

NO. _____

STATE OF TEXAS,
Plaintiff,

v.

LAFAYETTE C-STORE, LLC
d/b/a TEJANO MART 505,
Defendant.

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IN THE DISTRICT COURT OF

WEBB 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 LAFAYETTE C-STORE, LLC d/b/a TEJANO MART 505 ("Lafayette C-Store"), 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 LAFAYETTE C-STORE, LLC is a Texas limited liability company doing business in Webb County, Texas. Defendant may be served with process by serving its registered agent, Emiliano A. Martinez, 502 Houston Street, Laredo, Texas 78040. SERVICE OF PROCESS IS HEREBY REQUESTED.

3.2 Defendant operates a gas station located at 502 Lafayette Street in the city of Laredo in Webb County, Texas.

IV. VENUE

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

- A. The violations alleged occurred in Webb County. *See* Tex. Civ. Prac. & Rem. Code § 15.002; and
- B. Defendant is doing business in Webb 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.¹ *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

¹ "State of Disaster" means the period designated by the Governor's disaster declaration pursuant to Chapter 418 of the Government Code.

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.

5.4 Unfortunately, also almost immediately consumers began contacting the Texas Attorney General with reports of excessive and exorbitant pricing. 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 exorbitant or 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, ranging from \$7.00 to \$9.99 per gallon of unleaded regular gasoline. See **Exhibit D** (Consumer Receipts dated August 31, 2017), attached and incorporated herein for all purposes, reflecting that on August 31, 2017, Defendant charged consumers \$7.00 and \$9.99 per gallon of unleaded regular gasoline.

8.2 On numerous instances, not all of which are known to Plaintiff, Defendant also charged consumers a price per gallon higher than the price advertised. Consumers believed that they were purchasing gasoline at the price per gallon displayed at the pumps; and later upon paying Defendant, discovered that they were charged as much as \$9.99 per gallon.

IX. VIOLATIONS OF THE DTPA

9.1 Plaintiff incorporates Paragraphs 1.1 through 8.2, 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. Advertising a good or service with intent not to sell them as advertised, in violation of DTPA § 17.46(b)(9);
- B. 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

- C. 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 Webb 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. Demanding an excessive or exorbitant price for fuel or selling fuel at an excessive or exorbitant price during a state of disaster;

- B. Collecting or attempting to collect a price per gallon of fuel that is other than the price posted at the fuel pump;
- C. Collecting or attempting to collect a price per gallon of fuel other than the price posted on signage located at or near the dispensing pump or visible from the street;
- D. 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; and
- E. During a state of disaster and for a minimum of six months following the expiration of a state of disaster, failing to cease any ongoing or scheduled document or data destruction and preserve records reflecting:
 - i. Each individual fuel sale transaction including price per gallon and gallons purchased;
 - ii. The dates, times, and amounts of changes in fuel prices [and the signage posted to disclose those changes to consumers]; and
 - iii. All fuel supply costs incurred by Defendant.

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 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

/s/ Valeria Sartorio

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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: Consumer Receipts 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,


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.

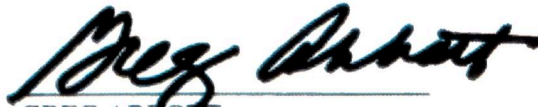
Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

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

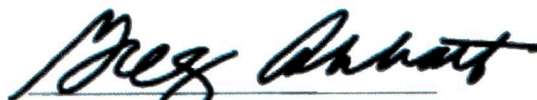
WHEREAS, the threat of imminent disaster caused by Hurricane Harvey is creating a temporary housing emergency in the state.

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

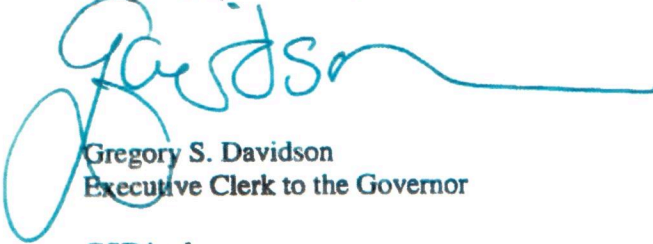
Dear Mr. Secretary:

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,



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

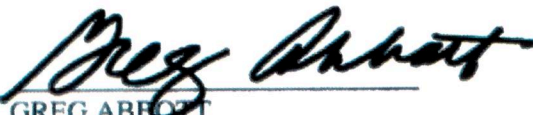
WHEREAS, Texas law prohibits price gouging and gives the attorney general the authority to prosecute anyone throughout Texas who takes advantage of a declared disaster by charging an exorbitant or excessive price for fuel, food, medicine, or any other necessity; and

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 ***
TEJANO MART 505
09463100
502 LAFAYETTE ST
LAREDO , TX
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INVOICE ██████
AUTH ██████
REF ██████
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FUEL TOTAL \$ 25.47
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CREDIT \$ 25.47
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Term ID: 4
Vehicle Card Number: ██████
Workstation ID: 00
Your opinion
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TEJANO MART 505
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502 LAFAYETTE ST
LAREDO , TX
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CREDIT \$ 88.44
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Term ID: 3
Vehicle Card Number: [REDACTED]
Workstation ID: 00
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Batch: 79 Seq Num: 29

Term ID: 8

ZIP ENTERED

Workstation ID: 00

Your opinion

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