

**IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY
CIVIL TRIAL DIVISION**

**COMMONWEALTH OF PENNSYLVANIA
BY ATTORNEY GENERAL JOSH SHAPIRO**

Petitioner

v.

**JENKINTOWN PHARMACY LLC
d/b/a JENKINTOWN PHARMACY
261 Old York Road, #212, Jenkintown, PA 19146**

Respondent

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: **TERM** _____
: **NO.** _____
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: **CIVIL ACTION- EQUITY**
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ORDER

AND NOW, this _____ day of _____, 2020, Respondent, Jenkintown Pharmacy, LLC d/b/a Jenkintown Pharmacy, is hereby ordered to comply with the subpoena served upon it by the Pennsylvania Office of Attorney General, Bureau of Consumer Protection, which was issued on June 25, 2020. Respondent is hereby ordered to:

1. Produce copies of all records and documents specified in the above mentioned subpoena no later than ten (10) days from the date of this Order;
2. Pay filing fees incurred by the Commonwealth for filing this action in the amount of \$289.50.

BY THE COURT:

J.

**IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY
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**MOTION TO COMPEL COMPLIANCE WITH SUBPOENA
PURSUANT TO PENNSYLVANIA PRICE GOUGING ACT**

The Commonwealth of Pennsylvania, Office of Attorney General, Bureau of Consumer Protection, by Attorney General Josh Shapiro (hereinafter “Commonwealth” or “Petitioner”), respectfully files this *Motion to Compel Compliance with Subpoena Pursuant to Pennsylvania Price Gouging Act* (hereinafter “Motion to Compel”), issued and served by the Commonwealth, under the authority granted to the Attorney General by § 5 of the Act of October 31, 2006, (P.L. 1210), 73 P.S. § 232.5 (hereinafter the “*Price Gouging Act*”). In support thereof, the Commonwealth alleges the following:

1. Petitioner is the Commonwealth of Pennsylvania, Office of Attorney General, Bureau of Consumer Protection, by Attorney General Josh Shapiro, with offices located at 1600 Arch Street, Third Floor, Philadelphia, PA 19103.
2. Respondent Jenkintown Pharmacy, LLC (hereinafter “Respondent”) is a Pennsylvania limited liability company registered with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations: Corporations Section (hereinafter

“Corporations Bureau”), with a registered business address of 261 Old York Road, #212, Jenkintown, PA 19046.

3. Respondent conducts business under the name “Jenkintown Pharmacy” which is registered as a fictitious name with the Corporations Bureau.

4. Respondent has at all times relevant and material hereto, engaged in trade and commerce within the Commonwealth of Pennsylvania by operating a pharmacy and convenience store at the Jenkintown Pharmacy location of 261 Old York Road, Jenkintown, Pennsylvania 19046.

5. The provisions of the *Price Gouging Act* state that “During... a state of disaster emergency...it shall be a violation of this act for any party within the chain of distribution of consumer goods or services or both to sell or offer to sell the goods or services...for an amount which represents an unconscionably excessive price.” 73 P.S. § 232.4(a).

6. The Commonwealth is conducting an investigation into the business practices of Respondent to determine its compliance with *Price Gouging Act*.

7. In the course of its investigation, the Commonwealth issued a subpoena dated March 11, 2020 with which, after lengthy delay, Respondent ultimately complied. The Commonwealth subsequently received additional information regarding possible price gouging by Respondent and sent a second subpoena to Respondent on June 25, 2020 (hereinafter the “Second Subpoena”). The Commonwealth served the Second Subpoena on Respondent via United States Postal Service First Class Mail to Respondent’s address at 261 Old York Road, Jenkintown, PA 19046 and copies were also sent via email to Respondent’s email addresses at dennis.acquah@jenkintownpharmacy.com and info@jenkintownpharmacy.com, respectively.

8. The Second Subpoena was issued pursuant to the authority granted to the Attorney General by Section 232.5(b) of the *Price Gouging Act*. 73 P.S. § 232.5(b).

9. The Second Subpoena directed Respondent to provide specific records and documents relating to its business practices to the Commonwealth by no later than July 2, 2020. A true and correct copy of the Commonwealth's Second Subpoena is attached hereto and incorporated herein as *Exhibit "A"*.

10. On July 2, 2020, Respondent's managing member, Dennis Acquah, communicated via email a request for an extension of time to provide the subpoenaed records and documents.

11. Respondent subsequently failed to provide the requested records and documents.

12. On July 30, 2020, after receiving no records or documents from Respondent, and following several unsuccessful attempts to reach Mr. Acquah by telephone, the Commonwealth attempted to contact Respondent in writing, via email to the aforementioned email addresses, to allow for a final opportunity to comply with the Second Subpoena and to caution that failure to comply may lead to the Commonwealth filing an enforcement action. A true and correct copy of the Commonwealth's email exchange with Respondent's managing member is attached hereto and incorporated herein as *Exhibit "B"*.

13. To date, Respondent has not provided the documents requested pursuant to the Second Subpoena and has not responded in any way to the Commonwealth's email communication on July 30, 2020.

14. The Commonwealth issued the Second Subpoena to Respondent in compliance with the law and provided Respondent, on multiple occasions, with a reasonable amount of time to comply with the requests therein.

15. According to 73 P.S. § 232.5(b):

Prior to the initiation of a civil action, the Attorney General is authorized to require the attendance and testimony of witnesses and the production of documents. For this purpose the Attorney General may issue subpoenas, examine witnesses and receive evidence.

73 P.S. § 232.5(b).

16. The *Price Gouging Act* entitles the Commonwealth to subpoena the information requested from Respondent pursuant to 73 P.S. § 232.5(b).

17. The *Price Gouging Act* further provides that “[i]f a person objects to or otherwise fails to comply with a subpoena or request for testimony, the Attorney General may file in Commonwealth Court or any court of record of this Commonwealth an action to enforce the subpoenas or request.” 73 P.S. § 232.5(b).

18. This Court is a proper forum for this Motion pursuant to 73 P.S. § 232.5(b).

19. Respondent’s failure to comply with the Commonwealth’s lawfully issued subpoena is grounds for this Court to grant the Commonwealth the costs of filing this action.

20. The Attorney General may invoke the aid of the Court of Common Pleas of Montgomery County, Pennsylvania, and such Court may thereupon issue an order requiring the person subpoenaed to obey the subpoena, comply with the requests therein, and produce the documents relative to the matter in question. 73 P.S. § 232.5(b).

21. The subpoena issued by the Commonwealth was within the authority and scope granted to the Attorney General by 73 P.S. §§ 232.1-232.5, *as amended*. Respondent, therefore, should be ordered by this Court to obey the subpoena, comply with the requests therein, and produce to the Commonwealth any and all information and documents requested therein.

WHEREFORE, the Commonwealth respectfully requests that this Honorable Court issue an order requiring Respondent to produce copies of all records and documents specified in

the Subpoena no later than ten (10) days from the date of this Court's Order and to pay the Commonwealth the sum of \$289.50 for filing fees related to this motion.

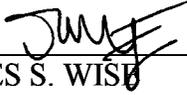
Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

Date: 9/02/2020

By: _____


JAMES S. WISE

Deputy Attorney General

Attorney I.D. #314913

Commonwealth of Pennsylvania

Office of Attorney General

1600 Arch Street, Third Floor

Philadelphia, Pennsylvania 19103

Telephone: (215) 560-2414

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261 Old York Road, #212, Jenkintown, PA 19146**

Respondent

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: **TERM** _____
: **NO.** _____
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: **CIVIL ACTION- EQUITY**
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VERIFICATION

I, John Gaskill, state that I am a Senior Supervisory Consumer Protection Agent for the Commonwealth of Pennsylvania, Office of Attorney General, Bureau of Consumer Protection and that I am authorized to make this Verification on behalf of Petitioner in the within action. I hereby verify that the facts set forth in the foregoing *Motion to Compel Compliance with Subpoena Pursuant to Pennsylvania Price Gouging Act* are true and correct to the best of my knowledge or information and belief.

I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: 9/2/2020

/s/JohnD.Gaskill
JOHN D. GASKILL
Senior Supervisory Consumer Protection Agent

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CIVIL TRIAL DIVISION**

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Commonwealth of Pennsylvania’s *Motion to Compel Compliance with Subpoena Pursuant to Pennsylvania Price Gouging Act*, Memorandum of Law in Support of the Commonwealth of Pennsylvania’s *Motion*, and Proposed Order, all for the above captioned matter, were served on the following via United States Postal Service First Class Mail, postage prepaid, on the date noted below:

Jenkintown Pharmacy, LLC d/b/a Jenkintown Pharmacy
261 Old York Road #212
Jenkintown, PA 19046

Date: 9/02/2020

By: 

JAMES S. WISE
Deputy Attorney General
Attorney I.D. #314913
Commonwealth of Pennsylvania
Office of Attorney General
1600 Arch Street, Third Floor
Philadelphia, Pennsylvania 19103
Telephone: (215) 560-2414

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**MEMORANDUM OF LAW IN SUPPORT OF THE COMMONWEALTH’S
MOTION TO COMPEL COMPLIANCE WITH SUBPOENA
PURSUANT TO PENNSYLVANIA PRICE GOUGING ACT**

I. SUMMARY OF ARGUMENT

In the course of its investigation, the Commonwealth of Pennsylvania, Office of Attorney General, Bureau of Consumer Protection, acting by Attorney General Josh Shapiro (hereinafter “Commonwealth”), pursuant to the authority granted to it by § 5 of the Act of October 31, 2006, (P.L. 1210), 73 P.S. § 232.5 (hereinafter the “*Price Gouging Act*”), the Commonwealth issued a subpoena dated March 11, 2020 with which, after lengthy delay, Respondent ultimately complied. The Commonwealth subsequently received additional consumer complaints and sent a second subpoena to Respondent on June 25, 2020 (hereinafter the “Second Subpoena”). The Commonwealth served the Second Subpoena on Respondent via United States Postal Service First Class Mail to Respondent’s address at 261 Old York Road, Jenkintown, PA 19046 and copies were also sent via email to Respondent’s email addresses at dennis.acquah@jenkintownpharmacy.com and info@jenkintownpharmacy.com, respectively.

The Second Subpoena, which the Commonwealth issued pursuant to the authority granted to the Attorney General by Section 232.5(b) of the *Price Gouging Act*. 73 P.S. § 232.5(b), directed Respondent to provide specific records and documents relating to its business practices to the Commonwealth by no later than July 2, 2020. On July 2, 2020, Respondent's managing member, Dennis Acquah, communicated via email a request for an extension of time to provide the subpoenaed records and documents.

Respondent subsequently failed to provide the requested records and documents. On July 30, 2020, after receiving no responsive records or documents from Respondent, and following several unsuccessful attempts to reach Mr. Acquah by telephone, the Commonwealth attempted to contact Respondent in writing via email to allow for a final opportunity to comply with the Second Subpoena and to caution that failure to comply may lead to the Commonwealth filing an enforcement action.

To date, Respondent has not provided the documents requested pursuant to the Second Subpoena and has not responded in any way to the Commonwealth's email communication on July 30, 2020.

II. ARGUMENT

A. The Subpoena Was Properly Authorized by the Power Granted to the Attorney General in Section 232.5 of the *Price Gouging Act*.

Under Section 232.5 of the *Price Gouging Act*, the Attorney General has the duty and authority to investigate any complaints received concerning violations of this act.

73 P.S. § 232.5(a).

Respondent has at all times relevant and material hereto, engaged in trade and commerce within the Commonwealth of Pennsylvania by operating a pharmacy and convenience store at the Jenkintown Pharmacy location of 261 Old York Road, Jenkintown, Pennsylvania 19046. The

Commonwealth is conducting an investigation into the business practices of Respondent, to determine compliance with the *Price Gouging Act* and the Commonwealth is concerned that Respondent's business practices violate the *Price Gouging Act*. Thus, the Commonwealth was in its discretion to subpoena Respondent under the authority granted to the Attorney General in Section 232.5 of said *Act*.

The Attorney General is authorized to require the production of documents relating to the potential violations at issue. For this purpose, the Attorney General or the Attorney General's representative may issue subpoenas, examine witnesses and receive evidence.

The Commonwealth issued the Second Subpoena to Respondent in compliance with the law and provided Respondent, on multiple occasions, with a reasonable amount of time and multiple opportunities to comply with the request.

B. Respondent Should be Ordered to Obey the Subpoena and Produce the Documents Requested Therein

The Attorney General may invoke the aid of the Court of Common Pleas, and such Court may thereupon issue an order requiring the person subpoenaed to obey the subpoena and produce the documents relative to the matter in question. 73 P.S. § 232.5(b). The subpoena issued by the Commonwealth is within the authority and scope granted to the Attorney General by 73 P.S. §232.5(a) and (b). Therefore, Respondent should be ordered by this Court to obey the subpoena served upon it.

III. CONCLUSION

The Commonwealth is granted authority to request information and/or documents through the use of subpoenas in its investigations involving the *Price Gouging Act*. The subpoena served upon Respondent was properly issued and is within the scope of the authority granted to the Attorney General in Section 232.5 of the *Price Gouging Act*. Therefore, the relief

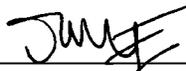
as requested herein by the Commonwealth should be granted, Respondent should be ordered by this Court under 73 P.S. § 232.5(b) to obey the subpoena served upon her, produce the requested records and documents, and pay the Commonwealth's filing fees for having to file this action.

Respectfully Submitted,

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

Date: 9/02/2020

By: 

JAMES S. WISE
Deputy Attorney General
Attorney I.D. #314913
Commonwealth of Pennsylvania
Office of Attorney General
1600 Arch Street, Third Floor
Philadelphia, Pennsylvania 19103
Telephone: (215) 560-2414

EXHIBIT A

Case# 2020-14278-0 Docketed at Montgomery County Prothonotary on 09/02/2020 12:53 PM, Fee = \$289.50. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

1600 Arch Street, Suite 300
Philadelphia, Pennsylvania 19103
Telephone: (215) 560-2414
Facsimile: (215) 560-2494

June 25, 2020

Sent Via Regular US Mail and Electronic Mail

Jenkintown Pharmacy
Attn: Dennis Acquah, CEO
261 Old York Road
Jenkintown, PA 19046
dennis.acquah@jenkintownpharmacy.com
info@jenkintownpharmacy.com

Re: Jenkintown Pharmacy
Inv. No. BCP-20-10-000045

Dear Mr. Acquah:

Enclosed is a copy of a subpoena issued by the Commonwealth of Pennsylvania Office of Attorney General pursuant to an authorized investigation in the above-captioned matter.

The subpoena requires you to produce information and/or copies of certain documents and records by no later than the close of business July 2, 2020.

If you have any questions concerning your rights and duties, you may wish to consult counsel. If you have any questions concerning the subpoena itself, please contact me directly at (215) 518-6788.

Thank you in advance for your anticipated cooperation.

Sincerely,

JAMES S. WISE
Deputy Attorney General

JSW/mh
Enclosure

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

20-004/2-JSW/JDG

IN THE MATTER OF:

JENKINTOWN PHARMACY
Inv. No. BCP-20-10-000045

SUBPOENA

TO:

Jenkintown Pharmacy
Attn: Dennis Acquah, CEO
261 Old York Road
Jenkintown, PA 19046
dennis.acquah@jenkintownpharmacy.com
info@jenkintownpharmacy.com

1. **YOU ARE HEREBY DIRECTED** to produce, deliver or cause to be delivered, via E-mail to Deputy Attorney General James S. Wise at jwise@attorneygeneral.gov, no later than the close of business on **July 2, 2020**, the following information and/or documents relating to Jenkintown Pharmacy at 261 Old York Road, Jenkintown, PA 19046 (hereinafter "Respondent").

- a. Any and all documents, or a list which may be prepared and submitted in lieu thereof, setting forth the total amount of units of the products listed below (hereinafter the "product at issue") sold to consumers during the period from January 15, 2020 to present. For each unit of the product at issue sold to consumers, please include the sales receipt or invoice and any additional information and documents related to the manufacturer, item number, date of sale, quantity, price paid by the consumer for the product at issue, price paid by the consumer for any additional fees associated with the sale (including, but not limited to, shipping fees and/or processing fees) and the name and address of the consumer;
 - i. KN95 masks
 - ii. Dial Antibacterial Soap (33 oz.)
 - iii. Softsoap Antibacterial (11.25 oz.)
 - iv. Bottles of hand sanitizer (8.45 oz.)
 - v. Purell Disinfectant Wipes (40 ct. and 175 ct.)
 - vi. Wet Ones Hand Wipes (20 ct.)

vii. CaviWipes Disinfectant Wipes (65 ct. and 160 ct.)

- b. Any and all documents, and a written explanation, evidencing and setting forth the reason(s), if any, why Respondent's prices for the product at issue increased during the period from January 15, 2020 to present;
- c. Any and all documents, or a list which may be prepared and submitted in lieu thereof, setting forth all parties involved in Respondent's chain of distribution for the sale and resale of the product at issue to consumers during the period from January 15, 2020 to present, including any manufacturer, supplier, wholesaler, distributor or retail seller. Please provide the names, addresses, telephone numbers and contact persons for each identified party.

2. This Subpoena is issued under authority granted to the Attorney General by § 5 of the Act of October 31, 2006, (P.L. 1210), 73 P.S. § 232.5.

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
Attorney General

Dated: June 25, 2020

By:



JAMES S. WISE
Deputy Attorney General

**FAILURE TO COMPLY WITH THIS SUBPOENA MAY RESULT
IN A SUBPOENA ENFORCEMENT ACTION BEING FILED
AGAINST YOU PURSUANT TO 73 P.S. § 232.5(b).**

EXHIBIT B

From: [Wise, James S.](#)
To: "Dennis Acquah"
Cc: info@jenkintownpharmacy.com
Subject: RE: Complaint with receipt attached re Jenkintown Pharmacy
Date: Thursday, July 30, 2020 4:05:49 PM

Dear Mr. Acquah,

My office has now sent you a subpoena via both USPS mail and email on multiple occasions, with the most recent document dated June 25, 2020, with a response deadline of July 2, 2020. We have not received a response from you.

Please be advised that this is your last opportunity to comply. If you do not respond to the subpoena or to this email, we may pursue an enforcement action against you for noncompliance with the subpoena and/or for violations of the PA Price Gouging Act.

If you have any questions, I can be reached on my direct line at (215) 518-6788.

Regards,

James Wise

-----Original Message-----

From: Dennis Acquah [<mailto:dennis.acquah@jenkintownpharmacy.com>]
Sent: Thursday, July 02, 2020 6:49 PM
To: Wise, James S.
Subject: Re: Complaint with receipt attached re Jenkintown Pharmacy

On 2020-06-25 11:47, Wise, James S. wrote:

- > Good Morning. I wanted to let you know that we are reopening our
- > investigation because we received additional complaints with some
- > evidence that you may be offering additional excessively priced
- > products for sale. We will be sending another subpoena for information
- > later today or tomorrow.
- >
- > Please let me know if you have any questions.
- >
- > James Wise
- > Deputy Attorney General
- > Commonwealth of Pennsylvania
- > Office of Attorney General
- > Bureau of Consumer Protection
- > 1600 Arch Street, Third Floor
- > Philadelphia, PA 19103
- > Phone: (215) 560-2414
- > Facsimile: (215) 560-2494
- >
- > **IMPORTANT/CONFIDENTIAL:** The information transmitted is intended only
- > for the person or entity to whom it is addressed and may contain
- > confidential and/or privileged material. Any use of this information
- > other than by the intended recipient is prohibited. If you receive
- > this message in error, please send a reply e-mail to the sender and
- > delete the material from any and all computers. Unintended
- > transmissions shall not constitute waiver of any applicable
- > attorney-client or any other applicable privilege. PA-OAG

- >
- > METADATA: This e-mail transmission and any accompanying material may
- > contain embedded metadata. Any included metadata is confidential or
- > privileged information and is not intended to be viewed by a
- > non-client recipient.

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- >

- > This message has been scanned for malware by Websense.
- > www.websense.com

Hello Mr. Wise,

I have tried to collate all the required documentation for you but I have not been able to complete it. I therefore will, respectfully, ask for an extension to submit those.

I applaud your commitment to public service and I will as previously shown through the initial complaint work to resolve this. Rest assured, as a small business our intention will always be efficient customer service.

Thank you and enjoy the holiday weekend soundly.

Dennis Acquah
484751882&