

**STATE OF VERMONT**

**SUPERIOR COURT  
CHITTENDEN UNIT**

**CIVIL DIVISION  
DOCKET NO.**

STATE OF VERMONT, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 BIG BROTHER SECURITY )  
 PROGRAMS INC., and )  
 SHELLEY PALMER, )  
 )  
 Defendants. )

**STATE OF VERMONT’S MOTION FOR PRELIMINARY INJUNCTION**

NOW COMES The State of Vermont, and pursuant to Vermont Rule of Civil Procedure 65(b)(1) and 9 V.S.A. § 2458(a), moves this Court for preliminary relief to enjoin Shelley Palmer (“Mr. Palmer”) and Big Brother Security Programs, Inc. (“Big Brother”) (collectively “Defendants”) from selling, attempting to sell, or marketing personal protective medical equipment (such as face masks) at unconscionably high prices. Defendants’ price gouging of surgical masks and misrepresentations about those masks constitute unfair acts and practices that violate Vermont’s Consumer Protection Act, 9 V.S.A. § 2451 *et seq.*

This Court should grant this Motion for Preliminary Injunction because Vermonters’ substantial health and safety interests are at immediate risk during the ongoing COVID-19 crisis. Vermont’s healthcare providers are in desperate need

of face masks. Defendants are holding themselves out as one of the few critical suppliers of essential face masks while charging exorbitant prices and misrepresenting the nature of such masks during a state emergency amidst a global pandemic. Defendants are selling surgical masks at 500%-4,000% of typical rates. At least one major Vermont hospital (Central Vermont Medical Center) purchased over \$100,000 worth of masks at Defendants' exorbitant rate because of the scarcity of such materials. An injunction is necessary now to: (i) ensure that Vermont healthcare workers have the appropriate type and supply of masks to prevent COVID-19 exposure; and (ii) protect the economic well-being of healthcare providers from being gouged on essential protective equipment. In furtherance of this Motion for Preliminary Injunction, the State of Vermont submits the following Memorandum of Law.

### **MEMORANDUM OF LAW**

After a preliminary statement and description of Defendants' conduct, the first section of this memorandum discusses the applicable standard for granting injunctive relief; the second section outlines the legal principles pertinent to consumer protection violations; and the third section applies those principles to the facts of Defendants' conduct. Combined, the facts and legal standards demonstrate that a preliminary injunction should be issued here.

#### **Preliminary Statement**

This is a case of enormous importance to stop a perpetrator of unfair acts against Vermont hospitals at a time of national public health crisis. Price gouging

during a time of emergency is an odious enough practice when involving fuel, food, or other necessities. It becomes despicable when scarcity is leveraged for profit at the expense of doctors, nurses, and other health providers that are the front line of response to the coronavirus (COVID-19) global pandemic. They are the caregivers for our parents, friends and neighbors—some of whom are gravely ill—and, who daily put their own lives (and those of their families) at risk of exposure. As of April 13, 2020 there are 748 Vermonters who are positively identified as having contracted the coronavirus and twenty-eight Vermonters have died.<sup>1</sup>

It is fair to say that doctors, nurses, and hospitals are desperate for protective equipment. Public reports indicate that some hospitals may be down to just days or weeks of equipment on hand.<sup>2</sup> It is because of the coincidence of a public health emergency and disruptions to normal supply chains that immediate, forceful action is required by the State to stop unlawful conduct that would otherwise allow unscrupulous actors to advantage and enrich themselves at the expense of the very institutions and actors we need to keep us—and them—healthy, safe, and in some cases alive. The special circumstances of this situation thus compel judicial intervention now. “The law is not always black or white and it is in the flexibility of the gray areas that justice can be done by a consideration of the type of illegality, the statutory purpose and the circumstances of the particular case.” *Am. Home*

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<sup>1</sup> Vt. Department of Health, COVID-19 in Vermont, “Current Activity in Vermont,” *at*: <https://www.healthvermont.gov/response/coronavirus-covid-19/current-activity-vermont> (last visited April 13, 2020).

<sup>2</sup> <https://vtdigger.org/2020/04/05/state-of-vermont-hospitals-emt-crews-scramble-for-ventilators-n95s-and-ppe/>.

*Imp., Inc. v. MacIver*, 105 N.H. 435, 438, 201 A.2d 886, 888 (1964) (finding price unconscionability). If there were ever a case we are called upon to act to stop price gouging it is this one.

### **Background and Facts**

Shelley Palmer is the sole owner and principal of Big Brother.<sup>3</sup> Big Brother is a Vermont business, located at Mr. Palmer's residence in Williston. *Id.* According to its filing with the Vermont Secretary of State, Big Brother's business has been to provide personal and private transportation services. *Id.* Recently, Mr. Palmer has used his business opportunistically to import and sell face masks to healthcare providers in Vermont during the COVID-19 crisis. As explained below, Mr. Palmer is exploiting the COVID-19 crisis and engaging in price gouging by selling face masks at exorbitant and exploitative rates (ranging from 500% to 4,000% above typical rates).

### **COVID-19 Crisis**

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. See Exhibit 1. In that Order, the Governor noted that "it is critical we take steps to . . . maintain the health and safety of Vermonters." *Id.* at 1.

The coronavirus is a respiratory illness that is highly contagious and potentially fatal, particularly to older and immunocompromised individuals. As of

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<sup>3</sup> See Big Brother Secretary of State Registration, *available at*: <https://www.vtsosonline.com/online/BusinessInquire/BusinessInformation?businessID=292838> (last visited April 12, 2020).

**April 13, 2020**, over 554,849 cases have been confirmed across the United States, with almost 21,950 dead.<sup>4</sup> As of **April 13, 2020**, Vermont has confirmed 748 cases and 28 deaths. *Supra* note 1. The coronavirus is thought to spread mainly from person to person through respiratory droplets. The primary way to limit viral exposure is through social distancing and isolation, thereby limiting contact with potential carriers of the virus. 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 appropriate Personal Protective Equipment (“PPE”), including certain types of PPE face masks.

As declared by the World Health Organization, the coronavirus is a global pandemic. Given the global breadth and severity of the coronavirus, PPE is in short supply. Compl. ¶ 15.

Consequently, the federal government has taken action to ensure the adequate and fair supply of PPE. On March 23, 2020, President Trump issued Executive Order (“EO”) 13190: Preventing Hoarding of Health and Medical Resources to Respond to the Spread of COVID-19. Through EO 13190, the President delegated to the Department of Health and Human Services (“HHS Department”) authority under section 102 of the Defense Production Act of 1950, 50 U.S.C. § 4512, as amended, to take actions necessary to protect PPE.<sup>5</sup>

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<sup>4</sup> Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19): Cases in the U.S., <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited April 13, 2020).

<sup>5</sup> See 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 (hereafter, “HHS Notice”), *at*:

The U.S. Defense Production Act prohibits any person from accumulating certain “designated” materials “(1) in excess of the reasonable demands of business, personal, or home consumption, or (2) for the purpose of resale at prices in excess of prevailing market prices.” 50 U.S.C. § 4512.

On March 25, 2020, the HHS Department issued a formal notice in the Federal Register, designating certain PPE materials to be subject to the hoarding and price-gouging prohibitions of 50 U.S.C. § 4512. Specifically, the HHS Department designated the following PPE materials as “scarce or threatened materials”:

- “Personal protective equipment (PPE) coveralls, e.g., Tyvek Suits.”
- “PPE face masks, including any masks that cover the user’s nose and mouth and may or may not meet fluid barrier or filtration efficiency levels.”
- “PPE surgical masks, including masks that covers the user’s nose and mouth and provides a physical barrier to fluids and particulate material.”
- “PPE face shields, including those defined at 21 CFR 878.4040 and those intended for the same purpose.”

*Supra* note 5, HHS Notice at 4.

In issuing the Notice, the HHS Department declared that “[t]his policy furthers the goal of protecting the Nation’s healthcare systems from undue strain.” *Id.* at 2. Additionally, states have found numerous instances of hoarding and price gouging of PPE face masks. Compl. ¶ 17.

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<https://www.hhs.gov/sites/default/files/hhs-dfa-notice-of-scarce-materials-for-hoarding-prevention.pdf?language=en> (last visited April 12, 2020).

### Defendants' PPE Sales and Misrepresentations

On March 9, 2020, Defendants purchased 5,000 surgical masks from their supplier in Shanghai, China for \$0.10 each and a total value of \$500.00. *See* Declaration of David Cheney ¶ 14; Cheney Exhibit 2. 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. Cheney Decl. ¶ 16.

Defendants have sold, and have attempted to sell, the surgical masks purchased from their supplier to Vermont healthcare providers. In these transactions, Defendants have charged \$2.50 per mask and have falsely represented the surgical masks to be the higher-grade masks known as “N95”.

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.

The FDA further explains the differences between surgical masks and N95 masks. The following illustrations and text descriptions are from the FDA’s website on PPE<sup>6</sup>:

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<sup>6</sup> Available at: <https://www.fda.gov/medical-devices/personal-protective-equipment-infection-control/n95-respirators-and-surgical-masks-face-masks> (last visited April 12, 2020).



*Fig. 1*

“A surgical mask is a loose-fitting, disposable device that creates a physical barrier between the mouth and nose of the wearer and potential contaminants in the immediate environment. These are often referred to as face masks, although not all face masks are regulated as surgical masks. Note that the edges of the mask are not designed to form a seal around the nose and mouth.” [emphasis added]



*Fig. 2*

“An N95 respirator is a respiratory protective device designed to achieve a very close facial fit and very efficient filtration of airborne particles. Note that the edges of the respirator are designed to form a seal around the nose and mouth. Surgical N95 Respirators are commonly used in healthcare settings and are a subset of N95 Filtering Facepiece Respirators (FFRs), often referred to as N95s.” [emphasis added]

On at least three separate occasions, Defendants sold thousands of surgical masks to Central Vermont Medical Center (“CVMC”) for **\$2.50 each**, which Defendants represented to be N95 masks:

- March 18, 2020: **9,500** masks totaling **\$23,750**. See Cheney Decl. ¶ 13, Exhibit 3 (Invoice #100, sales invoice describing the surgical masks as “Disposable Paper Non Woven Surgical Mask N95 2.5m.”)
- March 20, 2020: **15,000** masks totaling **\$37,500.00**. *Id.* (Invoice #101)
- March 24, 2020: **18,000** masks totaling **\$45,000.00**. *Id.* (Invoice #103)

While each invoice in Exhibit 3 identifies the masks in question as “N95” masks, none are. Indeed, CVMC has tested the masks in question and confirmed that they are generic surgical masks, not N95s. Cheney Decl. ¶ 13. The masks sold to CVMC by Defendants are very clearly plain surgical masks as in Fig. 1 *supra*, and not N95 masks. See Cheney Decl. ¶ 17 and Cheney Exhibits 4a-4e (photos of the masks). Below is the exact set of masks sold by Defendants:



Cheney Ex. 4c



Cheney Ex. 4d

Prior to the Governor’s declaration of emergency of March 13, and prior to the COVID-19 crisis, CVMC paid approximately 0.06 cents per mask for generic surgical masks of this type and quality. Cheney Decl. ¶ 11. Even while the COVID-19 crisis was unfolding, for example as of February 12, 2020, CVMC still paid their primary supplier 0.06 cents for the same masks. *See id.*; Cheney Exhibit 5.

Currently, Vermont’s hospital networks are purchasing non-N95 masks, such as surgical masks, at a higher rate due to apparent market changes during COVID-19. Upon information and belief, in the month of March 2020, Vermont’s hospital networks have purchased surgical masks for around \$0.50-0.60 cents per mask (including any applicable shipping costs from China). Even if these prices are justified, they are still significantly less than Defendants’ \$2.50 rate.

CVMC knew that Defendants were charging an exorbitant rate for plain surgical masks but CVMC still purchased them because it “had little choice due to the impending PPE shortages and need to keep patients and employees safe.”

Cheney Decl. ¶ 9. *See also id.* at ¶ 12 (CVMC ordered the masks “[i]n order to protect its staff, patients, families of the same and the public generally”).

Additionally, Defendants have made other attempts to sell their surgical masks as high-grade N95 masks at \$2.50 apiece. On March 17, 2020, Mr. Palmer visited Champlain Medical Urgent Care (“CMUC”) in South Burlington, Vermont. At CMUC’s front desk, Mr. Palmer offered to sell N95 masks to the medical practice for \$2.50 each. Declaration of Shea Bellino ¶¶ 6-7. Mr. Palmer explicitly represented the surgical masks as “industrial N95” masks. Bellino Decl. ¶ 7. This is shown in a video recording of the transaction taken by CMUC. *Id.* at ¶ 13 and Exhibit 6, CMUC video at minute 1:02-1:06: (In response to a question from CMUC front desk staff about whether the masks are “special,” Mr. Palmer states: “these aren’t the fancy ones, they are the regular industrial N95”).

Two staff members responded that the masks he offered for sale were not N95 masks, but rather surgical masks. Bellino Decl. ¶ 9. Mr. Palmer represented that the presence of a metal nose piece on the masks indicates an N95 mask, *id.*, and that “these are the same rate” (i.e., his masks were \$2.50), Ex. 6, CMUC video at 1:22-1:26. This is not the case. The presence or absence of a metal nose piece has no bearing on a respirator’s N95 certification. Bellino Decl. ¶ 10.

Presumably, Defendants claim that the surgical masks are “N95” in order to justify the \$2.50 price, because N95 masks are in fact a much more specialized type of medical equipment. *See Fig. 2 supra*; Bellino Decl. ¶ 11 (CMUC staff is trained in N95 masks and aware of the difference).

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

Further, as shown in the video at CMUC (Ex. 6), Defendants continue to attempt to sell their surgical masks as "N95" and at the 2,500% mark-up rate of \$2.50 each.

Therefore, an injunction is necessary to address Defendants' conduct.

### Argument

#### **I. Applicable Standards for an Injunction**

##### **A. An Injunction is Authorized by Statute**

Title 9 V.S.A. § 2458(a) empowers the Attorney General to seek a preliminary or permanent injunction to restrain violations of the Vermont Consumer Protection Act ("CPA" or "the Act"). The statute articulates two factors for requesting an injunction – reasonable belief that the Act has been violated, and reasonable belief that proceedings would be in the public interest:

Whenever the attorney general . . . has reason to believe that any person is using or is about to use any method, act or practice declared by section 2453 of this title to be unlawful . . . and that the proceedings would be in the public interest, the attorney general . . . may bring an action in the name of the state against such person to restrain by temporary or permanent injunction the use of such method, act or practice . . . . The courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this chapter . . . .

9 V.S.A. § 2458(a).

Per section 2458(a), the State may seek either a temporary or permanent injunction. At this time, the State seeks a preliminary injunction. A preliminary injunction is necessary now because Defendants' conduct is ongoing and Vermonters' critical health and safety interests are at immediate and substantial risk. Healthcare workers are in dire need of PPE masks, which are currently in short supply. Compl. ¶ 15. Defendants are holding themselves out as one of the few critical suppliers of PPE, while falsely representing the nature of their masks and charging exorbitant prices during an official state emergency and global pandemic. In short, there can be no greater urgency than to: (i) protect Vermont healthcare workers from an inadequate supply of proper PPE masks; and (ii) protect the economic well-being of healthcare providers from being gouged on PPE products.

For the reasons set forth below, State has sufficient evidence to prove the standards for a preliminary injunction.

#### B. Legal Standards for a Statutory Injunction

“This is a case in which an injunction is expressly authorized by statute.” *Minnesota ex rel. Hatch v. Sunbelt Commc'ns & Mktg.*, 282 F. Supp. 2d 976, 979 (D. Minn. 2002) (upholding injunction by Minnesota Attorney General for violations of Telephone Consumer Protection Act). *See also Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146 (1988) (distinguishing injunctions that are “expressly authorized by statute”).

Accordingly, in deciding whether to grant a motion for a preliminary injunction that is requested pursuant to statute, this Court need only consider the

action's likelihood of success on the merits.<sup>7</sup> See *United States v. Estate Pres. Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000) (noting "the traditional requirements" for injunctive relief "need not be satisfied" where injunction is expressly authorized by statute); *Henderson v. Byrd*, 133 F.2d 515, 517 (2d Cir. 1943) ("The contention that the plaintiff failed to prove the existence of the usual equitable grounds for relief, such as irreparable damage, is plainly irrelevant. Where an injunction is authorized by statute, it is enough if the statutory conditions are satisfied."); *United States v. Weingold*, 844 F. Supp. 1560, 1573 (D. N.J. 1994) ("Proof of irreparable harm is not necessary for the Government to obtain a preliminary injunction.").

Further, under the doctrine of statutory injunctions, it is presumed that statutory injunctions are in the public interest. "The principle underlying the willingness of the courts to issue statutory injunctions to public bodies to restrain violations of a statute is that harm to the public at large can be presumed from the statutory violation alone." *People ex rel. Hartigan v. Stianos*, 475 N.E.2d 1024, 1027-28 (Ill. App. Ct. 1985). See also *Webster v. Milbourn*, 759 S.W.2d 862, 864 (Mo. Ct. App. 1988) (potential harm to the public is presumed once court finds that defendant has engaged in unlawful trade practices).

Therefore, the only factor for analysis is whether the State can show a likelihood of success that Defendants violated the CPA. As discussed below, based

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<sup>7</sup> The traditional factors for granting a motion for preliminary injunction are: (1) the threat of irreparable harm to the movant, (2) the potential harm to the other parties, (3) the likelihood of success on the merits, and (4) the public interest. *In re J.G.*, 160 Vt. 250, 255-56 n.2 (1993); see also 11A Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2948 at 131-33 (1995).

on the evidence to date, Defendants have violated the CPA in numerous ways. Thus, the Motion for a Preliminary Injunction should be granted.

## **II. Overview of Vermont Consumer Protection Act**

The CPA prohibits “unfair or deceptive acts or practices in commerce.” 9 V.S.A. § 2453(a). The CPA is a remedial statute, to be interpreted liberally to accomplish its purpose of protecting consumers. *Carter v. Gugliuzzi*, 168 Vt. 48, 52, 716 A.2d 17, 21 (1998) (“The express statutory purpose of the Act is to protect the public against unfair or deceptive acts or practices . . . . Its purpose is remedial, and as such we apply the Act liberally to accomplish its purposes.”) (internal quotation marks omitted).

The CPA also protects Vermont businesses when they act as consumers, such as purchasing supplies for their business. 9 V.S.A. §2451a(a) (consumers include persons who buy “goods or services . . . not for resale . . . but for the use or benefit of his or her business or in connection with the operation of his or her business.”). A Vermont business is a “consumer” and thus entitled to the same protections that prohibit unfair and deceptive acts. *Rathe Salvage, Inc. v. R. Brown & Sons, Inc.*, 2008 VT 99, ¶ 21, 184 Vt. 355, 365, 965 A.2d 460, 467 (2008) (“we hold unequivocally that business entities are entitled to the same rights under the Act as other consumers”).

In interpreting the Act, Vermont courts are “guided by the construction of similar terms contained in . . . the Federal Trade Commission [FTC] Act and the courts of the United States.” 9 V.S.A. § 2453(b).

Under the CPA, “unfairness” and “deception” are two separate prohibitions. *Dernier v. Mortgage Network, Inc.*, 195 Vt. 113, 87 A.3d 465, 2013 VT 96, ¶ 55 (“‘Unfair’ acts and ‘deceptive’ acts each have their own tests”); *Orkin Exterminating Co., Inc. v. FTC*, 849 F.2d 1354, 1367 (11<sup>th</sup> Cir. 1988) (“[T]he unfairness doctrine differs from, and supplements, the prohibition against consumer deception.”). Unfairness is discussed below.

#### A. Unfairness

The Vermont Supreme Court has recognized three independent criteria for determining whether a practice is unfair:

“(1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise – whether, in other words, it is within at least the penumbra of some common-law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers . . . .”

*Christie v. Dalmig, Inc.*, 136 Vt. 597, 601, 396 A.2d 1385, 1388 (1979) (quoting *FTC v. Sperry & Hutchinson Co.* (“*Sperry*”), 405 U.S. 233, 244 n.5 (1972)).

It is not necessary that all three criteria be met so long as the practice is “exploitive or inequitable” or “is seriously detrimental to consumers or others.” *Sperry*, 233 at 244 n.5. *See also Christie*, 136 Vt. at 601 (noting that there is an open question as to “whether one or all of these factors must be present”); *State of Vermont v. CSA-Credit Solutions of Am., LLC & Doug Van Arsdale*, Dec. and Order: Mot. for Summ. J., at 7 (Vt. Super. Ct. March 5, 2012) (inserting an “or” into the three-part *Sperry* standard articulated in *Christie*).

### III. Defendants Have Committed Unfair Acts

Defendants currently sell, market, and attempt to sell, regular surgical masks as high-grade protective N95 masks during the COVID-19 crisis.

Defendants charge \$2.50 per mask, where typical market rates for the same mask are between \$0.06-\$0.60, and where Defendants paid \$0.10 each for the same mask from China, thereby profiting by 2,500% and many thousands of dollars.

Specifically, at least three price comparisons demonstrate Defendants' unconscionable and unfair pricing and price gouging:

- Before the COVID-19 crisis: CVMC paid around 0.06 cents per mask. \$2.50 is a **4,000%** markup.
- During the COVID-19 crisis: even assuming a justified, crisis market rate of 0.50 cents per mask, *supra* page 10, \$2.50 is a **500%** markup.
- Defendants' actual cost: 0.10 cents per mask. \$2.50 is a **2,500%** markup.

This constitutes unfair conduct in several ways:

- (i) it is unfair because it violates the policies expressed in the penumbra of state of emergency policies, including various state and federal price gouging laws, and it constitutes unconscionable pricing (Compl., Count I); and
- (ii) it is unfair because it is immoral, unethical, oppressive or unscrupulous in its totality (Compl., Count I).

A. Defendant's conduct is unfair because it violates state of emergency policies and the policies expressed in the penumbra of various price gouging laws.

As set forth above, an unfair act includes one that “offends public policy as it has been established by statutes, the common law, or otherwise – whether, in other words, it is within at least the penumbra of some common-law, statutory, or other established concept of unfairness.” *Christie*, 136 Vt. at 60. Defendants’ conduct is first unfair under the CPA (Count I of the Complaint) because it offends the policies and principles as expressed under the state of emergency doctrine, including the laws of price gouging, as well as the common law prohibition against unconscionable pricing.

1. *State of Emergency and Price Gouging Laws*

Vermont law authorizes the Governor to declare a state of emergency “in the event of an all-hazards event in or directed upon the United States or Canada that causes or may cause substantial damage or injury to persons or property within the bounds of the State in any manner.” 20 V.S.A. § 9. An “all-hazards” event includes a “health or disease-related emergency . . . which poses a threat or may pose a threat . . . to property or public safety in Vermont.” 20 V.S.A. § 2(1).

On March 13, 2020, Governor Scott declared a state of emergency in response to the global pandemic of COVID-19, noting for example that “COVID-19 would likely spread in Vermont at a rate similar to the rate of spread in other states and countries, and the number of persons requiring medical care could exceed locally available resources.” Ex. 1 at 1. The Executive Order further

explains that “it is critical we take steps to control outbreaks of COVID-19, . . . to minimize the risk to the public, maintain the health and safety of Vermonters, and limit the spread of infection in our communities and *within our healthcare facilities.*” *Id.* at 1-2 (emphasis added).

During states of emergency, activities that may otherwise be considered lawful, such as commercial and constitutional activity, may be restricted. *See, e.g., Smith v. Avino*, 91 F.3d 105, 109 (11<sup>th</sup> Cir. 1996) (“In an emergency situation, fundamental rights such as the right of travel and free speech may be temporarily limited or suspended.”); *United States v. Chalk*, 441 F.2d 1277 1280 (4<sup>th</sup> Cir. 1971) (upholding nighttime curfew and ban on sales of liquor, and noting that “[t]he invocation of emergency powers necessarily restricts activities that would normally be constitutionally protected.”); *Van Orden v. Borough of Woodstown New Jersey*, 703 F. App’x 153 (3<sup>d</sup> Cir. 2017) (upholding New Jersey’s travel ban during state of emergency resulting from Hurricane Irene).

While none of those restrictions apply specifically in this case, the key point is that a state of emergency requires strict measures to protect public health. This includes an inherent prohibition against exploitation of the situation. Logically, if travel bans, curfews, business closures, and stay-at-home orders can be imposed during a state of emergency, it follows that states can use their authority to prevent a seller’s pecuniary exploitation during that state of emergency, as in this case.

This public policy against financial exploitation during a crisis is also reflected in various price gouging laws. “Price-gouging” is the selling of essential goods at an unconscionably high price during a state-declared emergency. Vermont does not have a general price gouging statute. Vermont does have a specific statute prohibiting price gouging of certain fuel products. *See* 9 V.S.A. 2461d(b) (prohibiting the sale of heating fuel products for an amount “that represents an unconscionably high price” during a state-declared “market emergency”).

The majority of states have price gouging laws and almost all of these apply during any state of emergency. 161 Am. Jur. Trials 551 (citing price-gouging laws across 33 states).<sup>8</sup> While some of these laws, including Vermont’s fuel statute, 9 V.S.A. 2461d(b), reference a “market emergency” or “market disruption,” that distinction does not apply here. Consumer goods and necessities during a declared public health emergency like COVID-19 are fundamentally different than historic

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<sup>8</sup> *See, e.g.*, Ga. Code Ann. § 10-1-393.4 (West) (price-gouging as to “necessary” goods and services in a state of emergency constitutes an “unlawful, unfair, and deceptive trade practice”); Haw. Rev. Stat. Ann. § 127A-30 (West) (price-gouging as to “any commodity” in a state of emergency constitutes an “unfair and deceptive act[] or practice[]”); Idaho Code Ann. § 48-603(19) (West) (price-gouging as to “consumer fuel or food, pharmaceuticals, or water for human consumption” in a state of emergency constitutes an “unfair method[] of competition and unfair or deceptive act[] or practice[]”); Iowa Admin. Code r. 61-31.1(714) (West) (price-gouging as to “merchandise needed by victims of disasters” in a state of emergency constitutes an “unfair practice”); Me. Rev. Stat. tit. 10, § 1105 (price-gouging as to “necessities” in an “abnormal market disruption” constitutes an “unfair act or practice”); Okla. Stat. Ann. tit. 15, § 777.5 (West) (price-gouging as to “any goods, services, dwelling units, or storage space” in a state of emergency constitutes “a violation of the Oklahoma Consumer Protection Act”); Or. Rev. Stat. Ann. § 401.965 (West) (price-gouging as to “essential consumer goods or services” during a “declaration of an abnormal disruption of the market” constitutes an “unlawful trade practice”); 73 Pa. Stat. Ann. § 232.5 (West) (price-gouging as to “goods and services” during a state of emergency constitutes a violation of the “Unfair Trade Practices and Consumer Protection Law”).

price gouging as it relates to “market” emergencies (i.e., fuel shortages or an oil crisis). Nevertheless, the essential principles of *all* price gouging laws are instructive here, regardless of whether the emergency is a “market emergency” or “state of emergency,” because those laws reflect a public policy of protecting consumers from exploitative pricing of essential goods during *any* emergency.

Lastly, the federal government has had, since 1950, a law and policy against price gouging of certain critical “designated” materials during a crisis. *See* U.S. Defense Production Act, 50 U.S.C. § 4512. As of March 25, 2020, the HHS Department declared all types of PPE face and surgical masks to be critical “designated” materials and thus subject to the price gouging restrictions of the U.S. Defense Production Act. *Supra* note 5. The HHS Notice would certainly apply to Defendants’ PPE masks.

## *2. Defendants’ Unfair Conduct*

Defendants have engaged in unconscionable exploitation and price gouging of PPE masks. On three separate occasions from March 18-24, Defendants sold CVMC a total of 42,500 generic surgical masks at a purchase price of \$2.50 each for a total of **\$106,250.00**. Meanwhile, Defendants’ cost of the same masks was \$0.10 each, at a total cost of **\$4,250**. This is a mark-up of 2,500% and an exploitative gain of over \$100,000.

Further, Defendants claimed the masks were all “N95” when they were not. *See* Cheney Ex. 3 (invoices identifying the masks as “N95”). CVMC confirmed the masks were not N95. Cheney Decl. ¶ 13.

Thus, the generic surgical masks sold by Defendants should have been no more than around: (i) six cents each, which is the usual cost of such masks in a pre- state of emergency market, Cheney Decl. ¶ 11; or (ii) ten cents each, which is the actual cost of the masks that Defendants paid, Cheney Ex. 2. Even as compared to market prices during the current state of emergency, the increase would be in mere cents, not dollars. For example, in March 2020, Vermont’s hospital networks purchased surgical masks for 50-60 cents each. *Supra* page 10.

Defendants’ conduct thus constitutes unfair exploitation and price gouging. There are various definitions of what constitutes price gouging from state and federal sources:

- Vermont: a price is “unconscionably high” if: “the amount charged during the market emergency or seven days prior thereto represents a gross disparity” between *either* (i) the pre-emergency price, *or* (ii) the current market prices. 9 V.S.A. § 2461d.
- Federal law: charging “prices in excess of prevailing market prices.” 50 U.S.C. § 4512.
- New York: anything that is “unconscionably excessive,” i.e., “if the amount charged represents a *gross disparity* from the price such goods or services were sold or offered for sale immediately prior to the onset of the abnormal disruption of the market.” N.Y. Gen. Bus. Law § 396-r (emphasis added).
- Massachusetts: “A price is unconscionably high . . . if: (a) there is gross disparity between the price charged or offered and 1. the price at which the same good or service was sold or offered for sale by the business in the usual course of business immediately prior to the onset of the declared statewide or national emergency, or 2. the price at which the same or similar product is readily obtainable from other businesses.” Addendum to Massachusetts Secretary of State Regulation Filing Form, 940 CMR 3:18, *Price Gouging*.<sup>9</sup>

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<sup>9</sup> Available at: <https://www.mass.gov/doc/amendment-to-940-cmr-318/download>

- Florida: anything that “*grossly exceeds* the average price for that commodity during the 30 days before the declaration of the state of emergency” Fla. Stat. Ann. § 501.160 (emphasis added).
- California, New Jersey, Oklahoma and Arkansas: **10% price** increases during a declared state of emergency. Cal. Penal Code § 396; N.J.S.A. 56:8-107; 15 Okl. St. §§ 777.1; Ark. Code Ann. § 4-88-303(a)(1).
- Pennsylvania: “**20% more** than the average price in the preceding 7 days.” 73 Pa. Cons. Stat. § 232.4(a) (emphasis added).
- Texas: anything “exorbitant or excessive.” Tex. Bus. & Com. Code Ann. § 17.46.

From the above, there are several methods this Court can adopt to find unconscionable price gouging here.

**First**, comparing the \$2.50 price to pre-emergency market prices (as in the VT, NY and MA statutes). Here, the pre-emergency price is around \$0.06. Cheney Decl. ¶ 11. Obviously, Defendants’ \$2.50 price is grossly beyond the pre-emergency rate of \$0.06 or even \$0.10; it is over 25-40 times beyond the usual rate.

**Second**, comparing the \$2.50 price to prevailing rates during the emergency (as in the VT and federal statutes). Here, a comparative current price for a surgical mask during COVID-19 in Vermont is a range of \$0.50-60. *Supra* page 10. Thus, Defendants’ price is still shockingly high; it is 500% of the current, crisis market rate of surgical masks (assuming the \$0.50-60 rate is justified).

**Third**, comparing the \$2.50 price to percent increases, like 10-20% from another rate, either pre-emergency or a preceding time period like 7 or 30 days (as in the CA, NJ and PA statutes). Here, whether using a preceding period of 30 days or the pre-emergency rate, Defendants’ price of \$2.50 is an increase of **500%** and

4,000% respectively. *Supra* page 10; Cheney Decl. ¶ 11. These are exorbitant increases, and the very essence of price gouging.

All of that said, the Court need not adopt any of the particular tests addressed above as an official price gouging test because the CPA's unfairness doctrine already prohibits Defendants' behavior. For example, on March 17, 2020, Congress sent a letter to the FTC requesting the FTC to take enforcement actions against price gouging, noting that the FTC Act already "broadly prohibits unfair methods of competition," which would include price gouging of face masks during the COVID-19 crisis.<sup>10</sup> Vermont's CPA is similar to the FTC Act, and Vermont courts are to construe both statutes harmoniously. 9 V.S.A. § 2453(b).

Thus, the Court need only find that charging \$2.50 for a ten-cent surgical mask is within the penumbra of policies expressed by laws *like* price gouging statutes—*without* having to find a *per se* violation of a specific price gouging statute. It is sufficient that the facts of this case clearly demonstrate excessive pricing during a crisis, against the backdrop of numerous price gouging laws reflecting a policy against that kind of exploitation. Combined, it is clear that Defendants' conduct thus "lies within at least the 'penumbra' of established concepts of unfairness." *Bellerman v. Fitchburg Gas & Elec. Light Co.*, No. WOCV200900023B, 2013 WL 518526, at \*11 (Mass. Super. Jan. 7, 2013).

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<sup>10</sup> See Letter from House of Representatives to Chairman Simons, FTC, March 17, 2020, at: [https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/FTC.2020.3.17.%20Joint%20Letter%20re%20Price-Gouging.CPC\\_0.pdf](https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/FTC.2020.3.17.%20Joint%20Letter%20re%20Price-Gouging.CPC_0.pdf) (last visited April 12, 2020).

Further, apart from the specific price gouging laws, Defendants' pricing conduct is unconscionable generally under the CPA. Grossly excessive charges, even without a state of emergency, have been found unconscionable under unfair consumer protection standards. *See, e.g., Fleet v. United States Consumer Council, Inc.*, 95 B.R. 319, 336 (Bankr. E.D. Pa. 1989) (finding that grossly overpriced lawyer referral services violated New Jersey unfair practices law, entitling consumers to the statutory remedy of a refund of all monies acquired by a deceptive or unconscionable practice); *Wernly v. Anapol*, 91 B.R. 702, 704 (Bankr. E.D. Pa. 1988) (awarding the return of excessive check cashing charges under Pennsylvania's unfair practices law); *Phillips v. Dukes*, 24 B.R. 404, 417 (Bankr. E.D. Mich. 1982) (concluding that the consumer was entitled to the return of excessive closing costs under Michigan's Consumer Protection Act).

In such situations, prices have been found unconscionable when they typically exceed a two-to-one ratio between the price and the fair market value. *See, e.g., Kugler v. Romain*, 58 N.J. 522, 545, 279 A.2d 640, 653 (N.J. Sup. Ct. 1971) (upholding consumer protection action by New Jersey Attorney General, finding "an exorbitant price" that was "roughly two and one half times a reasonable market price," and holding that "[s]uch price-value clearly constitutes unconscionability"); *Murphy v. McNamara*, 36 Conn. Supp. 183, 189, 416 A.2d 170, 175 (Conn. Super. Ct. 1979) (finding "an unconscionable bargain" under Connecticut's consumer protection statute for charging a television set at "over two and one-half times the regular retail sales price"); *Toker v. Perl*, 103 N.J. Super. 500, 504, 247 A.2d 701,

703 (Law. Div. 1968), *aff'd*, 108 N.J. Super. 129, 260 A.2d 244 (N.J. App. Div. 1970) (“The conscience of this court is shocked by the price imposed upon these defendants for the freezer. The testimony in court valued the freezer at no more than \$300. The price charged was in excess of 2 and 1/2 times the maximum value.”); *Jones v. Star Credit Corp.*, 59 Misc. 2d 189, 191, 298 N.Y.S.2d 264, 266 (N.Y. Sup. Ct. 1969) (finding price unconscionability for a three-to-one ratio by charging \$900 for “the sale of a freezer unit having a retail value of \$300”).

Here, Defendants go well beyond the two- or three-to-one ratio. Defendants charged a price of surgical masks that is at least **4-5 times** the current market value, which is around \$0.50-60 cents in the COVID-19 market, assuming those rates are justified. *Supra* page 10. A five-fold markup from current market prices “clearly constitutes unconscionability.” *Kugler*, 58 N.J. at 545, 279 A.2d at 653.

Moreover, Defendants charged a price that is **25 times** the cost that Defendants paid. *See Cheney Exs. 2 and 3* (charging \$2.50 for masks that cost \$0.10). Courts have also found price unconscionability in similar scenarios when sellers charge more than double their cost of the material. *See State v. ITM, Inc.*, 275 N.Y.S.2d 303, 320 (N.Y. Sup. Ct. 1966) (finding unconscionability when the price for various appliances ranged from two to six times the seller’s cost); *Am. Home Imp., Inc. v. MacIver*, 105 N.H. 435, 439, 201 A.2d 886, 888 (1964) (voiding home improvement contract for price unconscionability where the total charge was almost three times the “value of goods and services”); *Frostifresh Corp. v. Reynoso*,

274 N.Y.S.2d 757, 760 (N.Y. Dist. Ct. 1966) (finding unconscionability when the cash price of a freezer was over two-and-one-half times the merchant's cost).

Similarly, no reasonable seller can justify charging 25 times the cost of a product, especially a product as relatively straightforward as a ten-cent cloth surgical mask. Hence, this case presents an even stronger example than those cited above since cloth surgical masks are not television sets or appliances that can vary in their product quality and complexity.

Lastly, Defendants' conduct is made worse given the nature of the victims; here medical providers like CVMC. Healthcare providers are protected as consumers when they engage in commercial transactions. *Rathe Salvage*, 2008 VT 99, ¶ 21. Healthcare providers are essential workers who must interact with actual and potential carriers of the coronavirus. Thus, PPE masks are the only source of protection for them. They need the masks. CVMC was in desperate need of surgical masks when approached by Defendants, and CVMC thus felt "constrained" into buying them, even at Defendants' exorbitant price. Cheney Decl. ¶ 15; *see also id.* at ¶ 9 (CVMC had "little choice" but to purchase Defendants' masks). As such, healthcare providers are among the highest class of citizens in need of protection from exploitative conduct like price gouging of their protective medical equipment. States like Vermont have an obligation to protect their healthcare workers from exactly this situation. *See Ex. 1* at 1-2 ("it is critical we take steps to . . . maintain the health and safety of Vermonters" and "limit the spread of infection . . . within our healthcare facilities."). *See also Compl.* ¶ 17

(citing instances of NY and FL pursuing hoarders and price gougers of PPE masks and equipment).

In sum, Defendants' conduct violates the CPA by charging essential healthcare providers an exorbitant and excessive price for generic surgical masks. This conduct is actionable under the CPA. *See People ex rel. Spitzer v. Dame*, 289 A.D.2d 997, 997, 734 N.Y.S.2d 789, 790 (2001). In *Spitzer v. Dame*, the NY Attorney General's Office brought a consumer protection action for an injunction, restitution and penalties against defendant for charging excessive roof repair prices immediately after a declared state of emergency resulting from a storm in 1998. *Id.* The N.Y. appeals court upheld the judgment in which "respondent was ordered to pay restitution, costs and civil penalties totaling \$18,785 for violations of [NY's consumer protection statute] and was enjoined . . . from further engaging in fraudulent, deceptive and illegal business practices." *Id.* Similarly, Defendants here are subject to the Vermont CPA and its prohibition against unfair acts and practices during a state of emergency.

Therefore, the State is likely to prevail on its claim that Defendants violated the CPA by price gouging CVMC out of over \$100,000.

**B. Defendant's conduct is unfair because it is immoral, unethical and oppressive.**

The sum total of Defendant's conduct of deliberately ordering generic surgical masks from China for \$0.10 each and then going to some of Vermont's largest healthcare providers and charging them \$2.50 each under the unscrupulous claim that the masks were higher-grade N95 masks amounts to

conduct that is “immoral, unethical, oppressive, or unscrupulous.” *Christie*, 136 Vt. at 601. It offends public policy by exploiting humanitarian crisis for pecuniary gain, and therefore, is — “immoral, unethical, oppressive or unscrupulous.” *Id.*

In support, the State repeats and incorporates the facts and arguments recited above in the “Background” section and Section A. The facts clearly demonstrate immoral, unethical and unscrupulous conduct during a state of emergency—and more importantly, during a healthcare crisis of global proportions. Specifically:

- Defendants have no background as being a medical supplier. Big Brother’s registered business is to provide transportation services. *Supra* note 3.
- In early March, Defendants ordered generic surgical masks from China at \$0.10 each. Cheney Decl. ¶ 16; Cheney Ex. 2.
- Defendants then sold thousands of those masks to CVMC at \$2.50 each. Cheney Decl. ¶ 13; Cheney Exs. 3-4.
- Defendants identified them as “N95” masks, even though the masks were not N95. Cheney Ex. 3; Cheney Decl. ¶ 13.
- Defendants approached other medical providers like CMUC and offered to sell the surgical masks at \$2.50 *and* as N95 masks. Bellino Decl. ¶¶ 6-10; Ex. 6.
- Defendants have profited 2,500% and gained at least over \$100,000, while Defendants’ actual cost is an estimated \$4,250.

- Defendants are exploiting a crisis shortage. PPE masks have been designated critical materials by the U.S. government. *Supra* note 5. As such, Vermont healthcare providers are required to purchase them because their workers are in desperate need of the masks.

This last point is particularly critical because Vermont healthcare providers have no meaningful choice to find another provider of essential PPE masks. *See, e.g., Gantchev v. Predicto Mobile, LLC*, 2009 WL 3055317, at \*3 (N.D. Ill. Sept. 18, 2009) (noting that “conduct is unethical or oppressive if it deprives plaintiffs of a meaningful choice or imposes an unreasonable burden on them” and finding that unauthorized telephone charges were unfair acts); *Centerline Equip. Corp. v. Banner Pers. Serv., Inc.*, 545 F. Supp. 2d 768, 780 (N.D. Ill. 2008) (finding that conduct is oppressive and unfair if “it imposes a lack of meaningful choice or an unreasonable burden on its target.”).

Similarly, CVMC was “constrained” into buying Defendants’ masks under Defendants’ oppressive and unethical pricing regime because of the short supply of PPE masks. Cheney Decl. ¶ 15. CVMC knew that Defendants were charging an exorbitant rate for plain surgical masks but CVMC still purchased them because it “had little choice due to the impending PPE shortages and need to keep patients and employees safe.” *Id.* at ¶ 9. *See also id.* at ¶ 12 (CVMC ordered the masks “[i]n order to protect its staff, patients, families of the same and the public generally”).

In sum, Defendants have taken advantage of a crisis in order to obtain a quick and exorbitant profit. This is exactly the kind of opportunistic conduct that states are empowered to enforce and protect against. *See, e.g., California Dep't of Water Res. v. Powerex Corp.*, 653 F. Supp. 2d 1057, 1058 (E.D. Cal. 2009) (California's water resources department brought action against electric utility for unfair and oppressive pricing after declared state of emergency: "POWEREX took an oppressive and unfair advantage of the distress created by the California energy crisis").

Defendants' conduct here is thus immoral, unethical, oppressive and unscrupulous, and is actionable under the CPA's unfairness prong. *See Bellerman v. Fitchburg Gas & Elec. Light Co.*, No. WOCV200900023B, 2013 WL 518526, at \*11 (Mass. Super. Jan. 7, 2013). In *Bellerman*, plaintiff brought consumer protection claims against defendant electric utility for inadequate preparedness and response during a state of emergency from a December 2008 ice storm. *Id.* In denying defendant's motion to dismiss and allowing plaintiff's claims to go forward, the court noted that Massachusetts' consumer protection statute allows for claims of immoral and unethical conduct during a state of emergency: "[i]f proven, the Company's conduct goes beyond mere negligence to the point where, under the case law cited above, *it may be found immoral, unethical and unscrupulous*. It also, lies within at least the 'penumbra' of established concepts of unfairness, including common-law misrepresentation." *Id.* (emphasis added).

Therefore, the State is likely to prevail on its unfairness claim that Defendants engaged in conduct that is “immoral, unethical, oppressive, or unscrupulous” under the CPA. *Christie*, 136 Vt. at 601.

### **Request for Relief**

Courts have the authority to restrict an otherwise lawful activity accomplished in an unlawful manner in order to eliminate unfair or deceptive practices. *See FTC v. National Lead*, 352 U.S. 419, 510 (1959) (upholding FTC’s restriction of lawful activities in order to prevent a continuance of unfair competitive practices). Here, a preliminary injunction is warranted to restrict Defendants’ unfair acts and practices.

Defendants are selling and offering for sale essential medical equipment: PPE masks. PPE masks are in short supply all over the nation and in Vermont due to the COVID-19 crisis. PPE masks are specifically designated critical materials by the U.S. government and subject to federal price gouging restrictions. Yet Defendants are charging the exorbitant and unconscionable rate of \$2.50, while falsely claiming the masks are N95 (presumably to justify the higher price), when the regular rate of such surgical masks would be around \$0.06 in a pre-emergency market or around \$0.50-60 in the current crisis market. Vermont healthcare workers bought Defendants’ masks for \$2.50 each (\$106,250 total) because they were constrained by the shortage and Defendants’ oppressive sales. There could be no greater urgency than to protect Vermont’s essential healthcare workers now; to ensure that they have the proper supply of face masks and to ensure their financial

stability in the face of exploitative price gouging. In short, Mr. Palmer is engaging in the very opposite conduct called for by the Governor’s emergency order. Ex. 1 at 2 (imploring that “Vermonters must come together as we have before in a crisis, to do our part”). Defendants’ conduct is illegal, immoral, unethical, and must be enjoined now.

### **Conclusion**

For the foregoing reasons, the State respectfully requests that the Court issue an order requiring that Defendants:

1. Refrain from selling or offering for sale PPE at unconscionably high prices.

DATED at Montpelier, Vermont, this 13<sup>th</sup> day of April 2020.

STATE OF VERMONT

THOMAS J. DONOVAN JR.  
ATTORNEY GENERAL

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**STATE OF VERMONT**

**SUPERIOR COURT  
CHITTENDEN UNIT**

**CIVIL DIVISION  
DOCKET NO.**

STATE OF VERMONT,	)
	)
Plaintiff,	)
	)
v.	)
	)
BIG BROTHER SECURITY	)
PROGRAMS INC., and	)
SHELLEY PALMER,	)
	)
Defendants.	)

**DECLARATION OF SHEA BELLINO**

The undersigned states the following upon personal knowledge,

1. My name is Shea Bellino. I am over 18 years of age, of sound mind, and am capable of making this declaration. The facts stated in this declaration are within my personal knowledge.
2. Because of the restrictions in place due to COVID-19, I am unable to personally appear before a notary public to swear to these facts under oath. However, I swear under pains and penalty of perjury that the facts I state herein are true and correct to the best of my knowledge and belief and do so with the same vigor as if sworn by a notary public.
3. I reside at 125 Maple Leaf Ln., Shelburne, VT 05482.
4. I received a BA from McGill University in 2018 and completed UVM's post-baccalaureate premedical program in 2019.

5. I am a Medical Assistant at Champlain Medical Urgent Care ("CMUC").
6. On March 17, 2020, Mr. Shelly Palmer entered CMUC and approached the front desk, where I was stationed.
7. Mr. Palmer stated to me that he was selling "industrial N95" masks for \$2.50 per mask. He had with him and placed on the counter directly in front of me, clear plastic packages of the masks in question.
8. Mr. Palmer claimed to have a certification for the masks he was selling, but I did not ask to view this certification because the masks appeared to be simple surgical masks, not N95 respirators.
9. I told Mr. Palmer that the masks he was trying to sell did not appear to be N95 respirators. He disagreed and suggested that the presence of a metal nose piece on the masks indicated they were N95 masks.
10. This is not the case. Unlike a surgical mask, an N95 respirator is approved by the National Institute for Occupational Safety and Health as per the requirements in 42 C.F.R. Part 84 and filters out at least 95% of airborne particles. The presence or absence of a metal nose piece has no bearing on a respirator's N95 certification.
11. CMUC specializes in occupational health services. Many of our patients are sent to our clinic by their employer to be fitted for respirators. As a medical assistant, I routinely conduct N95 respirator fit testing for these patients. Even before the outbreak of the coronavirus pandemic, I have handled N95 respirators and have been trained on their proper fit and use.

12. We declined Mr. Palmer's offer.

13. Finally, I have personal knowledge of a video monitoring system in place and running during business hours at my place of business. On March 17, 2020, Mr. Palmer was recorded through the video monitoring service making an offer for sale of the masks referred to above. I am a custodian of that record as an employee of the business. I have reviewed the video file and attest that it is a true and accurate recording of Mr. Palmer's appearance at my place of business that day, and that it has not been altered in any way.

*Champlain Medical Urgent Care*  
*South Burlington*  
DATED at \_\_\_\_\_, Vermont, this *10<sup>th</sup>* day of *April*, 2020.

By: 

STATE OF VERMONT

SUPERIOR COURT  
CHITTENDEN UNIT

CIVIL DIVISION  
DOCKET NO.

STATE OF VERMONT,	)
	)
Plaintiff,	)
	)
v.	)
	)
BIG BROTHER SECURITY	)
PROGRAMS INC., and	)
SHELLEY PALMER,	)
	)
Defendants.	)

**DECLARATION OF DAVID CHENEY**

The undersigned states the following under oath and upon personal knowledge:

1. My name is David Cheney. I am over 18 years of age, of sound mind, and am capable of making this declaration. The facts stated in this declaration are within my personal knowledge. Because of the restriction in place due to COVID-19, I am unable to personally appear before a notary public to swear to these facts under oath. However, I swear under pains and penalty of perjury that the facts I state herein are true and correct to the best of my knowledge and belief and do so with the same vigor as if sworn by a notary public.
2. I reside in the Town of Barre Town in the State of Vermont.
3. I studied Business Administration and Management at Community College of Vermont.

4. I am employed as the Director of Patient Support Services at The University of Vermont Health Network - Central Vermont Medical Center (“CVMC”). My responsibilities include directing central sterile reprocessing, external transportation, security, supply chains, fleet vehicles, service contacts and endoscope reprocessing.
5. During non-emergency times, CVMC purchases its medical supplies, including Personal Protective Equipment (“PPE”) through a network contract with a distributor through the University of Vermont Health Network (“UVM Network”).
6. As a result of the COVID-19 crisis, surgical masks are (1) in high demand as critical PPE and yet (2) are in short supply. Indeed, prior to interacting with Mr. Palmer, CVMC was facing increasing difficulty in maintaining its current supplies of surgical masks.
7. Although CVMC, through its regular supply chain, has negotiated and ordered surgical masks for delivery, CVMC is concerned that the surgical masks CVMC ordered will not arrive prior to running out of its current supply.
8. On March 18, 2020, Mr. Shelly Palmer (“Mr. Palmer”) of Big Brother Security Programs, Inc., (“Big Brother”) contacted me to let me know he had surgical masks available and asked if I was interested. I responded that CVMC was interested and requested samples and pricing.

9. On March 19, 2020, Mr. Palmer returned with a sample pack of 50 masks and quoted a price of \$2.50 each. I responded that CVMC usually pays \$.06 per mask, but acknowledged that CVMC had little choice due to the impending PPE shortages and need to keep patients and employees safe.
10. I had the sample masks reviewed by the CVMC Quality Department who found them to meet CVMC's standards for surgical masks. I then sought and received approval from Charlie Miceli, Network Chief Supply Chain Officer for the University of Vermont Health Network Supply Chain, to make the purchases.
11. Prior to the COVID-19 crisis, CVMC purchased such masks for \$.06 cents each. During the COVID-19 crisis, CVMC has paid another supplier of surgical masks approximately \$30.85 per case of 500 masks. Attached as EXHIBIT 5 is a true and accurate copy of an invoice paid by CVMC to Medline dated Feb. 12, 2020.
12. In order to protect its staff, patients, families of the same and the public generally, CVMC commenced ordering surgical masks from Big Brother.
13. Specifically:
  - a. On March 18, 2020, Mr. Palmer, through his company Big Brother sold 9,500 masks to Central Vermont Medical Center ("CVMC") for \$2.50 each, for a total of \$23,750. EXHIBIT 3 attached hereto is a true and accurate copy of three invoices from Big Brother to CVMC. Invoice #100 for this sale described the surgical masks in question as

“Disposable Paper Non Woven Surgical [Masks] N95 2.5m.”. However, the masks are not N95 masks. CVMC tested a sampling of these masks and confirmed that that they are surgical masks, not N95 masks.

Indeed, they were labeled merely as “Face Mask.”

- b. On March 20, 2020, Big Brother sold 15,000 masks to CVMC for \$2.50 each, for a total of \$37,500.00. EX. 3 at 2 (Invoice #101). For this sale, Invoice #101 again described the face masks as “Disposable Paper Non Woven Surgical Mask N95 2.5m.” However, the masks are not N95 masks. CVMC tested a sampling of these masks, too, and confirmed that that they are surgical masks, not N95 masks. They, too, were labeled merely as “Face Mask.”
- c. Finally, on March 24, 2020, Big Brother sold 18,000 masks (3 boxes of 6,000) to CVMC for \$2.50 each, a total of \$45,000.00. EX. 3 at 3 (Invoice #103). The invoice for the sale, Invoice #103, again described the masks a “Disposable Paper Non Woven Surgical Mask N95 2.5 m.” However, the masks are not N95 masks. CVMC tested a sampling of these masks, as well, and confirmed that that they are surgical masks, not N95 masks. They, too, were labeled by the manufacturer merely as “Face Mask.”

14. One of the boxes of surgical masks that CVMC ordered and received from Big Brother contained an invoice reflecting that, on March 9, 2020, Big Brother had purchased 5,000 face masks from his supplier in China—including,

presumably, the surgical masks within that box—for \$.10 each, for a total of \$500.00. EXHIBIT 2 attached hereto is a true and accurate copy of Invoice No. XJD0329777640 that was found within the box of surgical masks.

15. When I first saw this invoice, I immediately was concerned that Big Brother was marking up the costs of its surgical masks to this extent and price gouging the hospital. However, as described above, CVMC has few alternatives at this time and felt constrained to continue ordering PPE from Big Brother.

16. During the course of my interactions with Mr. Palmer, he indicated that he had purchased more surgical masks and other PPE from his supplier and “other associates” in China and would be receiving additional shipments of PPE in the future.

17. I took photos of the masks sold to us by Mr. Palmer. Attached as EXHIBIT 4 are true and correct copies of photos that I took showing the surgical masks that CVMC purchased.

18. After CVMC made three purchases, I continued to speak to Mr. Palmer. On Monday, April 6, 2020, Mr. Palmer said that “the AG had reached out” so he was no longer selling them, but he had a partner company that could sell them to CVMC.” Mr. Palmer identified the partner company as RICHCO Inc.” based in Milton, VT. He stated that the price for the masks had not changed.

19. CVMC purchased masks from RICHCO and when they were delivered a day or two later, the person who delivered them was wearing a Big Brother Securities t-shirt.

20. The RICHCO transactions are as follows:

- a. On April 6, 2020, RICHCO, Inc., sold CVMC 8,400 surgical masks at \$2.50 each, totaling \$21,000.00. EXHIBIT 7 attached hereto are true and accurate copies of three invoices from RICHCO Inc. to CVMC. This first transaction is reflected in Invoice #1351 dated April 6, 2020;
- b. On April 8, 2020, RICHCO, Inc., sold CVMC 5,000 masks at \$2.50 each, totaling \$12,000.00, EX. 7 at 2, Invoice #1354 dated April 8, 2020; and
- c. On April 8, 2020, RICHCO told me that it had received a call from Mr. Palmer letting him know that he had received more surgical masks, and therefore, RICHCO was able to sell CVMC an additional 3,450 @\$2.50, totaling \$8,625.00. EX. 7 at 3, Invoice #1352 dated April 8, 2020.

DATED at Berlin, Vermont, this 13 day of April, 2020.

By: David E. Cheney

# Exhibit 1

STATE OF VERMONT  
EXECUTIVE DEPARTMENT  
EXECUTIVE ORDER NO. 01-20

Declaration of State of Emergency in Response to COVID-19 and National Guard Call-Out

**WHEREAS**, since December 2019, Vermont has been working in close collaboration with the national Centers for Disease Control and Prevention (CDC) and with the United States Health and Human Services Agency to monitor and plan for the potential for an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), in the United States; and

**WHEREAS**, this rapidly evolving global situation required the Governor to direct the Vermont Department of Health (VDH) to activate the Health Operations Center in February 2020 when VDH began to monitor and later, test Vermonters who may have been exposed to COVID-19; and

**WHEREAS**, in March 2020, the Governor directed Vermont Emergency Management (VEM) to assemble an interagency taskforce, and later to activate the Vermont State Emergency Operations Center (SEOC), in accordance with the State Emergency Management Plan, to organize prevention, response, and mitigation efforts and share information with local and state officials; and

**WHEREAS**, on March 7, 2020 and March 11, 2020, VDH detected the first two cases of COVID-19 in Vermont; and

**WHEREAS**, on March 11, 2020 the World Health Organization made the assessment that COVID-19 can be characterized as a pandemic; and

**WHEREAS**, we now know that while most individuals affected by COVID-19 will experience mild flu-like symptoms, some individuals, especially those who are elderly or already have severe underlying chronic health conditions will have more serious symptoms and require hospitalization; and

**WHEREAS**, both travel-related cases and community contact transmission of COVID-19 have been detected in the region and this transmission is expected to continue; and

**WHEREAS**, if no mitigation steps are taken, COVID-19 would likely spread in Vermont at a rate similar to the rate of spread in other states and countries, and the number of persons requiring medical care could exceed locally available resources; and

**WHEREAS**, it is critical we take steps to control outbreaks of COVID-19, particularly among those who are elderly or already have underlying chronic health conditions, to minimize the risk

to the public, maintain the health and safety of Vermonters, and limit the spread of infection in our communities and within our healthcare facilities; and

**WHEREAS**, Vermonters must come together as we have before in a crisis, to do our part to protect the very ill and elderly by preventing and slowing the spread of this virus and ensure those who experience the most severe symptoms have access to the care they need.

**NOW THEREFORE**, I, Philip B. Scott, by virtue of the authority vested in me as Governor of Vermont and Commander-in-Chief, Vermont National Guard, by the Constitution of the State of Vermont, Chapter II, Section 20 and under 20 V.S.A. §§ 8, 9 and 11 and Chapter 29, hereby declare a State of Emergency for the State of Vermont.

**IT IS HEREBY ORDERED:**

1. All State licensed nursing homes (as defined in 33 V.S.A. § 7102(7)), the Vermont Psychiatric Care Hospital (VPCH) and Middlesex Therapeutic Community Residence shall prohibit visitor access to reduce facility-based transmission. This prohibition shall not apply to medically necessary personnel or visitors for residents receiving end of life care. Any visitors will be screened in accordance with recommendations by the Commissioner of the Vermont Department of Health.
2. All State licensed assisted living residences (as defined in 33 V.S.A. § 7102(1)), Level III residential care homes (33 V.S.A. 7102(10)(A)), and intermediate care facilities for individuals with intellectual disability (ICF/ID) (42 C.F.R. § 440.150), shall prohibit visitor access to reduce facility-based transmission. This prohibition shall not apply to two designated visitors, medically necessary personnel or visitors for residents receiving end of life care. Any visitors will be screened in accordance with recommendations by the Commissioner of the Vermont Department of Health.
3. All State therapeutic community residences (as defined in 33 V.S.A. § 7102 (11)), and Level IV residential care homes (33 V.S.A. § 7102 (10)(B)), shall restrict visitor access as necessary to reduce facility-based transmission. This restriction shall not apply to medically necessary personnel or visitors for residents receiving end of life care. Any visitors will be screened in accordance with recommendations by the Commissioner of the Vermont Department of Health.
4. All hospitals (as defined in 18 V.S.A. § 1902), except VPCH, shall develop visitation policies and procedures that conform to a minimum standard which shall be developed by the Agency of Human Services to restrict visitor access to reduce facility-based transmission.
5. In order to limit exposure and protect state employees, all non-essential out-of-state travel by State employees for State business is hereby suspended. The Secretary of Administration shall, in consultation with the Commissioner of Health, develop guidance

for employees returning from out-of-state travel. The Secretary of Administration shall also, in consultation with the Commissioner of Human Resources, encourage and facilitate telework among those State employees with the capacity to work remotely.

6. To help preserve and maintain public health, I hereby prohibit all large non-essential mass gatherings of more than 250 people in a single room or single space at the same time for social and recreational activities, such as an auditorium, stadium, arena, large conference room, meeting hall, cafeteria, theater, or any other confined indoor or confined outdoor space.

A "non-essential mass gathering" does not include normal operations at airports, bus or railway stations where 250 or more persons may be in transit. It also does not include typical office environments or retail or grocery stores where large numbers of people are present, but where it is unusual for them to be within arm's length of one another. Questions from commercial recreational entities, event sponsors and others shall be directed to the SEOC which shall provide appropriate guidance.

7. In preparing for and responding to COVID-19, all agencies of the state shall use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of VDH and the Department of Public Safety (DPS)/VEM in accordance with the State Emergency Management Plan.
8. I hereby authorize and direct the Adjutant General to call into Active State Service, for the purpose of assisting and supporting the State of Vermont, in its efforts to respond to the conditions created or caused by COVID-19 in order to alleviate hardship and suffering of citizens and communities and in order to preserve the lives and property of the State, any and all units of the National Guard of the State of Vermont as he, in consultation with DPS/VEM, may deem appropriate to carry out the purposes of this Order.
9. The Department of Financial Regulation shall, in consultation with the Departments of Labor, Tax, and Finance and Management, collect data on the state's demographics and analyze the potential and actual impacts of a COVID-19 outbreak on the state's population, the labor force and the economy, including state revenues.
10. In order to limit the spread of COVID-19 through community contacts, DPS shall, in consultation with VDH, coordinate the allocation of statewide investigatory resources to enhance VDH capacity for contact tracing.
11. The Commissioner of Motor Vehicles is hereby directed to develop a plan to extend DMV licensing and registration renewal deadlines and other statutory and regulatory DMV requirements to mitigate contagion risk by reducing customer traffic throughout all DMV district offices.

12. While many are concerned about the welfare of their children in the pre-K-through-12 schools, suspension of school at this time is not recommended by the Commissioner of Health as of the date of this Order. The Secretary of Education is hereby directed to develop a contingency plan for school closings necessitated by COVID-19 for such time as this may be recommended by VDH and VEM.
13. I hereby direct that no school superintendent or school board shall cause a student or parent to be penalized for student absences that are the result of following medical advice or the guidance of VDH or arising from the concerns of parents or guardians relating to COVID-19.
14. The Commissioner of Health shall oversee the investigation, coordination and mitigation efforts for the duration of this Order. All local boards of health shall consult with and abide by the recommendations of the Commissioner of Health prior to taking any action regarding isolation or quarantine of an individual(s). Town health officers shall work with and assist the Department as directed by the Commissioner of Health.
15. Relevant rules governing medical services shall be suspended to the extent necessary to permit such personnel to provide paramedicine, transportation to destinations including hospitals and places other than hospitals or health care facilities, telemedicine to facilitate treatment of patients in place, and such other services as may be approved by the Commissioner of Health.
16. Relevant rules governing nursing services shall be suspended to the extent necessary to permit such personnel to provide medical care, including but not limited to administration of medicine, prescribing of medication, telemedicine to facilitate treatment of patients in place, and such other services as may be approved by the Secretary of State in consultation with the Commissioner of Health.
17. The Agency of Commerce and Community Development shall work with U.S. Small Business Administration (SBA) and Vermont Small Business Development Center (SBDC) to survey businesses to determine the economic impact of losses for the disaster period as compared to the same period of the preceding year for the purpose of applying to the U.S. Small Business Administration (SBA) for SBA Economic Injury Disaster Loans.
18. To ensure that workers affected by COVID-19 have access to wage replacement programs, I hereby direct the Department of Labor to extend unemployment insurance to those Vermonters following the instructions of their healthcare providers to self – isolate or quarantine; to remove the work search requirement for those workers affected by temporary closure of a business; and to temporarily suspend any mechanisms that would delay the release of funds to claimants. Further, I hereby direct the Commissioner of Labor to work with the Legislature on other opportunities to extend benefits to workers affected by COVID – 19.

19. Pursuant to the powers granted to the Governor in 20 V.S.A. §§ 8, 9 and 11 and other provisions of law, I shall from time to time issue recommendations, directives and orders as circumstances may require.

This Executive Order shall take effect upon signing and shall continue in full force and effect until April 15, 2020, at which time the Governor, in consultation with VDH and DPS/VEM, shall assess the emergency and determine whether to amend or extend this Order.



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Philip B. Scott  
Governor

By the Governor:



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Brittney L. Wilson  
Secretary of Civil and Military Affairs

Executive Order No. 01-20

# Exhibit 2

# Invoice

<p><b>FROM</b></p> <p><b>Tax ID/EIN/VAT No.:</b>  <b>Contact Name:</b> MR.XU                  EBM-PAPST VENTILATOR CO LTD                  (SPB-A)(N3P) NO.2043 BLDG 2 LANE 70                  NORTH LAITING ROAD SONGJIANG DIST                   SHANGHAI 201615                   China, People's Republic of  <b>Phone:</b> 15921803418</p>	<p><b>Waybill Number:</b> 1Z70FF966742652005  <b>Shipment ID:</b> 70FF96GFQK9</p>  <p><b>Date:</b> 09/MAR/2020  <b>Invoice No.:</b> XJD0329777640  <b>Purchase No.:</b>  <b>Terms of Sale (Incoterm):</b>  <b>Reason for Export:</b> Sale</p>
<p><b>SHIP TO</b></p> <p><b>Tax ID/VAT No.:</b>  <b>Contact Name:</b> SHELLEY PALMER                  BIG BROTHER SECURITY PROGRAMS INC                  874 N WILLISTON RD                   WILLISTON, VT 05495                   United States  <b>Phone:</b> 18023245777</p>	<p><b>SOLD TO INFORMATION</b></p> <p><b>Tax ID/VAT No.:</b>  <b>Contact Name:</b>                  Same as Ship To    <b>Phone:</b></p>

Units	U/M	Description of Goods/Part No.	Harm. Code	C/O	Unit Value	Total Value
5000	PCS	FACE MASK	3005903000	CN	0.10	500.00 USD

**Additional Comments:**

**Declaration Statement:**  
 I hereby certify that the information on this invoice is true and correct and the contents and value of this shipment is as stated above.

**Shipper** \_\_\_\_\_ **Date** \_\_\_\_\_

<b>Invoice Line Total:</b>	500.00
<b>Discount/Rebate:</b>	0.00
<b>Invoice Sub-Total:</b>	500.00
<b>Freight:</b>	0.00
<b>Insurance:</b>	0.00
<b>Other:</b>	0.00
<b>Total Invoice Amount:</b>	500.00
<hr/>	
<b>Total Number of Packages:</b> 2	<b>Currency:</b> USD
<b>Total Weight:</b> 21.0 KGS	

# Exhibit 3

# Invoice # 100

**Big Brother Security Programs**

874 N. Williston Rd  
Williston, VT 05495  
802-242-444

March 18, 2020

PO # 418790

**Bill To:**

David Cheney  
CVMC  
130 Fisher Rd  
Berlin, VT 05602  
david.cheney@cvmc.org

DESCRIPTION	AMOUNT
Disposable Paper Non Woven Surgical Mack N95 2.5m	
9500 Units @ \$2.50	
Total	\$23,750.00

**THANK YOU FOR YOUR BUSINESS!**

# Invoice # 101

**Big Brother Security Programs**

874 N. Williston Rd  
Williston, VT 05495  
802-242-444

March 20, 2020

PO # 418790

**Bill To:**

David Cheney  
CVMC  
130 Fisher Rd  
Berlin, VT 05602  
david.cheney@cvmc.org

DESCRIPTION	AMOUNT
Disposable Paper Non Woven Surgical Mask N95 2.5m	
15,000 Units @ \$2.50	
Total	\$37,500.00

**THANK YOU FOR YOUR BUSINESS!**

# Invoice # 103

**Big Brother Security Programs**

874 N. Williston Rd  
Williston, VT 05495  
802-242-444

March 24, 2020

PO # 418790

**Bill To:**

David Cheney  
CVMC  
130 Fisher Rd  
Berlin, VT 05602  
david.cheney@cvmc.org

DESCRIPTION	AMOUNT
Disposable Paper Non Woven Surgical Mask N95 2.5m	
18,000 (3 boxes of 6,000) @ \$2.50	
Total	\$45,000.00

**THANK YOU FOR YOUR BUSINESS!**

# Exhibit 4a



合格证

产品名称: 一次性使用口罩

生产日期: 2023年11月

检验员: 检验

2023年

# Exhibit 4b

LE NITRILE EXAM GLOVES  
EXAMENS EN NITRILE, SANS POUDRE  
DE EXAMEN DE NITRILLO SIN POLVO

GRGE | GRAND | GRANDES

Boites / Caixas

### 合格证

产品名称：一次性使用口罩

生产日期： 202003

质检员：检验 07

保质期：三年

# Exhibit 4c



ANTS D'... EN NITRILE...  
QUANTE... XAMEN DE NITRILLO SIN POLVO

AND | GRANDES

3 Ply Face Mask  
Size: 17.5cm\*9.5cm  
Color: Blue 50pcs/Bag  
Made in China  
Date: Mar 4, 2020

# Exhibit 4d



Elastic ear loop mask

# Disposable Face Mask



- High B.F.E. and P.F.E. filtration
- Suitable for sensitive skin
- Comfortable fitting and easy breathing
- High elasticity ear hook

## 50 Pieces

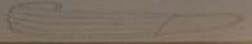


Open

Elastic ear loop mask

# Disposable Face Mask

High B.F.E. and P.F.E. filtration  
Suitable for sensitive skin  
Comfortable fitting and easy breathing  
High elasticity ear hook



BOX# 030



SensiCare Ice

REF MD

# Exhibit 4e



SensiCare **Ice**  
with SmartGuard™

POWDER-FREE NITRILE EXAM GLOVES  
GANTS D'EXAMEN EN NITRILE, SANS POUSSIERE  
GUANTES DE EXAMEN DE NITRILE SIN POLVO

LARGE | GRAND | GRANDES

Quantity: 10 Boxes | Boîtes | Cajas  
2500 Gloves | Gants | Guantes

Disposable Face Mask

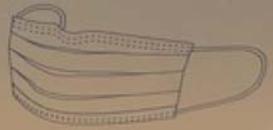
50 Pieces

Elastic ear loop mask

Disposable Face Mask

- High filterability, filters dust, pollen, bacteria
- 3-ply medical mask
- Suitable for sensitive skin

- ✓ High B.F.E. and P.F.E. retention
- ✓ Suitable for sensitive skin
- ✓ Comfortable fitting and easy breathing
- ✓ High elasticity ear hook



50 Pieces

BOX# 030

REF MDS

Ice

# Exhibit 5



www.medline.com

# INVOICE

Customer PO #	Invoice Date	Invoice #
417566	02/12/2020	1901365209

**Sold To:**  
CENTRAL VERMONT MEDICAL CENTER INC  
130 FISHER RD  
BERLIN, VT 05602-9516

**Ship To:**  
CENTRAL VERMONT MED CTR-STOREROOM  
130 FISHER RD  
BERLIN, VT 05602-9516

SALES REP #	SALES ORDER #	CARRIER	FREIGHT TERMS	CUSTOMER #	CURRENCY	AMOUNT DUE
130	499183753	MEDTRANS	MEDLINE	1020893	USD	\$2,344.10

LINE NO.	ORDER QTY	U/M	INVOICE QTY	ITEM NO. / DESCRIPTION	CODE*	DELIVERY #	UNIT PRICE	AMOUNT
20	132.00	CS	99.00	CRI5000 126651 /GOWN,ISO,THUMBLOOP,POLYETHYLENE,BLUE,REG	TE	982162361	20.25	2,004.75
70	18.00	CS	10.00	K-C47080 126258 /MASK,PROCEDURE,PLECTED,EARLOOPS,BLUE	TE	982411812	30.85	308.50
80	18.00	CS	1.00	K-C47080 126258 /MASK,PROCEDURE,PLECTED,EARLOOPS,BLUE	TE	982433012	30.85	30.85

GROSS	TAX AMOUNT	FREIGHT	TOTAL
2,344.10	0.00	0.00	\$2,344.10

Eligible Gross Amount **\$2,344.10**  
Discount amount **\$11.72** if recd. by **02/27/20**

\* Code  
TE - Tax Exempt  
C - Customer Freight

CUSTOMER SHALL PAY THE FREIGHT CHARGES INDICATED ON THIS INVOICE. ALL CLAIMS OF SHORT SHIPMENTS, MIS-SHIPMENTS AND OTHER ERRORS IN DELIVERY SHALL BE COMMUNICATED TO MEDLINE IN WRITING WITHIN TWO BUSINESS DAYS OF THE INVOICE DATE, OR THEY ARE DEEMED WAIVED. ALL CLAIMS FOR PRICING AND BILLING ERRORS SHALL BE COMMUNICATED TO MEDLINE IN WRITING WITHIN 180 DAYS OF INVOICE DATE, OR THEY ARE DEEMED WAIVED.

EXPORT PROHIBITED CONTRARY TO U.S. FEDERAL LAWS. NO RETURNS WILL BE ALLOWED WITHOUT WRITTEN AUTHORIZATION.(PH: 800-307-8386)

INTEREST WILL BE CHARGED AT THE RATE OF 1.5% PER MONTH ON PAST DUE BALANCE.

MEDLINE INDUSTRIES, INC. INCLUDES MEDLINE INDUSTRIES,INC. AND/OR ITS WHOLLY OWNED CONSOLIDATED SUBSIDIARIES, MEDLINE INDUSTRIES HOLDINGS, LP, A DELAWARE PARTNERSHIP, AND MEDCAL SALES, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, AS APPLICABLE.

Billing Inquiries: 1-800-388-2147, A/R Svcs Rep: Cindy Trojan x7704973

## REMITTANCE

**Bill To:**  
CENTRAL VERMONT MEDICAL CENTER  
PO BOX 547  
BARRE VT 05641-0547

**Customer #** 1020893  
**Invoice #** 1901365209  
**Invoice Date** 02/12/2020  
**Sales Rep #** 130  
**Payment Terms** .5% 15, Net 45  
**Amount Due** \$2,344.10

**Remit To:**  
Medline Industries, Inc.  
Dept 1080  
PO Box 121080  
Dallas TX 75312-1080

AMOUNT PAID \$ \_\_\_\_\_

Detach and return this portion with your payment

# Exhibit 6

Video [here](#).

# Exhibit 7

# RICHCO inc.

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**Address:** 109 Murray Ave  
Milton, VT 05468

**Phone:** 802-355-8850

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## Statement

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**Date:** April 6, 2020

**Bill To:** CVMC

David Cheney  
130 Fisher Rd  
Berlin, VT 05601

Date	Invoice #	Description	Amount	Balance
4/6/2020	1351	Surgical Mask	8,400 units @ \$2.50	<b>\$21,000</b>
				<b>\$21,000.00</b>

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# RICHCO inc.

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**Address:** 109 Murray Ave  
Milton, VT 05468

**Phone:** 802-355-8850

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## Statement

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**Date:** April 8, 2020

**Bill To:** CVMC

David Cheney  
130 Fisher Rd  
Berlin, VT 05601

Date	Invoice #	Description	Amount	Balance
4/8/2020	1354	Surgical Mask	5000 units @ \$2.50	<b>\$12,000</b>
				<b>\$12,000.00</b>

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# RICHCO inc.

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**Address:** 109 Murray Ave  
Milton, VT 05468

**Phone:** 802-355-8850

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## Statement

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**Date:** April 8, 2020

**Bill To:** CVMC

David Cheney  
130 Fisher Rd  
Berlin, VT 05601

Date	Invoice #	Description	Amount	Balance
4/8/2020	1352	Surgical Mask	3450 units @ \$2.50	<b>\$8,625</b>
				<b>\$8,625.00</b>

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