

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
DOCKET NO. 326-4-20 Cncv

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

CONSENT ORDER AND FINAL JUDGMENT ORDER

Plaintiff the State of Vermont (“State”) has filed a Complaint for a permanent injunction and other relief in this matter pursuant to the Vermont Consumer Protection Act, 9 V.S.A. § 2451 *et seq.*, (“CPA”). The State alleges the defendants Shelley Palmer and Big Brother Security Inc. (collectively referred to as “Defendants”), committed violations of the CPA by unfairly and excessively pricing personal protective equipment (“PPE”) (defined below) during the Covid-19 global pandemic. The State and Defendants (collectively, the “Parties”) have agreed to resolve the State’s claims by entering into a Stipulation for Entry of Consent Order and Final Judgment Order (“Stipulation”) agreeing to entry of this Consent Order and Final Judgment (“Judgment”).

IT IS HEREBY ORDERED THAT:

I. FINDINGS

- has**
1. This Court jurisdiction over the subject matter of this lawsuit and over all the Parties.
 2. The provisions of this Judgment shall be governed in accordance with the laws of the State of Vermont.
 3. Entry of this Judgment is in the public interest and reflects a negotiated agreement among the Parties.
 4. The Parties have agreed and stipulated to resolve the issues resulting from the Covered Conduct (defined below) by agreeing to the entry of this Judgment.
 5. Defendant Shelley Palmer (“Mr. Palmer”) is the sole owner and principal of Big Brother Security Programs, Inc. (“Big Brother”), a subchapter S corporation
 6. Big Brother’s business has been to provide contract and private transportation or for non-emergency medical transportation (“NEMT”) services.
 7. Prior to the COVID-19 pandemic (*i.e.*, prior to March 2020), Defendants had never been in the business of buying for resale or selling PPE.
 8. On three separate occasions between March 18, 2020 and March 24, 2020, Defendants sold 42,500 surgical masks at \$2.50 each for a total of \$106,250.00 to Central Vermont Medical Center (“CVMC”). These sales are as follows:

- On March 18, 2020, Defendants sold 9,500 masks for \$23,750 total.
- On March 20, 2020, Defendants sold 15,000 masks for \$37,500 total.
- On March 24, 2020, Defendants sold 18,000 masks for \$45,000 total.

II. DEFINITIONS

9. “**Covered Conduct**” means any acts or omissions, occurring up to and including the Effective Date of this Judgment, relating to the unfair and excessive pricing of PPE by Defendants relating to the sale of surgical masks to CVMC for \$2.50 per masks when they were purchased for \$.60 a mask during the period from March 18, 2020 to March 24, 2020.

10. “**CPA Claims**” means the claims the State asserted in its Complaint against Defendants, including claims for injunctive relief; restitution or other monetary payments to consumers under, and civil penalties under Vermont’s CPA.

11. “**CPA**” means Vermont’s Consumer Protection Act, 9 V.S.A. § 2451 *et seq.*

12. “**Effective Date**” means the date on which this Judgment has been approved and entered as an order by the Court.

13. “**Executive Order**” means the state of emergency due to the COVID-19 crisis, declared on March 13, 2020, including all addenda. Executive Order No. 01-20.

14. “**PPE**” means personal protective equipment such as protective clothing, including, gloves, face shields, goggles, masks, respirators, or other

order related to the

equipment designed to protect the wearer from injury or the spread of infection or illness.

III. EFFECT OF JUDGMENT

15. This Judgment fully and finally resolves and disposes of the CPA Claims arising from or related to the Covered Conduct that were alleged in the Complaint in this matter.

16. The Judgment will, upon its Effective Date, constitute a fully binding and enforceable agreement between the Parties and the Parties consent to its entry as a final judgment by the Court.

IV. RELIEF

A. Restitution to Central Vermont Medical Center

17. Defendants overcharged CVMC for the purchase of surgical masks. The Parties have agreed that in lieu of a cash payment, Defendants shall deliver certain PPE to CVMC.

18. Within three (3) business days of the Effective Date, or such other time agreed to in writing by the Parties, Defendants shall deliver the following PPE to CVMC:

- i. 5,000 Polycarbonate and Polyester (PET) face shields,
- ii. 22,400 face mask-shield combinations, and
- iii. 50,000 surgical masks.

B. Injunctive Relief

19. Defendants and their officers, employees, and affiliates are hereby enjoined, as follows:

- i. They shall not engage in future unfair or deceptive acts or practices under Vermont law, including, but not limited to, unfair or deceptive acts or practices in violation of the CPA, in connection with their dealings with consumers and state regulators, directly or indirectly, by:
 - a. advertising, marketing, offering for sale, selling, promoting, distributing, or knowingly assisting others in selling or distributing any PPE at excessive or unconscionably high pricing;
 - b. misrepresenting to consumers or knowingly assisting others in misrepresenting to consumers that a product complies with United States, state, or local safety standards when it does not; and
 - c. misrepresenting to consumers or knowingly assisting others in misrepresenting to consumers that PPE is a certain type or safety standard when it is not; *e.g.*, the PPE is a N95 respirator when it is not; and

ii. Reporting: For the duration of the Executive Order or for six (6) months from the Effective Date, whichever is longer, Defendants shall:

- a. Within 48 hours of each sale of PPE within the State of Vermont, provide the State with a report that includes:
 1. The total sale amount and price per item sold;
 2. The type of ~~the type of~~ PPE sold;
 3. The sale price of the PPE;
 4. The entity or person buying the PPE, including name and address;
 5. The dollar amount for which Defendants or their affiliates purchased the PPE;
 6. The date of the sale; and
 7. Upon request of the State, provide copies of all invoices or documentation related to the purchase of the PPE; *e.g.*, copies of purchase invoices.

- b. Upon request by the State, provide any documentation or information necessary for the State ^{to} confirm Defendants' compliance with this Judgment. Defendants shall promptly respond to the State's reasonable inquiries about the status or necessary documentation to confirm Defendant's compliance with this Judgment.

C. Civil Penalties

20. Defendants are liable for three (3) violations of the CPA. The Parties have agreed to a suspended civil penalty of \$15,000.00. In the event the Defendants violate any portion of this Judgment and upon ten (10) days' notice by the State, Defendants shall pay to the State the suspended amount of \$15,000.

D. Cy Pres

21. Defendants agree that, within five (5) business days from the Effective Date, they shall deliver 10,000 KN95 masks with ear loops to a location of the State's choosing. The State shall provide Defendants with written notice of the location within three (3) business of the Effective Date, or such other time agreed to in writing by the Parties. The State agrees to provide such written notice to Defendants by USPS First-Class mail and a courtesy copy *via* e-mail. Such masks or respirators are subject to testing by the State or designated recipient to determine that they are suitable to be used as PPE for Covid-19.

V. RELEASE

22. Released Claims. Subject to paragraph 23 below, in consideration of the monetary and non-monetary relief described in Section IV, and upon Defendants' delivery of PPE contemplated in paragraphs 18 and 21, the State of Vermont releases the Defendants and their officers, directors, employees, representatives, agents, affiliates, parents, subsidiaries, predecessors, assigns and successors (collectively, the "Releasees") from all CPA claims arising from the Covered Conduct including penalties, fines, restitution or other monetary payments or injunctive relief to the State.

23. Claims Not Covered. Notwithstanding any term of this Judgment, specifically reserved and excluded from the release in Paragraph 22 as to any entity or person, including Releasees, are the following:

- i. Any criminal liability that any person or entity, including Releasees, has or may have to the State of Vermont;

ii. Any civil or administrative liability that any person and/or entity, including Releasees, has or may have to the State of Vermont not expressly covered by the release in Paragraph 22, including, but not limited to, any and all of the following claims:

- a. state or federal antitrust violations;
- b. claims arising under state tax laws;
- c. any claims not now known to the State;
- d. Medicaid claims, including but not limited to Medicaid fraud or abuse;
- e. state false claims violations;
- f. claims to enforce the terms and conditions of this Judgment; and
- g. any claims individual consumers have or may have under above-cited Vermont CPA against any person or entity, including the Releasees.

24. Nothing contained in this Judgment shall relieve Defendants of the obligations they maintain under any other Judgment or agreement relating to any of their products and/or services.

25. The CPA Claims set forth in the Complaint are resolved in their entirety.

VII. ADDITIONAL PROVISIONS

26. Consent to this Judgment does not constitute an approval by the Attorney General of Defendants' business acts and practices, and Defendants shall not represent this Judgment as such an approval.

27. Nothing in this Judgment constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws. The Judgment takes no position with regard to the tax consequences of the Judgment regarding federal, state, local and foreign taxes.

28. This Judgment, which constitutes a continuing obligation, is binding upon the State and Defendants, and any of Defendants' respective successors, assigns, or other entities or persons otherwise bound by law.

29. The terms of this Judgment may be modified only by a subsequent written agreement signed by all Parties. Where the modification constitutes a material change to any term of this Judgment, it will be effective only by written approval of all Parties and the approval of the Court.

30. The Defendants shall not cause or encourage third parties, nor knowingly permit third parties acting on the behalf of Defendants, to engage in practices from which Defendants are prohibited by this Judgment.

31. Nothing in this Judgment shall limit or expand the Attorney General's right to obtain information, documents, or testimony from Defendants to evaluate Defendants' compliance with obligations set forth in this Judgment.

32. Any failure by any party to this Judgment to insist upon the strict performance by any other party of any of the provisions of this Judgment shall not be deemed a waiver of any of the provisions of this Judgment, and such party,

notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Judgment.

33. Nothing in this Judgment shall preclude any party from commencing an action to pursue any remedy or sanction that may be available to that party upon its determination that another party has failed to comply with any of the requirements of this Judgment.

34. Nothing in this Judgment shall relieve Defendants of their obligation to comply with all federal, state, or local law and regulations.

35. If any portion of this Judgment is held invalid by operation of law, the remaining terms of this Judgment shall not be affected and shall remain in full force and effect.

36. This Judgment supersedes all prior communications, discussions, or understandings, if any, of the Parties, whether oral or in writing.

37. Notices and Reporting: All Notices and Reporting required under this Judgment shall be provided to the following *via* USPS First Class Mail and a courtesy copy *via* e-mail:

Defendants:
Mr. Shelley Palmer
Big Brother Security Programs, Inc.
874 N. Williston Rd.
Williston, VT 05495-8839
E-mail: bondsman@msn.com
Telephone: (802) 324-5777

Plaintiff:
Merideth C. Chaudoir
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609-1001
E-mail: merideth.chaudoir@vermont.gov
Telephone: 802-828-1422

38. Continuing Jurisdiction: This Court retains jurisdiction of this action and the Parties hereto for the purpose of enforcing and modifying this Judgment and for the purpose of granting such additional relief as may be necessary and appropriate.

APPROVAL BY THE COURT

APPROVED FOR FILING AND SO ORDERED THIS 2nd DAY OF
December, 2020.

Electronically signed pursuant to V.R.E.F. 9(d).



Helen M. Toor
Superior Court Judge