

JOHN R. KROGER
Attorney General



MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
CIVIL ENFORCEMENT DIVISION

September 17, 2009

Clerk of Court
Klamath County Circuit Court
Klamath County Courthouse
316 Main Street
Klamath Falls, OR 97601

Re: **Filing by Mail -- Complaint**
State of Oregon ex rel. John Kroger v. Sushil Kumar and Hardip Singh Sandhu, dba
Ray's Market
DOJ Case No.: 137420/FF 8948-09

Dear Clerk of Court:

Please file the enclosed complaint in the case referenced above.

I also have enclosed a blue confirmation card and a self addressed, postage paid envelope. Please include the assigned case number and judge on the blue card. I would appreciate it if you would make a copy of the caption page (the entire complaint is not necessary), displaying the assigned case number, and the "Filed" and "Entered" stamps, and return it in the enclosed envelope to confirm that the complaint has been received.

Do not hesitate to contact me if you have any questions or concerns. Thank you.

Sincerely,

Merrill Maiano
Assistant Attorney General
Tel. (503) 934-4416

Enclosures
DM#1633157

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3 IN THE CIRCUIT COURT FOR THE STATE OF OREGON
4 FOR THE COUNTY OF KLAMATH

5 STATE OF OREGON, ex rel JOHN
6 KROGER, Attorney General of Oregon,

7 Plaintiff,

8 v.

9 SUSHIL KUMAR and HARDIP SINGH
SANDHU, dba RAY'S MARKET,

10 Defendants.

Case No.:

**COMPLAINT – ANTITRUST AND
UNLAWFUL TRADE PRACTICES**

**CLAIMS NOT SUBJECT TO
ARBITRATION**

11 Plaintiff, Attorney General John Kroger, alleges claims for relief on behalf of the
12 State of Oregon (State) pursuant to Oregon's antitrust statutes, ORS 646.705 through
13 646.836, and Unlawful Trade Practices Act (UTPA), ORS 646.605 through 646.656 The
14 State alleges that at all material times:

15 1.

16 Defendants owned and operated a retail market doing business as Ray's Market.
17 Ray's Market is located in Klamath Falls, Oregon, which is in Klamath County, Oregon.

18 2.

19 Defendants sold fuel to purchasers at Ray's Market.

20 3.

21 Klamath River Gas is a retail market that sells fuel. It is located in Keno, Oregon,
22 approximately 15 miles from Klamath Falls, Oregon.

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4.

Defendant Hardip Singh Sandhu has declared bankruptcy under Chapter 7 of the United States Bankruptcy Code. The State seeks only injunctive relief from Hardip Singh Sandhu.

FIRST CLAIM FOR RELIEF

(Antitrust)

5.

The State realleges and incorporates each and every allegation contained in paragraphs 1 through 4 of this complaint.

6.

The State, acting through its Attorney General, brings this claim under ORS 646.760 and ORS 646.770 to obtain civil penalties and equitable remedies.

7.

ORS 646.725 prohibits every contract, combination, or conspiracy in restraint of trade or commerce.

8.

Defendants engaged in illegal activities while selling fuel in the regular, continuous, and substantial flow of trade and commerce within the State of Oregon.

9.

On or about November 18, 2008, Defendant Sushil Kumar, acting individually and on behalf of the business known as Ray's Market, attempted to create an illegal contract, combination, or conspiracy in restraint of trade or commerce with Klamath River Gas in Keno, Oregon.

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10.

On or about November 18, 2008, Defendant Sushil Kumar, acting individually and on behalf of the business known as Ray's Market, used and/or relied on threats, intimidation, and/or coercion against competing fuel retailers, including Klamath River Gas in an attempt to enter into an illegal contract, combination, or conspiracy in restraint of trade or commerce.

11.

Defendant Sushil Kumar:

- (a) Attempted to fix the price of fuel to be sold to purchasers at Ray's Market and Klamath River Gas;
- (b) Attempted to fix the price at which fuel was to be sold to consumers in Oregon;
- (c) Attempted to restrain price competition among competing retailers that sell fuel to purchasers in Oregon;
- (d) Used threats and intimidation in an attempt to unlawfully restrict and curtail Klamath River Gas's pricing independence regarding fuel;
- (e) Used threats and intimidation in an attempt to coerce Klamath River Gas into making an agreement with Defendants to engage in supra-competitive fuel pricing; and
- (f) Threatened fuel purchasers with the loss of unfettered and open competition among retailers, all in violation of ORS 646.725.

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12.

As a result of the illegal conduct alleged above:

- (a) The State sustained injury to its general welfare and economy;
- (b) The State will be subject to a continuing threat of injury to its general welfare and economy, unless Defendants are enjoined from illegal conduct; and
- (c) Fuel purchasers and Defendants' competitors remain threatened with further injury to their property, unless Defendants are enjoined from illegal conduct

13.

Defendants' aforementioned practices constituted an attempt to enter into a price-fixing agreement in restraint of trade and in violation of ORS 646.725.

SECOND CLAIM FOR RELIEF

(Unlawful Trade Practices: ORS 646.608(1)(i))

14.

The State realleges and incorporates each and every allegation contained in paragraphs 1 through 4 of this complaint.

15.

The State, acting through its Attorney General, brings this claim under ORS 646.605 through ORS 646.656 to obtain civil penalties and equitable remedies.

16.

On or about December 2008, Defendants advertised gasoline prices on a sign visible from the street that did not match the lowest price of gasoline available at their pumps.

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17.

Defendants were given a Notice of Unlawful Trade Practices, as required by ORS 646.632(2), and failed to submit to the Attorney General an acceptable Assurance of Voluntary Compliance.

18.

Defendants' conduct, as described in this complaint, was willful within the meaning of ORS 646.605(10).

19.

Defendants violated ORS 646.608(1)(i) by advertising the price of fuel with intent not to provide it as advertised on a sign visible from the street. Each time that Defendants charged more at the pump than advertised at the street is a separate and distinct violation of ORS 646.608(1)(i).

THIRD CLAIM FOR RELIEF

(Unlawful Trade Practices: ORS 646.608(1)(k))

20.

The State realleges and incorporates each and every allegation contained in paragraphs 1 through 4, and paragraphs 14 through 18, of this complaint

21.

Defendants violated ORS 646.608(1)(k) by making false or misleading representations concerning the nature of the transaction or obligation incurred when they charged more at the pump for fuel than advertised on a sign visible from the street. Each time that Defendants charged more at the pump than advertised on a sign visible from the street is a separate and distinct violation of ORS 646.608(1)(k).

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FOURTH CLAIM FOR RELIEF

(Unlawful Trade Practices: ORS 646.608(1)(u))

22.

The State realleges and incorporates each and every allegation contained in paragraphs 1 through 4, and paragraphs 14 through 18, of this complaint.

23.

Defendants violated ORS 646.608(1)(u) and OAR 137-02-0150 when they displayed, without requisite explanation, a price per gallon of gasoline or diesel that was inconsistent with the price per gallon at the pump.

PRAYER FOR RELIEF

24.

WHEREFORE the State prays for the following relief:

On the State's first claim for relief under Oregon's antitrust statutes, ORS 646.705 through 646.836, for judgment as follows:

(a) Adjudge and decree that Defendants attempted to enter into an unlawful contract, combination, or conspiracy in unreasonable restraint of trade and commerce in violation of ORS 646.725;

(b) Pursuant to ORS 646.760:

(1) Enjoin and restrain Defendants, their employees, and all other persons acting in concert with them, from engaging in the unlawful practices described in the first claim for relief in this Complaint and any similar unlawful practices;

- 1 (2) Enter judgment against Defendant Sushil Kumar for civil penalties in
2 an amount to be determined by the Court to be just and proper, but not
3 more than \$250,000 for each violation of ORS 646.725; and
4 (3) Award the State reasonable attorney fees, expert witness fees, and
5 investigative costs against Defendant Sushil Kumar;

6 (c) Pursuant to ORS 646.770:

- 7 (1) Enjoin and restrain Defendants, their employees, and all other persons
8 acting in concert with them, from engaging in the unlawful practices
9 described in this Complaint and any similar unlawful practices; and
10 (2) Award the State reasonable attorney fees and the costs of suit,
11 including necessary reasonable investigative costs and reasonable
12 experts' fees against Defendant Sushil Kumar; and

13 (d) Grant such additional relief as the Court may deem just and proper under the
14 circumstances.

15 On the State's second, third, and fourth claim for relief under Oregon's UTPA,
16 ORS 646.605 through 646.656, for judgment as follows:

- 17 (a) Enter judgment against Defendant Sushil Kumar for civil penalties of up to
18 \$25,000 for each willful violation of the UTPA, ORS 646.605 through 646.656;
19 (b) Award the State its reasonable attorney fees and costs pursuant to ORS
20 646.632(8) and ORCP 68 against Defendant Sushil Kumar;
21 (c) Enjoin and restrain Defendants, their employees, and all other persons acting in
22 concert with them, from engaging in the unlawful practices described in the
23 second claim for relief in this Complaint and any similar unlawful practices,

1 pursuant to ORS 646.632; and

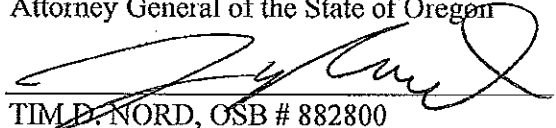
2 (d) Enter judgment granting any additional relief that the Court deems necessary,
3 pursuant to ORS 646.636.


4 As to all claims for relief:

5 Enter judgment that all injunctions herein shall apply to Defendants individually
6 and through any present or future corporation or other organization or entity whose acts,
7 practices, or policies are directed, formulated, or controlled by either defendant or in
8 which Defendants are a principal or own any interest; to Defendants' successors and
9 assigns, agents, representatives and employees, directly or through any affiliate,
10 corporation, subsidiary, division or other related entity consumer.

11 Dated: 9/16/09, 2009

12 Respectfully submitted,
13 JOHN R. KROGER
14 Attorney General of the State of Oregon


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