

STATE OF NORTH CAROLINA
WAKE COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
NO. 21 CV _____

STATE OF NORTH CAROLINA *ex rel.*
JOSHUA H. STEIN, Attorney General,
BY  WAKE COUNTY, N.C.

COMPLAINT

Plaintiff,

v.

JACK'S IN AND OUT MART, LLC,

Defendant.

INTRODUCTION

This is an action by plaintiff, State of North Carolina, on relation of Joshua H. Stein, Attorney General (“the State”), against defendant Jack’s In and Out Mart, LLC, doing business as “Jack’s In & Out” and “In & Out Food Mart” (“defendant”), to enforce North Carolina’s laws against price gouging during a state of emergency, and against unfair and deceptive trade practices in connection with the shutdown of the Colonial Pipeline in early May, 2021.

The State alleges that beginning on or about May 10, 2021, during a state of emergency due to the shutdown of the Colonial Pipeline, defendant increased its retail price for gasoline offered by 60% and, despite no material increase in its fuel cost, sold gasoline to consumers at that unreasonably excessive price; and further, to entice customers to its business, defendant falsely posted the availability of, and reduced price for, regular gasoline—when defendant was not selling regular gasoline at all but only premium at an unreasonably excessive price.

The State therefore alleges that the defendant violated North Carolina’s prohibition on price gouging during a state of emergency, N.C. Gen. Stat. § 75-38; and North Carolina’s Unfair

and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1. The State seeks permanent injunctive relief against defendant, together with civil penalties, consumer restitution, disgorgement, attorneys' fees, and other relief.

PARTIES

1. The State of North Carolina, acting on the relation of its Attorney General, Joshua H. Stein, brings this action pursuant to authority granted by Chapters 75 and 114 of the North Carolina General Statutes.

2. On information and belief, defendant is a North Carolina limited liability company operating at 911 Fayetteville Street in Durham, North Carolina. In its business registration filings with the North Carolina Secretary of State, defendant claims that its principal office's physical address is at 1 Floretta Place, Unit 91444, in Raleigh, which is the street address of the U.S. Post Office branch where defendant maintains post office box 91444. On information and belief, Joel Hopkins is the president and member manager of defendant, and resides at 1812 Silver Mist Court, Raleigh, North Carolina.

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction pursuant to N.C. Gen. Stat. §§ 75-1.1 and 75-15 because the acts or practices alleged herein occurred in or affected commerce in North Carolina.

4. The Court has personal jurisdiction over defendant because its acts or practices alleged herein occurred in the State of North Carolina.

5. Venue is proper in Wake County pursuant to the Attorney General's selection under N.C. Gen. Stat. § 75-14.

FACTUAL ALLEGATIONS

6. On May 10, 2021, North Carolina Governor Roy Cooper, by executive order, declared a state of emergency because of the surprise shutdown of the Colonial Pipeline in response to a ransomware cyberattack on the company. (The Declaration, Executive Order 213, is attached as **State's Exhibit 1** and incorporated here by reference as if fully set forth.) The State of Emergency was in effect at all times relevant to this Complaint.

7. In the following days, defendant imposed price increases on gasoline from its pre-declaration price of \$3.29 per gallon for premium on May 9, 2021, to inflated prices, including as high as or higher than \$5.499 per gallon for premium during the period covering at least May 11 through May 13, 2021.

8. By displaying such prices at its gasoline pumps, defendant offered to sell gasoline at those prices. Further, defendant made actual sales of gasoline at such inflated prices.

9. Examples of such sales are reflected in the affidavits at **State's Exhibits 2 and 3**, attached, which are incorporated here by reference as if fully set forth.

10. Defendant's inflated markups inherent in the above-noted prices at which it offered and sold gasoline were the product of defendant's opportunism, and not the result of increased supplier costs.

11. Indeed, reflecting defendant's stable cost structure leading up to defendant's post-declaration retail price increases, the two preceding monthly gasoline shipments defendant received were at \$2.58 per gallon on March 29, 2021 and \$2.65 per gallon on April 26, 2021, for premium.

12. On information and belief, during all or part of the time in issue, defendant's street sign representing its price offered *regular* gasoline at \$2.909 per gallon. However, on information

and belief, during all or part of the time in issue defendant was not selling regular gasoline at all, and only sold premium at \$5.499 per gallon, which gave defendant's street sign a tendency or capacity to deceive and made it part of a bait-and-switch scheme to lure customers to the station only to then present them with the excessively priced premium gasoline. (See attached **State's Exhibit 4**, incorporated here by reference as if fully set forth)

13. During the State's investigation of this matter, defendant failed to make timely, full, and complete disclosure of its conduct during the time in issue. Therefore, discovery in this matter may uncover violations of law in addition to those alleged here.

CLAIMS FOR RELIEF

I. PRICE GOUGING

N.C. GEN. STAT. §§ 75-38 and 75-1.1

14. Paragraphs 1 through 13 are realleged and incorporated here by reference.

15. North Carolina's prohibition on price gouging provides:

Upon a triggering event, it is prohibited and shall be a violation of G.S. 75-1.1 for any person to sell or rent or offer to sell or rent any goods or services which are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being of persons or their property with the knowledge and intent to charge a price that is unreasonably excessive under the circumstances.

16. Defendant's continuing offer to sell gasoline at inflated prices, including at \$5.499 or higher for premium, was done with the knowledge and intent to charge an unreasonably excessive price for goods consumed or used as a direct result of an emergency, in violation of N.C. Gen. Stat. §§ 75-38 and 75-1.1.

17. Each sale of gasoline by defendant at the noted inflated prices was done with the knowledge and intent to charge an unreasonably excessive price for goods consumed or used as a direct result of an emergency, in violation of N.C. Gen. Stat. §§ 75-38 and 75-1.1.

II. DECEPTIVE PRACTICES
N.C. GEN. STAT. § 75-1.1

18. Paragraphs 1 through 17 are realleged and incorporated here by reference.

19. Each day that defendant's street sign represented that defendant offered regular gasoline at \$2.909 per gallon, when defendant was actually only selling premium gasoline for \$5.499 per gallon, was an unfair or deceptive act or practice in violation of N.C. Gen. Stat. § 75-1.1

PRAYER FOR RELIEF

WHEREFORE, THE STATE PRAYS THE COURT for the following relief:

1. That, after hearing on due notice, defendant, together with its agents, employees, representatives, subcontractors, successors and assigns, and any persons acting in concert with them, be permanently enjoined, under N.C. Gen. Stat. § 75-14, from:

(a) offering to sell, or charging or receiving payment for, motor fuel with the knowledge and intent that the price is an unreasonably excessive price under the circumstances, in violation of N.C. Gen. Stat. §§ 75-38 and 75-1.1; and

(b) offering to sell motor fuel at one price, but then selling motor fuel at a higher price.

2. That the defendant be ordered to pay civil penalties of \$5,000.00 for each instance of price gouging and unfair and deceptive trade practices, pursuant to N.C. Gen. Stat. § 75-15.2;

3. That upon final adjudication defendant be ordered, pursuant to N.C. Gen. Stat. § 75-15.1 to pay restitution to all consumers who suffered injury due to defendants' unlawful acts and practices set forth above;

4. That upon final adjudication defendant be ordered to disgorge all amounts it or its agents, employees, representatives, subcontractors, successors and assigns have received, or in the future

do receive, in connection with the price gouging and deceptive trade practices set forth above, under N.C. Gen. Stat. § 75-14;

5. That defendant be ordered to reimburse the State for attorneys' fees and litigation expenses in this action, pursuant to N.C. Gen. Stat. § 75-16.1;

6. That the costs of this action be taxed to defendant; and

7. That the State be granted such other and further relief as to the Court seems just and appropriate.

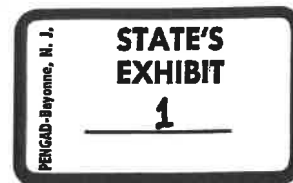
This the 5th day of August, 2021.

JOSHUA H. STEIN
ATTORNEY GENERAL



K. D. Sturgis
Special Deputy Attorney General

North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
Telephone: (919) 716 6000
Facsimile: (919) 716 6050
State Bar No. 9486
ksturgis@ncdoj.gov



State of North Carolina

ROY COOPER
GOVERNOR

May 10, 2021

EXECUTIVE ORDER NO. 213

**DECLARATION OF A STATE OF EMERGENCY AND
TEMPORARY SUSPENSION OF MOTOR VEHICLE REGULATIONS TO
ENSURE ADEQUATE FUEL SUPPLIES THROUGHOUT THE STATE**

WHEREAS, the Colonial Pipeline system ("Colonial Pipeline"), a primary fuel pipeline for North Carolina and the East Coast of the United States, reported a ransomware cyber-attack on May 7, 2021, which has resulted in a temporary shutdown of that line, and may cause a disruption in the delivery of refined petroleum products including but not limited to fuel oil, diesel, jet fuel and gasoline; and

WHEREAS, the uninterrupted supply of refined petroleum products including but not limited to fuel oil, diesel, jet fuel and gasoline, is essential for the health, safety or economic well-being of persons or property in North Carolina, and any interruption in the delivery of those products threatens the public welfare; and

WHEREAS, N.C. Gen. Stat. § 166A-19.1(4) provides that it is the responsibility of the undersigned, state agencies, and local governments to "provide for cooperation and coordination of activities relating to emergency mitigation preparedness, response, and recovery among agencies and officials of this state and with similar agencies and officials of other states, with local and federal governments, with interstate organizations, and with other private and quasi-official organizations"; and

WHEREAS, N.C. Gen. Stat. §§ 166A-19.10 and 166A-19.20 authorize the undersigned to declare a state of emergency and exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, on May 9, 2021, the Federal Motor Carrier Safety Administration ("FMCSA") issued Regional Emergency Declaration 2021-002 to provide regulatory relief for commercial motor vehicle operations commercial motor vehicle operations while providing direct assistance in supporting emergency relief efforts transporting gasoline, diesel, jet fuel, and other refined petroleum products into the affected states during the emergency from shortages due to the shutdown, partial shutdown, and/or manual operation of the Colonial Pipeline system; and

WHEREAS, the unanticipated shutdown of the Colonial Pipeline due to a ransomware cyber-incident and network issues that affect the supply of refined petroleum products including but not limited to fuel oil, diesel, jet fuel and gasoline constitutes a state of emergency for the State of North Carolina as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19); and

WHEREAS, the emergency area, as defined in N.C. Gen. Stat. §§ 166A-19.3(7) and 166A-19.20(b), is the entire State of North Carolina; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(3), the undersigned, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency which restricts the immediate relief of human suffering; and

WHEREAS, the undersigned has found that residents may suffer losses and further widespread damage within the meaning of N.C. Gen. Stat. §§ 166A-19.3(3) and 166A-19.21(b); and

WHEREAS, 49 C.F.R. § 390.23 allows the Governor of a state to suspend the rules and regulations under 49 C.F.R. Parts 390-399 for up to thirty (30) days if the Governor determines that an emergency condition exists; and

WHEREAS, with the concurrence of the Council of State, the undersigned hereby waives the registration requirements of N.C. Gen. Stat. §§ 20-86.1 and 20-382, the fuel tax requirements of N.C. Gen. Stat. § 105-449.47, and the size and weight requirements of N.C. Gen. Stat. §§ 20-116, 20-118 and 20-119 that would apply to vehicles carrying emergency relief supplies to assist with ensuring adequate fuel supplies within North Carolina or the East Coast of the United States.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1.

I hereby declare that a state of emergency, as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19), exists in the State of North Carolina due to the unanticipated shutdown of the Colonial Pipeline due to a cyber incident and potential impacts from that incident.

For purposes of this Executive Order, the emergency area is the entire State of North Carolina ("the Emergency Area").

Section 2.

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan ("the Plan").

Section 3.

I delegate to Erik A. Hooks, the Secretary of the North Carolina Department of Public Safety ("DPS"), or his designee, all power and authority granted to and required of me by Article 1A of Chapter 166A of the North Carolina General Statutes for the purpose of implementing the Plan and deploying the State Emergency Response Team to take the appropriate actions necessary to promote and secure the safety and protection of the populace in North Carolina.

Section 4.

Further, Secretary Hooks, as Chief Coordinating Officer for the State of North Carolina, shall exercise the powers prescribed in N.C. Gen. Stat. § 143B-602.

Section 5.

I further direct Secretary Hooks or his designee to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the state in responding to this emergency.

Section 6.

DPS, in conjunction with the North Carolina Department of Transportation ("DOT"), shall waive the maximum hours of service for drivers prescribed by DPS pursuant to N.C. Gen. Stat. § 20-381.

Section 7.

DPS, in conjunction with DOT, shall waive certain size and weight restrictions and penalties

arising under N.C. Gen. Stat. §§ 20-116, 20-118, and 20-119, certain registration requirements and penalties arising under N.C. Gen. Stat. §§ 20-86.1 and 20-382, and certain registration and filing requirements and penalties arising under N.C. Gen. Stat. §§ 105-449.45, 105-449.47, and 105-449.49 for vehicles supporting emergency relief efforts by transporting gasoline, diesel, jet fuel, and other refined petroleum products in North Carolina and the affected states during the emergency from shortages due to the shutdown, partial shutdown, and/or manual operation of the Colonial Pipeline system in the Emergency Area.

Section 8.

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer ("GVWR") or 90,000 pounds gross weight, whichever is less.
- b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- c. When a vehicle and vehicle combination exceed twelve (12) feet in width and the total overall vehicle combination's length exceeds seventy-five (75) feet from bumper to bumper.
- d. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having (A) a yellow banner on the front and rear that is seven (7) feet long and eighteen (18) inches wide and bears the legend "Oversized Load" in ten (10) inch black letters, 1.5 inches wide and (B) red flags measuring eighteen (18) inches square on all sides at the widest point of the load. In addition, when operating between sunset and sunrise, a certified escort shall be required for loads exceeding eight (8) feet six (6) inches in width.

Section 9.

Vehicles referenced under Sections 7 and 8 of this Executive Order shall be exempt from the following registration requirements:

- a. The requirement to obtain a temporary trip permit and payment of the associated \$50.00 fee listed in N.C. Gen. Stat. § 105-449.49.
- b. The requirement of filing a quarterly fuel tax return as the exemption in N.C. Gen. Stat. § 105-449.45(b)(1) applies.
- c. The registration requirements under N.C. Gen. Stat. §§ 20-382.1 and 20-382 concerning interstate for-hire authority are waived; however, vehicles shall maintain the required limits of insurance as required.
- d. Non-participants in North Carolina's International Registration Plan and International Fuel Tax Agreement will be permitted to enter North Carolina in accordance with the exemptions identified by this Executive Order.

Section 10.

The size and weight exemption for vehicles will be allowed on all DOT designated routes, except those routes designated as light traffic roads under N.C. Gen. Stat. § 20-118. This order shall not be in effect on bridges posted pursuant to N.C. Gen. Stat. § 136-72.

Section 11.

The waiver of regulations under Title 49 of the Code of Federal Regulations does not apply to the Commercial Drivers' License and Insurance Requirements. This waiver shall be in effect for thirty (30) days or the duration of the emergency, whichever is less.

Section 12.

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 6 through 11 of this Executive Order in a manner that does not endanger North Carolina motorists.

Section 13.

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish that their loads are for direct assistance being used for providing direct assistance supporting emergency relief efforts by transporting gasoline, diesel, jet fuel, and other refined petroleum products in North Carolina and the affected states during the emergency to address shortages due to the shutdown, partial shutdown, and/or manual operation of the Colonial Pipeline system.

Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo or provide services not in support of emergency relief efforts related to the shortages of gasoline, diesel, jet fuel, and other refined petroleum products due to the shutdown, partial shutdown, and/or manual operation of the Colonial pipeline system in North Carolina, or when the motor carrier dispatches a driver or commercial motor vehicle to another location to begin operations in commerce. (49 C.F.R. § 390.23(b)).

Upon termination of direct assistance to emergency relief efforts related to the shortages of gasoline, diesel, jet fuel, and other refined petroleum products due to the shutdown, partial shutdown and/or manual operation of the Colonial pipeline system in the North Carolina or the affected states, the motor carrier and driver are subject to the requirements of 49 C.F.R. Parts 390 through 399, except that a driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with Parts 390 through 399. When a driver is moving from emergency relief efforts to normal operations a 10-hour break is required when the total time a driver operates conducting emergency relief efforts, or a combination of emergency relief and normal operation, equals 14 hours.

Section 14.

This Executive Order does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale, or purchase of alcoholic beverages as provided in N.C. Gen. Stat. § 166A-19.30(c).

Section 15.

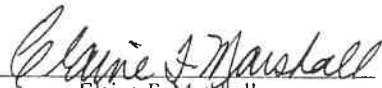
This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 10th day of May in the year of our Lord two thousand and twenty-one.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State



STATE OF NORTH CAROLINA

COUNTY OF DURHAM

AFFIDAVIT OF ANTHONY JARMAN

{1} My name is Anthony Jarman. I am over the age of 18 and am competent to provide this affidavit.

{2} On May 13, 2021, I purchased gasoline at the In & Out Mart at 911 Fayetteville Street in Durham, North Carolina.

{3} My car requires premium gasoline, and other stations I drove by that day just had regular. The In and Out Mart did not have a sign on the street displaying the price per gallon of gasoline, but I saw that they had customers at the pumps. Based on my prior purchases in the Durham area I expected premium there similarly to be priced at \$2.99 or \$3.01 per gallon.

{4} When I pulled into the In and Out Mart I could see paper placed over the regular and mid-grade prices, and a young lady who was there directing traffic stated that they just had premium.

{5} When I was pumping gas, the glare of the sun on the pump prevented my view of the price per gallon on the pump. When I very quickly reached a total purchase amount of \$40.00 or \$50.00, I checked to see if the gasoline was leaking from the pump or from my gas tank. A young lady who was directing traffic asked if I would like a receipt, and I said yes. When she brought it from the store I realized the gasoline was priced at \$5.499.

{6} Attached is a true and accurate copy of a photograph I took of the receipt I received for this purchase, showing the location, date and the selling price of \$5.499 per gallon for premium gasoline.

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Date: August 3, 2021

Signed: Anthony Jarmann

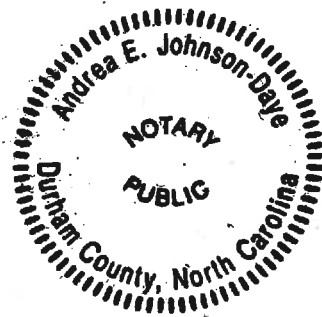
SWORN TO AND SUBSCRIBED
BEFORE ME THIS THE 3rd
DAY OF AUGUST, 2021.

Andrea E. Johnson-Payne

Notary Public

My Commission Expires:

8/15/2021



Welcome To
In & Out Food Mart

 In and Out
 911 Fayetteville St
 Durham NC 27701

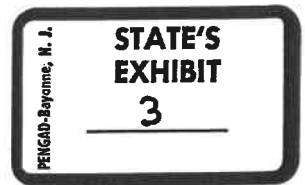
Description	Qty	Amount
Prem CA #04	11.9846	65.90
SELF @ 5.499/ G		
Subtotal		65.90
Tax		0.00
TOTAL		65.90
DEBIT \$		65.90

MC DEBIT
 Payment from



Thanks For Shopping
 With Us
 ST# 1 TILL XXXX DR# 1 TRAN# 9043638
 CSH: 0 5/11/21 6:08:27 PM

STATE OF NORTH CAROLINA



COUNTY OF WAKE

AFFIDAVIT OF DAPHNE LITTLE

{1} My name is Daphne Little. I am over the age of 18 and am competent to provide this affidavit.

{2} I am employed as a Consumer Protection Specialist for the North Carolina Department of Justice, Consumer Protection Division.

{3} In that capacity I am a custodian of certain business records of the Department, including consumer complaints regarding price gouging.

{4} Attached is a true and accurate copy of a consumer complaint received by the Department in the regular course of business, regarding Tiffany Adams' May 11, 2021 purchase of gasoline at the "In and Out Food Mart," located at 911 Fayetteville Street in Durham, for \$5.499 per gallon, and the accompanying photograph of the receipt for that sale.

Date: 8/3/2021

Signed: Daphne Little

SWORN TO AND SUBSCRIBED

BEFORE ME THIS THE 3

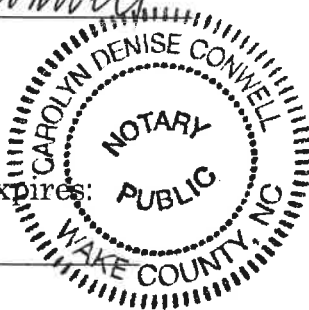
DAY OF AUGUST, 2021.

A handwritten signature in cursive script, appearing to read "Carolyn Denise Conwell".

Notary Public

My Commission Expires:

12-7-2024



NAME

Mrs. Tiffany Adams

ADDRESS

409 Moline Street
Durham, North Carolina 27707

DAYTIME PHONE

(919) 706-6638

EVENING PHONE

(919) 753-7342

EMAIL

Tiffanympollock@gmail.com

COMPANY NAME

Jacks in & out

COMPANY ADDRESS

911 Fayetteville st
911 Fayetteville st
Durham, North Carolina 27707
United States

COMPANY COUNTY

Durham

PRODUCT, ITEM OR SERVICE INVOLVED

Gas

IF THIS IS A GASOLINE PRICING COMPLAINT, PLEASE SELECT THE GRADE

Premium

PRICE BEFORE DISASTER

\$3.29

PRICE AS OF DATE

05/09/2021

HOW DO YOU KNOW THE PRE-DISASTER PRICE?

I shop here weekly.

PRICE AFTER DISASTER

\$5.49

PRICE AS OF DATE

05/11/2021

EXPLANATION GIVEN BY BUSINESS FOR POST-DISASTER PRICE.

Owner shrugged shoulders and laughed while stating, I'm about to run out what am I supposed to do?

WILL YOU BE SUBMITTING RECEIPT OR OTHER DOCUMENTATION BY MAIL OR FAX?

No

FILE UPLOAD

- [44BAF454-B128-4EA4-89E3-76952065F8F8.jpeg](#)
- [1E29B2C5-8F1C-48AF-AFD6-C6EC6DDDCEB5.jpeg](#)
- [1ED416E1-8678-4A52-B524-589426807414.jpeg](#)

\$

5499

PRICE PER GALLON, ALL TAXES INCLUDED

PREMIUM UNLEADED

MINIMUM OCTANE RATING
(R + M) / 2 METHOD

93

P R E S S

Welcome To
In & Out Food Mart

In and Out
911 Fayettevill St
Durham NC 27701

Description	Qty	Amount
Prem CA #04	4.3746	24.05
SELF @ 5.499/ G		
Subtotal		24.05
Tax		0.00
TOTAL		24.05
DEBIT \$		24.05

Thanks For Shopping
With Us

XXXX DR# 1 TRAN# 9043660
5/11/21 7:14 22 PM

