

EXECUTIVE SUMMARY – CSAC CHALLENGE AWARDS ENTRY

Category: Administration of Justice & Public Safety / Urban County

ORANGE COUNTY DISTRICT ATTORNEY’S OFFICE

CONSUMER FRAUD UNIT – COVID-19 STRIKE TEAM

OVERVIEW

OCDA established the Covid-19 Hotline and Strike Team to address the large volume of price gouging and emergency-related complaints we received.

CHALLENGE

On March 4, 2020, Governor Gavin Newsom declared a state of emergency for California as a result of Covid-19. That declaration activated the price gouging law (Penal Code section 396) which prohibits retailers from increasing their prices for food, water, medical supplies and other essential goods (such as gloves, masks, and cleaning supplies) more than 10% above the price charged immediately before the declaration of emergency. We almost immediately began receiving calls from citizens complaining about price gouging at stores throughout Orange County and by online retailers. We quickly realized we needed a way to handle the large volume of incoming complaints.

One of the early calls complaining of price gouging related to an online retailer that had just started selling masks and gloves in order to take advantage of the emergency situation and the huge demand by consumers for these products. After a careful review of Penal Code section 396, we determined that the law did not apply to “new sellers,” meaning retailers who did not sell the item prior to the declaration of emergency were free to charge as much as they wanted for food, water, medical supplies and other essential goods. This created not only an unfairness to Orange County consumers, who would be gouged by buying essential products from new sellers, but it also created an unfairness amongst retailers. Those who sold the item prior to the emergency could only sell the item for 10% more than the pre-emergency price, but new sellers could legally charge any amount for those items.

SOLUTION

To handle the volume of complaints we were receiving on Covid-related issues (primarily price gouging, reports of potentially fraudulent Covid testing and reports of businesses not complying with mandatory closure orders), we set up a Covid-19 hotline number and online complaint form to receive complaints. Within the first few months, we had received over 400 complaints through our hotline. We created a Covid-19 Strike Team made up of a Supervising Investigator, multiple investigators, a paralegal, a supervising attorney and two deputy district attorneys to review and respond to each and every complaint received. Our Strike Team and Hotline were established on March 13, and worked full-time throughout the spring and summer to respond to and investigate every complaint.

To solve the issue of the “new seller” loophole in the law, our District Attorney joined forces with State Senator Tom Umberg and the San Diego District Attorney’s Office to sponsor legislation to close that loophole. SB 1196 was drafted to close the loophole by setting a ceiling on the amount a retailer could

charge for an item that wasn't offered for sale by that retailer prior to the declaration of emergency. While we were in the process of drafting this legislation, on April 4, 2020, Governor Newsom issued an Executive Order which created a temporary fix for this "new seller" loophole. SB 1196 mirrored that Executive Order in establishing that a new seller would be guilty of price gouging if it sold an essential item during a declared emergency for more than 50% over the cost of that item.

INNOVATION

OCDA's Covid-19 Hotline and Strike Team was an innovative approach to handling a sudden influx of complaints relating to this emergency situation. Our method ensured that our citizens' voices could be heard, and we ensured that each and every call was responded to within 48 hours.

OCDA also showed innovation in responding to a loophole in the law by teaming up with a State Senator and another County District Attorney to create a legislative solution to the loophole.

RESULTS

We are pleased to report that SB 1196 was passed by the Senate and Assembly (following testimony by both Orange County and San Diego prosecutors) and is currently awaiting the Governor's signature in order to become law. Through our innovation and partnership with Senator Umberg and San Diego DA's Office, we achieved success and have created a law that is fairly enforceable against all retailers throughout the state during emergency periods. Our citizens will no longer be unfairly gouged for essential goods by "new sellers" who are profiting from the misery occurring in our state.

OCDA Strike Team members have contacted hundreds of retailers throughout the County, informing them of the price gouging law and encouraging their voluntary compliance. In nearly every instance, retailers who become aware of the law will change their practices to conform to it, obviating the need for enforcement action. OCDA has also teamed up with a variety of outside agencies, including the Orange County Health Care Agency, the CDC, the FDA, the California Medical Board, local police agencies, and neighboring district attorney's offices to investigate many of the Covid-related complaints we received on the hotline. OCDA has several ongoing, open investigation and enforcement actions involving Covid-19 complaints that came through our Hotline.

REPLICABILITY

Other law enforcement agencies throughout the state can replicate our results by creating a hotline and strike team to deal with emergency situations where members of the public need the ability to communicate with them without overwhelming the emergency response systems. Staffing a hotline on a short-term basis leads to better communication with the public and the ability to take quick, decisive action to solve a problem.

PROGRAM CONTACT

Lesley D. Young
Assistant District Attorney
Orange County District Attorney's Office
P.O. Box 808
Santa Ana, CA 92701
(714) 648-3601 / Lesley.Young@da.ocgov.com