

## California AG's Consumer Protection Authority Gains New Teeth on January 1, 2024

The California Office of the Attorney General — like most state AGs — has the authority to seek both civil penalties and restitution for alleged violations of state consumer protection laws. Civil penalties are paid to the AG's office, while restitution is paid to impacted consumers. Specifically, under California's Unfair Competition Law<sup>1</sup> and False Advertising Law,<sup>2</sup> the AG's office can seek civil penalties of \$2,500 per violation, which must be deposited into a general fund for use by the AG's office to support consumer protection investigations and prosecutions. Until now, however, California law has not contained any specific direction as to how restitution funds should be collected, held, or distributed in consumer protection cases. Additionally, if a defendant was insolvent and unable to pay the ordered or agreed-upon restitution, the affected consumers may have simply been out of luck.

Pursuant to new legislation, which takes effect on January 1, 2024, California is establishing a Consumer Fraud Restitution Fund within the state treasury (Restitution Fund). The Restitution Fund will “be used by the [AG] to provide restitution to victims of acts or practices for which consumer restitution has been ordered but not paid” and such funds will be acquired through payments made by other defendants.

In other words, if a defendant is insolvent and cannot pay restitution to affected consumers, the AG will soon be able to pay restitution out of the Restitution Fund using proceeds from prior cases. As California State AG Rob Bonta put it, this bill “is a game changer,” as these changes to the consumer protection laws will allow the AG's office “to compensate [] victims using proceeds that predatory businesses receive from their misconduct,” and “ensure that there is a source of funding to help make whole victims ... who otherwise might go uncompensated because of the inability of the defendant to pay restitution[.]”

Importantly, the same bill creating the Restitution Fund also authorizes the AG's office to seek disgorgement for consumer protection violations — money which must be deposited into the Restitution Fund. While the AG's office is arguably precluded from seeking disgorgement for any conduct that occurred prior to the January 1, 2024, effective date, we would expect the AG to seek disgorgement (in addition to restitution and civil penalties) in all enforcement actions going forward, if for no other reason than to operationalize the newly created Restitution Fund.

Just as importantly, the creation of this new Restitution Fund may dramatically impact the AG's approach to bringing enforcement actions against potentially insolvent defendants. If the AG's office can now make consumers whole *regardless* of a defendant's ability to pay, the office has one more reason to continue pursuing the case. Companies crossing paths with the California AG will need to adapt to this new reality.

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<sup>1</sup> Cal. Bus. & Prof. Code § 17200 *et seq.*

<sup>2</sup> Cal. Bus. & Prof. Code § 17500 *et seq.*

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