

Consumer Protection Suits and Enforcement Increase in Response to COVID-19 Emergency Declarations

April 2020

Enforcement agencies around the country are monitoring the prices of commodities during the COVID-19 pandemic. When demand for essential items increases, some companies may see an opportunity to raise prices, but doing so during a declared public emergency can lead to significant penalties and liability under consumer protection laws.

On April 3, 2020, California Governor Gavin Newsom signed an executive order expanding consumer protections against price gouging and profiteering as the state responds to the COVID-19 pandemic. Since then, both the Governor and California Attorney General have indicated price gouging and profiteering enforcement will remain top priorities.

Like most price gouging laws, California Penal Code section 396 applies “upon the proclamation of a state of emergency.” This law was triggered when California declared a state of emergency on March 4, 2020, as a result of COVID-19. The law is intended to protect citizens from excessive and unjustified increases in commodity prices during or shortly after a declared state of emergency. Unlike many states, however, California’s law includes a cap that prohibits price increases of more than 10 percent, with certain exceptions. With the issuance of the Governor’s executive order, unless an exception applies, it is unlawful for any person or entity to sell food, consumer goods, medical or emergency supplies, and other covered products, for a price that is more than 10 percent greater than the highest price that person or entity sold or offered to sell the product on February 4, 2020. The Governor’s executive order is in effect until September 4, 2020.

The Governor’s April 3, 2020 executive order provides additional enforcement tools to the California Department of Justice and Attorney General’s Office, and other prosecutors. Price gouging is punishable by up to a year in jail and a \$10,000 penalty per violation. Profiteering violations are punishable by up to six months in jail and a \$1,000 penalty per violation. The Attorney General, district attorneys, county counsel, and city attorneys also have authority to seek injunctive relief, restitution, and civil penalties of up to \$2,500 per violation under California’s Unfair Competition Law, Business and Professions Code section 17200 et seq. All of these penalties may be assessed for each unlawful sale or offer for sale, and the remedies apply cumulatively.

The uptick in enforcement is already visible and highly publicized. Walmart, Costco, and other major companies and supermarket chains were recently sued in a price gouging class action in the United States District Court for the Northern District of California, that alleges a price increase of more than 600 percent on essential goods like eggs and hand sanitizer during the COVID-19 crisis.



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The Environmental and Regulatory Team at Hartman King PC has extensive experience advising clients regarding consumer protection laws, providing enforcement defense, and defending civil litigation matters involving weights and measures and consumer protection claims. If you would like more information about how to ensure compliance with consumer protection laws during the COVID-19 crisis, or need help defending an enforcement action, please contact us at Contact@HartmanKingLaw.com.

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#COVID-19 #enforcementdefense #executiveorder #governornewsom

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