



**I. PARTIES, JURISDICTION, AND VENUE**

**A. Plaintiff**

1. The Vermont Attorney General is authorized under the Vermont Consumer Protection Act, 9 V.S.A. § 2458, to sue to enforce the Act's prohibitions on unfair and deceptive acts and practices in commerce.

2. The Vermont Attorney General also has the right to appear in any civil action in which the State has an interest. 3 V.S.A. § 157. The Attorney General has an interest in ensuring that entities that do business in Vermont do so in a lawful manner.

**B. Defendants**

3. Defendant Shelley Palmer ("Mr. Palmer") is a resident of Vermont with his principal place of residence at 874 North Williston Road, Williston, Vermont 05495.

4. Mr. Palmer is the Owner, President, and Director of Big Brother Security Programs, Inc.

5. Defendant Big Brother Security Programs, Inc. ("Big Brother"), is a Vermont for-profit corporation with its principal place of business located at 874 North Williston Road, Williston, Vermont 05495.

6. Big Brother's primary business is to own and operate public and private transportation.

7. Through Mr. Palmer, Big Brother has recently undertaken the business of importing surgical masks from a supplier in Shanghai, China (the “Supplier”).

**C. Jurisdiction and Venue**

8. The Court has personal jurisdiction over Defendants because they reside in Vermont and conduct business in Vermont, including in Chittenden County.

9. Venue in this Court is proper because Defendants reside and are located in Chittenden County.

10. This action is in the public interest.

**II. FACTUAL BACKGROUND**

**A. COVID-19 Crisis**

11. On Friday, March 13, 2020, Governor Scott issued Executive Order EO1-20 to declare a State of Emergency in the State of Vermont in response to COVID-19, or the coronavirus.

12. The coronavirus is a respiratory illness that is highly contagious and potentially fatal, particularly to older and immunocompromised individuals. It is thought to spread mainly from person to person through respiratory droplets.

13. The primary way to limit viral exposure is through social distancing and isolation, thereby limiting contact with potential carriers of the virus.

14. However, essential workers such as healthcare workers and public servants do not have this option. They attempt to keep safe from the virus through vigilant use of Personal Protective Equipment (“PPE”), such as surgical masks.

15. Given the global breadth and severity of the coronavirus, PPE is in short supply.<sup>1</sup>

16. Consequently, on March 25, 2020, the federal government, through the Department of Health and Human Services, issued a notice in the federal register, based on President Trump’s March 23<sup>rd</sup> Executive Order 13910, making it illegal to hoard and price gouge any PPE, such as surgical masks.<sup>2</sup>

17. States have been finding numerous instances of hoarding and price gouging related to PPE.<sup>3</sup>

## **B. Defendants’ PPE Practices**

18. On March 9, 2020, Defendants purchased 5,000 surgical masks from their Supplier in China for \$0.10 each, at a total cost of \$500.00.<sup>4</sup>

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<sup>1</sup> See Amelia Nerenberg, *Where Are All The Masks?*, The New York Times, Apr. 3, 2020, <https://www.nytimes.com/article/face-masks-coronavirus.html>

<sup>2</sup> Notice of Designation of Scarce Materials or Threatened Materials Subject to COVID-19 Hoarding Prevention Measures Under Executive Order 13910 and Section 102 of the Defense Production Act of 1950, <https://www.hhs.gov/sites/default/files/hhs-dfa-notice-of-scarce-materials-for-hoarding-prevention.pdf?language=en>

<sup>3</sup> See, e.g., Neil Vigdor, *A Hoarder’s Huge Stockpile of Masks and Gloves Will Now Go to Doctors and Nurses, F.B.I. Says*, The New York Times, Apr. 2, 2020, <https://www.nytimes.com/2020/04/02/nyregion/brooklyn-coronavirus-price-gouging.html>; and Hayley Fowler, *Hoarder Stashed Masks, Gowns Ahead of Coronavirus Outbreak. Now Hospitals Will Get Them*, Miami Herald, Apr. 3, 2020, <https://www.miamiherald.com/news/coronavirus/article241742776.html>

<sup>4</sup> On information and belief, Defendants purchased at least an additional 37,500 surgical masks (later sold to the Central Vermont Medical Center, as described below), presumably from the same Supplier at the same cost of \$0.10 each.

19. Defendants have represented that they have purchased additional surgical masks and other PPE from their Supplier and either currently have or expect additional shipments of PPE.

20. Defendants have sold the surgical masks purchased from their Supplier to Vermont healthcare providers.

21. In these transactions, Defendants have falsely represented the surgical masks to be the higher-grade masks known as “N95” masks to at least two Vermont healthcare providers.

22. Unlike surgical masks, N95 masks filter out at least 95% of airborne particles and are approved by the federal National Institute for Occupational Safety and Health as per the requirements in 42 C.F.R. part 85.

Central Vermont Medical Center

23. On **March 18, 2020**, Defendants sold **9,500** masks to Central Vermont Medical Center (“CVMC”)<sup>5</sup> for **\$2.50 each**, for a total of **\$23,750**. The invoice for this sale described the surgical masks as “Disposable Paper Non Woven Surgical Ma[s]k N95 2.5m.”

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<sup>5</sup> CVMC is a domestic non-profit hospital located in Berlin, Vermont. It is a “consumer” for purposes of the Vermont Consumer Protection Act. Per the Act, a “‘consumer’ means any person who purchases, leases, contracts for, or otherwise agrees to pay consideration for goods or services not for resale in the ordinary course of his or her trade or business but for his or her use or benefit or the use or benefit of a member of his or her household, or in connection with the operation of his or her household or a farm whether or not the farm is conducted as a trade or business, *or a person who purchases, leases, contracts for, or otherwise agrees to pay consideration for goods or services not for resale in the ordinary course of his or her trade or business but for the use or benefit of his or her business or in connection with the operation of his or her business.*” 9 V.S.A. §2451a(a) (emphasis added).

24. On **March 20**, 2020, Defendants sold **15,000** masks to CVMC for \$2.50 each, for a total of **\$37,500.00**. The invoice for this sale describes the masks as “Disposable Paper Non Woven Surgical Mask N95 2.5m.”

25. On **March 24**, 2020, Defendants sold **18,000** masks (3 boxes of 6,000 masks each) to CVMC for \$2.50 each, for a total of **\$45,000.00**. The invoice for this sale describes the masks as “Disposable Paper Non Woven Surgical Mask N95 2.5 m.”

26. While each invoice described above indicates that the masks in question are “N95” masks, none are. Indeed, CVMC has tested the masks in question and confirmed that they are generic surgical masks, not N95s.

27. CVMC purchased Defendants’ masks because of supply chain and shortage issues.

28. Prior to the COVID-19 crisis, CVMC paid approximately \$0.06 per mask for generic surgical masks of this type and quality.

29. Even as the COVID-19 crisis unfolded, as of February 12, 2020, CVMC paid its primary supplier \$0.06 for the same masks.

30. In sum, Defendants sold CVMC 42,500 generic surgical masks at a purchase price of \$2.50 each for a total of **\$106,250.00**. Meanwhile, Defendants’ cost for the masks was \$0.10 each, at a total cost of **\$4,250**. This is a mark-up of 2,500%.

Champlain Medical Urgent Care

31. On March 17, 2020, Mr. Palmer visited Champlain Medical Urgent Care (“CMUC”) located at 150 Kennedy Drive, South Burlington, Vermont 05403.

32. At CMUC's front desk, Mr. Palmer offered to sell N95 masks to the medical practice for \$2.50 each.

33. Two staff members stationed at the front desk questioned Mr. Palmer, stating that the masks he offered for sale were not N95 respirators, but surgical masks. Mr. Palmer represented that the presence of a metal nose piece on the masks indicated that they were N95 masks. This is not the case. The presence or absence of a metal nose piece has no bearing on a respirator's N95 certification. *See also supra* ¶ 22.

34. Further, Mr. Palmer claimed to have a certification for the masks he was selling, but no staff member at CMUC had the opportunity to look at it thoroughly before CMUC declined Mr. Palmer's offer to purchase the masks.

## **VIOLATIONS OF THE LAW**

### **COUNT ONE**

#### **Unfair Acts and Practices in Violation of 9 V.S.A. § 2453**

35. The State realleges and incorporates by reference each of the allegations contained in all paragraphs of this Complaint as though fully alleged herein.

36. Defendants have engaged and are continuing to engage in unfair acts and practices in commerce, in violation of the Vermont Consumer Protection Act, 9 V.S.A. § 2453(a), which offend the public policy and laws as expressed in state and federal price gouging laws and the COVID-19 crisis guidelines for PPE; are immoral, unethical, oppressive and unscrupulous; and cause substantial injury to

consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.

37. Defendants have committed unfair acts by engaging in “price gouging,” i.e., selling essential goods at an unconscionably high price during a state-declared emergency.

38. Specifically, Defendants engaged in unconscionable pricing and price gouging by selling PPE masks at exorbitant prices, including exceeding 4,000% of the market price of the same masks prior to the COVID-19 emergency, and exceeding 2,500% of Defendants’ cost of the mask.

39. Defendants’ conduct is also especially unscrupulous because Defendants have falsely labeled their surgical masks as “N95” and are marketing and describing the plain surgical masks as “N95” in Defendants’ sales transactions.

**WHEREFORE**, Plaintiff State of Vermont respectfully requests that the Court enter judgment in its favor and the following relief:

1. A judgment determining that Defendants have violated the Vermont Consumer Protection Act;
2. A permanent injunction prohibiting Defendants from engaging in the unfair acts and practices identified herein;
3. A judgment requiring Defendants to provide restitution to all Vermont consumers who purchased PPE masks from Defendants;

4. A judgment requiring Defendants to disgorge all profits obtained as a result of their violations of the Vermont Consumer Protection Act;
5. Civil penalties of \$10,000 for each violation of the Vermont Consumer Protection Act;
6. The award of investigative and litigation costs and fees to the State of Vermont; and
7. Such other and further relief as the Court may deem appropriate.

Dated: April 13, 2020

STATE OF VERMONT

THOMAS J. DONOVAN JR.  
ATTORNEY GENERAL

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