

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

In the Investigation of:

AG Case Number: L17-3-1144

A & L United Investment Group, LLC d/b/a
Marathon Gas Station and
Lissette Sanchez Nunez, an individual,

Respondents.

ASSURANCE OF VOLUNTARY COMPLIANCE

Pursuant to the provisions of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Chapter 501, Part II, Florida Statutes, and Section 501.160, Florida Statutes (2016), the Office of the Attorney General, State of Florida, Department of Legal Affairs ("Attorney General") has investigated certain acts and practices of A & L United Investment Group, LLC d/b/a Marathon Gas Station and Lissette Sanchez Nunez (collectively "Respondents"), related to the sale and offer for sale of petroleum products and pricing during a declared state of emergency.

Respondents enter into this Assurance of Voluntary Compliance ("AVC") with the Attorney General without admission of wrongdoing and for the purpose of resolving this matter only. Pursuant to Section 501.207(6), Florida Statutes, the Attorney General accepts this AVC in termination of its investigation.

1. FACTUAL BACKGROUND

1.1 A & L United Investment Group, LLC d/b/a Marathon Gas Station ("Marathon") is a Florida Limited Liability Company with its principal place of business located at 5 N.W. 167th Street, North Miami Beach, FL 33169-6017. Marathon is engaged in the sale and offering for sale of goods, including, but not limited to, petroleum products.


Initials

1.2 Lissette Sanchez Nunez (“Nunez”) is an individual residing in Miami-Dade County, Florida. Nunez is, and has been at all times material hereto, a manager and owner of Marathon. Nunez directly participates in, manages, operates, and controls the operations of Marathon including, but not limited to, making all operational and financial decisions for Marathon.

1.3 On October 3, 2016, Governor Rick Scott, following the forecast from the National Hurricane Center suggesting large portions of the East Coast of Florida may face significant impact from Hurricane Matthew, issued Executive Order Number 16-230 declaring a state of emergency in every county in the State of Florida (“State of Emergency”). Section 9 of Executive Order Number 16-230 provides as follows:

Pursuant to Section 501.160, Florida Statutes, it is unlawful and a violation of Section 501.204 for a person 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.

1.4 Upon declaration of the State of Emergency relating to Hurricane Matthew, Attorney General Pamela Jo Bondi activated a price gouging hotline to enable consumers to contact the Attorney General and report excessive increases in the price of essential items such as food, ice, gas, lodging, lumber, and water during the State of Emergency.

1.5 On October 6, 2016, Hurricane Matthew strengthened into a dangerous Category 4 hurricane, with sustained winds ranging from 130 mph to 156 mph, and was expected to impact a 500-mile span of the East Coast from West Palm Beach, Florida to South Carolina. More than 1.5 million Floridians were under mandatory or voluntary evacuation orders, and Governor Scott urged all Floridians in the threatened areas to leave their homes and seek shelter from the potentially life-threatening winds and storm surge.

1.6 On October 7, 2016, Hurricane Matthew moved very close along the East Coast of Florida, with wind gusts reported over 100 mph, causing major wind and flood damage to homes and businesses.

1.7 During a state of emergency, a price for the sale or offer for sale of any essential commodity as defined by Section 501.160(1)(a), Florida Statutes, is considered “unconscionable” under Section 501.160(1)(b)(2), Florida Statutes, if “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 state of emergency, unless the increase in the amount charged is attributable to additional costs incurred in connection with...the sale of the commodity..., or regional, national, or international market trends.” Section 501.160(1)(b)(2), Florida Statutes (2016).

1.8 Based upon complaints from consumers alleging that Marathon engaged in unconscionable pricing relating to the sale or offering for sale of petroleum products during the State of Emergency, the Attorney General initiated an investigation into Respondents’ business acts and practices.

1.9 During the 30 days immediately prior to October 3, 2016, when no state of emergency was in effect, the average price for regular unleaded gasoline in the Respondents’ area was \$2.267 per gallon. However, during the State of Emergency, Respondents raised fuel charges for the same commodity from \$2.399 per gallon to \$2.679 per gallon. Respondents additionally increased mid-grade fuel from \$2.979 per gallon to \$3.339 per gallon, and premium grade fuel from \$3.157 per gallon to \$3.368 per gallon. The increases in the prices charged by Respondents were the result of Respondents’ deliberate actions and not related to an increase in the costs

incurred in the sale of the commodity or to any relevant market trend that would impact the cost of the commodity during the State of Emergency.

1.10 This AVC is based upon the Factual Background detailed herein. The Attorney General shall not be estopped from taking further action in this matter should the facts described herein be shown to be incorrect in any material way, or this AVC not be complied with in full.

2. JURISDICTION AND VENUE

2.1 The parties agree that the State of Florida has jurisdiction over Respondents for the purposes of entering into this AVC and any enforcement actions arising out of this AVC.

2.2 It is further agreed by the parties that venue for any matters relating to or arising out of this AVC shall lie solely in Miami-Dade County, Florida.

3. COMPLIANCE TERMS

3.1 Respondents, including Marathon' agents and employees, agree to be permanently enjoined from selling, or offering to sell, petroleum or any other essential commodities at an unconscionable price within any area for which a state of emergency is declared in violation of the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes, and Section 501.160, Florida Statutes.

3.2 Respondents agree to designate a contact person within Marathon to receive, review, and respond to consumer complaints related to Hurricane Matthew price gouging allegations and inquiries escalated to Marathon by the Attorney General.

4. MONETARY TERMS

Consumer Restitution

4.1. Respondents shall provide refund checks in the amount of **Twenty-Five Dollars and Zero Cents (\$25.00)** per consumer to the two (2) consumers who reported to the Office of the Attorney General that they paid increased fuel charges during the pertinent period herein at the time that Respondents sign and return the partially executed copy of the AVC and other required payment detailed below in paragraph 4.2. The Office of the Attorney General shall timely provide the names of the consumers to whom Respondents should make the consumer restitution checks payable.

Attorney's Fees and Costs

4.2 Respondents shall pay to the Attorney General the sum of **One Thousand Dollars and Zero Cents (\$1,000.00)** for attorney's fees and costs. Payment shall be made by wire transfer, cashier's check, or other certified funds payable to the **Department of Legal Affairs Revolving Trust Fund** and shall likewise be sent to Assistant Attorney General Carol E. A. DeGraffenreidt, Office of the Attorney General, Consumer Protection Division, The Waterview Building, 1515 North Flagler Drive, Suite 900, West Palm Beach, FL 33401, simultaneously with the submission of Respondents' partially executed copy of this AVC.

Civil Penalties

4.3 Subject to Respondents' full, complete, and timely compliance with the terms and conditions of this AVC and in consideration of the parties' entry into this AVC, the Attorney General hereby suspends the civil penalties that could otherwise be due for the acts and practices at issue under Sections 501.164, 501.2075, and/or Section 501.2077, Florida Statutes (2016), of up to \$15,000.00 per violation.

5. FAILURE TO COMPLY WITH TERMS AND CONDITIONS OF AVC

5.1 In the event Respondents fail to comply with the Monetary Terms pursuant to Section “4. MONETARY TERMS” of this AVC, Respondents shall be in default of this AVC and hereby stipulate to entry of a final judgment against them, jointly and severally, in favor of the Attorney General for the outstanding monies due. Evidence of the failure to pay in accordance with the terms and conditions of this AVC may be in the form of an affidavit from the Attorney General.

5.2 Respondents acknowledge and agree that any failure to comply with the terms and conditions of this AVC is, by statute, *prima facie* evidence of a violation of FDUTPA, and will subject Respondents to any and all civil penalties and sanctions provided by law, including the award of attorney’s fees and costs.

6. ACCEPTANCE OF THE AVC

6.1 The Attorney General’s South Florida Bureau Chief of the Consumer Protection Division may refuse to accept this AVC at her discretion, and the AVC shall only become effective upon the Bureau Chief’s execution of this AVC.

6.2 This AVC may be signed in multiple counterparts, each of which shall be considered an original, and all of which together will constitute one and the same agreement.

6.3 The effective date (“Effective Date”) of this AVC is the date on which the AVC is fully executed by the parties.

7. BUSINESS RECORDS

7.1 In connection with the Attorney General’s future monitoring of Respondents, Respondents agree to retain documents and information reasonably sufficient to establish their compliance with the provisions of this AVC for two (2) years from the Effective Date of this AVC.

Respondents shall provide the Attorney General reasonable access to such documents and information upon written request from the Attorney General, and Respondents shall produce documents and information requested by the Attorney General within fifteen (15) calendar days of the written request.

8. CONSTRUCTION OF AVC

8.1 This AVC is the result of joint negotiations between the parties and shall be deemed to have been drafted by both the Attorney General and Respondents. In the event of a dispute, this AVC shall not be construed against either party. Nothing herein shall be construed to limit or bar any other governmental entity from pursuing other available remedies against the Respondents for acts and practices addressed by this AVC.

8.2 The Attorney General has not approved any of the Respondents' business practices, and Respondents shall not use the existence of this AVC to in any way imply such approval.

8.3 If any clause, provision, or section of the AVC shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this AVC, and this AVC shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

8.4 Nothing in this AVC is to be construed as a waiver of any private rights of any person or release of any private rights, causes of action, or remedies of any person against Respondents or any other person or entity.

8.5 This AVC is the final, complete, and exclusive statement of the parties' agreement on the matters contained in this AVC, and it supersedes all previous negotiations and agreements. Other than any representation expressly stated in this AVC, the parties have not made any representations or warranties to each other, and neither party's decision to enter into this AVC is

based upon any statements by the other party outside of those in this AVC.

9. APPLICABILITY

9.1 Within thirty (30) calendar days of the Effective Date, Respondents shall make the terms and conditions of this AVC known to any managers, members, officers, directors, employees, agents, independent contractors, or other persons who are substantially affected by this AVC and are involved in the businesses, projects, and/or activities of Respondents, or anyone else acting for or on behalf of Respondents. Within thirty (30) calendar days of the Effective Date, Respondents shall provide a copy of the price gouging statute, Section 501.160, Florida Statutes, to any managers, members, officers, directors, employees, agents, independent contractors, or anyone else acting for or on behalf of Respondents.

9.2 The obligations imposed by this AVC are continuing in nature and shall apply to Respondents' successors and assigns as well as any and all current or new officers, employees, agents, representatives or any other persons who become engaged in the business or activities of Respondents.

10. CHANGES IN LAW OR BUSINESS PRACTICES

10.1 Respondents shall not affect any change in the form of doing business or the organizational identity of any of the existing business entities or create any new business entities as a method of avoiding the obligations and terms and conditions set forth in this AVC.

11. MISCELLANEOUS

11.1 Notice to any of the parties to this AVC as may be required shall be made by certified mail at the addresses set forth below unless any party notifies the other parties in writing of another address to which notices should be provided.

To Respondents:

A & L United Investment Group, LLC d/b/a
Marathon Gas Station and/or Lissette Sanchez Nunez
17971 Biscayne Blvd., #210
Aventura, Florida 33160

To the Attorney General:

Carol E. A. DeGraffenreidt, Assistant Attorney General
Office of the Attorney General
Consumer Protection Division
Waterview Building
1515 North Flagler Drive. Suite 900
West Palm Beach, FL 33401

IN WITNESS WHEREOF, Respondents have caused this AVC to be executed by an authorized representative in the County and State listed below, as of the date affixed thereon.

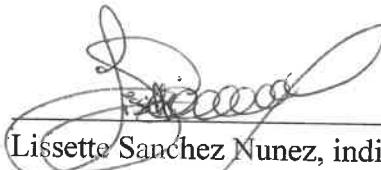
SIGNATURES ON SEPARATE PAGE(S)

BY MY SIGNATURE, I, Lissette Sanchez Nunez, hereby affirm that I am acting in my capacity and within my authority as the co-owner and manager of A & L United Investment Group, LLC d/b/a Marathon Gas Station, and that I am binding A & L United Investment Group, LLC d/b/a Marathon Gas Station to the terms and conditions of this AVC.

A & L UNITED INVESTMENT GROUP, LLC
d/b/a MARATHON GAS STATION



By: Lissette Sanchez Nunez
Title: Co-Owner and Manager
Date: October 11, 2017

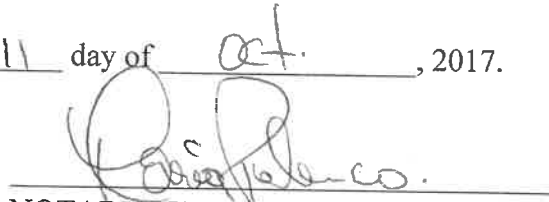
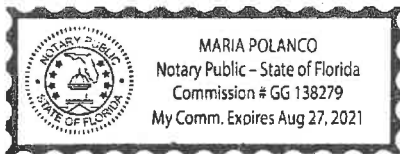


Lissette Sanchez Nunez, individually
and as authorized Officer for
A & L UNITED INVESTMENT GROUP, LLC
d/b/a MARATHON GAS STATION
Date: October 11, 2017

STATE OF FLORIDA
COUNTY OF DADE

BEFORE ME, an officer duly authorized to take acknowledgments in the State of Florida, personally appeared Lissette Sanchez Nunez, as an authorized officer of A&L United Investment Group d/b/a Marathon Gas Station, Days, who acknowledged before me that he executed the foregoing instrument for the purposes therein stated, on this 11 day of Oct., 2017.


Sworn to and subscribed before me this 11 day of Oct., 2017.



NOTARY PUBLIC
(print, type or stamp commissioned name of Notary Public)

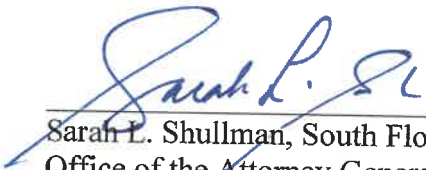
Personally known _____ or Produced identification (check one) Type of Identification
Produced: FD Lic 5522 520 89 6220 Exp. 04/2/19

OFFICE OF THE ATTORNEY GENERAL

By: 
Carol E. A. DeGraffenreidt, Assistant Attorney General
Office of the Attorney General
Department of Legal Affairs
1515 North Flagler Drive, Suite 900
West Palm Beach, Florida, 33401
Telephone No.: (561) 837-5007
Facsimile No.: (561) 837-5109
Electronic mail: Carol.DeGraffenreidt@myfloridalegal.com

Dated: October 24, 2017

Accepted this 24th day of Oct., 2017


Sarah L. Shullman, South Florida Bureau Chief
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Dated: Oct. 24, 2017