

STATE OF TEXAS,  
Plaintiff,

v.

PETROLEUM WHOLESALE, L.P.  
D/B/A SUNMART and PWI GP L.L.C.,  
Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

234 JUDICIAL DISTRICT

FILED  
THERESA CHANG  
DISTRICT CLERK  
HARRIS COUNTY, TEXAS  
2008 JUN 19 AM 10:33  
BY DEPUTY

**PLAINTIFF'S ORIGINAL PETITION  
AND APPLICATION FOR INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the STATE OF TEXAS, Plaintiff, acting by and through Attorney General of Texas GREG ABBOTT (hereinafter "Attorney General"), complaining of PETROLEUM WHOLESALE, L.P., doing business as SUNMART, and PWI GP L.L.C. (hereinafter "Defendants") and would respectfully show the court as follows:

**I. DISCOVERY CONTROL PLAN**

1. Discovery shall be conducted under a LEVEL 2 discovery control plan pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

**II. JURISDICTION**

2. 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 and Public Health Division against Defendants for violations of Tex. Bus. & Com. Code Ann. § 35.48 (hereinafter "Section 35.48") and

the Identity Theft Enforcement and Protection Act, Chapter 48<sup>1</sup> of the Tex. Bus. & Com. Code Ann § 48.001, *et seq*, (hereinafter "Chapter 48"). Section 35.48 grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions.

### **III. DEFENDANT**

3. Defendant, PETROLEUM WHOLESALE, L.P., doing business as SUNMART, is a Texas limited partnership which is presently headquartered at 2189 Lake Woodlands Drive, The Woodlands, Montgomery County, Texas 77380. Until approximately August 1, 2007, Defendant's headquarters were located at 3648 FM 1960 Road W., Houston, Harris County, Texas. Defendant may be served with process by serving its registered agent for service of process, Stuart W. Lapp, at 2204 Timberloch Place, Suite 270, The Woodlands, Texas 77380.

3.1 Defendant, PWI GP L.L.C., is a Texas limited liability company with its principal office located at 2189 Lake Woodlands Drive, The Woodlands, Texas 77380, Montgomery County, Texas. Defendant may be served with process by serving its registered agent for service of process, Stuart W. Lapp, at 2204 Timberloch Place, Suite 270, The Woodlands, Texas 77380. PWI GP L.L.C. is the General Partner in the limited partnership.

### **IV. VENUE**

4. Venue of this suit lies in Harris County, Texas, for the following reasons:

A. Under Tex. Bus. & Com. Code Ann. § 48.201(c)(1), venue is proper insofar as the violation occurred in Harris County, Texas; and

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<sup>1</sup> In 2005, the Texas Legislature enacted three Chapters 48. The chapter cited above was titled "Identity Theft Enforcement and Protection Act" by Tex. S.B. 122, 79<sup>th</sup> Leg. R.S. (2005).

B. Under Tex. Civ. Prac. & Rem. Code Ann. § 15.002(a)(1), venue is proper insofar as all or a substantial part of the events or omissions giving rise to the claims alleged herein occurred in Harris County, Texas.

### **V. PUBLIC INTEREST**

5. Plaintiff, STATE OF TEXAS, has reason to believe that Defendants are engaging in, have engaged in, or are about to engage in acts or practices, which violate Texas identity theft prevention laws, as set forth below, namely failing to protect and safeguard from unlawful use or disclosure sensitive personal information collected or maintained by Defendants in the regular course of business. Because these unlawful acts or practices expose Defendants' customers to the risk of identity theft, the Consumer Protection and Public Health 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.

5.1 The Texas Legislature in 2005 amended Section 35.48 and enacted the Identity Theft Enforcement and Protection Act to protect this public interest, noting that identity theft is one of the fastest growing crimes in the country, and Texas has one of the highest rates of identity theft in the United States.<sup>2</sup> Moreover, victims of identity theft spend an average of 600 hours over a two to four year period, as well as \$1,400 or more, trying to clear their names.<sup>3</sup> Identity theft also imposes a substantial cost on businesses - in 2002 the total cost to businesses in the United States was

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<sup>2</sup> See Tex. C.S.H.B. 698, 79th Leg. R.S. (2005) (Committee Report Substituted), and Tex. S.B. 122, 79th Leg. R.S. (2005) (Committee Report Unamended).

<sup>3</sup> *Id.*

estimated at almost \$50 billion.<sup>4</sup> The Legislature specifically recognized “dumpster diving” for discarded business records as a significant means through which identity theft is committed.<sup>5</sup>

## **VI. ACTS OF AGENTS**

6. Whenever in this petition it is alleged that Defendants did any act it is meant that:
- A. Defendants performed or participated in the act, or
  - B. Defendants’ officers, agents, trustees, employees, representatives, or successors performed or participated in the act on behalf of and under the authority of the Defendants.

## **VII. NATURE OF DEFENDANTS’ OPERATION AND FACTUAL ALLEGATIONS**

7. Defendant PETROLEUM WHOLESALE, L.P., doing business as SUNMART, is a large “full service petroleum company offering retail convenience store products, branded and wholesale gasoline, on and off-road diesel, lubricants and common carrier transportation services.”<sup>6</sup> Petroleum Wholesale services more than 350 retail locations throughout ten states, including Texas.<sup>7</sup> SUNMART Travel Centers & Convenience Stores sell typical retail convenience store products, among other items.<sup>8</sup> SUNMART locations exist throughout Texas, Oklahoma, Kansas, Colorado, Utah and Arizona.<sup>9</sup> Defendant PWI GP L.L.C. is the General Partner in the limited partnership.

7.1 In the regular course of its business operations, Defendants collect a large amount of

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<sup>4</sup> *Id.*

<sup>5</sup> See Tex. C.S.H.B. 698, 79th Leg. R.S. (2005) (Committee Report Substituted).

<sup>6</sup> Petroleum Wholesale, About Us, <http://www.petroleumwholesale.com/sunmart.web/about.html>.

<sup>7</sup> *Id.*

<sup>8</sup> Petroleum Wholesale, Sunmart, Convenience Stores, <http://www.petroleumwholesale.com/sunmart.web/store.html>.

<sup>9</sup> *Id.*

personally identifiable information from its customers. In operating retail convenience stores, Defendants accept credit/debit cards and checks for payment. Defendants maintain copies of sales receipts that include credit/debit card numbers. In addition, Defendants also maintain records of canceled or returned checks.

7.2 On August 1, 2007, the Attorney General's office received a report from the local media, KPRC-TV Local 2 Houston, that some of Defendants' records had been discarded in a publicly accessible trash dumpster located in the parking lot of an office building at 3648 FM 1960 Road W., Houston, Harris County, Texas. Until recently, this had been Defendants' headquarters.

7.3 On the evening of August 1, 2007, an investigator employed with the Attorney General's office retrieved hundreds of documents from said dumpster. The documents collected all bore the name of and/or are related to PETROLEUM WHOLESALE/SUNMART.

7.4 The dumped records include documents that contain the personal information of PETROLEUM WHOLESALE/SUNMART customers.

7.5 More specifically, the dumped records include hundreds of receipts displaying sensitive personal information such as customers' names, full credit or debit card numbers, and expiration dates. In addition, the records contain returned checks and information forms which list the customers' names, banking routing numbers, driver's license numbers, social security numbers, and/or dates of birth.

7.6 Also, among the dumped records, were employee records, tax exemption certificates, invoice records, employee performance reviews, employee shift records, employee disciplinary records, store evaluations, Subway inventories, internal emails, and PETROLEUM WHOLESALE'S accounting

information.

7.7 Although the dumped records bore sensitive personal information that could be used to steal the identities of its customers, Defendants failed to shred, erase, or otherwise make the sensitive personal information unreadable or undecipherable. Instead, these records were placed in a trash dumpster that was readily accessible to the public.

### **VIII. IDENTITY THEFT PREVENTION VIOLATIONS**

8. Defendants, as alleged above, failed to safeguard the personal identifying information of its customers by shredding, erasing, or by other means, to make it unreadable or undecipherable before disposing of its business records, in violation of Tex. Bus. & Com. Code Ann. § 35.48(d).

8.1 Defendants, as alleged above, failed to implement and maintain reasonable procedures to protect and safeguard from unlawful use or disclosure any sensitive personal information that it collected or maintained in the regular course of business, in violation of Tex. Bus. & Com. Code Ann § 48.102(a).

8.2 Defendants, as alleged above, failed to destroy or arrange for the destruction of its customer records containing sensitive personal information within its control that were not retained by it, in violation of Tex. Bus. & Com. Code Ann § 48.102(b).

### **IX. REQUEST FOR TRIAL BY JURY**

9. Plaintiff, STATE OF TEXAS, requests a jury trial of this matter and tenders the jury fee to the Harris County District Clerk's office pursuant to Tex. R. Civ. P. 216 and Tex. Gov't Code Ann. § 51.604.

## X. PRAYER

10. WHEREFORE, Plaintiff, STATE OF TEXAS, prays that Defendants be cited according to law to appear and answer herein, and upon trial of this cause, a PERMANENT INJUNCTION be issued restraining and enjoining Defendants, their successors, assigns, officers, agents, servants, employees, and attorneys, and any other person in active concert or participation with Defendants from engaging in the following acts or practices:

- A. Disposing of business records containing personal identifying information or sensitive personal information without first shredding, erasing, or by other means making this information unreadable or undecipherable;
- B. Violating Defendants' duty to protect and safeguard sensitive personal identifying information of their customers from unlawful use or disclosure by exposing such information to the risk of identity theft, including but not limited to: disposing of unshredded records in any kind of waste receptacle that is accessible to the public.

10.1 As an alternative to the relief requested in Provision A. of Paragraph 10, Plaintiff prays that Defendants be ordered to dispose of business records containing personal identifying information or sensitive personal information by contracting with a business that is engaged in the disposal of confidential business records.

10.2 Plaintiff further prays that Defendants be ordered to adopt, implement, and maintain a comprehensive information security program that is fully documented in writing, and which protects and safeguards from unlawful use, disposal, or disclosure, any personal identifying information or sensitive personal information collected, maintained, or accessible by Defendants' employees or agents in the regular course of business.

- 10.3 In addition, Plaintiff respectfully prays that upon final hearing this Court will:
- A. Order Defendants to pay civil penalties in favor of Plaintiff, STATE OF TEXAS, pursuant to Tex. Bus. & Com. Code Ann. § 35.48(f) and/or Tex. Bus. & Com. Code Ann § 48.201(a);
  - B. Order Defendants to pay Plaintiff, STATE OF TEXAS, reasonable attorneys' fees, investigatory costs, and court costs pursuant to Tex. Gov't. Code Ann. § 402.006(c);  
and
  - C. Order Defendants to pay all prejudgment interest on all awards of civil penalties as provided by law.
- 10.4 Further, Plaintiff respectfully prays for all other relief to which it may be justly entitled.

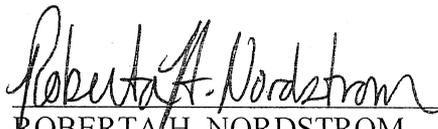
Respectfully submitted,

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