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Price Gouging Litigation Continues Apace

Minding Your Business Blog on **November 2, 2021**

As price gouging restrictions remain in place in many states and municipalities, new and ongoing enforcement actions continue to advance or settle. Over the past several weeks, we have seen a number of noteworthy developments in the most watched price gouging matters.

Online Merchants Guild v. Cameron, 20-cv-00029-GFVT (E.D. K.Y.)

After Kentucky Attorney General Daniel Cameron initiated civil price gouging investigations into various Kentucky-based merchants last year, the Online Merchants Guild ("Guild") brought suit to enjoin application of the state price gouging laws against its member suppliers. The district court granted a preliminary injunction, and Kentucky appealed. In April 2021, the Sixth Circuit dissolved the lower court's preliminary injunction and remanded for further proceedings. The Attorney General filed a motion for judgment on the pleadings, arguing that the Guild's allegations of constitutional violations fail because Kentucky's statute is not extraterritorial and it is sufficiently clear to pass constitutional muster. On October 12, 2021, the Guild moved to voluntarily dismiss its case without prejudice, noting that the Guild and Attorney General were engaged in discussions to address the state's concerns while avoiding further litigation. The Guild further stated it did not intend to pursue litigation as an entity, but if further litigation were necessary, it could be addressed through individual suits by its members. The parties are awaiting the district court's determination on their respective dismissal motions.

Greenberg v. Amazon, 2:21-cv-00898-RSL (W.D. Wash.)

On July 2, 2021, a group of consumers filed a putative class action in Washington District Court seeking to hold Amazon accountable for allegedly unlawful price gouging during the COVID-19 pandemic on a variety of Amazon-branded products as well as products sold by third-party sellers in the Amazon marketplace. On October 1, 2021, Amazon filed a motion to dismiss the complaint. Among other things, Amazon pointed to the basic economic principle of supply and demand and argued that the court should not impose a blanket price ceiling of its own accord. Amazon also objected to the plaintiffs' attempt to create a 15% limit on price increases, a standard which is not found in Washington's consumer protection statute or case law. The plaintiffs' filed an amended complaint which added an additional named plaintiff and described additional products allegedly sold at inflated prices. The plaintiffs amended complaint also claims the baseline price for measuring whether price gouging occurred is the "the price prevailing immediately prior to the declaration of a national emergency related to COVID-19." Amazon's deadline to respond to the amended complaint is due November 5, 2021.

Bell v. Cal-Maine Foods et al., 1:20-cv-00461-RP (W.D. TX)

On September 20, 2021, Judge Robert Pitman dismissed a class action price gouging case in the Western District of Texas after adopting Magistrate Judge Mark Lane's report and recommendation. Plaintiffs alleged that defendant egg producers conspired to, and illegally raised egg prices in violation of section 17.46(b)(27) of the Texas Business and Commerce Code, which prohibits "exorbitant or excessive prices" on certain products during a state of emergency. Magistrate Judge Lane found that the plaintiffs failed to claim the amount in controversy necessary for the court to have subject matter jurisdiction. Plaintiffs argued that their claims against each defendant should be aggregated together but failed to make any factual allegations that the defendants are related or worked together to manipulate and raise egg prices. The district court adopted these findings and dismissed the complaint without prejudice.

Ellison v. Sparboe Farms, Inc. 27-cv-21-10810 (MN)

On October 25, 2021, Minnesota Attorney General Keith Ellison announced a settlement between the state and Sparboe Farms, ending a lawsuit by the state which alleged that Sparboe had engaged in price gouging on eggs during the Covid-19 pandemic. As part of the settlement, Sparboe will donate over 1 million eggs to Minnesota nonprofit organizations for the purpose of combatting hunger and food insecurity over the next 18 months. Sparboe is responsible for all costs associated with the donation and must provide updates and documentation to the attorney general if requested.

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