



State of California  
Office of the Attorney General

XAVIER BECERRA  
ATTORNEY GENERAL

March 20, 2020

Jonathan E. Johnson, III, CEO  
Overstock  
6350 South 3000  
East Salt Lake City, UT 84121

Dear Mr. Johnson:

I write to express my concern about the prevalence of postings on third party platforms, such as yours, attempting to capitalize on the current public health crisis caused by novel coronavirus, or COVID-19. Specifically, numerous sellers are utilizing e-commerce platforms to charge illegally inflated prices for otherwise affordable medical supplies or simple household goods.

Such conduct may constitute criminal price gouging. Under California Penal Code Section 396, price gouging is a misdemeanor in all California communities during a declared state of emergency. California law generally prohibits charging a price that exceeds, by more than 10 percent, the price of an item before a state or local declaration of emergency. This law applies to the prices of certain goods or services when a declared state of emergency results in disruptions of the market, including with respect to food, emergency and medical supplies, and other consumer goods. Exceptions to this prohibition exist if, for example, the price of labor, goods, or materials has increased for the business.

Violators of the price gouging statute are subject to criminal prosecution that can result in a one-year imprisonment in county jail and/or a fine of up to \$10,000. Violators are also subject to civil enforcement actions including civil penalties of up to \$2,500 per violation, injunctive relief, and mandatory restitution. The Attorney General and local district attorneys can enforce the statute.

The operators of e-commerce platforms have a critical role in preventing, stopping, and reporting illegal price gouging from your website. I therefore ask that you take the following actions, to the extent that you have not already done so:

- Supplement algorithmic management of postings on your website with meaningful human review. It is clear from the volume of potentially illegal postings that algorithms currently in use are not up to the task of filtering out posts that price gouge.



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- Ban third-party sellers that engage in gouging or other predatory products from your platform. These sellers should not be allowed to operate in the marketplace.
- Ensure that algorithms and human review include shipping costs in order to prevent gouging by sellers attempting to evade detection by increasing shipping costs rather than base prices.
- Ban the sale by new third-party sellers of certain items that are particularly ripe for price gouging abuse, such as surgical masks, cleaning supplies and hand sanitizer, and certain household goods and paper products. Allowing only long-time third-party sellers to market these products will reduce the opportunity for abuse by new third-party sellers looking to make a quick buck off of this crisis.
- Restrict or eliminate features that allow products to be posted for bid rather than set prices for items particularly ripe for price gouging, in order to prevent bidding wars that unfairly drive up prices of necessary goods.
- Refer potential violations of price gouging laws to my office, and to other appropriate law enforcement agencies, so that they can be investigated and, where appropriate, prosecuted under applicable law.

Please contact my office to provide information about the steps that you have already taken or plan to take to combat price gouging on your platform, including any steps you have taken that I have not listed above. That information, as well as any referrals concerning potential illegal contact, should be directed to Eleanor Blume, Special Assistant to the Attorney General, at [eleanor.blume@doj.ca.gov](mailto:eleanor.blume@doj.ca.gov).

During this difficult public health emergency, it is imperative that we do not allow unscrupulous sellers to take advantage of vulnerable populations by price gouging on essential medical supplies or household goods. I look forward to working with you to eliminate such activity on your website.

Sincerely,



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Attorney General