

330 West Broadway
San Diego, CA 92101
(619) 531-4040

SanDiegoDA.com

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO
SUMMER STEPHAN
DISTRICT ATTORNEY

DAVID P. GREENBERG
ASSISTANT DISTRICT ATTORNEY

April __, 2020

[Name]
[Address]

Re: Price Gouging During State of Emergency -- Notification and Warning

Dear _____:

The Consumer Protection Unit of the San Diego County District Attorney's Office prosecutes criminal and civil violations of California's consumer protection laws. Among the laws enforced by the Consumer Protection Unit are California Penal Code section 396 and California Business and Professions Code sections 17200 *et seq.*, prohibiting price gouging in retail sales during declared emergencies.

Information presently in our possession indicates that your retail business may be in violation of the requirements of California law regarding price gouging during the present state of emergency.

California Penal Code section 396 states, in relevant part:

Upon the proclamation of a state of emergency declared by the President of the United States, **or the Governor, or upon the declaration of a local emergency** by an official, board, or other governing body vested with authority to make that declaration in any county, city, or city and county, **and for a period of 30 days following that proclamation or declaration, it is unlawful for a person, contractor, business, or other entity to sell or offer to sell, any consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than 10 percent greater than the price charged by that person for those goods or services immediately prior to the proclamation or declaration of emergency.**

(See Cal. Pen. Code section 396(b); emphasis added.) The goods and services covered by the law are specified in Penal Code section 396(j)(3)-(12). (Certain limited price increases are allowed under this Penal Code section as specified in Penal Code section 396(b).)

In addition, Executive Order N-44-20, issued on April 3, 2020 by Governor Gavin Newsom, prohibits price gouging practices by businesses that did not previously sell the covered goods:

If a person or other entity (including, but not limited to, any business enterprise of any kind) did not offer an item for sale on February 4, 2020, and that item is among the categories of goods listed in Paragraph 2 [of that Order], that person or entity shall note—from April 4, 2020 until September 4, 2020, and except as set forth below—sell or offer to sell that item for an **unconscionably excessive price**. For purposes of this Paragraph, . . . **a price is unconscionably excessive if that price is more than 50 percent great than whichever of the following applies: (a) The amount that the person or entity paid for the item; or (b) If the person or entity did not purchase the item, the total cost, to the person or entity of producing and selling the item.**

(See Executive Order N-44-20, April 3, 2020, at Paragraph 3.)

Violation of Penal Code section 396 is a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year and/or a fine of up to \$10,000. (Cal. Pen Code § 396(h)). Violation of the Executive Order is a misdemeanor punishable as set forth in Government Code section 8665. (Cal. Gov. Code § 8665.) Further, violation of Penal Code section 396 or this Executive Order constitutes an unlawful business practice and an act of unfair competition within the meaning of California Business and Professions Code section 17200 *et seq.* (See Pen. Code § 396(i); Executive Order N-44-20, para. (4).) Remedies for violation of section 17200 include injunctive relief, civil penalties of up to \$2,500 per violation, and consumer restitution.

Based on information presently in our possession, your retail business may be in violation of Penal Code section 396, Executive Order N-44-20, and California Business and Professions Code section 17200. It has come to our attention that your business has offered [continues to offer] goods [or services] covered by the prohibition in Penal Code section 396 and/or Executive Order N-44-20 in the County of San Diego. Specifically, _____

This letter constitutes formal notice that your business must take all necessary steps to ensure full compliance with California law governing price increases during this time of declared emergency.

If you wish to present evidence of your compliance with the above pricing regulations, please provide this information by mailing or transmitting the same to:

Office of the District Attorney
Economic Crimes Division, Consumer Fraud Unit
ATTN: _____
330 W. Broadway, Ste. 750
San Diego, CA 92101

Should you have any questions about whether you are in compliance with the law, please consult with appropriate legal counsel.

Thank you for your anticipated cooperation and compliance.

Very truly yours,

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

By: _____

Consumer Protection Unit
Economic Crimes Division
(619) 531-4070