

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil
(Consumer Protection)

Court File No. _____

In the Matter of Forsman Farms, Inc.

**ASSURANCE OF
DISCONTINUANCE**

WHEREAS, this Assurance of Discontinuance (“Assurance”) is entered into pursuant to Minn. Stat. § 8.31, subd. 2b, between the State of Minnesota, through its Attorney General, Keith Ellison, and Forsman Farms, Inc. (“Forsman Farms”);

WHEREAS, on March 20, 2020, as a result of the COVID-19 pandemic, Minnesota Governor Tim Walz issued Executive Order 20-10, which prohibits price-gouging for essential consumer goods or services beginning at 5:00 p.m. on March 21, 2020 and continuing for the duration of the peacetime emergency declared in Executive Order 20-01 on March 13, 2020. A true and correct copy of Executive Order 20-10 is attached hereto as “**Exhibit A.**”

WHEREAS, beginning at 5:00 p.m. on March 21, 2020, Executive Order 20-10 prohibits persons from selling, offering to sell, or causing to sell in Minnesota any essential consumer goods or services for an amount that represents an “unconscionably excessive price.”

WHEREAS, under Executive Order 20-10 the term “unconscionably excessive” includes, among other things, the following:

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;

WHEREAS, Executive Order 20-10 further vests the Attorney General with enforcement authority, including obtaining a civil penalty of up to \$10,000 per sale or transaction, as well as any other relief available in accordance with Minnesota Statutes section 8.31. 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.”

WHEREAS, it is alleged that, on or after 5:00 p.m. on March 21, 2020, Forsman Farms sold, offered to sell, or caused essential consumer goods or services to be sold in Minnesota for prices greater than the twenty percent (20%) threshold set forth by Executive Order 20-10 that were not substantially attributable to significant additional costs outside Forsman Farms’ control;

WHEREAS, the Attorney General and Forsman Farms (collectively, the “Parties”) desire to resolve fully this matter by Assurance;

NOW THEREFORE, the Attorney General and Forsman Farms hereby agree to entry of an order with the following terms and conditions:

FACTUAL ALLEGATIONS

1. The Attorney General alleges that on or after 5:00 p.m. on March 21, 2020, Forsman Farms sold, offered to sell, or caused to sell essential goods or services in Minnesota for an amount that represents an unconscionably excessive price in violation of Executive Order 20-10.

2. Specifically, the Attorney General alleges that Forsman Farms offered to sell and sold eggs to its wholesale customers on or after March 21, 2020, under pre-existing market-price agreements that tied its sale price of eggs to the market index price for retail shell eggs—namely, Urner Barry’s reported egg prices for the Midwest region (hereinafter the “Urner Barry Egg

Index” or “Index”). Due to increased consumer demand caused by the COVID-19 pandemic, the Urner Barry Egg Index prices have rapidly risen in recent weeks, as prices for every shell egg category on the Index have increased by more than 150% since February 12, 2020. The Index prices peaked on March 26, 2020, and started to decrease as of April 2, 2020.

3. The Attorney General alleges that, because Forsman Farms’ pre-existing market-based contracts tied its egg prices to the rapidly-increasing Urner Barry Egg Index prices, Forsman Farms offered to sell and sold eggs to its wholesale customers on or after March 21, 2020, for prices that exceeded the company’s pre-COVID egg pricing by more than 150%. This has caused a concomitant increase in egg prices further down the supply chain, including greatly increased retail prices for Minnesota consumers that purchased Forsman Farms eggs at their local stores.

4. Eggs are essential consumer goods pursuant to Executive Order 20-10, because they are food items that are vital and necessary for the health and welfare of the public.

5. The Attorney General alleges that the prices at which that Forsman Farms offered to sell or sold eggs to its customers are unconscionably excessive in violation of Executive Order 20-10, because:

- a. The prices at which Forsman Farms offered to sell and sold its eggs, or at which it caused its eggs to be sold, were more than twenty percent (20%) greater than the prices at which Forsman Farms offered to sell or sold eggs, or caused eggs to be sold, in the usual course of business during the thirty-day period from February 12, 2020 through March 13, 2020.
- b. There is a gross disparity between the amount Forsman Farms currently charges for eggs and the price at which Forsman Farms offered to sell or

sold eggs, or caused eggs to be sold, in the usual course of business during the thirty-day period from February 12, 2020 through March 13, 2020.

6. The Attorney General alleges that Forsman Farms has not demonstrated that the excessive prices at which it offered to sell or sold eggs, or at which it caused eggs to be sold, are substantially attributable to significant additional costs outside the control of Forsman Farms. The Attorney General alleges that the increased market index price for eggs reflects increased consumer demand, and did not result in significant additional costs for Forsman Farms that justified the above-described price increases.

7. The Attorney General alleges that the above-described alleged conduct violates Executive Order 20-10.

COMPANY'S POSITION

8. Forsman Farms contends that it did not violate Executive Order 20-10 because recent price increases in the retail shell egg market were caused by commodities market forces outside the control of Forsman Farms. Forsman Farms asserts that its increase in prices charged to wholesaler customers, which subsequently caused increased prices for Minnesota consumers, was not within its control because it was automatically triggered by the provisions of pre-existing market-based pricing arrangements. Forsman Farms contends that all such contracts pre-dated Executive Order 20-10 and, therefore, it did not violate Executive Order 20-10.

9. Notwithstanding Forsman Farms' disagreement with the allegation that it violated Executive Order 20-10, Forsman Farms has cooperated with the Office of the Minnesota Attorney General and voluntarily (1) adjusted its contract pricing retroactive to March 21, 2020 for Minnesota retail shell egg customers, (2) provided replacement invoices to such customers reflecting this retroactive price change, (3) credited such customers for any excess payment with respect to such reissued invoices, (4) reviewed its existing Minnesota contracts to ensure they

comply with the requirements of Executive Order 20-10, and (5) taken appropriate measures to ensure any future Minnesota contracts comply with the requirements of Executive Order 20-10 for the duration of the peacetime emergency declared in Executive Order 20-01 or until Executive Order 20-10 is rescinded.

INJUNCTIVE RELIEF

10. Forsman Farms, including its principals, officers, directors, employees, agents, independent contractors, affiliates, subsidiaries, and successors, as well as other persons in active concert or participation with Forsman Farms who receive actual notice of this order, shall comply with the following injunctive terms and provisions for the duration of the peacetime emergency declared in Executive Order 20-01 or until Executive Order 20-10 is rescinded:

11. When offering to sell, selling, or causing to sell eggs in Minnesota to existing customers, Forsman Farms shall charge the lower of (a) the price provided by the existing agreement or contract between Forsman Farms and the customer, or (b) a price that is no more than 20% greater than the average price at which Forsman Farms offered to sell or sold the same egg product to the same customer between February 12, 2020, and March 13, 2020.

12. For the avoidance of doubt, this Assurance does not prohibit Forsman Farms from altering or amending its agreements with its existing customers, so long as Forsman Farms remains in compliance with the pricing limit specified in Paragraph 11(b).

13. When offering to sell, selling, or causing to sell eggs in Minnesota to new customers, Forsman Farms shall not charge a price more than 20% greater than the Urner-Barry Egg Index prices for the relevant egg category that existed on February 12, 2020.

14. If substantial additional costs outside the control of Forsman Farms associated with offering to sell, selling, or causing to sell eggs arise, Forsman Farms shall promptly notify

and must receive the written approval of the Attorney General's Office ("AGO") before increasing the price of eggs beyond the prices specified in Paragraphs 11 and 13. Forsman Farms shall promptly cooperate with the AGO's review of the notification, including answering questions and producing relevant information and documentation within three (3) business days of any request from the AGO.

15. Forsman Farms shall comply with Executive Order 20-10 in setting prices for all other essential consumer goods and services it sells, offers to sell, or causes to be sold within Minnesota.

16. Forsman Farms shall fulfill the terms of this Assurance, and all of its parents, subsidiaries, and successors shall be bound by this Assurance as if they had signed this Assurance, so as to accomplish the full relief contemplated by this Assurance. Forsman Farms shall not effect any change in its form of doing business, organizational identity, organizational structure, affiliations, ownership, or management composition as a method or means of attempting to avoid the requirements of this Assurance.

STAYED CIVIL PENALTY

17. Forsman Farms shall pay a stayed civil penalty of \$75,000 to the Attorney General upon application to the Court and a showing by the Attorney General that Forsman Farms has violated any of the terms of this Assurance and Order. The Court shall decide whether the stayed civil penalty shall be imposed and may hold an evidentiary hearing, if it deems such hearing necessary. The release in Paragraph 19 does not prevent the Attorney General from moving for, or collecting, the stayed civil penalty described in this Paragraph, to the extent that Forsman Farms is in breach of this Assurance and Order.

GENERAL TERMS

18. Nothing in this Assurance shall relieve Forsman Farms of its obligation to comply with all applicable Minnesota and federal laws and regulations.

19. In consideration of the stipulated relief and contingent upon the Court's entry of this Assurance, the Attorney General, by execution of this Assurance, hereby fully and completely releases Forsman Farms of any and all claims of the Attorney General under Executive Order 20-10, connected with or arising out of the allegations contained in this Assurance, up to and including the date of this Assurance. The Attorney General through this Assurance does not settle, release, or resolve any claim against Forsman Farms or any other person or entity involving any private causes of action, claims, and remedies, including, but not limited to, private causes of action, claims, or remedies provided for under Minn. Stat. § 8.31. This release does not apply in any way to claims of any other Minnesota state agency, department, official, or division.

20. This Assurance is neither an admission nor denial of liability by Forsman Farms.

21. This Assurance may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement. This Assurance may be executed by facsimile or electronic copy in any image format.

22. The person signing this Assurance for Forsman Farms warrants that Forsman Farms has authorized the person to execute this Assurance, that Forsman Farms has had the opportunity to consult with legal counsel of its choosing before entering into the Assurance, and that he or she executes this Assurance in an official capacity that binds Forsman Farms and its successors.

23. This Assurance constitutes the full and complete terms of the agreement entered into by Forsman Farms and the Attorney General.

24. The Parties agree that this Assurance, including any issues related to interpretation or enforcement, shall be governed by the laws of the State of Minnesota.

25. The Ramsey County District Court shall retain jurisdiction of this matter for purposes of enforcing this Assurance. The Attorney General may make such application as appropriate to enforce or interpret the provisions of this Assurance or, in the alternative, maintain any action within his legal authority for such other and further relief as he determines is proper and necessary for the enforcement of this Assurance. The parties agree that, in any action brought by the Attorney General to enforce the terms of this Assurance, the Court shall have the authority to award equitable relief, including specific performance.

26. The failure of a party to exercise any rights under this Assurance shall not be deemed to be a waiver of any right or any future rights.

27. Nothing in this Assurance shall be construed to limit the power or authority of the State of Minnesota or the Attorney General except as expressly set forth herein.

28. Each of the parties is represented by counsel, participated in the drafting of this Assurance, and agrees that the Assurance's terms may not be construed against or in favor of any of the parties by virtue of draftsmanship.

29. Forsman Farms understands that if a Court of competent jurisdiction holds that Forsman Farms has committed a violation of this Assurance, that such violation may subject Forsman Farms to sanctions for contempt pursuant to Minn. Stat. § 8.31, subdivision 2b, and that the Attorney General may thereafter, in his sole discretion, initiate legal proceedings against Forsman Farms for any and all violations of this Assurance.

30. Each party shall perform such further acts and execute and deliver such further documents as may reasonably be necessary to carry out this Assurance.

31. Forsman Farms shall not state or imply, directly or indirectly, that the State of Minnesota or the Attorney General have approved of, condoned, or agree with any conduct or actions by Forsman Farms.

32. Forsman Farms agrees that the Attorney General, without further notice to Forsman Farms, may file this Assurance with the Ramsey County District Court on an *ex parte* basis, and that the Court may issue the Order below without further proceedings.


33. Service of notices required by this Assurance shall be served on the following persons, or any person subsequently designated by the parties to receive such notices:

Eric J. Maloney, Assistant Attorney General
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101

Forsman Farms, Inc.
c/o Bryant Tchida
Moss & Barnett P.A.
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402

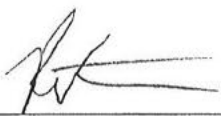
KEITH ELLISON
 Attorney General
 State of Minnesota

Date: 4-27-20

By: 
 Eric J. Maloney
 Assistant Attorney General

FORSMAN FARMS, INC.

Date: 4-27-20

By: 
 Peter Forsman, Chief Financial Officer and Co-Owner
 Forsman Farms, Inc.

ORDER

Having reviewed the terms of the foregoing Assurance of Discontinuance, which is incorporated herein by reference, and which the Court finds reasonable and appropriate, it is SO ORDERED.

Date: _____

 JUDGE OF DISTRICT COURT

THERE BEING NO CAUSE FOR FURTHER DELAY, LET JUDGMENT BE ENTERED IMMEDIATELY.

STATE OF MINNESOTA

Executive Department



Governor Tim Walz

Emergency Executive Order 20-10

Combatting 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:

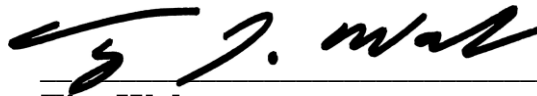
1. Beginning March 21, 2020 at 5:00 pm, and continuing for the duration of the peacetime emergency declared in Executive Order 20-01 or until this Executive Order is rescinded, all persons are prohibited from selling, offering to sell, or causing to sell in this state any essential consumer goods or 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