

IN THE IOWA DISTRICT COURT FOR SIOUX COUNTY

<p>STATE OF IOWA ex rel. THOMAS J. MILLER, ATTORNEY GENERAL OF IOWA</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>MICHAEL EVAN NOTEBOOM,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">EQUITY NO. _____</p> <p style="text-align: center;">PETITION and APPLICATION FOR TEMPORARY INJUNCTION</p>
---	--

COMES NOW the State of Iowa ex rel. Attorney General of Iowa, Thomas J. Miller, by Assistant Attorneys General Mariclare Thinnies Culver and William R. Pearson, pursuant to the provisions of Iowa Code § 714.16, commonly referred to as the Iowa Consumer Fraud Act, states as follows for its claims against Defendant:

1. Iowa Attorney General Thomas J. Miller is authorized to bring this action on behalf of the State of Iowa by § 714.16(7) of the Iowa Consumer Fraud Act to sue to enforce the Act's prohibitions on unfair and deceptive acts and practices.
2. Defendant Michael Evan Noteboom, upon information and belief, is an Iowa citizen residing in Orange City, Sioux County, Iowa.
3. The State of Iowa brings this action to prevent, restrain, and redress violations of Iowa's consumer fraud statute and the price-gouging rule, pursuant to Iowa Code § 714.16(7) and 61 IAC 31.1 (714), and seeks a temporary injunction, permanent injunction, restitution or disgorgement, civil penalties and all other remedies and costs permitted pursuant to the Act.
4. The Court has subject matter jurisdiction over this action pursuant to Iowa Code section

714.16(7). Venue is proper in this county pursuant to § 714.16(7).

5. The coronavirus, which causes the disease COVID-19, is a respiratory illness that is highly contagious and potentially fatal, particularly to older persons and individuals with underlying health conditions. It is believed primarily to spread from person to person through respiratory droplets or aerosol spray and through human contact with surfaces containing the virus.
6. The State of Iowa, like the nation and the world, is faced with an unprecedented public health crisis – the COVID-19 virus. The virus has caused serious illness and death in many of those stricken with it; has severely burdened our healthcare workers and system; has separated loved ones from their families; has virtually shut down the State and national economies and caused untold personal financial strain; has caused the closure of many Iowa businesses and the furlough of tens of thousands of Iowa workers; and has caused people to fundamentally alter their daily living for an extended period of time in an effort to avoid exposing themselves and their families to the virus or otherwise spread the virus.
7. On a national and state level, there have been shortages and/or unavailability of basic household necessities and sanitizing supplies.
8. From the pandemic, heroes have arisen who put the social good and their fellow man first, such as doctors, nurses and other health care workers. Unfortunately, others have chosen to take advantage of the crisis in order to personally and unfairly profit from the panic and product shortages initiated by COVID-19. Defendant is in the latter group.
9. U.S. Dept. of Health and Human Services declared a national public health emergency due to COVID-19 on January 31, 2020, retroactive to January 27, 2020 under section 319 of the Public Health Service Act (42 U.S.C. 247d). President Trump declared a national

emergency on March 13, 2020 beginning March 1, 2020 due to COVID-19 under the National Emergencies Act 50 U.S.C. 1601, *et seq.*

10. Iowa Governor Reynolds issued a State of Iowa Disaster Emergency for the entire state on March 9, 2020 effective March 9, 2020 for 30 days unless sooner terminated or extended. This declaration has been extended and broadened on more than one occasion since March 9, 2020 and remains in effect statewide today. (*See, e.g.,* continuing Public Health Disaster Emergency Proclamations, as well as Presidential Declarations, at https://www.homelandsecurity.iowa.gov/disasters/disaster_proclamations.html).
11. Under the Iowa Price-Gouging Rule, Iowa Admin. Code (“IAC”) 61-31.1(714), the charging of excessive prices for merchandise needed by victims of disasters constitutes an “unfair practice” under the Consumer Fraud Act, Iowa Code § 714.16, and is subject to all penalties provided therein.
12. Under the Iowa rule, an “excessive price” is a price not justified by the seller’s actual costs of acquiring, producing, selling, transporting, and delivering the actual product sold, plus a reasonable profit. IAC 61-31.1(714). An excessive price is to be presumed from a substantial increase in the price of any merchandise over the price at which the merchandise was sold or offered for sale in the usual course of business immediately prior to the onset of the emergency, or from a substantial increase in the markup from cost if wholesale prices or costs have increased. IAC 61-31.1(714).
13. A *per se* violation of the Iowa Consumer Fraud Act exists when it is shown that a person has charged an excessive price for merchandise to be provided to persons within an area declared to be a disaster area during the period of any declaration of emergency and for the subsequent recovery period. IAC 61-31.1(714).

14. Defendant, on information and belief, used one or more accounts or seller identifications, including but not limited to “mn65,” on the eBay platform, to engage in price gouging of merchandise needed by victims of disasters, and thereby engaged in unfair practices under the Iowa Consumer Fraud Act.
15. On March 24, 2020 Plaintiff first became aware of Defendant listing some items of merchandise needed by victims of disaster on eBay account mn65. On that date, the Iowa Attorney General’s office sent mn65 a written warning about price gouging.
16. On further investigation, the Attorney General’s office came to believe that “mn65” is Michael Evan Noteboom from Orange City, Iowa. Further, the Attorney General determined that from March 2 to March 27, 2020, Defendant Noteboom listed 272 items for sale on eBay by seller ID mn65. Of the 272 items of merchandise listed by mn65 during that period, 253 of the items appear to be merchandise needed by victims of disasters, such as toilet paper, paper towels, and disinfecting or sanitizing products.
17. As of on or about March 27, 2020, the Attorney General’s office was able to identify a list of Defendant’s mn65 eBay sales of merchandise needed by victims of disasters which he sold for excessive prices from March 2-27, 2020, and that list is attached hereto as **Exhibit A**. By way of example, Defendant sold Bounty paper towels-12 pack for \$119.99; Angel Soft toilet paper-12 pack for \$86.00; a 12 ounce can of Lysol disinfectant spray for \$43.00; and Equate flushable wipes, 192 count, for \$35.00
18. On or about April 2, 2020 the Attorney General’s office sent Defendant a letter directing him to CEASE and DESIST from violating the Price-Gouging Rule (See attached **Exhibit B**). The State also directed Defendant to provide certain documentation to the State regarding the dates and prices at which he acquired all of the items he sold, and the costs

he incurred in selling, transporting, and/or delivering the items to the purchasers who bought them. Defendant has refused or otherwise failed to respond to the Attorney General's office.

COUNT I
CONSUMER FRAUD ACT: PRICE-GOUGING AND
UNFAIR ACTS AND PRACTICES

19. The State re-alleges and incorporates Paragraphs 1 through 18 as if fully set forth herein.
20. Defendant's acts and practices, as set forth herein, constitute violations of the Iowa Price-Gouging Rule and the Iowa Consumer Fraud Act which prohibit, inter alia, selling necessary merchandise at excessive prices during a disaster and unfair acts and practices, giving rise to the full complement of remedies available in that statute.

REQUEST FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

21. This Petition For Temporary Injunction is filed pursuant to Iowa Code § 714.16(7), which specifically authorizes injunctive relief “[i]f it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful” by the Act. Pursuant to that section, the Attorney General may seek and obtain in an action in the district court a temporary restraining order, preliminary injunction or a permanent injunction prohibiting any person from continuing or engaging in the unlawful practice or doing an act in furtherance of the practice. The Court may also make such orders or judgments as necessary to prevent the use or employment by a person of any prohibited practice. Iowa Code § 714.16(7).
22. Pursuant to Rule 1.1502(1) of the Iowa Rules of Civil Procedure, a temporary injunction may be entered in any case specially authorized by statute and may be supported by

affidavit. When, as here, an injunction is specially authorized by statute, the usual requirements for injunctive relief do not apply, and it is sufficient to meet the statutory conditions. *See* I.R.Civ.P. 1.1502(3); *See also State ex rel. Turner v. Limbrecht*, 246 N.W.2d 330, 334 (Iowa 1976) (overruled on other grounds by *State ex rel. Miller v. Hydro Mag, Ltd.*, 436 N.W.2d 616, 622 (Iowa 1989)).

23. Pursuant to Iowa Rule of Civil Procedure 1.1502(1), filed contemporaneously with this Petition and Application is the Affidavit of Susan M. Kerr, an investigator with the Iowa Attorney General's office, Consumer Protection Division, who investigated this matter.
24. It is the State's contention that this Petition, Application and Affidavit establish that Defendant is using unlawful practices, including but not limited to unfair practices, in violation of Iowa Code § 714.16, and that injunctive relief is necessary to stop these unlawful practices.
25. No bond is required, as Iowa Rule of Civil Procedure 1.207 provides that in an action by the state, no security shall be required of the state.
26. The State certifies, pursuant to Iowa Rule of Civil Procedure 1.1504, that no prior petition seeking a temporary injunction or injunctive relief against these parties has been previously presented to this or any Court.
27. The Plaintiff, State of Iowa, requests pursuant to Iowa Rule of Civil Procedure 1.1507 that the Court set this Petition for Preliminary Injunction for an immediate evidentiary hearing and send notice to the Defendant of the time and place of hearing.

PRAYER FOR RELIEF

28. The Attorney General respectfully request the Court grant the following relief:
 - A. Pursuant to Iowa Code § 714.16(7) enter a TEMPORARY INJUNCTION and

PERMANENT INJUNCTION restraining Defendant (and Defendant's agents, employees, independent contractors, salespersons, servants, representatives, officers and directors, principals, partners, members, affiliates, predecessors, successors, assigns, merged or acquired predecessors, parent or controlling entities and all other persons, corporation, and business entities acting in concert or participating with Defendant who has actual or constructive notice of the Court's injunction), individually, in conjunction with others, or directing others to do on their behalf, from creating and/or using any seller ID, seller account, user ID, pseudonym, account or any other mechanism for the purpose of selling household merchandise on any platform, website, medium, circular, newspaper, or any other internet-based or paper-based site or medium;

- B. Pursuant to Iowa Code § 714.16(7) and upon further request by the State addressed to the Court, enter a TEMPORARY INJUNCTION and PERMANENT INJUNCTION restraining Defendant, and Defendant's agents, employees, independent contractors, salespersons, servants, representatives, officers and directors, principals, partners, members, affiliates, predecessors, successors, assigns, merged or acquired predecessors, parent or controlling entities and all other persons, corporation, and business entities acting in concert or participating with Defendant who has actual or constructive notice of the Court's injunction, from engaging in the unfair and unlawful acts and practices, including but not limited to as alleged in this Petition or any amendment thereto, or otherwise in violation of the Iowa Consumer Fraud Act;
- C. Pursuant to Iowa Code § 714.16(7) after trial on the merits, default by Defendant or summary judgment, make permanent the above-described injunctions, expanding their

provisions as necessary by including, inter alia, such “fencing in” provisions as are reasonably necessary to ensure that Defendants and other enjoined persons and entities do not return to the unlawful practices alleged herein, or commit comparable violations of law;

- D. Grant such additional relief as the Court deems just and equitable, including but not limited to Consumer restitution where practicable, disgorgement, and civil penalties under the Iowa Consumer Fraud Act;
- E. Pursuant to Iowa Code § 714.16(11), enter judgment against Defendant, and include in said judgment an award for attorney fees, the State’s costs and court costs.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

By: /s/ Mariclare Thinnis Culver _____
MARICLARE THINNES CULVER
WILLIAM R. PEARSON
Assistant Attorneys General
1305 East Walnut, 2nd Floor
Des Moines, IA 50319
Telephone: (515) 281-5926
Facsimile: (515) 281-6771
Mari.ThinnisCulver@ag.iowa.gov
William.Pearson@ag.iowa.gov

ATTORNEYS FOR THE STATE

Original filed.