

STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF INGHAM

DANA NESSEL, ATTORNEY GENERAL
OF THE STATE OF MICHIGAN, *ex rel*
The people of the State of Michigan,

No. 21-226-CP

Petitioner,

HON. CLINTON CANADY

v

PGH ASSOCIATES, LLC,

Respondent.

**NOTICE OF FILING OF ASSURANCE OF VOLUNTARY COMPLIANCE
AND DISCONTINUANCE – MCL 445.906**

Attached is an Assurance of Voluntary Compliance and Discontinuance.

Respectfully submitted,

DANA NESSEL
Attorney General



Darrin F. Fowler (P53464)
Assistant Attorney General
Michigan Dep't of Attorney General
Corporate Oversight Division
P.O. Box 30736
Lansing, MI 48909
(517) 335-7632
FowlerD1@michigan.gov

Dated: June 23, 2021

ASSURANCE OF VOLUNTARY COMPLIANCE AND DISCONTINUANCE

Dana Nessel, Attorney General of the State of Michigan, on behalf of the State of Michigan (“Petitioner”) and PGH Associates, LLC (“Respondent”), hereby execute and agree to be bound by this Assurance of Voluntary Compliance and Discontinuance. This Assurance concerns the resolution of alleged violations of the Michigan Consumer Protection Act, 1976 PA 331, as amended, MCL 445.901 *et seq.* (“MCPA”).

Based on the foregoing, the Parties agree as follows:

I. Definitions

1.1 “Assurance” means this Assurance of Voluntary Compliance and Discontinuance.

1.2 “COD” means the Michigan Department of Attorney General, Corporate Oversight Division.

1.3 “Respondent” refers to PGH Associates, LLC, whether doing business under any other assumed name or acting through its principals, employees, contractors, or any other business entity.

1.4 “Parties” means COD and Respondent, collectively.

1.5 All other terms shall have the meaning specifically defined in the MCPA.

II. COD investigation of Respondent

2.1 Respondent owns and operates a BP gas station at: 39600 Ann Arbor Rd. in Plymouth Township. The prices at Respondent’s gas station were featured in

a WXYZ-TV Detroit story on the evening of May 18—that story is available at: <https://www.wxyz.com/news/regular-unleaded-priced-at-3-89-gal-at-bp-in-plymouth-premium-listed-for-4-89>. COD was alerted to the pricing by the media outlet, and an investigator visited Respondent’s community the next day to survey local gas prices and interview Respondent’s management.

2.2 COD determined there was probable cause to believe Respondent was engaging in an unfair trade practice made unlawful by the MCPA. As a result, on May 26, 2021, COD issued a Notice of Intended Action (“NIA”) to Respondent, which detailed COD’s concerns regarding Respondent’s business practice.

2.3 Respondent is offering this Assurance to avoid the time and expense of litigating COD’s concerns. This Assurance, and COD’s acceptance of it, does not constitute an admission of any wrongdoing by Respondent.

2.4 In entering into the Assurance, the mutual objective of the Parties is to resolve, without litigation, COD’s potential claims under the MCPA for preliminary and permanent injunctive relief, as well as the potential claims for payment of damages and reimbursement of COD’s costs and expenses related to COD’s enforcement action. The entry into this Agreement by Respondent is not an admission of liability with respect to any issue addressed in this Agreement, nor is it an admission of any factual allegations or legal conclusions stated or implied herein or in COD’s May 26, 2021 NIA.

III. Jurisdiction

3.1 The Department of Attorney General (“the Department”) has jurisdiction over the subject matter of this Assurance pursuant to MCL 445.905 and 445.910. Respondent waives all objections and defenses that it may have as to the jurisdiction of the Department over the matters covered by this Assurance.

IV. Parties Bound

4.1 This Assurance binds Respondent, whether acting through associates, principals, officers, directors, employees, representatives, successors or assigns, or through any other subsidiary, corporation, assumed name or business entity. Respondent is responsible for compliance with the terms of this Assurance, and must ensure that all of Respondent’s employees, agents and representatives comply with the terms of this Assurance.

V. Implementation of Compliance Measures

5.1 To the extent that Respondent may have engaged in any unfair or deceptive business practices in the State of Michigan, Respondent shall immediately cease and desist such practices and will comply with the MCPA going forward.

VI. Financial obligations

6.1 Respondent will pay a civil penalty of \$2,000 to the State of Michigan to resolve the dispute between the Parties. This amount shall be paid to COD no later than July 1, 2021.

6.2 It is understood that the Attorney General shall retain at least \$300 of the civil penalty as compensation for the time and expense associated with its investigation in this matter and will make \$1,700 from this civil penalty available to consumers through distribution in a claims process. To be eligible for a distribution under this subsection, a consumer must substantiate that he or she purchased gasoline from the BP gas station identified in Section 2.1 on May 18, 2021. Respondent will cooperate with COD in verifying any such claims. The amounts of any distributions will be at COD's discretion, and Respondent waives any right to challenge such amounts. COD reserves the right to adjust the amounts of any distributions based on the size and number of claims received. All funds that remain undistributed to consumers by COD on September 15, 2021 will be retained by the Attorney General as further compensation for the time and expense associated with the investigation and claims process.

6.3 If Respondent is late in making the above payment, it agrees to pay \$10.00 per day for each calendar day after the due date. Such late fees shall be paid to COD. If the payment is more than thirty calendar days late, Respondent agrees to compensate the Attorney General for any litigation costs and attorney fees associated with any action brought to enforce the terms of this Assurance.

6.4 All payments to the State of Michigan/COD required by this Section shall be made by check payable to the "State of Michigan." The payments and any other information shall be sent to Darrin F. Fowler, Assistant Attorney General, Corporate Oversight Division, P.O. Box 30736, Lansing, MI 48909.

VII. Release

7.1 Upon the Effective Date, COD hereby releases and discharges Respondent and any of its parent entities, affiliates, subsidiaries, predecessors, successors or assigns, and each and all of its past or present officers, directors, associates, shareholders, controlling persons, representatives, employees, attorneys, counselors, advisors, or agents, from any and all civil or administrative claims, demands, rights, actions, causes of action, and liabilities, of any kind or nature whatsoever, that are based directly or indirectly on the Attorney General's consumer protection investigation as identified in the aforementioned NIA, including the alleged acts, failures to act, omissions, misrepresentations, facts, events, transactions, statement, occurrences or other subject matter which were or could have been set forth, alleged, complained of or otherwise referred to in the NIA. Nothing herein shall be construed as a waiver or release of claims asserted or that may be asserted by individual consumers, other divisions of the Attorney General's office, or other state or federal agencies.

VIII. General Provisions

8.1 This Assurance is binding upon, inures to the benefit of, and applies to the Parties and their successors-in-interest. This Assurance does not bind any Division of the Michigan Department of the Attorney General other than COD, or other agencies, boards, commissions or offices of the State of Michigan.

8.2 This Assurance does not create any private right or cause of action to any third party.

8.3 This Assurance does not constitute an approval by the Attorney General of any of Respondent's business practices and Respondent must not make any representation to the contrary.

8.4 No modification of this Assurance is valid unless in writing and signed by all Parties.

8.5 Within seven business days of the Effective Date of this Assurance, COD will file a copy of this Assurance with the Ingham County Circuit Court, as described in MCL 445.906(2).

8.6 Unless a temporary restraining order is sought, COD will make reasonable efforts to provide written notice in the event that COD believes Respondent to be in noncompliance with any provision of this Assurance, setting forth the basis for such belief.

IX. Signatories, Execution in Counterparts, and Electronic Signatures

9.1 Each undersigned individual represents and warrants that he or she is fully authorized by the Party he or she represents to enter into this Assurance and to legally bind such Party to the terms and conditions of this Assurance.

9.2 This Assurance may be executed in counterparts, each of which is deemed an original hereof, but which together constitute one and the same instrument and agreement, and that facsimile or electronically-transmitted

signatures may be submitted in connection with this Assurance and are binding on that Party to the same extent as an original signature.

X. Effective Date

10.1 The effective date of this Assurance is the date upon which the COD representative signs this Assurance.

**Dana Nessel, Attorney General,
on behalf of the People of the
State of Michigan**

Dated: June 23, 2021

By:



Darrin F. Fowler (P53464)
Assistant Attorney General
Corporate Oversight Division
P.O. Box 30736
Lansing, MI 48909

PGH Associates, LLC

Dated: June 23, 2021

By:



Ernest J. Essad (P32572)
Williams, Williams, Rattner, & Plunkett, PC
380 N. Old Woodward Ave., Ste. 300
Birmingham, MI 48009-5322