

NO. \_\_\_\_\_

STATE OF TEXAS,  
Plaintiff,

v.

ENCINAL FUEL, LLC d/b/a ENCINAL  
FUEL STOP,  
Defendant.

§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

LA SALLE COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

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

TO THE HONORABLE DISTRICT JUDGE:

COMES NOW, Plaintiff, the State of Texas ("State"), acting by and through Texas Attorney General KEN PAXTON, and files this civil enforcement action against Defendant ENCINAL FUEL, LLC d/b/a ENCINAL FUEL STOP ("Defendant"), alleging that following the Texas Governor's disaster declaration due to Hurricane Harvey, Defendant violated Texas law by engaging in price gouging, charging consumers up to \$9.99 per gallon of unleaded regular gasoline fuel.

**I. DISCOVERY**

**1.1** Pursuant to Tex. R. Civ. P. 190.3, discovery is intended to be conducted under a Level 2 discovery control plan.

**1.2** This case is not subject to the restrictions of expedited discovery under Tex. R. Civ. P. 169 because:

**A.** The relief sought by the State includes non-monetary injunctive relief; and

- B. The State's claims for monetary relief including penalties, consumer redress, and attorney's fees and costs are in excess of \$100,000.00 and could exceed \$1,000,000.00.

## **II. JURISDICTION**

2.1 This action is brought by Attorney General KEN PAXTON, through his Consumer Protection Division, in the name of the STATE OF TEXAS, and in the public interest under the authority granted by § 17.47, Texas Deceptive Trade Practices – Consumer Protection Act, Tex. Bus. & Com. Code Ann. § 17.41, *et seq.* (“DTPA”), alleging that Defendant has engaged in false, misleading, or deceptive acts or practices in the conduct of trade and commerce as defined in, and declared unlawful by, DTPA §§ 17.46(a) and (b).

2.2 In enforcement suits filed pursuant to § 17.47, the Attorney General, acting by and through his Consumer Protection Division, is further authorized to seek civil penalties of up to \$20,000 per violation, restitution for identifiable consumers, and injunctive relief to enjoin Defendant from further violations of the DTPA.

## **III. DEFENDANT AND NATURE OF DEFENDANT'S OPERATION**

3.1 Defendant ENCINAL FUEL, LLC is a Texas limited liability company doing business in La Salle County. Defendant may be served with process by serving its registered agent, Fernando Rodriguez, 803A San Dario Avenue, Laredo, Texas 78040. SERVICE OF PROCESS IS HEREBY REQUESTED.

3.2 Defendant operates a gas station located at 28442 South IH-35 in the southwestern part of La Salle County in the town of Encinal, Texas – approximately 27 miles south of the county seat of Cotulla and 30 miles north of Laredo.

#### IV. VENUE

4.1 Venue lies in La Salle County, Texas, for the following reasons:

- A. The violations alleged occurred in La Salle County. *See* Tex. Civ. Prac. & Rem. Code § 15.002.
- B. Defendant is doing business in La Salle County. *See* Tex. Bus. & Com. Code § 17.47(b).

#### V. PUBLIC INTEREST

5.1 Defendant has caused injury, loss, and damage to the State of Texas and has caused adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. The Attorney General is of the opinion and believes that these proceedings are in the public interest in accordance with DTPA § 17.47(a).

5.2 Pursuant to Texas law, it is illegal to take advantage of a disaster declared by the Governor by selling necessities such as food, fuel, and medicine, at excessive or exorbitant prices. DTPA § 17.46(b)(27). On August 23, 2017, pursuant to Tex. Gov't Code § 418.014, the Texas Governor declared a state of disaster for thirty counties due to the threat of imminent disaster from then Tropical Depression Harvey. *See Exhibit A* (Governor's Proclamation dated August 23, 2017), attached and incorporated herein for all purposes. On August 25, 2017, pursuant to Tex. Gov't Code § 418.020, the Texas Governor suspended all laws authorizing or requiring the collection of state or local hotel or motel occupancy taxes from the victims of now Hurricane Harvey, or personnel participating in relief operations, for a period from August 23, 2017 to September 6, 2017. In this proclamation, the Governor stated that Harvey is likely to make landfall in Texas as a major hurricane, and that the threat of imminent disaster is creating a temporary housing emergency in the state. *See Exhibit B* (Governor's Proclamation dated

August 25, 2017), attached and incorporated herein for all purposes. On September 1, 2017, the Governor issued a proclamation reiterating that the price gouging laws in Texas apply throughout the state of Texas following a disaster declaration. *See Exhibit C* (Governor's Proclamation dated September 1, 2017), attached and incorporated herein for all purposes. Executive orders, proclamations, and regulations issued by the Governor have the force and effect of law. *See* Tex. Gov't Code § 418.012.

**5.3** State officials urged residents of certain counties to evacuate their homes for higher, safer ground. On the Friday evening of August 25, 2017, Hurricane Harvey made landfall on the Texas coast between Port Aransas and Port O'Connor as a Category 4 hurricane. The hurricane brought winds of 130 mph and dropped approximately 50 inches of rain in parts of Texas. While flood waters from the historic rainfalls were still rising, multitudes of Texans have been rescued from flooding homes that are no longer habitable.

**5.4** Almost immediately, incredible stories of compassion and heroism emerged – reporters rescued citizens on live television and local business owners opened their doors to provide shelter to evacuees and first responders. Unfortunately, also almost immediately consumers began contacting the Texas Attorney General with reports of excessive and exorbitant pricing. Before the storm even made landfall, consumers trying to prepare for the imminent devastation seeking to buy necessities such as water faced prices of \$40-50 per case and those seeking emergency lodging were forced at some hotels to pay nearly triple the hotels' customary rate. After the storm, some gas stations exploited the fear of gas shortages by more than doubling their prices – in some instances charging \$6-10 per gallon. Since the Governor's original disaster declaration, the Attorney General has received thousands of consumer

complaints and thousands more emails and phone calls relating to illegal price gouging throughout Texas.

## **VI. TRADE AND COMMERCE**

**6.1** Defendant has, at all times described below, engaged in conduct constituting “trade” and “commerce,” as those terms are defined in § 17.45(6) of the DTPA.

## **VII. ACTS OF AGENTS**

**7.1** When it is alleged that Defendant did any act, it is meant that Defendant performed or participated in such act or thing, or Defendant’s officers, agents, or employees performed or participated in the act or thing and were authorized to do so by Defendant.

## **VIII. STATEMENT OF FACTS**

**8.1** On numerous instances, not all of which are known to Plaintiff, Defendant demanded or charged excessive prices for fuel during a declared disaster, thus taking advantage of a disaster. More specifically, eight days after the Texas Governor’s initial disaster proclamation and six days after Hurricane Harvey made landfall in Texas, Defendant demanded or charged consumers exorbitant or excessive prices for fuel, including \$8.99 and \$9.99 per gallon of unleaded regular gasoline. **Exhibits D, E, F, and G**, attached and incorporated herein for all purposes, reflect that on August 31, 2017, Defendant charged consumers \$8.99 and \$9.99 per gallon of unleaded regular gasoline.

## **IX. VIOLATIONS OF THE DTPA**

**9.1** Plaintiff incorporates Paragraphs 1.1 through 8.1, as if fully set forth herein.

**9.2** Defendant has engaged in false, misleading, or deceptive acts or practices in the conduct of trade or commerce, in violation of the DTPA as follows:

- A. Taking advantage of a disaster declared by the Texas Governor under Chapter 418 of the Government Code, by selling and/or leasing fuel, food, medicine, or other necessity at an exorbitant or excessive price, in violation of DTPA § 17.46(b)(27)(A); and
- B. Taking advantage of a disaster declared by the Texas Governor under Chapter 418 of the Government Code, by demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, or other necessity at an exorbitant or excessive price, in violation of DTPA § 17.46(b)(27)(B).

#### **X. DISGORGEMENT**

**10.1** Defendant's assets are subject to the equitable remedy of disgorgement. Defendant should be ordered to disgorge all monies fraudulently taken from individuals together with all of the proceeds, profits, income, interest and accessions thereto. Such disgorgement should be for the benefit of victimized consumers and the State of Texas.

#### **XI. TRIAL BY JURY**

**11.1** Plaintiff herein requests a jury trial and tenders the jury fee to the La Salle County District Clerk's office pursuant to Tex. R. Civ. P. 216 and Tex. Gov't Code Ann. § 51.604.

#### **XII. PRAYER**

**12.1** WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited according to law to appear and answer herein; that after due notice and hearing, a TEMPORARY INJUNCTION be issued; and that after due notice and trial, a PERMANENT INJUNCTION be issued. Plaintiff prays that the Court will issue an ORDER enjoining

Defendant, its officers, agents, servants, employees, and any other person in active concert or participation with Defendant from the following:

- A.** Taking advantage of any disaster declared by the Governor under Chapter 418 of the Government Code, by advertising, offering for sale, or selling fuel or other necessities at an exorbitant or excessive price;
- B.** Violating any regulation, proclamation, declaration, or executive order made by the Governor pursuant to Chapter 418 of the Government Code; and
- C.** Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, or other written or computer-generated materials relating to Defendant's business currently or hereafter in Defendant's possession, custody, or control except in response to further orders or subpoenas in this cause.

**12.2** Plaintiff prays that this Court award damages and restitution of monies paid by consumers.

**12.3** Plaintiff further requests that Defendant be ordered to pay to the State of Texas:

- A.** Civil penalties of up to \$20,000.00 per violation of the DTPA, pursuant to DTPA § 17.47(c)(1);
- B.** Civil penalties of up to \$250,000 per violation of the DTPA, when the act or practice that acquired or deprived money or other property from consumers who were 65 years of age or older when the act or practice occurred, pursuant to DTPA § 17.47(c)(2);

- C. Pre-judgment and post-judgment interest on all awards of restitution, damages, or civil penalties, as provided by law; and
- D. All costs of Court, costs of investigation, and reasonable attorney's fees pursuant to Texas Government Code § 402.006(c).

12.4 Plaintiff prays for all further relief, at law or in equity, to which it is justly entitled.

Respectfully Submitted,


KEN PAXTON  
Attorney General of Texas

JEFFREY C. MATEER  
First Assistant Attorney General

BRANTLEY STARR  
Deputy First Assistant Attorney General

JAMES E. DAVIS  
Deputy Attorney General for Civil Litigation

PAUL SINGER  
Chief, Consumer Protection Division

  
\_\_\_\_\_  
**VALERIA SARTORIO**  
SBN 24073758  
**STEVEN ROBINSON**  
SBN 24046738  
Assistant Attorneys General  
valeria.sartorio@oag.texas.gov  
steven.robinson@oag.texas.gov  
Office of the Attorney General  
Consumer Protection Division  
112 E. Pecan, Suite 735  
San Antonio, Texas 78205  
Telephone (210) 225-4191  
Fax (210) 225-1075



**D. ESTHER CHAVEZ**

SBN 04162200

Senior Assistant Attorney General

esther.chavez@oag.texas.gov

Office of the Texas Attorney General

Consumer Protection Division

P.O. Box 12548

Austin, Texas 78711

Telephone (512) 475-4628

**ATTORNEYS FOR PLAINTIFF**

## **EXHIBIT LIST**

- Exhibit A: Governor's Proclamation dated August 23, 2017
- Exhibit B: Governor's Proclamation dated August 25, 2017
- Exhibit C: Governor's Proclamation dated September 1, 2017
- Exhibit D: Gasoline receipt, \$100.00 for 11.112 gallons at 4:09 p.m., dated August 31, 2017
- Exhibit E: Gasoline receipt, \$121.13 for 12.114 gallons at 5:07 p.m., dated August 31, 2017
- Exhibit F: Gasoline receipt, \$149.00 for 14.901 gallons at 5:23 p.m., dated August 31, 2017
- Exhibit G: Gasoline receipt, \$20.04 for 2.004 gallons at 5:46 p.m., dated August 31, 2017

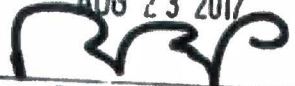


GOVERNOR GREG ABBOTT

August 23, 2017

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
4pm O'CLOCK

The Honorable Rolando B. Pablos  
Secretary of State  
State Capitol Room 1E.8  
Austin, Texas 78701

AUG 23 2017  
  
Secretary of State

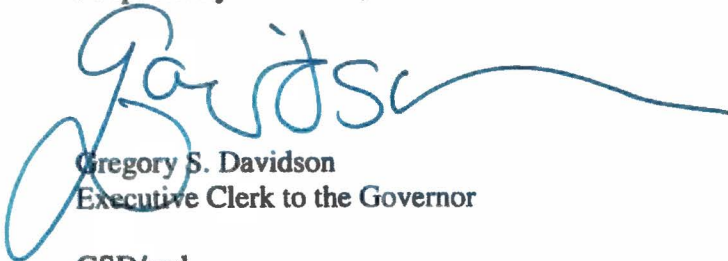
Dear Mr. Secretary:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation declaring a state of disaster in the counties of Aransas, Austin, Bee, Calhoun, Chambers, Colorado, Brazoria, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton, and Wilson, beginning August 23, 2017, due to the threat of imminent disaster posed by Tropical Depression Harvey.

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,

A large, stylized blue ink signature of Gregory S. Davidson.

Gregory S. Davidson  
Executive Clerk to the Governor

GSD/gsd

Attachment

# PROCLAMATION

BY THE

## Governor of the State of Texas

---

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that Tropical Depression Harvey poses a threat of imminent disaster, including severe flooding, storm surge and damaging winds, in the counties of Aransas, Austin, Bee, Calhoun, Chambers, Colorado, Brazoria, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton, and Wilson, beginning August 23, 2017.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties based on the existence of such threat.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.



IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 23rd day of August, 2017.

  
GREG ABBOTT  
Governor



GOVERNOR GREG ABBOTT

August 25, 2017

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
5:15pm O'CLOCK

The Honorable Rolando B. Pablos  
Secretary of State  
State Capitol Room 1E.8  
Austin, Texas 78701

AUG 25 2017  
  
Secretary of State

Dear Mr. Secretary:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation that suspends all laws authorizing or requiring the collection of state or local hotel or motel occupancy taxes from the victims of Hurricane Harvey or personnel participating in relief operations.

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,

Gregory S. Davidson  
Executive Clerk to the Governor

GSD/gsd

Attachment



# PROCLAMATION

BY THE

## Governor of the State of Texas

---

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, did issue a disaster proclamation on August 23, 2017, certifying that Tropical Depression Harvey poses a threat of imminent disaster in specified counties; and

WHEREAS, Tropical Depression Harvey has since been upgraded to a hurricane and is likely to make landfall in Texas as a major hurricane; and


WHEREAS, the threat of imminent disaster caused by Hurricane Harvey is creating a temporary housing emergency in the state.

THEREFORE, in accordance with the Disaster Proclamation and with the authority vested in me by Section 418.020(c) of the Texas Government Code, I do hereby suspend all laws authorizing or requiring the collection of state or local hotel or motel occupancy taxes from the victims of Hurricane Harvey or personnel participating in relief operations, for a period of 14 days, beginning August 23, 2017, and ending September 6, 2017.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.



IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 25th day of August, 2017.

  
GREG ABBOTT  
Governor

ATTESTED BY:



ROLANDO B. PABLOS  
Secretary of State



GOVERNOR GREG ABBOTT

September 1, 2017

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE

3:00 PM O'CLOCK

The Honorable Rolando B. Pablos  
Secretary of State  
State Capitol Room 1E.8  
Austin, Texas 78701

SEP 01 2017  
  
Secretary of State

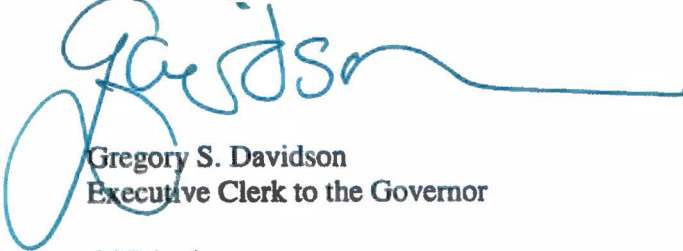
Dear Mr. Secretary:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation relating to price gouging violations of subsection 17.46(b)(27) of the Texas Business and Commerce Code to be investigated and prosecuted by the attorney general anywhere throughout the state during the disaster created by Hurricane Harvey.

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,

A large, stylized blue ink signature of Gregory S. Davidson.

Gregory S. Davidson  
Executive Clerk to the Governor

GSD/gsd

Attachment

# PROCLAMATION

BY THE

## Governor of the State of Texas

---

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, did issue a series of proclamations declaring a state of disaster in 58 counties of Texas as a result of the catastrophic damage caused by Hurricane Harvey; and

WHEREAS, millions of Texans have been impacted by this disaster, including many who have been displaced from their homes and have temporarily relocated to other parts of the state that are not a part of the declared disaster area; and

WHEREAS, many Texans impacted by this disaster are particularly vulnerable to economic exploitation during this challenging time; and

WHEREAS, Texas law prohibits price gouging and gives the attorney general the authority to prosecute anyone throughout Texas who takes advantage of a declared disaster by charging an exorbitant or excessive price for fuel, food, medicine, or any other necessity; and

WHEREAS, I am assured that the Attorney General and other law enforcement officials throughout Texas will seek to identify and vigorously prosecute those who use price-gouging to take advantage of the victims of Hurricane Harvey;

NOW, THEREFORE, be it known that price gouging is unlawful throughout Texas and that violations of subsection 17.46(b)(27) of the Texas Business and Commerce Code may be investigated and prosecuted by the attorney general anywhere throughout the state.



IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 1st day of September, 2017.

  
GREG ABBOTT  
Governor

ATTESTED BY:





\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*

Welcome to  
Encinal Fuel Stop  
Encinal Fuel Stop  
00376372  
28442 South I35  
Encinal, TX  
08/31/2017 358538354  
04:09:07 PM

XXXXXXXXXXXX5445  
MASTERCARD  
INVOICE [REDACTED]  
AUTH [REDACTED]

PUMP# 7  
UNLEAD REG 11.112G  
PRICE/GAL \$8.999

FUEL TOTAL \$ 100.00  
\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*

CREDIT \$ 100.00  
\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*

Learn how to  
EARN REWARDS  
with a Chevron  
or Texaco  
Credit Card  
See application  
for details

Thank you  
Please Come Again

\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*



Welcome To  
Encinal Fuel Stop

Encinal Fuel Stop, 1  
442 South I35  
Encinal, TX 78019

08/31/2017 5:07:16 PM  
Register: 1 Trans #: [REDACTED] Op ID: 3  
Your cashier: Raul

UNLEAD REG CA PUMP# 5  
12.114 GAL @ \$ 9.999/GAL \$121.13 99

-----  
Subtotal = \$121.13

Tax = \$0.00

-----  
Total = \$121.13

Change Due = \$0.00

Manual Credit \$121.13

Thank You  
Come Again

00376372  
28442 South I35  
Encinal, TX  
08/31/2017 358538389  
05:23:01 PM

XXXXXXXXXXXXXXXXXX5123  
WEX FLEET  
INVOICE E/[REDACTED]  
AUTH [REDACTED]

PUMP# 8  
UNLEAD REG 14.901G  
PRICE/GAL \$9.999

FUEL TOTAL \$ 149.00  
\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*

CREDIT \$ 149.00  
\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*

OD 155623

Save up to 6 cents  
per gal with the  
Chevron & Texaco  
Business MasterCard!  
Call 1.888.243.8358

Thank you  
Please Come Again

EXHIBIT

F

\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*

Welcome to  
Encinal Fuel Stop  
Encinal Fuel Stop

00376372

28442 South I35

Encinal, TX

08/31/2017 358538400

05:46:19 PM

XXXXXXXXXXXX8388

VISA

INVOICE E/

AUTH

PUMP# 7

UNLEAD REG 2.004G

PRICE/GAL \$9.999

FUEL TOTAL \$ 20.04

\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*

CREDIT \$ 20.04

\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*

Learn how to  
EARN REWARDS  
with a Chevron  
or Texaco  
Credit Card  
See application  
for details

Thank you  
Please Come Again

EXHIBIT

G

\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*