

For Immediate Release:

December 23, 2021

Contact: Jerri Mares (505) 321-4372

Attorney General Balderas Sues Bob's LP Gas, Inc. for Failure to Provide Propane Gas; Provides Hotline for Impacted Consumers

Santa Fe, NM– Today, following his investigation and consumer advisory on increased cost and unavailability of propane gas, Attorney General Hector Balderas filed a lawsuit against Bob's LP Gas, Inc. ("Bob's Gas") for failure to provide the propane gas they had contracted to deliver to vulnerable Northern New Mexicans as the winter weather sets in.

"It is unconscionable that a company is able to leave hundreds of New Mexicans without access to safe heat when they need it the most," said Attorney General Balderas. "This issue is a matter of life and death."

The lawsuit alleges that Bob's Gas is refusing to refill propane tanks that consumers lease from the company, despite its obligation to do so. Bob's Gas is leaving hundreds of New Mexicans without propane gas for safe heat during freezing temperatures. Without propane in colder temperatures, these New Mexicans are forced to resort to burning wood for heat, using dangerous gas grills or electric space heaters for warmth. Attorney General Balderas sought voluntary cooperation from Bob's Gas and its owner, Bob Sivers, without success.

In addition to the lawsuit, Attorney General Balderas is seeking an immediate injunction against Bob's Gas to force the company to either provide propane to these individuals or to allow another company to temporarily fill consumers' propane tanks. Attorney General Balderas is also seeking a complete client list to verify that Bob's Gas is in compliance with the laws for the safety of New Mexican citizens.

The New Mexico Department of Homeland Security and Emergency Management issued a storm warning yesterday, encouraging Northern New Mexicans to prepare for heavy winds and cold temperatures. Consumers who are at risk of running out of propane because Bob's Gas hasn't filled their tank are urged to contact the Attorney General's office at 1-844-255-9210 or file a complaint at www.nmag.gov/file-a-complaint.aspx

A copy of the complaint is attached.

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FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*,
HECTOR BALDERAS, Attorney General
for the State of New Mexico,

Plaintiff,

v.

Case No. D-101-CV-2021-02652

BOB'S LP GAS, INC. and
ROBERT SIVERS,

Case assigned to Wilson, Matthew Justin

Defendants.

VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff State of New Mexico, by and through Hector Balderas, Attorney General for the State of New Mexico ("Plaintiff" or "State") (Jacqueline N. Ortiz, Assistant Attorney General), hereby brings this action against defendants Bob's LP Gas, Inc. ("Bob's Gas") and Robert Sivers, individually and in support hereof, states as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff is the duly elected Attorney General of the State of New Mexico.
2. The Attorney General is required to prosecute and defend all actions and proceedings when, in his judgment, the state's interest requires such action. *See* § 8-5-2(B) NMSA (1978).
3. The State of New Mexico, by the Honorable Hector H. Balderas, Attorney General of the State of New Mexico, brings this suit because, in his judgment, it is in the state's interest to do so and pursuant to its inherent *parens patriae* authority to remedy an injury to its "quasi-sovereign interest" in the physical and economic health and well-being of a substantial segment of its population.

4. New Mexico enjoys *parens patriae* standing in this suit because its residents have been adversely affected by the failure of Bob's Gas to provide propane gas to individuals with which it is contracted to do so, leaving New Mexicans without access to a critically important source of heat as the winter weather sets in.

5. Further, the Attorney General has the authority to enforce the New Mexico Unfair Practices Act, NMSA 1978 §§ 57-12-1, *et seq.* ("UPA"), and the New Mexico public nuisance statute, NMSA 1978 §§ 30-8-1, *et seq.* ("Public Nuisance Statute"), to ensure the protection of New Mexico residents, natural resources, and commerce.

6. Bob's Gas is a Colorado corporation with its principal place of business in Rio Arriba County, New Mexico.

7. Upon information and belief, Robert Sivers is an individual residing in Colorado doing business in New Mexico.

8. The conduct of the Defendants giving rise to this action occurred in Santa Fe County, New Mexico.

9. Jurisdiction and venue are proper in this Court.

FACTUAL ALLEGATIONS

10. Robert Sivers is the president and owner of Bob's Gas.

11. New Mexicans enter into contracts with Bob's Gas in which they lease propane tanks from Bob's Gas and Bob's Gas refills the tanks when the tank is below 50% full.

12. Despite consumers paying on their contracts, Bob's Gas and Robert Sivers (together, the "Defendants") have failed refill the leased propane tanks, leaving vulnerable New Mexicans without any access to safe heat during the winter months.

13. Consumers have repeatedly requested Defendants service their tanks but Defendants have failed to do so despite their contractual obligations.

14. Other propane providers are not allowed to fill tanks owned by Defendants without written permission from Defendants pursuant to NMSA 1978 §70-5-23. In other words, Defendants' customers are essentially captives of Defendants unless Defendants permit other companies to fill their tanks.

15. Defendants have refused to provide their permission, willfully and deliberately depriving their customers of available propane and leaving vulnerable New Mexicans without any access to safe heat during the winter months.

16. Because of Defendants' refusal to refill their customer's propane tanks and their refusal to allow another company to temporarily assist Defendants in filling their propane tanks, New Mexicans may be forced to resort to unsafe heating practices including bringing in gas grills for heating, which could lead to carbon monoxide poisoning, fires, and ultimately, the death of individuals.

COUNT I
VIOLATIONS OF THE UPA
NMSA 1978, §§ 57-12-1 *et. seq.*

17. The State incorporates the foregoing paragraph of this complaint in accordance with Rule 1-010(C) NMRA.

18. Bob's Gas and Robert Sivers are persons engaged in trade or commerce within New Mexico.

19. Bob's Gas and Robert Sivers are willfully engaged in acts or practices in connection with the sale, lease, rental or loan of goods and services in the regular course of their trade or commerce that may, tend to, or actually do deceive New Mexico consumers.

20. Bob's Gas and Robert Sivers offered propane and the service of refilling leased propane tanks with the intent not to supply them in the quantity requested by the prospective buyer.

21. Bob's Gas and Robert Sivers offered propane and the service of refilling the propane tanks with the intent not to supply reasonable expectable public demand.

22. Bob's Gas and Robert Sivers failed to deliver the quantity of gas contracted for.

23. Bob's Gas and Robert Sivers engaged in acts and practices in connection with the sale of propane and the lease of propane tanks that to a person's detriment takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree.

24. Bob's Gas and Robert Sivers engaged in acts and practices in connection with the sale of propane and the lease of propane tanks that to a person's detriment results in a gross disparity between the value received by a person and the price paid.

COUNT II
INJUNCTIVE RELIEF
NMSA 1978, §§ 57-12-1 *et. seq.*

25. Plaintiff incorporates herein the foregoing allegations in accordance with Rule 1-010(C).

26. Defendants have the ability to allow other companies to fill their tanks, but Defendants have refused.

27. Northern New Mexico is Defendants' primary service area within the State, and residents there are routinely subjected to freezing and subzero temperatures during the winter months.

28. Because of the largely rural nature of northern New Mexico, residential propane deliveries are a primary source of heat for thousands of New Mexicans, including Defendants' customers.

29. Absent a temporary restraining order and injunction against Defendants, forcing Defendants to allow other propane companies to fill tanks owned by Defendants and leased by consumers, and to otherwise change their business practices, consumers will suffer immediate and irreparable injury, loss or damage.

30. The threatened injury to New Mexico consumers outweighs any damage an injunction might cause Defendants.

31. There is a substantial likelihood the Plaintiff will prevail on the merits of this case.

COUNT III
COMMON LAW PUBLIC NUISANCE

32. Plaintiff incorporates herein the foregoing allegations in accordance with Rule 1-010(C).

33. New Mexico asserts this cause of action based on its inherent *parens patriae* authority.

34. Defendants are knowingly failing to provide propane gas to individuals with which they are contracted to do so leaving New Mexicans without any safe access to heat in the winter months.

35. Defendants' conduct and the lack of propane gas annoys, injures, and endangers the comfort, repose, health, and safety of others.

36. Defendants' conduct and the lack of propane gas are injurious to human and environmental health.

37. An ordinary person would be reasonably annoyed or disturbed by the lack of propane gas for heat in the winter months.

38. The rights, interest, and inconvenience to New Mexico and the general public far outweighs the rights, interests and inconvenience to Defendants.

39. Defendants' conduct caused harm to the State and its citizens.

40. Defendants' conduct is a public nuisance.

41. Defendants knew their conduct in refusing to refill propane gas tanks or allowing another company to temporarily fill the gas tanks would cause such injuries to the State and the New Mexico public.

42. Accordingly, Defendants had a duty to cease such conduct but failed to do so.

43. Because Defendants' conduct as alleged herein was malicious, willful, reckless and/or wanton, the State is entitled to seek, and does seek, punitive damages sufficient to punish Defendants and to deter Defendants and others from engaging in similar conduct in the future.

COUNT IV
VIOLATIONS OF THE NEW MEXICO PUBLIC NUISANCE STATUTE
NMSA 1978, §§ 30-8-1 et. seq.

44. Plaintiff incorporates herein the foregoing allegations in accordance with Rule 1-010(C).

45. New Mexico asserts this cause of action based on its inherent *parens patriae* authority.

46. New Mexico asserts this cause of action pursuant to NMSA 1978 §§ 30-8-1 et. seq..

47. The Public Nuisance Statute renders unlawful "knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority which is either (A) injurious to public health, safety, morals or welfare; or (B) interferes with the exercise and enjoyment of public rights[.]" NMSA 1978 § 30-8-1(A)-(B).

48. The Attorney General is authorized to enforce the Public Nuisance Statute in court by seeking abatement from "any person, corporation or association of persons who shall create, perform or maintain a public nuisance." NMSA 1978 § 30-8-8.

49. Defendants have knowingly created, performed, or maintained a public nuisance injurious to public health, safety, and welfare.

50. Defendants actions constitute a statutory public nuisance.

COUNT V
UNJUST ENRICHMENT

51. Plaintiff incorporates herein the foregoing allegations in accordance with Rule 1-010(C).

52. Consumers have conferred a benefit on Defendants by making payments on a contract for services that are not being performed.

53. Defendants have realized that monetary benefit.

54. Under the circumstances, it would be inequitable for Defendants to retain the benefit without full payment for the value thereof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

New Mexico prays for judgment against Defendants, jointly and severally, as follows:

- A. Damages according to proof;
- B. Declaratory relief, including an order declaring that the conduct alleged herein has violated New Mexico law;
- C. Preliminary injunctive relief pending trial, including a temporary restraining order and preliminary injunction prohibiting Defendants from refusing to allow other propane providers to fill tanks owned by Defendants and leased by individuals;
- D. Further injunctive relief, including the award of past, present, and future costs to fully abate the public nuisance;

E. An order requiring Defendants to disgorge all revenues obtained as a result of violations of the Unfair Practices Act, and to make restitution to all persons of money, property, or other things received from them in any transaction related to Defendants' violations of the Unfair Practices Act;

F. Civil penalties of \$5,000 per willful violation of the Unfair Practices Act;

G. Award of punitive damages sufficient to punish Defendants for malicious, willful, reckless, and/or wanton misconduct and to deter Defendants and others from engaging in similar misconduct in the future;

H. Litigation costs and attorneys' fees as permitted by law;

I. Pre-judgment and post-judgment interest on all monies awarded, as permitted by law;

J. Such other and further relief as the Court deems just and proper.

DATED: December 22, 2021

HECTOR H. BALDERAS,
ATTORNEY GENERAL

/s/ Jacqueline N. Ortiz
Jacqueline Ortiz
Assistant Attorneys General
P.O. Drawer 1508
Santa Fe, New Mexico 87504-1508
505-717-3500 - voice
505-222-9033 - facsimile
jortiz@nmag.gov
Attorneys for Plaintiff

VERIFICATION OF ASSISTANT ATTORNEY GENERAL
JACQUELINE N. ORTIZ

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO) S. S.

I, Jacqueline N. Ortiz, being duly sworn, do hereby state as follows:

1. I am an Assistant Attorney General in the New Mexico Attorney General’s Office. The State of New Mexico ("Plaintiff"), by the Honorable Hector H. Balderas, the Attorney General of the State of New Mexico, has filed the above-captioned action pursuant to its inherent *parens patriae* authority, as well as pursuant to its statutory authority. I am authorized to make this Verification pursuant to NMSA 1978, Section 30-8-8 (1978) and NMRA 1-066 on behalf of Plaintiff.

2. To the extent the allegations in the Complaint concern facts related to Plaintiff, I know those allegations to be true. To the extent the allegations in the Complaint concern facts and actions of parties other than Plaintiff, I believe those allegations to be true and correct, to the best of my knowledge, information and belief

I make this Verification under penalty of perjury that the foregoing is true and correct.

Executed this 22ND day of December, 2021.

**Jacqueline
Ortiz**  Digitally signed by
Jacqueline Ortiz
Date: 2021.12.22 17:40:38
-07'00'

Jacqueline N. Ortiz
Assistant Attorneys General
New Mexico Office of the Attorney General
P.O. Drawer 1508
Santa Fe, New Mexico 87504