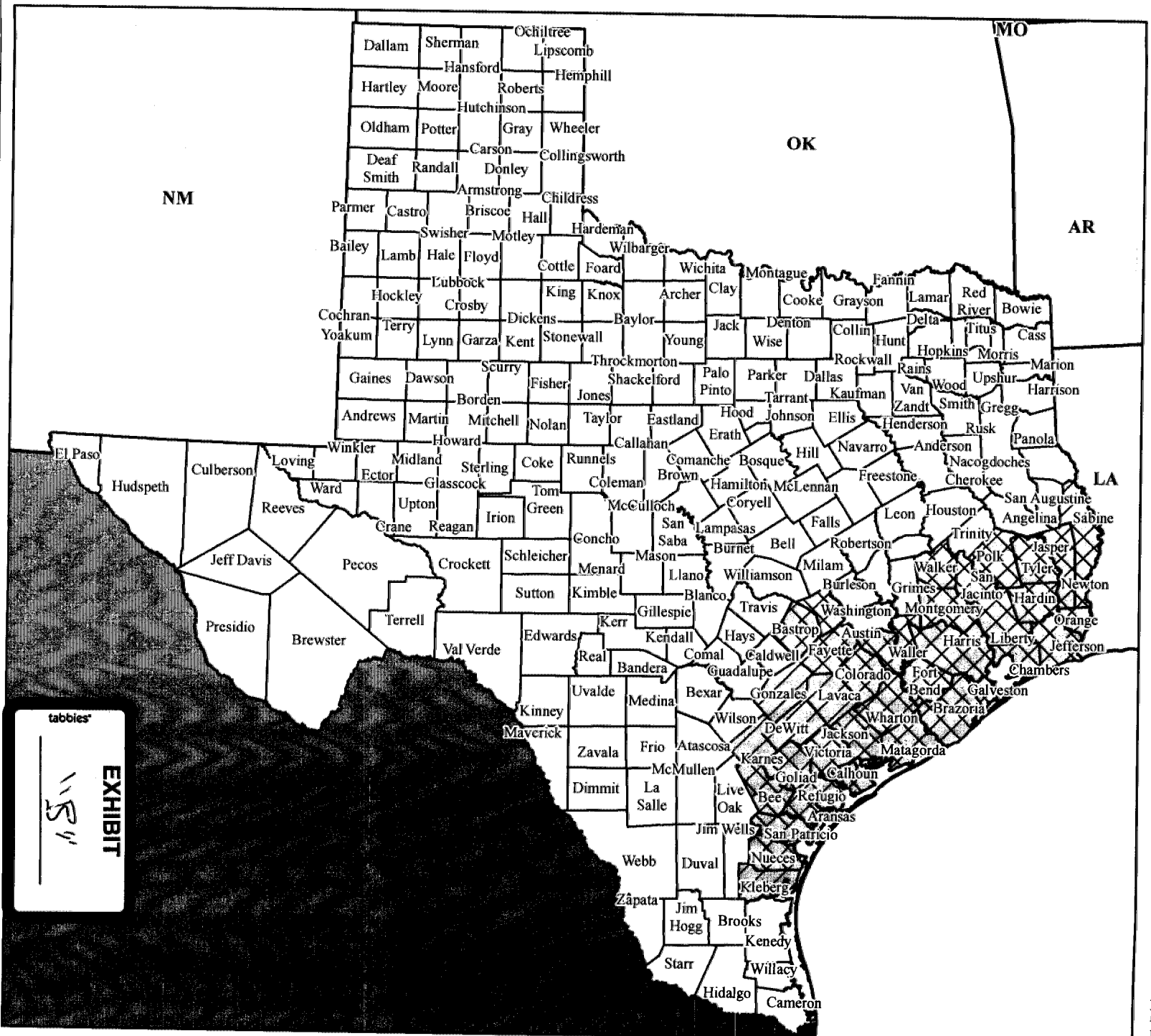
Harvey marks the most extreme rain event in U.S. history

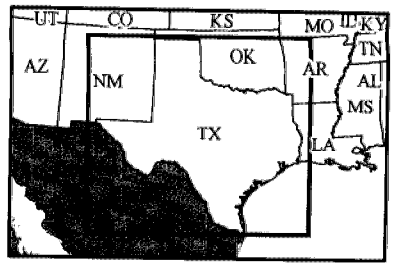
Houston is experiencing its third '500-year' flood in 3 years. How is that possible?

Jason is the Washington Post's weather editor and Capital Weather Gang's chief meteorologist. He earned a master's degree in atmospheric science, and spent 10 years as a climate change science analyst for the U.S. government. He holds the Digital Seal of Approval from the National Weather Association.
Follow @capitalweather

FEMA-4332-DR, Texas Disaster Declaration as of 09/19/2017

FEMA





Data Layer/Map Description:
The types of assistance that have been designated for selected areas in the State of Texas.

All designated areas in the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

Designated Counties

- No Designation
- Public Assistance
- Public Assistance (Category B)
- Individual Assistance and Public Assistance (Categories A and B)
- Individual Assistance and Public Assistance (Categories A - G)

N
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0 40 80 120 160 Miles

Data Sources:
FEMA, ESRI;
Initial Declaration: 08/25/2017
Disaster Federal Registry Notice:
Amendment #9 - 09/19/2017
Datum: North American 1983
Projection: Lambert Conformal Conic

MapID b738660354f0919171750hqprod

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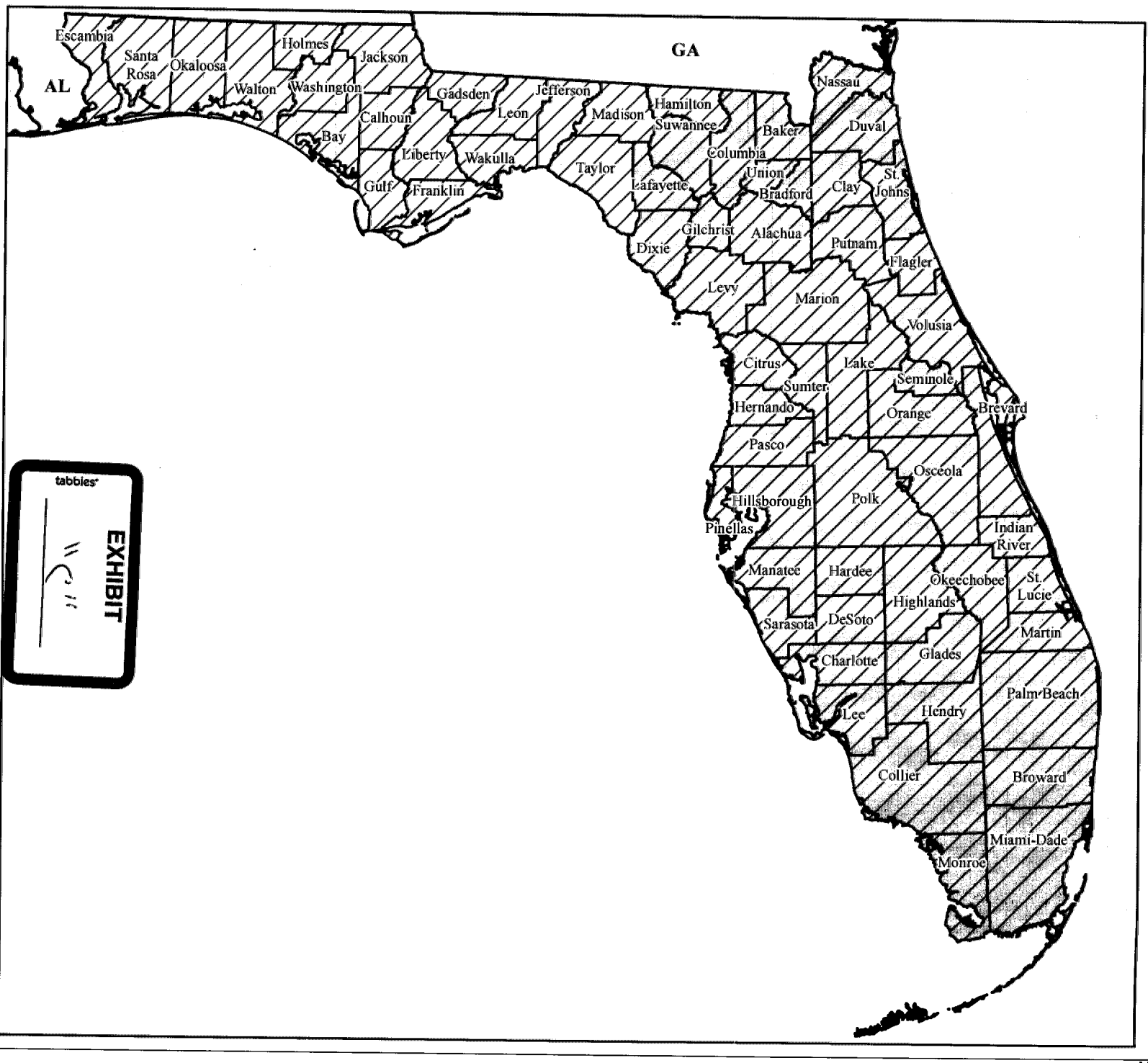
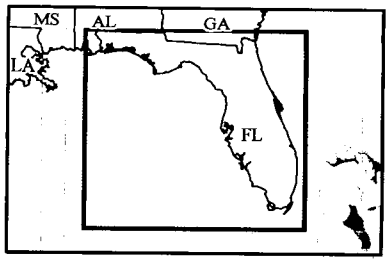
EXHIBIT

FEMA-4337-DR, Florida Disaster Declaration as of 09/16/2017

FEMA





Data Layer/Map Description:
The types of assistance that have been designated for selected areas in the State of Florida.

All designated areas in the State of Florida are eligible to apply for assistance under the Hazard Mitigation Grant Program.

Designated Counties

Public Assistance (Categories A and B)

Individual Assistance and Public Assistance (Categories A and B)

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0 25 50 75 100 Miles

Data Sources:
FEMA, ESRI;
Initial Declaration: 09/10/2017
Disaster Federal Registry Notice:
Amendment #7 - 09/16/2017
Datum: North American 1983
Projection: Lambert Conformal Conic

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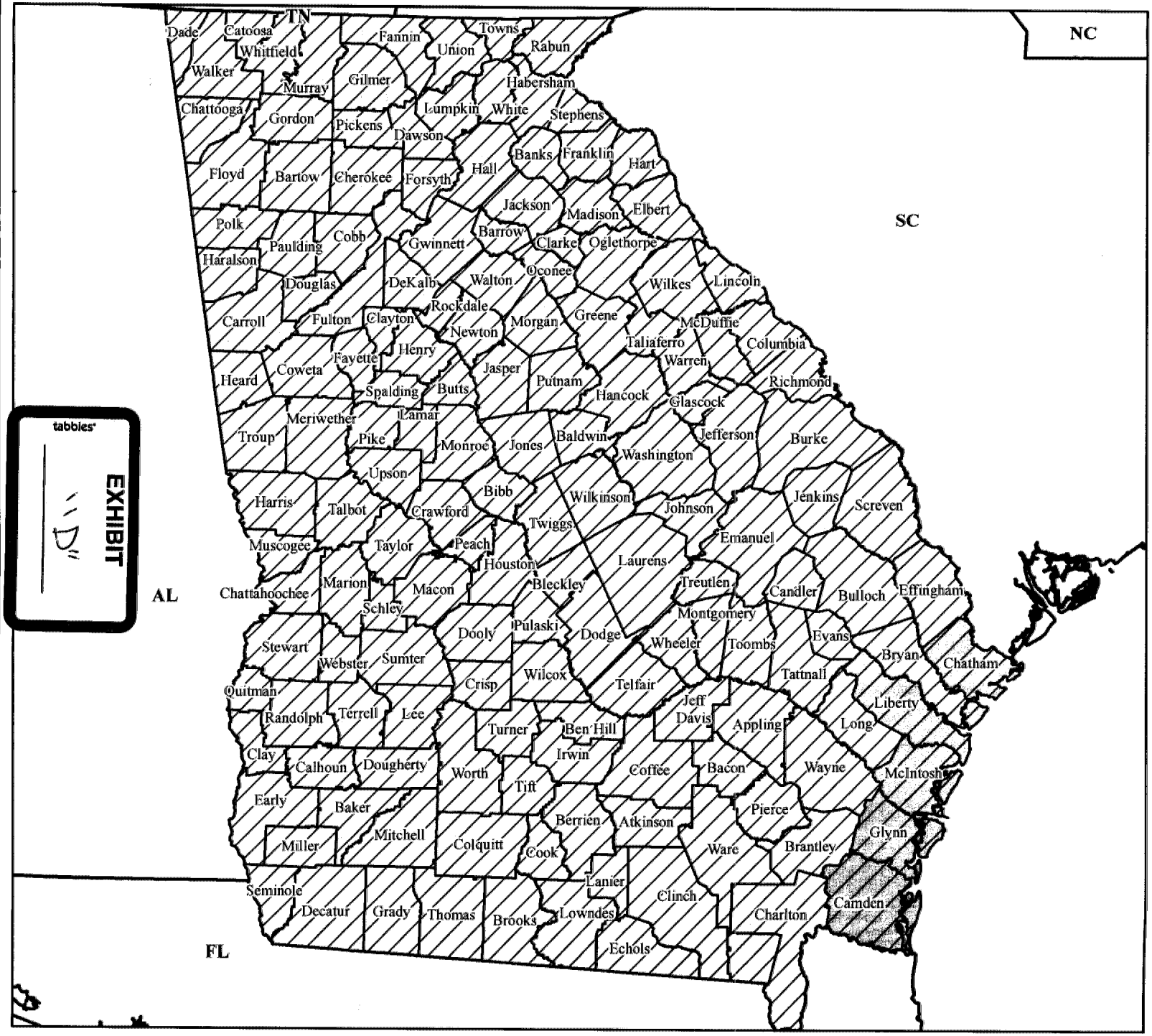
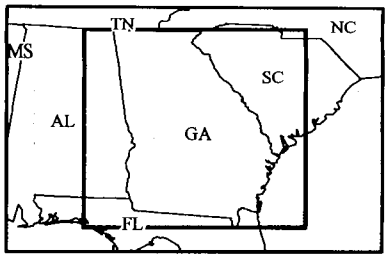
tabbies EXHIBIT

FEMA-4338-DR, Georgia Disaster Declaration as of 09/18/2017

FEMA





Data Layer/Map Description:
The types of assistance that have been designated for selected areas in the State of Georgia.

All designated areas in the State of Georgia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

Designated Counties

- Public Assistance (Categories A and B)
- Individual Assistance and Public Assistance (Categories A and B)

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0 10 20 30 40
Miles

Data Sources:
FEMA, ESRI;
Initial Declaration: 09/15/2017
Disaster Federal Registry Notice:
Amendment #1 - 09/18/2017
Datum: North American 1983
Projection: Transverse Mercator

MapID 72d44c5b2d60919171808hqprod

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EXHIBIT
"D"

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

CONSUMER PROTECTION
SUBPOENA DUCES TECUM

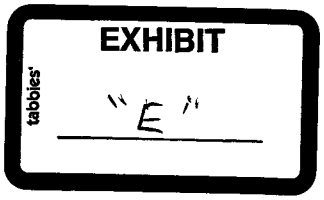
IN THE INVESTIGATION OF: **Disaster Debris Removal Services**
AG Case No. L17-3-1152

TO: AshBritt, Inc.
565 E. Hillsboro Blvd.
Deerfield Beach, FL 33411
c/o Michael W. Moskowitz, Registered Agent
800 Corporate Drive, Suite 500
Fort Lauderdale, FL 33334

THIS INVESTIGATIVE SUBPOENA DUCES TECUM is issued pursuant to Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes, and Section 501.160, Florida Statutes, Rental or Sale of Essential Commodities During a Declared State of Emergency: Prohibition Against Unconscionable Prices, in the course and authority of an official investigation. Your attention is directed to Sections 501.204, 501.206, and 501.160, Florida Statutes (2017), printed and attached hereto.

YOU ARE HEREBY COMMANDED to produce all documentary material and other tangible evidence as described herein, that is in your possession, custody, or control, or in the possession, custody, or control of your agents or employees, and to make it available for inspection and copying or reproduction before Assistant Chief Assistant Attorney General Julia A. Harris and/or other Assistant Attorney(s) General on Friday, October 13, 2017 at 9:00 a.m. at the following location:

Office of the Attorney General
Consumer Protection Division
3507 East Frontage Road, Suite 325
Tampa, Florida 33607



ALTERNATIVELY, this subpoena may be complied with by delivering copies of all of the requested materials, prior to the date set forth above to c/o Assistant Chief Assistant Attorney General Julia A. Harris at Julia.Harris@myfloridalegal.com. The production of material in response to this demand shall include the following:

SEE ATTACHED ADDENDUM

WITNESS, the Department of Legal Affairs at Tampa, Florida, this 2nd day of October, 2017.

PAMELA JO BONDI
ATTORNEY GENERAL

Julia A. Harris
Assistant Chief Assistant Attorney General
Florida Bar No. 884235
Office of the Attorney General
Department of Legal Affairs
3507 East Frontage Road, Suite 325
Tampa, Florida 33607
Phone: (813) 287-7950
Facsimile: (813) 281-5515

501.204 Unlawful acts and practices.

(1) Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

(2) It is the intent of the Legislature that, in construing subsection (1), due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2017.

501.206 Investigative powers of enforcing authority.

(1) If, by his or her own inquiry or as a result of complaints, the enforcing authority has reason to believe that a person has engaged in, or is engaging in, an act or practice that violates this part, he or she may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence. Within 5 days, excluding weekends and legal holidays, after the service of a subpoena or at any time before the return date specified therein, whichever is longer, the party served may file in the circuit court in the county in which he or she resides or in which he or she transacts business and serve upon the enforcing authority a petition for an order modifying or setting aside the subpoena. The petitioner may raise any objection or privilege which would be available under this chapter or upon service of such subpoena in a civil action. The subpoena shall inform the party served of his or her rights under this subsection.

(2) If matter that the enforcing authority seeks to obtain by subpoena is located outside the state, the person subpoenaed may make it available to the enforcing authority or his or her representative to examine the matter at the place where it is located. The enforcing authority may designate representatives, including officials of the state in which the matter is located, to inspect the matter on his or her behalf, and he or she may respond to similar requests from officials of other states.

(3) Upon failure of a person without lawful excuse to obey a subpoena and upon reasonable notice to all persons affected, the enforcing authority may apply to the circuit court for an order compelling compliance.

(4) The enforcing authority may request that an individual who refuses to comply with a subpoena on the ground that testimony or matter may incriminate him or her be ordered by the court to provide the testimony or matter. Except in a prosecution for

perjury, an individual who complies with a court order to provide testimony or matter after asserting a privilege against self-incrimination to which he or she is entitled by law shall not have the testimony or matter so provided, or evidence derived therefrom, received against him or her in any criminal investigation or proceeding.

(5) Any person upon whom a subpoena is served pursuant to this section shall comply with the terms thereof unless otherwise provided by order of the court. Any person who fails to appear with the intent to avoid, evade, or prevent compliance in whole or in part with any investigation under this part or who removes from any place, conceals, withholds, mutilates, alters, or destroys, or by any other means falsifies any documentary material in the possession, custody, or control of any person subject to any such subpoena, or knowingly conceals any relevant information with the intent to avoid, evade, or prevent compliance shall be liable for a civil penalty of not more than $5,000, reasonable attorney's fees, and costs.

501.160. Rental or sale of essential commodities during a declared state of emergency; prohibition against unconscionable prices.

(1) As used in this section:

(a) "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.

(b) It is prima facie evidence that a price is unconscionable if:

1. The amount charged represents a gross disparity between the price of the commodity or rental or lease of any dwelling unit or self-storage facility that is the subject of the offer or transaction and the average price at which that commodity or dwelling unit or self-storage facility was rented, leased, sold, or offered for rent or sale in the usual course of business during the 30 days immediately prior to a declaration of a state of emergency, unless the increase in the amount charged is attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of any dwelling unit or self-storage facility, or regional, national, or international market trends; or

2. 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, unless the increase in the amount charged is attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of any dwelling unit or self-storage facility, or regional, national, or international market trends.

(2) Upon a declaration of a state of emergency by the Governor, it is unlawful and a violation of s. 501.204 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 is effective not to exceed 60 days under the initial declared state of emergency as defined in s. 252.36(2) and shall be renewed by statement in any subsequent renewals of the declared state of emergency by the Governor.

(3) It is unlawful and a violation of s. 501.204 for any person to impose unconscionable prices for the rental or lease of any dwelling unit or self-storage facility during a period of declared state of emergency.

(4) A price increase approved by an appropriate government agency shall not be a violation of this section.

(5) This section shall not apply to sales by growers, producers, or processors of raw or processed food products, except for retail sales of such products to the ultimate consumer within the area of the declared state of emergency.

(6) Nothing herein shall be interpreted to preempt the powers of local government except that the evidentiary standards and defenses contained in this section shall be the only evidentiary standards and defenses used in any ordinance adopted by local government to restrict price gouging during a declared state of emergency.

(7) Section 501.211 notwithstanding, nothing in this section creates a private cause of action in favor of any person damaged by a violation of this section.

(8) Any violation of this section may be enforced by the office of the state attorney or the Department of Legal Affairs.

(9) Upon a declaration of a state of emergency by the Governor, in order to protect the health, safety, and welfare of residents, any person who offers goods and services for sale to the public during the duration of the emergency and who does not possess a business tax receipt under s. 205.032 or s. 205.042 commits a misdemeanor

of the second degree, punishable as provided in s. 775.082 or s. 775.083. During a declared emergency, this subsection does not apply to religious, charitable, fraternal, civic, educational, or social organizations. During a declared emergency and when there is an allegation of price gouging against the person, failure to possess a license constitutes reasonable cause to detain the person, provided that the detention shall only be made in a reasonable manner and only for a reasonable period of time sufficient for an inquiry into the circumstances surrounding the failure to possess a license.

ADDENDUM

Definitions

A. The word "Contractor" as used herein means the addressee/recipients of this subpoena, their parents, branches, departments, divisions, affiliates, subsidiaries, retail outlets, stores, franchises, successors, or predecessors, whether wholly owned or not, including, without limitation, any organization or entity in which said addressees have a management or controlling interest, together with all present and former officers, directors, agents, employees, sales people, brokers, agents, representatives or anyone else acting or purporting to act, on behalf of the above-identified persons or entities.

B. The word "document" means all documents, records and writings of any kind, and all communication (as defined below in Paragraph E) which are stored or retrievable or recorded in any manner, including originals and all non-identical copies whether different from the originals by notation made on such copies or otherwise, all drafts, alterations, modifications, changes, and amendments, graphic or any electronic or mechanical records or representations of any kind. The term "documents" includes, but is not limited to, the original and any non-identical copy (which is different from the original because of notation on such copy or otherwise) of all correspondence, E-mail, telegrams, teletype messages, contracts (including drafts, proposals, and any and all exhibits thereto), drafts, minutes and agendas, memoranda (including inter- and intra-office memoranda, memoranda for file, pencil jottings, diary entries, desk calendar entries, reported recollections, and any other written form of notation of events or intentions), transcripts and recordings of conversations and telephone calls, books of account, ledgers, publications, professional journals, invoices, financial statements, purchase orders, receipts, canceled checks and all other documentary material of any nature whatever, together with any attachments thereto or enclosures therewith.

C. The term "any" shall be construed as synonymous with "all" and shall be all inclusive.

D. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.

E. The word "communication" means any act, action, oral speech, written correspondence, contact, expression of words, thoughts, or ideas, or transmission or

exchange of data or other information to another person, whether orally, person to person, in a group, by telephone, letter, personal delivery, intercom, telex, fax, e-mail, compact or floppy disc, or any other process, electric, electronic or otherwise in any medium. All such communications in writing shall include, without limitation, printed, typed, handwritten or other readable documents.

F. The word "person" means any individual and all entities, and, without limiting the generality of the foregoing, includes natural persons, employees, contractors, agents, consultants, vendors, telemarketers, consumers, customers, officers, directors, successors, assigns, joint owners, associations, partnerships, companies, joint ventures, corporations, affiliates, trusts, trustees, escrow agents and estates, and all groups or associations of persons.

G. "Related to" or "relating to" means in whole or in part constituting, containing, concerning, embodying, reflecting, describing, analyzing, identifying, stating, referring to, setting forth, or dealing with, or in any way pertaining to.

H. "Disaster Debris Removal Contract" means a contract entered into by Contractor with a Contracting Governmental Entity for disaster debris removal services, which may also include debris recovery, processing, separation recycling, reduction, hauling, and lawful disposal, and management support and/or operations and reporting in response to an emergency event such as, but not limited to, a hurricane.

I. "Contracting Governmental Entity or Entities" means a county, municipality, or political subdivision of the State of Florida that entered into a Disaster Debris Removal Contract with Contractor.

J. "Subcontractor" or "Subcontractors" means a person or entity engaged by Contractor to perform subcontract services and which may include services in Florida for Disaster Debris Removal Contract services.

Instructions

K. The documents to be produced pursuant to each request should be segregated and specifically identified to indicate clearly the particular numbered or lettered request to which they are responsive.

L. For each request, or part thereof, which is not fully responded to pursuant to any privilege, the nature of the privilege and grounds in support thereof should be fully stated.

M. If you possess, control, or have custody of no documents responsive to any numbered request set forth below, state this fact by so specifying in your response to said request.

N. The use of the singular form of a word includes the plural and vice versa. In addition, the use of any tense of any verb includes all other tenses of the verb.

O. Unless otherwise specified, original documents must be produced. If your "original" is a photocopy, then the photocopy would be and should be produced as the original. Said copy shall be legible and bound or stapled in the same manner as the original.

P. This Subpoena is for the production of all responsive documents and information in your possession, custody or control regardless of whether such documents or information is possessed directly by you or your directors, officers, agents, employees, representatives, subsidiaries, managing agents, affiliates, investigators, or by your attorneys or their agents, employees, representatives or investigators.

Q. If any responsive document or information cannot be produced in full, you are to produce it to the extent possible, indicating which document, or portion of that document, is being withheld, and the reason that document is being withheld.

R. Documents not otherwise responsive to this subpoena shall be produced if such documents mention, discuss, refer to, or explain the documents that are called for by this subpoena, or if such documents are attached to documents called for by the subpoena and constitute routing slips, transmittal memoranda, or letters, comments, evaluations or similar materials.

S. If a document once existed and has subsequently been lost, destroyed, or is otherwise missing, please provide sufficient information to identify the document and state the details concerning its loss or destruction.

T. ***Electronically Stored Information*** (ESI) is to be produced in the form in which it is ordinarily maintained. For example, native files would include email, spreadsheets and word processing files. Responsive documents that exist in electronic format shall be provided in native format (e.g., Microsoft Word files (.doc) or Outlook (.pst), emails, spreadsheets and word processing documents) with standard Metadata intact, as outlined below. Prior to any production of responsive data from a structured database (e.g., Oracle, SAP, SQL, MySQL, QuickBooks, etc.), the producing party shall first provide the database dictionary and a list of all

reports that can be generated from the structured database. The list of reports shall be provided in native Excel (.xls) format. The database format will be requested for production after both parties agree on the format. Please include sufficient identification of the applicable software program to permit access to, and use of, each document. All attachments must be linked to their electronic documents. Native files should be provided in directories which are identifiable as responsive to a specific document request. All documents produced in native form should be produced on CDROM, DVDROM, or External USB drive media of a type that can be read by any standard computer. Unless otherwise agreed to, standard Metadata in electronically stored information shall be preserved and produced, such as: Custodian, To, From, CC, BCC, Dates and Times (Sent, Received and Modified), Attachments, Links and Document types. A more complete list can be provided upon request. Questions regarding electronic production should be directed to the Assistant Attorney General whose name appears on the subpoena. Arrangements will be made for the communication with the appropriate in-house technical expert.

U. If you claim the attorney-client privilege, work-product privilege, or any other privilege, for any document, provide a detailed privilege log that contains at least the following information for each document that you have withheld:

1) The name of each author, writer, sender or initiator of such document or thing, if any;
2) The name of each recipient, addressee or party for whom such document or thing was intended, if any;
3) The date of such document, if any, or an estimate thereof so indicated if no date appears on the document;
4) The general subject-matter as described on such document; if no such description appears, then such other description sufficient to identify said document; and
5) The claimed grounds for withholding the document, including, but not limited to, the nature of any claimed privilege and grounds in support thereof.

V. In the event that you seek to assert trade secret protection under Florida Statutes Section 688.002(4)(b), Section 812.081(1)(c), Section 815.04, and/or Section 815.045, for each document for which trade secret protection is claimed:

1) Provide prior to or simultaneous with production of the document at issue, a sworn affidavit from a person with knowledge as to the basis for the trade secret claim, which complies with the following:

a. The affidavit should specify the bates range of the claimed trade secret documents at issue, generally describe the documents at issue, and provide "substantial, competent evidence" of the application of the trade secret exemption.

b. The affidavit should attach a certification (similar in form to a traditional privilege log) that identifies for each separate claimed trade secret document (i) the bates range of the document, (ii) a description of the document sufficient to determine the application of the trade secret exemption, and (iii) the specific element(s) or provision(s) of Section 688.002(4) or Section 812.081(c) that render the document at issue a trade secret exempted from public records.

2) Segregate and separately label the documents claimed as trade secrets: documents produced electronically should be produced on separate CD or electronic media clearly-labeled "Trade Secret" on the physical media as well in the title of the electronic folder or file; documents produced in hard copy should be separated and each clearly labeled "Trade Secret."

3) Any challenge to the application of the trade secret exemption shall be rebutted, if at all, only by you and not by the Office of the Attorney General, whose involvement shall be limited solely to providing notice to you of any challenge to your claim of trade secret protection. To the extent you seek to assert a trade secret exemption in connection with a public records request to the Office of the Attorney General, you shall be obligated to seek an appropriate protective order or otherwise establish the applicability of the trade secret claim and exemption. Failure to do so shall render the documents subject to production under any applicable public records requirements and not protected by a trade secret claim.

W. All document destruction or retention policies and practices and electronic file deletion or disk management policies and practices (including but not limited to reformatting practices) that could have the effect of altering or deleting information requested by this subpoena should be suspended until you produce a complete response to this subpoena or you are excused from this subpoena.

WHEREFORE YOU ARE HEREBY COMMANDED TO PRODUCE

For the period September 4, 2017, unless otherwise specified, through your complete response ("Relevant Period"):

1. Documents sufficient to identify or, in the alternative, a summary report* that identifies for each Contracting Governmental Entity which provided a notice to proceed to Contractor, or otherwise requested that performance begin, pursuant to a Disaster Debris Removal Contract:
    a. current performance status, including but not limited to the number of trucks and other debris removal equipment deployed onsite,
    b. the estimated amount of debris removed by Contractor,
    c. the estimated amount of uncollected disaster debris remaining for removal and related services, and
    d. the estimated amount of time to complete remaining services.
2. For each Disaster Debris Removal Contract, documents that identify or a summary report* that identifies the following:
    a. the contract rate(s) for vegetative debris removal before September 4, 2017,
    b. whether Contractor is or is not performing at that contract rate(s) for vegetative debris removal,
    c. any amended contract rate(s) for vegetative debris removal on or after September 4, 2017,
    d. the existence of any other disaster debris removal contractors performing similar services for the same Contracting Governmental Entity, and
    e. the project manager for the contract.
3. All Disaster Debris Removal Contracts with Contracting Governmental Entities effective during the Relevant Period, including any amendments and attachments thereto.
4. All requests for proposal that resulted in an executed Disaster Debris Removal Contract effective during the Relevant Period with a Contracting

Governmental Entity, and all Contractor responses to each such request for proposal, including all attachments thereto.

5. All communications with each Contracting Governmental Entity relating to a Disaster Debris Removal Contract.

6. Documents identifying the number of Subcontractors contacted by Contractor to perform each Disaster Debris Removal Contract.

7. All communications with Subcontractors.

8. Documents identifying rates for vegetative debris removal that were offered to Subcontractors by Contractor, including Subcontractor name, address and contact information.

9. Documents identifying rates for vegetative debris removal requested by Subcontractors.

10. Documents identifying rates for vegetative debris removal that were agreed to by Subcontractors.

11. Documents identifying the Subcontractors by name, address, and contact information that refused to perform at the rate offered and the date of the Subcontractor's refusal, regardless of whether the Subcontractor later agreed to perform at the same or higher rate.

12. Documents identifying requests, demands, or suggestions for increased payment rates by Subcontractors to induce performance for disaster debris removal services.

13. Copies of financial statements or supplemental financial information provided to any Contracting Governmental Entity, at any time related to any Disaster Debris Removal Contract.

14. Documents identifying all Subcontractors by name, address, and contact information that Contractor engaged to perform disaster debris removal services pursuant to a Disaster Debris Removal Contract and the payment rate.

15. All invoices received from Subcontractors, relating to services provided under the Disaster Debris Removal Contract.

16. Documentation of all payments to Subcontractors relating to services provided under the Disaster Debris Removal Contract.

17. Documentation of all losses sustained by Contractor regarding each Subcontractor, relating to services provided under the Disaster Debris Removal Contract.

18. Documentation of all invoices submitted to each Contracting Governmental Entity, relating to services provided under the Disaster Debris Removal Contract.

19. For each Contracting Governmental Entity, provide documents identifying all rates charged by contractors for disaster vegetative debris removal services in that area.

20. For each Contracting Governmental Entity, provide documents identifying all rates charged by subcontractors for disaster vegetative debris removal services in that area.

21. All communications with FEMA or other federal governmental entities relating to Disaster Debris Removal Contracts or performance thereunder.

22. Copies of policies and procedures or communications relating to retention of subcontractors to meet the needs of Disaster Debris Removal Contracts after a hurricane affecting the State of Florida.

23. An organizational chart or documents that identify the functional and reporting structure of Contractor, including for each person the respective title(s), area of responsibility, identification of each person who is an owner, officer, or manager, and the percentage of ownership held.

24. Any documents that identify Subcontractors and indicate rates paid to those subcontractors in 2016 for vegetative debris removal services provided in Florida relating to Tropical Storm Colin, Hurricane Hermine, Tropical Storm Julia, and Hurricane Matthew.

*A summary report is an option to facilitate the providing of a response. The Attorney General does not waive its right to review the documents supporting any summary report.

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

CONSUMER PROTECTION DIVISION
SUBPOENA DUCES TECUM WITHOUT APPEARANCE

IN THE INVESTIGATION OF DECEPTIVE INTERNET ADVERTISING
AGENCY CASE NO. L12-3-1146

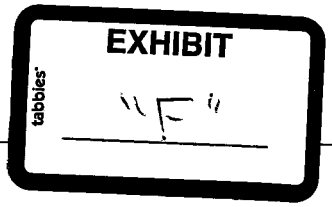
TO: WAM IT TECHNOLOGIES, LLC, also d/b/a WAM IT, LLC,
c/o Mr. Steven R. Andrews
822 N. Monroe Street
Tallahassee, FL 32303
(850) 681-6416 | SAndrews@AndrewsLawOffice.com

THIS INVESTIGATIVE SUBPOENA DUCES TECUM is issued pursuant to Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes, in the course and authority of an official investigation. Your attention is directed to Sections 501.204, Florida Statutes and also to Section 501.206, Florida Statutes, printed and attached hereto.

YOU ARE HEREBY COMMANDED to produce all documentary material and other tangible evidence as described herein that is in your possession, custody, or control, and to make it available for inspection and copying or reproduction before **RICHARD P. LAWSON, Director of the Consumer Protection Division** and/or other Assistant Attorney(s) General on or before **July 22, 2013** at 5:00 p.m., Eastern Standard Time, at the following location:

Office of the Attorney General, Division of Consumer Protection
107 W. Gaines Street, Director's Suite 119
Tallahassee, FL 32399

NOTE: You may submit the requested materials via electronic mail and directing them to the attention of **SCOTT T. HUNT, Senior Investigator Supervisor, Consumer Protection Division** at any time prior to **July 22, 2013 at 5:00 p.m.** The production of material in response to this demand shall include the following: **SEE ATTACHED ADDENDUM**



501.204 Unlawful acts and practices.--

(1) Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

(2) It is the intent of the Legislature that, in construing subsection (1), due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2006.

501.206 Investigative powers of enforcing authority. --

(1) If, by his or her own inquiry or as a result of complaints, the enforcing authority has reason to believe that a person has engaged in, or is engaging in, an act or practice that violates this part, he or she may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence. Within 5 days, excluding weekends and legal holidays, after the service of a subpoena or at any time before the return date specified therein, whichever is longer, the party served may file in the circuit court in the county in which he or she resides or in which he or she transacts business and serve upon the enforcing authority a petition for an order modifying or setting aside the subpoena. The petitioner may raise any objection or privilege which would be available under this chapter or upon service of such subpoena in a civil action. The subpoena shall inform the party served of his or her rights under this subsection.

(2) If matter that the enforcing authority seeks to obtain by subpoena is located outside the state, the person subpoenaed may make it available to the enforcing authority or his or her representative to examine the matter at the place where it is located. The enforcing authority may designate representatives, including officials of the state in which the matter is located, to inspect the matter on his or her behalf, and he or she may respond to similar requests from officials of other states.

(3) Upon failure of a person without lawful excuse to obey a subpoena and upon reasonable notice to all persons affected, the enforcing authority may apply to the circuit court for an order compelling compliance.

(4) The enforcing authority may request that an individual who refuses to comply with a subpoena on the ground that testimony or matter may incriminate him or her be ordered by the court to provide the testimony or matter. Except in a prosecution for perjury, an individual who complies with a court order to provide testimony or matter after asserting a privilege against self-incrimination to which he or she is entitled by law shall not have the testimony or matter so provided, or evidence derived there from, received against him or her in any criminal investigation or proceeding.

(5) Any person upon whom a subpoena is served pursuant to this section shall comply with the terms thereof unless otherwise provided by order of the court. Any person who fails to appear with the intent to avoid, evade, or prevent compliance in whole or in part with any investigation under this part or who removes from any place, conceals, withholds, mutilates, alters, or destroys, or by any other means falsifies any documentary material in the possession, custody, or control of any person subject to any such subpoena, or knowingly conceals any relevant information with the intent to avoid, evade, or prevent compliance shall be liable for a civil penalty of not more than $5,000.00 reasonable attorney's fees, and costs.

ADDENDUM

DEFINITIONS

For the purposes of this subpoena, the following definitions apply:

A. **WAM IT, LLC D/B/A WAM! MEDIA GROUP.** means any and all departments, divisions, affiliates, subsidiaries, retail outlets, stores, franchisees, successors, manufacturers, distributers, or predecessors, whether wholly owned or not, including, without limitation, any organization or entity in which **WAM IT, LLC D/B/A WAM! MEDIA GROUP.** or its officers has a management or controlling interest, that has documents (as defined herein) in its possession, custody, or control regarding any business practices within the State of Florida or any present and former officers, directors, agents, representatives or anyone else acting or purporting to act, on behalf of **WAM IT, LLC D/B/A WAM! MEDIA GROUP.** that has documents (as defined herein) in their possession, custody, or control regarding any business practices within the State of Florida.

B. The terms "documents" and "documentation" mean all writings of any kind or nature, wherever situated, that are owned, possessed, controlled, in the custody of or accessible to **WAM IT, LLC D/B/A WAM! MEDIA GROUP.** whether prepared or received by, **WAM IT, LLC D/B/A WAM! MEDIA GROUP.**, including, but not limited to, papers filed with governmental authorities, complaints, licenses, authorizations, transcripts, certificates, records, dealership agreements, other agreements, letters, telegrams, log books, price quotations, catalogs, price books, invoices, receipts, sales, estimates, regularly kept summaries or compilations of business records, inventories, ledgers, accounts, sales records, vouchers, shipping invoices or notices, newsletters, price lists, bids, worksheets, brochures, reports, surveys, tests, strategies, plans, studies, understandings, arrangements, appointment books, calendar and diary entries, pamphlets, notes, tabulations, books, bulletins, interoffice communications, training materials and records of meetings, conferences and telephone or other conversations or communications.

The terms "document" and "documentation" further mean all documents, records and writings of any kind, and all communication (as defined below in Paragraph F) which are stored or retrievable or recorded in any manner, including originals and all non-identical copies whether different from the originals by notation made on such copies or otherwise, all drafts, alterations, modifications, changes, and amendments, graphic or any electronic or mechanical records or representations of any kind. Any electronic records or computer data should be provided on one of the following media: CD Rom or 3.5-inch floppy disk. The term "documents" includes, but is not limited to, the original and any non-identical copy (which is different from the original because of notation on such copy or otherwise) of all correspondence, E-mail, telegrams, teletype messages, contracts (including drafts, proposals, and any and all exhibits thereto), drafts, minutes and agendas, memoranda (including inter- and intra-office memoranda, memoranda for file, pencil jottings, diary entries, desk calendar entries, reported recollections, and any other written form of notation of events or intentions), transcripts and recordings of conversations and telephone calls, books of account, ledgers, publications, professional journals, invoices, financial statements, purchase orders, receipts, canceled checks and all other documentary material of any nature whatever, together with any attachments thereto or enclosures therewith.

The terms "documents" and "documentation" shall include, the original and any non-identical copy or draft (which is different from the original because of notations on such copy or otherwise) of all correspondence, teletype messages, contracts (including drafts, proposals, and any and all exhibits thereto) minutes of meetings, agendas, memoranda (including inter- and intra-office memoranda, memoranda for file, pencil jottings, reported recollections, and any other written form of notation of events or intentions), and recordings of conversations, e-mail, telephone messages and telephone calls, books, written manuals, photographs, graphs, tabulations, logs, charts, books of account, financial statements, purchase orders and all other documentary material of any nature whatever, together with any attachments thereto or enclosures therewith.

The terms "documents" and "documentations" shall also include data stored, maintained or organized on computer or any other way electronically or magnetically, including, but not limited to, data stored on video or audio cassette, on computer, hard disk, CD-Rom, Jaz disk, Zip disk or standard 3.5" floppy disk, or posted on the World Wide Web.

The terms "document" and "documents" shall moreover include both paper records and all electronically stored records and information, both the original and any non-identical copy (whether different from the original because of the notes made on or attached to such copy or otherwise), including draft versions of the original, of any written, recorded, or graphic matter, however produced or reproduced, including, but not limited to, memoranda, inter-office communications, studies, analyses, reports, results of investigations, contracts, agreements, work papers, ledgers, books of account, vouchers, bank checks, invoices, receipts, web page printouts, lists, telegrams, schedules, photographs, sound recordings, films, videos, graphics, and all computer data and computer files of all types, including, but not limited to, electronic mail, instant messages, text messages, voice mail, electronic documents, power-points, audio and video media files, flash drive disks, floppy disks, CD-ROM disks, back-up tapes, zip drives, hard drives, email server drives, web-server drives, or other electronic information storage devices, and/or any other electronic or paper document or writings of any kind whatsoever. For any document related to the matters described herein which is not in your possession, but which you know to exist, you are requested to identify any such document and indicate to the best of your ability that document's present or last known location and custodian.

C. The terms "related or "relating" mean, without limitation, the concepts: refer to, concerning, discuss, describe, reflect, deal with, pertain to, analyze, evaluate, estimate, constitute, study, survey, project, assess, record, summarize, criticize, report, comment, or otherwise involve in whole or in part.

D. The term "any" shall be construed as synonymous with "every" and shall be all inclusive.

E. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.

F. "Communication" means any act, action, oral speech, written correspondence, contact, expression of words, thoughts, or ideas, or transmission or exchange of data or other information to another person, whether orally, person to person, in a group, by telephone, personal delivery, inter-office mail, private or public mail carrier or courier, intercom, telex, fax, e-mail, compact or floppy disc,

or any other process, electric, electronic or otherwise in any medium. All such communications in writing shall include, without limitation, printed, typed, handwritten or other readable documents.

INSTRUCTIONS

A. Copies of all documents and records requested should be provided in a digital, searchable format, such as CD-Rom, whenever possible.

B. The documents to be produced pursuant to each request should be segregated and specifically identified to indicate clearly the particular numbered request to which they are responsive.

C. For each request, or part thereof, which is not fully responded to pursuant to any privilege, the nature of the privilege and grounds in support thereof should be fully stated.

D. If you possess, control, or have custody of no documents responsive to any numbered request set forth below, state this fact by so specifying in your response to said request.

E. The use of the singular form of a word includes the plural and vice versa. In addition, the use of any tense of any verb includes all other tenses of the verb.

F. This Subpoena is for the production of all responsive documents and information in your possession, custody or control regardless of whether such documents or information is possessed directly by you or your directors, officers, agents, employees, representatives, subsidiaries, managing agents, affiliates, investigators, or by your attorneys or their agents, employees, representatives or investigators.

G. If any responsive document or information cannot be produced in full, you are to produce it to the extent possible, indicating which document, or portion of that document, is being withheld, and the reason that document is being withheld.

H. Documents not otherwise responsive to this subpoena shall be produced if such documents mention, discuss, refer to, or explain the documents that are called for by this subpoena, or if such documents are attached to documents called for by the subpoena and constitute routing slips, transmittal memoranda, or letters, comments, evaluations or similar materials.

I. If a document once existed and has subsequently been lost, destroyed, or is otherwise missing, please provide sufficient information to identify the document and state the details concerning its loss or destruction.

J. If you claim the attorney-client privilege, work-product privilege, or any other privilege (other than trade secret), for any document, provide a detailed privilege log that contains at least the following information for each document that you have withheld:

   i. The name of each author, writer, sender or initiator of such document or thing, if any;
   ii. The name of each recipient, addressee or party for whom such document or thing was intended, if any;

iii. The date of such document, if any, or an estimate thereof so indicated if no date appears on the document;

iv. The general subject-matter as described on such document; if no such description appears, then such other description sufficient to identify said document; and,

v. The claimed grounds for withholding the document, including, but not limited to, the nature of any claimed privilege and grounds in support thereof.

K. **SUPPLEMENTAL INSTRUCTION FOR SUBPOENAS**

In the event that you seek to assert trade secret protection under Florida Statutes Section 688.002(4)(b), Section 812.081(1)(c), Section 815.04(3), and/or Section 815.045, for each document for which trade secret protection is claimed:

1. Provide prior to or simultaneous with production of the document at issue, a sworn affidavit from a person with knowledge as to the basis for the trade secret claim, which complies with the following:

    a. The affidavit should specify the bates range of the claimed trade secret documents at issue, generally describe the documents at issue, and provide "substantial, competent evidence" of the application of the trade secret exemption.

    b. The affidavit should attach a certification (similar in form to a traditional privilege log) that identifies for each separate claimed trade secret document (i) the bates range of the document, (ii) a description of the document sufficient to determine the application of the trade secret exemption, and (iii) the specific element(s) or provision(s) of Section 688.002(4) or Section 812.081(c) that render the document at issue a trade secret exempted from public records.

2. Segregate and separately label the document claimed as trade secrets: documents produced electronically should be produced on separate CD or electronic media clearly-labeled "Trade Secret" on the physical media as well in the title of the electronic folder or file; documents produced in hard copy should be separated and each clearly labeled "Trade Secret."

3. Any challenge to the application of the trade secret exemption shall be rebutted, if at all, only by you and not by the Office of the Attorney General, whose involvement shall be limited solely to providing notice to you of any challenge to your claim of trade secret protection. To the extent you seek to assert a trade secret exemption in connection with a public records request to the Office of the Attorney General, you shall be obligated to seek an appropriate protective order or otherwise establish the applicability of the trade secret claim and exemption. Failure to do so shall render the documents subject to production under any applicable public records requirements and not protected by a trade secret claim.

WHEREFORE, WAM IT, LLC D/B/A WAM! MEDIA GROUP., IS HEREBY COMMANDED TO PRODUCE THE FOLLOWING DOCUMENTS:

ITEMS TO BE PRODUCED

1. Identify or produce Documents which identify the entity (person, company, corporation, etc.) associated with each of the domain names listed below. Full and complete contact information shall include, but is not limited to:
   a. Name of company or corporation
   b. Name of owner, manager or primary contact
   c. Complete mailing address of entity
   d. All known telephone numbers
   e. Primary contact email address

   ConsumerLifestyleTrends.com
   ConsumerProductsExposed.com
   IConsumerDigest.com
   TheFinanceGuardian.com
   HealthyConsumerTrends.com
   TopTrustedConsumerReviews.com
   SkinTherapyReports.com
   YourConsumerDigest.com
   ConsumerFinanceDaily.com
   DailyConsumerAlert.net
   HealthWellnessLifestyle.net
   HealthWellnessLifestyle.com
   IHealthLifestyles.com

2. Identify, or produce Documents that identify all monies flowing between Wam Media and the affiliates/advertisers associated with the domain names listed in Item #1 for the time period of January 1, 2012 through March 31, 2013.

3. Identify or produce Documents that detail financial transactions for bank account number **BMO Harris Bank Account No. 480-900-089-3** for the periods of July 2012 and October 2012 through March 2013, including at least the following information per transaction:
   a. Date
   b. Amount
   c. Description
   d. Debtor identity
   e. Creditor identity

4. Identify or produce Documents that detail financial transactions from the following bank accounts for the period of October 2012 through March 31, 2013, including at least the following information per transaction:
   a. Date
   b. Amount

c. Description
d. Debtor identity
e. Creditor identity

Account Numbers:
BMO Harris Bank Acct No. 480-900-090-7
BMO Harris Bank Acct No. 480-900-108-3
BMO Harris Bank Acct No. 481-177-032-9

WITNESS, the Office of the Attorney General, Department of Legal Affairs, at Tallahassee, FL, on this 8TH day of July, 2013.

PAMELA JO BONDI
Attorney General

WILLIAM B. ARMISTEAD
Consumer Protection Division
Assistant Attorney General
Florida Bar No. 88535
Office of the Attorney General
107 W Gaines St
Tallahassee, Florida 32399
Phone: 850.414.3300
E-Mail: william.armistead@myfloridalegal.com

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

WAM IT TECHNOLOGIES, LLC
d/b/a WAM IT, LLC,

CASE NO.: 2013 CA 002063

Petitioner,

vs.

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

Respondent.
_____/

ORDER

This case is before the Court on behalf of Petitioner who objects to Respondent's enforcement subpoena pursuant to 501.206(1), Florida Statutes. This Court grants Petitioner's request for an evidentiary hearing and such hearing shall take place from 2-4 p.m. on September 4, 2013 at the Leon County Courthouse. The Attorney General shall come forward with sufficient evidence to establish the enforcing authority has reason to believe that a person has engaged in, or is engaging in, an act or practice in violation of Chapter 501, Part II, Florida Statutes . The Petitioner shall be entitled to enter rebuttal evidence.

DATED this 30 day of ~~August,~~ Sept. 2013.

ORDERED AND ADJUDGED

The Honorable John C. Cooper

EXHIBIT
tabbies
"G"

Copies Mailed By
SB on 9-4-13