



The Office of
Minnesota Attorney General Keith Ellison
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March 24, 2020

John R. Menard, Jr.
Chief Executive Officer
Menard, Inc.
5101 Menard Drive
Eau Claire, WI 54703

VIA FAX 715-876-2868 AND U.S. MAIL

Re: Warning of Potential Price-Gouging Violations

Dear Mr. Menard:

The Minnesota Attorney General's Office ("AGO") has received reports that your company has recently excessively increased the prices of essential goods and services in the midst of the COVID-19 public health emergency, including but not limited to cleaning supplies such as 409 multi-surface cleaning spray and bleach, and face masks.

For example, a consumer reported to the AGO that your Rochester store location recently nearly doubled the price for a 32 ounce bottle of Formula 409 Multi-Surface Cleaner. Specifically, when the consumer purchased this product from your Rochester store location on January 10, 2020, it cost \$2.74. When he next purchased it on March 8, 2020, the price had nearly doubled to \$4.99. See receipts attached hereto for your review as "**Exhibit A.**"

Similarly, the AGO has received reports that your Minnesota store locations have also recently excessively increased the price of Clorox bleach. For example, the AGO has received complaints that Menards has increased the price of a 121 ounce container of Clorox bleach to \$8.99. As you know, the Michigan Attorney General's Office has notified you of similar complaints it has received about Menards' grossly increasing the prices it charges for bleach.¹

The AGO has also received complaints that Menards has excessively increased the price of the face masks that it sells, including by increasing the online price of such masks on its website and then offering vouchers to purchasers that may only be used toward future in-store purchases at Menards. The AGO understands from news reports that Menards has already

¹ See March 17, 2020 Notice of Intended Action from the Michigan Attorney General's Office to Menards, available at https://www.michigan.gov/documents/ag/Notice_of_Intended_Action_3.17.2020_684103_7.pdf.

publicly apologized for this conduct and stated that it plans to address this issue by providing customers who purchased the masks at inflated prices with a \$39.95 in-store voucher.²

Menards' purported resolution of its excessive face mask pricing is troubling to the AGO for multiple reasons: First, Menards, to-date, has not committed to reduce its face mask prices to ensure it is not charging unconscionably excessive prices for face masks during the ongoing COVID-19 peacetime emergency in Minnesota (or elsewhere throughout the country). Second, Menards' voucher- solution provides no relief to purchasers who fail to affirmatively apply for the voucher or choose not to return to Menards' stores to purchase additional products. Finally, the voucher- solution also allows Menards to retain the excessive prices it has already charged as well as further enrich itself by enticing victimized consumers to return to its stores and make more purchases.

As you may know, on March 20, 2020, Governor Tim Walz issued Executive Order 20-10 (attached hereto as "**Exhibit B**"), which empowers this Office to investigate and take action against persons that are unconscionably raising the prices of goods and services due to the spread of COVID-19. The Executive Order prohibits excessively raising the prices of essential consumer goods or services, including the following: (1) any price increase to a value 20% greater than the previous price that existed on or after February 12, 2020; (2) any price that is in "gross disparity" with the previous price that existed on or after February 12, 2020; or (3) any price that "grossly exceed[s]" local area prices for the same or similar goods or services. Pursuant to Minn. Stat. § 12.32, "[o]rders and rules promulgated by the governor under authority of section 12.21, subdivision 3, clause (1), when approved by the Executive Council and filed in the Office of the Secretary of State, have, during a . . . peacetime emergency . . . the full force and effect of law."

This letter serves as notice to you that Executive Order 20-10 prohibits you from implementing unconscionably excessive price increases in Minnesota during the current state of emergency. **The AGO demands that you rescind all previously implemented price increases, which violate Executive Order 20-10 and agree not to implement any other price increases during the term of the COVID-19 public health emergency.**

The Attorney General is the chief legal officer for the State of Minnesota, and is dedicated to taking urgent and decisive action against those who choose to take advantage of Minnesotans during this crisis. Pursuant to Minnesota Statutes section 8.31, the AGO is authorized to utilize enforcement measures whenever the AGO has reason to believe that any person is using or is about to use any "unfair discriminatory, and other unlawful practice[] in business, commerce, or trade." The AGO may file a lawsuit seeking civil penalties of **\$10,000 per unlawful sale or transaction**, along with injunctive relief, recovery of the AGO's attorney fees and costs, and other remedial relief authorized by Minn. Stat. § 8.31. See Executive Order 20-10; Minn. Stat. § 8.31, subs. 3, 3a. The AGO may also, prior to filing a lawsuit, issue formal discovery demands to compel testimony and production of records. Minn. Stat. § 8.31, subd. 2.

² See Paul Egan, *Retailer Menards on Overpriced Masks: "We Are Very Sorry."*, DETROIT FREE PRESS (March 21, 2020), available at <https://www.freep.com/story/money/business/Michigan/2020/03/19/coronavirus-covid-19-menards-apologizes-price-gouging/2879775001/>.

In order to facilitate the AGO's ongoing review and investigation of your compliance with Executive Order 20-10, I ask that you respond to the following requests for information and documents:

1. Provide a list of cleaning supply products, including but not limited to cleaning sprays and bleach, as well as all face mask products (and replacement filters) for which you have raised prices by any amount, at any time in Minnesota since February 12, 2020.
2. For each product listed in response to Question 1, and for each retail location in Minnesota, indicate:
 - a. The dates and amounts of all price changes in Minnesota since February 12, 2020;
 - b. The quantity sold in Minnesota since February 12, 2020;
 - c. The revenue related to sales of each product since February 12, 2020; and
 - d. Your profit derived from the sales of each product since February 12, 2020.
3. Provide copies of all Minnesota price lists, in-store advertisements, signs, and other documentation of the listed prices for each product listed in response to Question 1, from March 22, 2020 to the present.
4. Provide copies of all Minnesota price lists, in-store advertisements, signs, and other documentation of the listed prices for each product listed in response to Question 1, as of February 12, 2020.
5. Provide the manufacturer's suggested retail price for each product listed in response to Question 1. Provide any documentation supporting your response.
6. For each product listed in response to Question 1, provide an explanation for the price increase(s) and provide any documents explaining, justifying, or discussing the price increase(s).
7. With respect to the online sale of face mask products on Menards' website, indicate:
 - a. The dates and amounts of all price changes effecting Minnesota residents since February 12, 2020;
 - b. The quantity of face mask products sold to Minnesota residents since February 12, 2020;
 - c. The revenue and profits derived from the sale of face mask products to Minnesota residents since February 12, 2020; and
 - d. The existence and amount of any vouchers offered to Minnesota residents that purchased such face mask products.
8. If you are unwilling to agree to rescind the price increases listed in response to Question 1, explain why you will not agree to rescind the price increase and return the product's price to its pre-COVID value and how your position complies with Executive Order 20-10.

On behalf of the AGO, I ask that you respond in writing to the requests in this letter **on or before March 27, 2020**. This letter shall also serve as notice that you must preserve all records,

Mr. John R. Menard, Jr.

March 24, 2020

Page 4

including electronically stored information, related to the advertising, pricing, and sale of cleaning supplies such as cleaning sprays and bleach, and face masks to any person or business in Minnesota.

In the event we do not obtain adequate assurances or cooperation from you, the AGO will take appropriate actions as provided under the law. We anticipate and appreciate your cooperation in this matter. Please contact me if you have any questions.

Sincerely,



JASON PLEGGENKUHLE

Consumer, Wage, and Antitrust Division Manager

Assistant Attorney General

(651) 757-1147

jason.pleggenkuhle@ag.state.mn.us

Enclosures: Exhibit A – 409 Multi-Surface Cleaning Spray Receipts
Exhibit B - Executive Order 20-10

|#4684457-v1

Use Your  2%
BIG CARD REBATE

MENARDS - ROCH NORTH
6733 Prairie Vista
Dr.
Rochester, MN 55901

KEEP YOUR RECEIPT
RETURN POLICY VARIES BY PRODUCT TYPE

Unless noted below allowable returns for
Items on this receipt will be in the form
of an in store credit voucher if the
return is done after 06/06/20

If you have questions regarding the
charges on your receipt, please
email us at:
RCHNfrontend@menards.com



Sale Transaction

100 OZ PINESOL REGULAR	
6472112	6.88
32OZ 409 ALL PURPOSE CLN	
6472111	4.88
MENARD REBATE NO: [REDACTED]	7.02-
Remaining Balance:	\$0.00

TOTAL	4.25
TAX ROCHESTER-MN 8.125%	0.35
TOTAL SALE	4.60
VISA CREDIT [REDACTED]	4.60
Auth Code: [REDACTED]	
Chip Inserted	

TC - [REDACTED]

TOTAL NUMBER OF ITEMS = 3

GUEST COPY

The Cardholder acknowledges receipt of
goods/services in the total amount shown
hereon and agrees to pay the card issuer
according to its current terms.

THIS IS YOUR CREDIT CARD SALES SLIP
PLEASE RETAIN FOR YOUR RECORDS.

Connect with Local PROs to Complete

Your Projects at Menards!

March 17, 18, & 19 from 5-7pm

Now Hiring!

Extra \$3/HR on Weekends

Please Apply in Person

Or at Menards.com/Careers

THANK YOU, YOUR CASHIER, TAMMY

51653 06 5491 03/08/20 04:59PM 3314

Use Your  2%
BIG CARD REBATE

MENARDS - ROCH NORTH
6733 Prairie Vista
Dr.
Rochester, MN 55901

KEEP YOUR RECEIPT
RETURN POLICY VARIES BY PRODUCT TYPE

Unless noted below allowable returns for
Items on this receipt will be in the form
of an in store credit voucher if the
return is done after 04/09/20

If you have questions regarding the
charges on your receipt, please
email us at:
RCHNfrontend@menards.com



Sale Transaction

PINE SOL CLEANER PINK	
6471147	4.47
32OZ 409 ALL PURPOSE CLN	
6472111	2.74
24OZ SCRUBBING BUBBLES	
6471617 2	\$3.48
6" TC/NON-TC AT NEW CONG	
3493000 4	\$7.79
	31.16

TOTAL	45.33
TAX ROCHESTER-MN 8.125%	3.68
TOTAL SALE	49.01
VISA CREDIT [REDACTED]	49.01
Auth Code: [REDACTED]	
Chip Inserted	

TC - [REDACTED]

TOTAL NUMBER OF ITEMS = 8

GUEST COPY

THE FOLLOWING REBATE RECEIPTS WERE
PRINTED FOR THIS TRANSACTION:
7989

The Cardholder acknowledges receipt of
goods/services in the total amount shown
hereon and agrees to pay the card issuer
according to its current terms.

THIS IS YOUR CREDIT CARD SALES SLIP
PLEASE RETAIN FOR YOUR RECORDS.

Now Hiring!

Extra \$3/HR on Weekends

Please Apply in Person

Or at Menards.com/Careers

THANK YOU, YOUR CASHIER, CHERI

7937 03 6391 01/10/20 02:53PM 3314

STATE OF MINNESOTA

Executive Department



Governor Tim Walz

Emergency Executive Order 20-10

Combating Price Gouging During the COVID-19 Peacetime Emergency

I, Tim Walz, Governor of the State of Minnesota, by the authority vested in me by the Constitution and applicable statutes, issue the following Executive Order:

The COVID-19 pandemic presents an unprecedented challenge to our State. Minnesota has taken proactive steps to ensure that we are ahead of the curve on COVID-19 prevention and response. On March 13, 2020, I issued Executive Order 20-01 and declared a peacetime emergency because this pandemic, an act of nature, threatens the lives of Minnesotans, and local resources are inadequate to address the threat. In Executive Order 20-01, I directed all state agencies to submit proposed orders and rules to protect and preserve public health and safety.

Pursuant to Minnesota Statutes 2019, section 12.21, subdivision 3(1), the Governor may “make, amend, and rescind the necessary orders and rules to carry out the provisions” of Minnesota Statutes, Chapter 12. When approved by the Executive Council and filed in the Office of the Secretary of State, such orders and rules have the force and effect of law during the pendency of a peacetime emergency. Any inconsistent rules or ordinances of any agency or political subdivision of the state are suspended during the pendency of the emergency. Under Minnesota Statutes 2019, section 12.45, this Executive Order may specifically prescribe the penalty or punishment for violation of this Executive Order.

Minnesotans have responded to the call of public health officials and experts to prepare for and defend against the challenges confronting all of us. As Minnesotans have prepared to protect themselves and their families from this pandemic and to support loved ones and neighbors in need, we have heard reports of excessive and opportunistic pricing of basic necessities needed for public health and security. The Minnesota Attorney General’s Office has received numerous reports of price gouging from consumers throughout the State. These reports have included concerns about excessive pricing on hygiene supplies, cleaning products, personal protective equipment, food, and other essential consumer goods and services.

These concerns raise risks of immediate and irreparable injury, loss, or damage to consumers, and immediate risk to the public interest of ensuring that Minnesotans can prepare for and respond to this emergency situation. These matters implicate safety concerns and matters of public safety, personal safety, and economic security. As a result, immediate resolution of these

concerns (including but not limited to necessary and prompt court-intervention) is in the public interest and necessary to protect the public peace, health, and safety of Minnesotans during this peacetime emergency.

For these reasons, I order as follows:

1. Beginning March 21, 2020 at 5:00 pm, and continuing for the duration of the peacetime emergency declared in Executive Order 20-01 or until this Executive Order is rescinded, all persons are prohibited from selling, offering to sell, or causing to sell in this state any essential consumer goods or services for an amount that represents an unconscionably excessive price.
2. For purposes of this Executive Order, the following terms are defined as specified below.
 - a. "Person" or "persons" has the meaning in Minnesota Statutes 2019, section 325F.68, subdivision 3.
 - b. "Essential consumer goods or services" means goods or services vital and necessary for the health, safety, and welfare of the public, including without limitation: food, water, fuel, gasoline, housing, shelter, transportation, health care goods and services, pharmaceuticals, medical supplies, and personal hygiene, sanitation, and cleaning goods.
 - c. "Unconscionably excessive" means:
 - i. The amount charged represents a gross disparity between the price of the good or service and the price of the same good or service that was sold or offered for sale in the usual course of business during the thirty (30) days immediately prior to the peacetime emergency declared by Executive Order 20-01 on March 13, 2020, unless the person demonstrates that the disparity is substantially attributable to significant additional costs outside the control of the person; or
 - ii. The amount charged for the good or service is more than twenty percent (20%) greater than the price of the same good or service that was sold or offered for sale in the usual course of business during the thirty (30) days immediately prior to the peacetime emergency declared by Executive Order 20-01 on March 13, 2020, unless the person demonstrates that the disparity is substantially attributable to significant additional costs outside the control of the person; or
 - iii. The amount charged grossly exceeds the price at which the same or similar good or service is readily obtainable by other purchasers in the trade area, unless the person demonstrates that the price increase is substantially attributable to significant additional costs outside the control of the person.

3. The Attorney General may investigate and bring an enforcement action to remediate and enjoin any alleged violation of this section. The authority of the Attorney General under this Executive Order includes but is not limited to the authority provided under Minnesota Statutes 2019, section 8.31.
4. Pursuant to Minnesota Statutes 2019, section 12.45, any person who is found to have violated this section is subject to a civil penalty of not more than \$10,000 per sale or transaction. The Attorney General may additionally seek any relief available pursuant to Minnesota Statutes 2019, section 8.31.

Pursuant to Minnesota Statutes 2019, section 4.035, subdivision 2, and section 12.32, this Executive Order is effective immediately upon approval by the Executive Council. It remains in effect until the peacetime emergency declared in Executive Order 20-01 is terminated or until it is rescinded by proper authority.

A determination that any provision of this Executive Order is invalid will not affect the enforceability of any other provision of this Executive Order. Rather, the invalid provision will be modified to the extent necessary so that it is enforceable.

Signed on March 20, 2020.



Tim Walz
Governor

Filed According to Law:



Steve Simon
Secretary of State

Approved by the Executive Council on March 20, 2020:



Alice Roberts-Davis
Secretary, Executive Council