EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-44-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS despite sustained efforts, COVID-19 continues to spread and is impacting nearly all sectors of California; and

WHEREAS it is vital that California's health care workers, first responders, and others engaged in the fight against COVID-19 be able to obtain the medical and emergency supplies they need, and that all Californians be able to obtain food and consumer goods; and

WHEREAS the State is prepared to take strong action against price gouging, profiteering, and other unscrupulous business practices that threaten these vital interests; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8571, 8627, and 8665, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1) The time limitation set forth in Penal Code section 396, subdivision (b), prohibiting price gouging in time of emergency, is hereby waived. All prohibitions against price gouging set forth in subdivision (b) shall be in effect through September 4, 2020.

2) In addition to the prohibitions set forth in Penal Code section 396, a person or other entity (including, but not limited to, any business enterprise of any kind) shall not—from April 4, 2020 until September 4, 2020, and except as set forth below—sell or offer to sell any item from among the following categories of goods for a price that is more than 10 percent greater than the highest price charged by that person or entity for that item on February 4, 2020:

    - Food items;
    - Consumer goods;
    - Medical or emergency supplies; and
    - Any other materials previously designated by the U.S. Secretary of Health and Human Services as Scarce Materials or Threatened

Materials pursuant to section 102 of the Defense Production Act, 50 U.S.C. § 4512.

A price increase greater than the 10 percent increase specified above shall not be unlawful if the seller can prove either of the following:

a) The increase was directly attributable to additional costs imposed on the seller by suppliers of the item, and the price is no more than 10 percent greater than the total of the cost to the seller plus the markup customarily applied by the seller for that item in the usual course of business on February 4, 2020; or

b) The seller was offering the relevant item for sale at a reduced price on February 4, 2020, and the increased price is not more than 10 percent greater than the price at which the seller ordinarily sold the item.

Additionally, and notwithstanding the foregoing, it shall not be a violation of this Paragraph 2 to sell or offer to sell any medical or emergency supplies to the State (including, but not limited to, any agency, department, board, commission, or office of the State), or to any political subdivision of the State, on terms acceptable to the State or to the relevant political subdivision of the State, as determined by the Governor's Office of Emergency Services (as to sales or offers of sale to the State) or by the officer or entity within the political subdivision that is responsible for procuring such supplies (as to sales or offers of sale to that subdivision).

3) 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, that person or entity shall not—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 3, a price is unconscionably excessive if that price is more than 50 percent greater 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.

Notwithstanding the foregoing, it shall not be a violation of this Paragraph 3 to sell or offer to sell any medical or emergency supplies to the State (including, but not limited to, any agency, department, board, commission, or office of the State), or to any political subdivision of the State, on any terms acceptable to the State or to the relevant political subdivision of the State, as determined by the Governor's Office of Emergency Services (as to sales or offers of sale to the State) or by the officer or entity within the political subdivision that is responsible for procuring such supplies (as to sales or offers of sale to

that subdivision).

4) Each instance in which an item is sold or offered for sale in a manner prohibited by Paragraph 2 or Paragraph 3 shall constitute a separate violation of this Order. Each violation of this Order shall be a misdemeanor punishable as set forth in Government Code section 8665. Each such violation shall also be redressable in the same manner as any other unlawful business practice under the Unfair Competition Law, Business and Professions Code section 17200 et seq., and as otherwise provided by the laws of the State. These remedies are cumulative.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 3rd day of April 2020.

GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State