



# California: Changes to Consumer Protection Authority

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California has a new tool in the toolbox when it comes to remedies available for certain consumer protection law violations. The governor of California recently signed [legislation](#) adding the remedy of disgorgement for AG actions under [false advertising](#) and [unfair competition](#) laws (Consumer Laws), which would require a party to repay all amounts obtained through illegal or wrongful acts. In addition, the law created a Victims of Consumer Fraud Restitution Fund (Fund) to help make victims whole in consumer protection lawsuits brought by the California Attorney General. The Fund is funded through payments made by those who violate consumer protection laws, and not through taxes or fees charged to law-abiding businesses.

Starting January 1, 2024, in an action brought by the California AG pursuant to Consumer Laws, the court can award disgorgement in addition to other remedies already provided for in those statutes, which include the often confused remedy of consumer restitution. The difference between the two remedies is one of focus; restitution focuses on how much the victims were harmed by the conduct, while disgorgement focuses on what the wrongdoer gained as a result of the illegal conduct. Of importance, disgorgement does not require a showing of the specific harmed consumers that need to be compensated, making it an attractive, flexible remedy for enforcers.

When determining whether to award disgorgement, the court shall take into account the amount of civil penalties and consumer restitution awarded, “in addition to other appropriate factors.” Currently, the California AG has authority to seek civil penalties of \$2500/violation. The funds recovered as disgorgement shall be deposited into the new Fund, established in the State Treasury. Monies in the Fund may, upon appropriation by the legislature, be used by the AG to provide restitution to victims of acts or practices for which consumer restitution has been ordered but not paid in an action brought by the AG pursuant to the Consumer Laws. Should the AG recover funds from a defendant after payment from the Fund has been made, the AG can reimburse the Fund.

California Attorney General Bonta sponsored this bill, [declaring](#) that it is a game changer and will allow consumers to get restitution when a business has been successfully prosecuted, but becomes insolvent. Companies should take note that the flexibility to obtain disgorgement will likely give California greater authority to obtain additional monetary recoveries in the state’s actions. Disgorgement however is specific to AG actions which necessarily excludes California District Attorney and private actions. Because a “violation” for penalty purposes and “appropriate factors” under the new statute are undefined, it will be worth watching how California wields this new source for payment when it comes to negotiating resolutions. We also note that several other state AGs

already claim disgorgement authority (which the FTC currently lacks). See, e.g., [New York](#) and [Texas](#).

As California is a very active state when it comes to consumer protection, one can assume that this new tool will be used to a great extent, and that California will want to quickly ensure that the Fund maintains a robust amount of money to be used in future enforcement matters.