



SPOTLIGHT

Examining Price-Gouging Allegations During COVID-19 Pandemic

Shook Partner [Katie Gates Calderon](#) and Associate [Elizabeth Fessler](#) have authored “[Best Practices for Food and Beverage Pricing Right Now](#)” for *Law360*, which discusses how food and beverage companies may face regulatory actions and reputational damage if they are perceived to have raised their prices too much during the COVID-19 pandemic. “With increased demand and potentially increasing production costs due to supply chain disruptions, many in the food and beverage industry may be wondering how to deal with the economic pressures without running afoul of price-gouging statutes,” Fessler and Gates Calderon write.

Many states have different laws governing price-gouging, and those laws often differ on what an acceptable price differential may be. Understanding which state laws apply and documenting all aspects of the reasoning for any price increase are key, they explain, concluding, “If you are contacted about pricing issues, it may be best to contact outside counsel before providing any records or documents to government agents because the laws, and potential defenses, vary by state.”

Price-gouging allegations have already begun to be filed, including a lawsuit brought by the Texas attorney general arguing that Cal-Maine Foods Inc. raised prices for its eggs by 300% and a consumer putative class action seeking “to hold Amazon accountable for its unlawful price increases during the COVID-19 pandemic.” *Texas v. Cal-Maine Foods Inc.*, No. 20205427 (Tex.

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Shook offers expert, efficient and innovative representation to clients targeted by food lawyers and regulators. We know that the successful resolution of food-related matters requires a comprehensive strategy developed in partnership with our clients.

For additional information about Shook’s capabilities, please contact



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Dist. Ct., filed April 23, 2020); *McQueen v. Amazon.com Inc.*, No. 20-2782 (N.D. Cal., filed April 21, 2020).

LEGISLATION, REGULATIONS & STANDARDS

President, Agencies Act to Maintain Food Supply

President Trump has issued an executive order directing Secretary of Agriculture Sonny Perdue to “ensure the continued supply of meat and poultry” consistent with guidance issued by the Centers for Disease Control and Prevention (CDC) and the Occupational Safety and Health Administration. CDC also issued a report on COVID-19 at meat and poultry processing facilities for the month of April 2020 that found 4,913 cases and 20 deaths among 130,000 workers and cited, among other risks, “crowded, multigenerational” residences and carpooling as relevant factors increasing the likelihood of transmission among employees. The government actions coincide with lawsuits seeking to hold meat and poultry processing plants liable for injury or death caused by COVID-19, including a wrongful death lawsuit brought against Quality Sausage Co. following the death of a forklift driver who allegedly contracted the coronavirus from coworkers. *Parra v. Quality Sausage Co.*, No. DC-20-06406 (Tex. Dist. Ct., filed April 30, 2020).

Trump also issued an executive order aiming to “improve the competitiveness of American industry” by increasing aquaculture to boost the production of seafood. The order allows Secretary of Commerce Wilbur Ross to request “each Regional Fishery Management Council to submit, within 180 days of the date of this order, a prioritized list of recommended actions to reduce burdens on domestic fishing and to increase production within sustainable fisheries, including a proposal for initiating each recommended action within 1 year of the date of this order.”

Chipotle to Pay \$25 Million for Foodborne Illness Outbreaks

The Department of Justice (DOJ) has announced that Chipotle Mexican Grill Inc. will pay \$25 million and enter a deferred prosecution agreement to resolve criminal charges related to foodborne illness outbreaks that occurred between 2015 and 2018. The deferred prosecution agreement will require Chipotle to



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ABOUT SHOOK

Shook, Hardy & Bacon is widely recognized as a premier litigation firm in the United States and abroad. For more than a century, the firm has defended clients in some of the most substantial national and international product liability and mass tort litigations.

Shook attorneys are experienced at assisting food industry clients develop early assessment procedures that allow for quick evaluation of potential liability and the most appropriate response in the event of suspected product contamination or an alleged food-borne safety outbreak. The firm also counsels food producers on labeling audits and other compliance issues, ranging from recalls to facility

comply with an improved food safety program for three years to avoid conviction.

“This case highlights why it is important for restaurants and members of the food services industry to ensure that managers and employees consistently follow food safety policies,” a DOJ attorney stated in a press release. “The Department of Justice will vigorously enforce food safety laws in order to protect public health.”

inspections, subject to FDA, USDA and FTC regulation.



FDA, USDA Could Improve Cell-Cultured Meat Cooperation, GAO Finds



The U.S. Government Accountability Office (GAO) has publicly released its April 2020 report on the partnership between the Food and Drug Administration (FDA) and Department of Agriculture (USDA) on the development of cell-cultured meat. GAO indicated that it began the inquiry after some stakeholders “expressed concern about the agencies’ oversight of cell-cultured meat amidst a fragmented federal food safety oversight system.” GAO recommended that “FDA and USDA more fully incorporate leading practices for effective collaboration in the agencies’ interagency agreement,” and the agencies “partially concurred and indicated a willingness to incorporate these practices in a more detailed agreement, which would also meet the intent of the recommendations.”

LITIGATION

Court Orders Restaurant Group to Allow Employee to Wear a Face Mask

A Texas state court has reportedly ordered Hillstone Restaurant Group to allow an employee returning to work to wear a face mask to avoid the transmission of COVID-19. The complaint initially sought to lift the restaurant group’s mask ban for all employees, but the plaintiff amended the complaint to only apply to her after the company attempted to remove the case to federal court, according to the *Dallas Morning News*. The employee asserted that she was denied four shifts, or 40 hours, because she refused to work without a mask, and the court’s temporary order will allow her to wear a mask for two weeks.

FIRM NEWS

Shook Ranked First in Food and Beverage News for Third Consecutive Year by JD Supra

JD Supra 2020 [Readers Choice Awards](#) recognized Shook for the third consecutive time as the top law firm for food and beverage content. The award acknowledges top authors and firms for their thought leadership and reader engagement in key topics during the past year.

Shook Partners [Mark Anstoetter](#), [Katie Gates Calderon](#) and [Lindsey Heinz](#) tied as the top authors in the Food and Beverage category, with their legal writing ranked as the most read and responded to on the topic. Across all categories, Anstoetter, Gates Calderon and Heinz were among 235 authors selected out of more than 50,000 who publish their work on the legal news platform. In the category of Food and Beverage news, Anstoetter, Gates Calderon and Heinz were the top three in a field of 900 food and beverage authors.

JD Supra connects professionals writing on topics read by C-suite executives, in-house counsel and media members, delivering legal and business content in daily email digests through more than 100 proprietary social feeds, on mobile platforms, to partner websites and as news across the web.

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