

CAUSE NO. _____

STATE OF TEXAS,
Plaintiff,

v.

AUCTIONS UNLIMITED LLC,
Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY,

____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION
FOR TEMPORARY AND PERMANENT INJUNCTIONS**

COMES NOW THE STATE OF TEXAS, hereinafter referred to as Plaintiff, acting by and through Attorney General of Texas, KEN PAXTON, complaining of Defendant Auctions Unlimited LLC for selling necessities at an excessive or exorbitant price during a disaster declared by the governor, and for cause of action would respectfully show:

I. DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to Texas Rule of Civil Procedure 190.3.
2. This case is not subject to the restrictions of expedited discovery under Texas Rule of Civil Procedure 169 because the relief sought by the State includes non-monetary injunctive relief.
3. In addition to the claim for non-monetary injunctive relief, the State seeks monetary relief in excess of \$100,000, including civil penalties, attorney's fees and costs.

II. NATURE OF THIS SUIT

4. The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection Division against Defendant for

violations of the Texas Deceptive Trade Practices—Consumer Protection Act (DTPA), Tex. Bus. & Com. Code §§ 17.41–17.63. The DTPA grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions. DTPA § 17.47.

III. DEFENDANT

5. Defendant Auctions Unlimited LLC is a domestic limited liability company doing business in Harris County, Texas. Defendant Auctions Unlimited may be served with process, through its registered agent, Timothy Worstell at 4007 Elmwood Dr., Pearland, TX 77584.

IV. JURISDICTION

6. This Court has jurisdiction over this action pursuant to section 17.47(b) of the DTPA.

V. VENUE

7. Venue of this suit lies in Harris County, Texas, under the DTPA § 17.47(b), for the following reasons:

- (a) The transactions forming the basis of this suit occurred in Harris County, Texas.
- (b) Defendants have done business in Harris County, Texas.
- (c) Defendants' principal places of business are in Harris County, Texas.

VI. PUBLIC INTEREST

2. Plaintiff, the State of Texas, has reason to believe that Defendant is engaging in, has engaged in, or is about to engage in, the unlawful acts or practices set forth below, that Defendant has, by means of these unlawful acts and practices, caused damage to and/or acquired money or property from persons, and that Defendant has adversely affected the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. Therefore, the

Consumer Protection Division of the Office of the Attorney General of the State of Texas believes, and is of the opinion, that these proceedings are in the public interest. *See* DTPA § 17.47(a).

VII. TRADE AND COMMERCE

8. Defendant has, at all times described below, engaged in conduct which constitutes “trade” and “commerce,” as those terms are defined in section 17.45(6) of the DTPA.

VIII. ACTS OF AGENTS

9. Whenever in this petition, Plaintiff alleges that a Defendant did any act, Plaintiff means that that the officers, agents, partners, or employees of Defendant performed or participated in the act on behalf of, and under the authority of, Defendant.

IX. APPLICABLE LAW

10. The DTPA prohibits “false, misleading, or deceptive acts or practices in the conduct of any trade or commerce.” DTPA § 17.46 (a).

11. The DTPA also prohibits taking advantage of a disaster declared by the governor under Chapter 418 of the Texas Government Code by offering, demanding in connection with the sale, and/or selling at an exorbitant or excessive price, fuel, food, medicine, or other necessities. *See* DTPA § 17.46(b)(27)(A), (B).

12. Section 418.014 of the Texas Government Code provides:

(a) The governor by executive order or proclamation may declare a state of disaster if the governor finds a disaster has occurred or that the occurrence or threat of disaster is imminent.

(b) Except as provided by Subsection (c), the state of disaster continues until the governor:

(1) finds that:

(A) the threat or danger has passed; or

(B) the disaster has been dealt with to the extent that emergency conditions no longer exist; and

(2) terminates the state of disaster by executive order.

(c) A state of disaster may not continue for more than 30 days unless renewed by the governor.

X. NATURE OF DEFENDANT'S OPERATIONS

13. Defendant is taking advantage of a disaster by offering for sale, and/or selling, necessities such as face masks, hand sanitizer, and cleaning supplies at exorbitant or excessive prices after Texas Governor Abbott declared a disaster on March 13, 2020 under Chapter 418 of the Texas Government Code.

XI. EXHIBITS

14. Plaintiff relies on the following exhibits in support of its petition and applications for Temporary Injunction and Permanent Injunction:

Exhibit A: The March 13, 2020 Proclamation by Governor Greg Abbott declaring a statewide disaster because of COVID-19.

Exhibit B: Affidavit of Charlene Gale, an investigator with the Office of the Attorney General, providing details on her investigation into Defendant's activities.

Exhibit C: Screen captures of Defendant's website.

XII. FACTUAL ALLEGATIONS

15. On March 13, 2020 at 11:20 a.m., pursuant to Texas Government Code section 481.014, Texas Governor Greg Abbott issued a statewide disaster proclamation because of COVID-19, a contagious respiratory virus. *See* Exhibit A. The statewide disaster remains in effect at this time.

16. Defendant Auctions Unlimited LLC operates an establishment at 8777 Tallyho Rd., Bldg. 3, Houston, TX 77061 and has offered for sale necessities such as face masks, hand sanitizer, and cleaning supplies to consumers at prices which greatly exceed the normal and reasonable price for

this good. Thus, Defendant is taking advantage of the disaster by demanding and/or charging exorbitant and/or excessive prices for these necessities.

17. On March 17, 2020, Auctions Unlimited LLC listed an auction on its website (<https://auctionsunlimitedllc.hibid.com/catalog/205456/over-750-000-face-masks/>) for “Over 750,000 Face Masks.” This auction listing included, among other things, face masks, N95 particulate respirators, hand soap, all-purpose cleaner, and disinfectant wipes. In other words, the auction listed items necessary to combat the spread of the virus COVID-19.

18. Face masks and the N95 respirators are in high demand to protect individuals and health professionals from the transmission of COVID-19. The Centers for Disease Control and Prevention has recently issued guidance to optimize the supply of facemasks in response to a national shortage of personal protective equipment in the United States. *See* Centers for Disease Control and Prevention: Strategies for Optimizing the Supply of Facemasks (March 17, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/face-masks.html>. On March 24, 2020, Governor Abbott issued an executive order to secure the purchase of millions of these essential supplies. GOV. OF THE STATE OF TEXAS, EXECUTIVE ORDER GA 09 (March 24, 2020). That same day, March 24, 2020, the bidding on N95 respirator masks on Defendant’s website had pushed the price for some listings of masks as high as \$180 for a package of 16 masks. *See* Exhibit C. On information and belief, Defendant typically sells these masks at auction for \$10–20 a box.

19. According to Auctions Unlimited’s owner, Tim Worstell, Defendant’s auctions brought in \$154,000 in sales and earned the Defendant as much as \$40,000. Polly Mosendz and William Turton, *More Than 750,000 Masks Auctioned For Huge Markup In Texas While Hospitals Run Out Nationwide*, Chicago Tribune (Mar. 24, 2020, 8:17 PM),

<https://www.chicagotribune.com/coronavirus/ct-nw-mask-purell-auction-coronavirus-20200325-sq6pynvjnrgfzkcomjkffteawu-story.html>. Mr. Worstell admits to receiving warnings from both the Consumer Protection Division and local police that selling medical necessities at excessive or exorbitant rates during a declared disaster constitutes price gouging, but decided to go forward with the auction anyway. *See id.*

XIII. DTPA VIOLATIONS

20. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

21. Defendant, as alleged above, is engaging or has engaged in false, misleading, or deceptive acts or practices in the conduct of trade or commerce in violation of DTPA section 17.46(a).

22. Defendant, as alleged above, is engaging or has engaged in false, misleading, or deceptive acts or practices in the conduct of trade or commerce, in violation of DTPA sections 17.46(b)(27)(A) and (B), by offering, demanding in connection with the sale, and/or selling at an exorbitant or excessive price during a declared state of disaster, face masks, N95 particulate respirators, hand soap, all-purpose cleaner, and disinfectant wipes, or other necessity.

XIV. INJURY TO CONSUMERS

23. Defendant has, by means of these unlawful acts and practices, obtained money or property from consumers who are entitled to restitution, or in the alternative, has caused actual damages to identifiable persons who are entitled to compensation.

24. Because Defendant has engaged in the unlawful acts and practices described above, Defendant has violated the law as alleged in this petition. Unless restrained by this Honorable Court, Defendant will continue to violate the laws of the State of Texas and cause injury to the general public.

**XV. APPLICATION FOR TEMPORARY INJUNCTION
AND PERMANENT INJUNCTION**

25. The State alleges that by reason of the foregoing, Defendant should not continue to sell or offer to sell goods in violation of the laws of Texas. Unless immediately restrained by this Honorable Court, the Defendant will continue to violate the laws of the State of Texas and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public. The interests of the State of Texas and the public require immediate action to keep Defendant from continuing to sell necessary goods at exorbitant or excessive prices. Further, unless injunctive relief is granted, Defendant will continue collecting monies from consumers by use of false, misleading, or deceptive trade practices. Therefore, the State requests a Temporary Injunction and Permanent Injunction, as indicated below.

26. The State of Texas requests that, after notice and hearing, the Court issue a Temporary Injunction, and ORDER that Defendant, its officers, agents, servants, employees, attorneys and any other persons in active concert or participation with them, who receive actual notice of the order by personal service or otherwise, be restrained from engaging in the following acts or practices:

- A. Selling or offering to sell face masks, cleaning supplies, hand soap, hand sanitizer, or another necessity at an exorbitant or excessive price over the price for the same item on the day immediately preceding the date that the governor declared a disaster because of COVID-19;
- B. Concealing, withholding, destroying, mutilating, altering, falsifying, or removing from the jurisdiction of this Court any books, records, documents, invoices, receipts, or other written materials relating to the business of Defendants currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause; and
- C. Representing, directly or by implication, that this Court, the State of Texas, or the Office of the Attorney General has approved any good or service sold or offered for sale by Defendant, or approved of any of Defendant's business practices.

27. The State requests leave of this Court to conduct discovery prior to any scheduled

Temporary Injunction Hearing and prior to Defendant's answer date with reasonably shortened deadlines. Any discovery and depositions, telephonic or otherwise, would be conducted with reasonable shortened notice to Defendants and their attorneys, if known.

28. The State further requests that this Court order Defendants to provide Plaintiff the following information within five (5) business days after the entry of the Temporary Injunction:

- A. The amount of inventory for each product below,
 - (1) Face Masks
 - (2) Cleaning Supplies
 - (3) Hand Soap
 - (4) Hand Sanitizer
 - (5) Disinfectant Wipes;
- B. The unit cost for each product below,
 - (1) Face Masks
 - (2) Cleaning Supplies
 - (3) Hand Soap
 - (4) Hand Sanitizer
 - (5) Disinfectant Wipes;
- C. The final sale price on March 24, 2020, for each product listed below:
 - (1) Face Masks
 - (2) Cleaning Supplies
 - (3) Hand Soap
 - (4) Hand Sanitizer
 - (5) Disinfectant Wipes;
- D. The final sale price, since December 1, 2019, for each auction of a product listed below:
 - (1) Face Masks
 - (2) Cleaning Supplies
 - (3) Hand Soap
 - (4) Hand Sanitizer
 - (5) Disinfectant Wipes.

29. For the reasons set forth above, the State of Texas requests, after notice and hearing, that the Court issue Temporary and Permanent Injunctions, enjoining the acts set out in paragraph 21, 22, and 26 above, as authorized by sections 17.47(a) of the DTPA.

XVI. CONDITIONS PRECEDENT

30. All conditions precedent to the State's claim for relief have been performed or have occurred.

XVII. TRIAL BY JURY

31. The State demands a jury trial and tenders the appropriate fee with this petition.

XVIII. PRAYER

32. WHEREFORE, Plaintiff prays that Defendant be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, their officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendant from engaging, directly or indirectly, in the acts or practices set out in paragraph 21, 22, and 26, above.

33. In addition, Plaintiff, State of Texas, respectfully prays that this Court:

- A. Award civil penalties in favor of Plaintiff, State of Texas, in the amount not to exceed more than \$10,000.00 per violation, and \$250,000 in the event the deception impacts anyone over 65 years of age;
- B. Order Defendant to restore all money or other property acquired by means of unlawful acts or practices, or in the alternative, to compensate identifiable persons for actual damages;
- C. Award Plaintiff reasonable attorney's fees and court costs pursuant to Texas Government Code section 402.006;
- D. Award Plaintiff pre-judgment and post-judgment interest at the highest lawful rate;
- E. Appoint a receiver or sequester Defendant's assets if Defendant has been ordered by this Court to make restitution and Defendant has failed to do so within three (3) months after the order to make restitution has become final and nonappealable;
- F. Adjudge that all fines, penalties or forfeitures payable to and for the benefit of the State are not dischargeable under bankruptcy pursuant to 11 U.S.C. section 523(a)(7).

34. Further, Plaintiff, State of Texas, respectfully prays for all other relief to which Plaintiff, State of Texas, may be justly entitled.

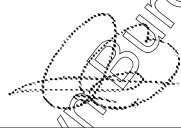
Respectfully submitted,

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