

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

STATE OF OHIO, ex rel. Dave Yost	:	
ATTORNEY GENERAL OF OHIO,	:	CASE NO:
150 East Gay St., 22nd Floor	:	
Columbus, Ohio 43215	:	JUDGE
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
MARIO F. SALWAN	:	
7071 Bramshill Circle	:	
Chagrin Falls, OH 44023	:	
	:	
and	:	
	:	
JOHN DOES 1 THROUGH 100	:	
Individuals, corporations, organizations,	:	
or other legal entities whose names and	:	
addresses are presently unknown,	:	
	:	
Defendants.	:	

**PLAINTIFF STATE OF OHIO'S MOTION FOR A
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION
AGAINST DEFENDANTS MARIO F. SALWAN
AND JOHN DOES 1 THROUGH 100**

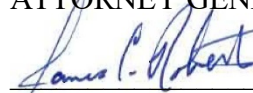
The Plaintiff State of Ohio, acting on the relation of its Attorney General Dave Yost, moves this Court for a temporary restraining order and preliminary injunction pursuant to Ohio Civil

Rule 65.

Respectfully Submitted,

DAVE YOST
ATTORNEY GENERAL OF OHIO

By:



James C. Roberts (0077733)
David M. Dembinski (0006978)
Principal Assistant Attorneys General
150 East Gay Street, 22nd Floor
Columbus, Ohio 43215
Phone: (614) 466-1730
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MEMORANDUM IN SUPPORT

I. STATEMENT OF FACTS

In early 2020, as Americans learned that the global epidemic known as COVID-19 had begun to spread throughout the United States, demand for certain products such as disinfecting wipes, hand sanitizers, respirator masks, and even toilet paper began to increase. These purchases were driven largely by fear that the health crisis would lead to shortages or restrict consumers' ability to shop for supplies.

Defendants operate an online commercial business in which they sell products to the general public through the e-commerce platform e-Bay under the user name Donkey476. Motivated by the prospect of being able to reap large profits by selling some of these essential, high-demand products through their Donkey476 e-Bay store, Defendants began purchasing large volumes of one particularly scarce and life-saving product – N95 respirator masks (“N95 Masks”). N95 Masks are a form of personal protective equipment (“PPE”) used by healthcare professionals, first responders, and individuals with compromised immune systems, among others, to suppress the spread of contagious diseases such as COVID-19.

Having acquired in excess of one thousand two hundred (1,200) N95 Masks, Defendants began listing them for sale on the Donkey476 store on March 28, 2020. Defendants have sold at least fifteen (15) packages of ten (10) N95 Masks each at prices ranging from \$360.00 to \$375.00, for an average price of \$363.43 per package, or \$36.34 per mask. The average retail price of N95 Masks prior to the COVID-19 pandemic was typically \$1.75 to \$2.35 per mask, for an average retail price of \$2.05 per mask.

Despite numerous well-publicized pleas by health care organizations and governmental bodies for new sources of supply of N95 Masks, and even at least one direct message from a

health care professional imploring Defendants to sell their N95 Masks for fair market prices, Defendants continue to hold the products hostage, demanding on average 1,700% more than pre-COVID-19 prices.

II. ARGUMENT

Immediate temporary and preliminary injunctive relief is both justified and necessary in this action to protect the health, safety, and well-being of Ohioans. Defendants' acts of hoarding essential forms of personal protective equipment ("PPE") and listing them for resale at exorbitant prices has caused and will continue to cause serious harm to the public unless enjoined.

Specifically, these actions have:

- denied reasonable access to N95 Masks to Ohio's first-responders and healthcare workers by reducing the available supply in the market;
- denied reasonable access to N95 Masks to Ohioans with compromised immune systems or other health issues that make them especially vulnerable to the COVID-19 virus; and
- exacerbated public panic by demanding unfair, deceptive, or unconscionable prices for N95 Masks on the e-commerce site e-Bay.

A. Requirements for Issuance of Injunctive Relief

The Attorney General has the authority, under R.C. 1331.11 and R.C. 1345.07(A)(2), to seek the injunctive relief requested in this action. Moreover, the State is not required to establish the elements of a private action for injunctive relief, such as irreparable damage or lack of adequate legal remedy. It is well-established in Ohio law that when the state has been granted a specific injunctive remedy by statute, these traditional requirements of equitable injunctions do not apply. *Ackerman v. Tri-City Geriatric & Health Care, Inc.*, 55 Ohio St. 2d 51, 56 (1978). In *Ackerman*,

the Court found that it would be “redundant” to ask the state to show irreparable harm or lack of adequate remedy once the state has shown that the conditions the General Assembly has deemed to be harmful exist. *Id.* at 57. The Court further reasoned that to balance equities when the state seeks a statutorily-authorized injunction would be inappropriate, as such injunctions “are not designed primarily to do justice to the *parties* but to prevent harm to the general public.” *Id.* (emphasis in original).

B. Defendants’ Violation of the Valentine Act

The facts set forth in the State’s complaint and in the attached affidavits demonstrate that Defendants are engaged in a continuing violations of Ohio law, and that such violations constitute a direct threat to the public health, safety, and well-being. Defendants have violated, *inter alia*, the State’s antitrust law, R.C. Chapter 1331 (the Valentine Act).

Ohio Revised Code 1331.01 prohibits, in part:

“... a combination of capital, skill or acts by two or more persons for any of the following purposes:

“(a) To create or carry out restrictions in trade or commerce;

“(b) To ... increase ... the price of merchandise or a commodity;”

R.C. 1331.01(C)(1); *see also* R.C. 1331.04 (declaring such “trusts” illegal).

It is well-established in Ohio law that any activity that has a “pernicious effect” on free trade is a *per se* violation of the antitrust laws. *State ex rel. Brown v. Zayre of Ohio, Inc.* (Com. Pleas, Cuyahoga County 1974), 324 N.E.2d 186, 189, 41 Ohio Misc. 117, 123, citing *State, ex rel. Brown, v. Andrew Palzes, Inc.* (Com. Pleas, Cuyahoga County 1973), 1973-2 Trade Cases, Para. 74,764, at 95,329. This Court has held that “[t]he true test of the illegality of such combinations, it seems, is their tendency to endanger the public....” *Needles v. Bishop & Babcock Co.* (C. P. Franklin Co. 1904), 14 Ohio Dec. 445. Moreover, for actions that tend to endanger the public through their pernicious effect on trade, “no evidence of its reasonableness or business excuse may

be used to justify it, nor need evidence be introduced to demonstrate its unreasonableness, or the specific injury resulting to the public or the economy.” *Zayre* at 189.

Defendants’ acts of hoarding essential, potentially life-saving, scarce products during a public health crisis, and demanding excessive prices for those products clearly constitute restraints of trade with the kind of pernicious effects that violate Ohio’s antitrust law. In *State ex rel. Schlesinger v. Columbus Packing Co.*, the Franklin County Court of Common Pleas stated that by acquiring and withholding from the market a large quantity of pork, the defendant’s actions “can tend to but one end, the restraint of trade with respect to this commodity and the maintaining of the high price of pork in this community by the voluntary withdrawal from the market of said large amount of pork, which acts, in the opinion of the court, *constitute a violation of both the letter and the spirit of the Valentine anti-trust law.*” *State ex rel. Schlesinger v. Columbus Packing Co.* (C. P. Franklin Co. 1919), 30 Ohio Dec. 213, 214 (affirmed by *Columbus Packing Co. v. State*, 100 Ohio St. 285) (emphasis added).

The scarcity of the N95 Masks in light of the current health crisis is undeniable. On March 30, 2020, the United States Department of Health and Human Services issued a Notice of Designation of Scarce Materials or Threatened Materials Subject to COVID-19 Hoarding Prevention Measures, 85 CFR 61 at 17592 (the “Designation”), attached as Attachment A. The Designation identifies “N-95 Filtering Facepiece Respirators” as a scarce material. The federal statute under which the Designation was issued defines unlawful hoarding as the accumulation of materials designated as scarce “(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. The State requests that the Court take judicial notice of the Designation and of 50 U.S.C. 4512 pursuant to Civil Rule 44.1(A)(3).

Defendants have accumulated large quantities of N95 Masks during the current public health crisis, and have demanded prices that are clearly excessive in light of retail market prices for these same products in the weeks preceding the declaration of a state of emergency in Ohio in connection with the COVID-19 virus. *See* Attachment B, Affidavit of Robert E. Morgan.

Defendants' actions have had a pernicious effect on the market for N95 Masks, on Ohio consumers, and on Ohio's healthcare systems and governmental entities that are struggling to acquire badly-needed supplies of PPE, including N95 Masks, at prices that do not cripple their budgets. Their inability to do so, is a real and immediate danger to their healthcare personnel and first responders, who in many instances are working without adequate protection because of the hoarding and unconscionable pricing activities of Defendants and others like them. *See* Attachment C, Affidavit of Sean McGlone.

C. Defendants' Violations of the CSPA

The complaint in this action and the affidavits attached to this Motion demonstrate that Defendants have engaged in, and are continuing to engage in multiple violations of Ohio's Consumer Sales Practices Act, R.C. 1345.01 et seq. ("CSPA").

Defendants' ongoing conduct is precisely what the CSPA was implemented to prevent. The purpose of the CSPA, R.C. 1345.01 *et seq.*, is to prohibit unfair, deceptive, or unconscionable acts and practices by suppliers. *Celebrezze v. Hughes*, 18 Ohio St.3d 71, 74 (1985). Proof of Defendants' intent is not even required for a finding of a R.C. 1345.02 violation, such as alleged in Count II of the Complaint, and are *per se* violations of the law. *See Fletcher v. Don Foss of Cleveland, Inc.*, 90 Ohio App.3d 82, 86 (8th Dist. 1993); *Thomas v. Sun Furniture Co.*, 61 Ohio App.2d 78, 80-81 (1st Dist. 1978). The CSPA is remedial legislation that must be afforded liberal construction to further its intent and purpose of protecting consumers.

Einhorn v. Ford Motor Co., 48 Ohio St.3d 27, 29 (1990); *Liggins v. May Co.*, 53 Ohio Misc. 21, 23 (Cuyahoga C.P. 1977).

The CSPA applies to acts or practices committed by a “supplier(s)” such as Defendants in the course of “consumer transaction(s).” R.C. 1345.01. “Consumer transaction(s)” includes the sale or solicitation for sale of goods such as N95 Masks for personal, family, or household purposes. R.C. 1345.01 (A). “Suppliers” are businesses or persons engaged in effecting or soliciting consumer transactions. R.C. 1345.01(C).

Defendants’ acts of selling and continuing to offer for sale N95 Masks at excessive prices during the course of a national and state emergency has caused and will continue to cause significant harm to consumers. Current events have allowed the Defendants to unfairly raise prices to an absurd average of 1,700% more than pre-COVID-19 prices. There is a critical public need for these masks and Defendants’ egregious conduct of selling them at severely inflated prices must be brought to an immediate end.

III. REQUEST FOR RELIEF

THEREFORE, Plaintiff State of Ohio requests the following immediate injunctive relief in order to protect the public health, safety, and welfare:

- A. A temporary restraining order restraining Defendants from:
- acquiring additional N95 Masks in volumes that exceed Defendants’ personal or household needs for a thirty (30) day period; and
 - selling or otherwise disposing of the N95 Masks currently in Defendants’ possession without prior approval of this Court.
- B. A permanent injunction requiring Defendants to:
- forfeit all N95 Masks currently in their possession to the State for distribution to healthcare

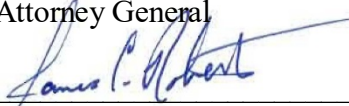
workers and/or first responders in the State of Ohio in exchange for just compensation at a fair market rate to be determined by this Court; and

- refrain from acquiring additional N95 Masks in volumes that exceed Defendants' personal or household needs for a thirty (30) day period.

Respectfully Submitted,

Dave Yost
Attorney General

By:



James C. Roberts (0077733)
David M. Dembinski (0006978)
Principal Assistant Attorneys General
150 East Gay Street, 22nd Floor
Columbus, Ohio 43215
Phone: (614) 466-1730
Facsimile: (866) 818-6922
Email: james.roberts@ohioattorneygeneral.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Plaintiff State of Ohio's Motion for a Temporary Restraining Order and Preliminary Injunction Against Defendants Mario F. Salwan and John Does 1 through 100 was hand-delivered on this 13th day of April, 2020, to the following:

MARIO F. SALWAN
7071 Bramshill Circle
Chagrin Falls, OH 44023



James C. Roberts
Principal Assistant Attorney General
Office of the Ohio Attorney General
Antitrust Section
150 East Gay Street, 22nd Floor
Columbus, Ohio 43215
(614) 466-1730

ATTACHMENT A

IV. List of Recognized Standards

FDA maintains the current list of FDA Recognized Consensus Standards in a searchable database that may be accessed at <https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm>. Such standards are those that FDA has recognized by notice published in the **Federal Register** or that FDA has decided to recognize but for which recognition is pending (because a periodic notice has not yet appeared in the **Federal Register**). FDA will announce additional modifications and revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often if necessary.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under section 514 of the FD&C Act by submitting such recommendations, with reasons for the recommendation, to CDRHStandardsStaff@fda.hhs.gov. To be considered, such recommendations should contain, at a minimum, the information listed on FDA's website, which is specifically available at <https://www.fda.gov/medical-devices/standards-and-conformity-assessment-program/recognition-standard>.

Dated: March 24, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020-06520 Filed 3-27-20; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Designation of Scarce Materials or Threatened Materials Subject to COVID-19 Hoarding Prevention Measures

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) announces the issuance of a Notice under Executive Order 13910 (Executive order) and section 102 of the Defense Production Act of 1950 (the Act), as amended, designating health and medical resources necessary to respond to the spread of Coronavirus Disease 2019 (COVID-19) that are scarce or the supply of which would be threatened by excessive accumulation. These designated materials are subject to the hoarding prevention measures

authorized under the Executive order and the Act. The Notice was issued on March 25, 2020.

DATES: This action took effect March 25, 2020.

FOR FURTHER INFORMATION CONTACT:

Bryan Shuy: 202-703-8610;

Bryan.Shuy@hhs.gov.

SUPPLEMENTARY INFORMATION: On March 23, 2020, and in response to the spread of COVID-19, President Trump signed Executive Order 13910 (Executive order) to prevent hoarding of health and medical resources necessary to respond to the spread of COVID-19 within the United States. As provided in the Executive order, it is the policy of the United States that health and medical resources needed to respond to the spread of COVID-19, such as personal protective equipment and sanitizing and disinfecting products, are appropriately distributed. This policy furthers the goal of protecting the Nation's healthcare systems from undue strain.

Through the Executive order, the President delegated, to the Secretary of Health and Human Services (the Secretary), his authority under section 102 of the Defense Production Act of 1950, 50 U.S.C. 4512, as amended (the Act), to prevent hoarding of health and medical resources necessary to respond to the spread of COVID-19 within the United States, and his authority to implement the Act in subsection III of chapter 55 of title 50, United States Code (50 U.S.C. 4554, 4555, 4556, and 4660). Under this delegation and the Act, the Secretary may designate such resources as scarce materials or materials the supply of which would be threatened by such accumulation (threatened materials). The Secretary may also prescribe conditions with respect to accumulation of such materials in excess of the reasonable demands of business, personal, or home consumption. The Act prohibits any person from accumulating 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.

HHS is issuing this Notice designating scarce materials or threatened materials that are subject to the hoarding prevention measures authorized under the Executive order and the Act. Under 50 U.S.C. 4552(13), the term "materials" includes any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and any technical information or services ancillary to the use of any

such materials, commodities, articles, components, products, or items. For purposes of this Notice, the term "scarce materials or threatened materials" means health or medical resources, or any of their essential components, determined by the Secretary to be needed to respond to the spread of COVID-19 and which are, or are likely to be, in short supply or the supply of which would be threatened by hoarding. Designated scarce materials or threatened materials are subject to periodic review by the Secretary.

This designation is not a "regulation" under the Act. See 50 U.S.C. 4559. To the extent that it were, the Secretary finds that, in light of the current global pandemic, urgent and compelling circumstances make compliance with public comment requirements impracticable.

See id. This designation shall terminate after 120 days from the date of publication, unless superseded by a subsequent notice.

A copy of the Notice is provided below and also can be found on HHS's website.

NOTICE OF DESIGNATION OF SCARCE MATERIALS OR THREATENED MATERIALS

Health or medical resources, or any of their essential components, determined by the Secretary of HHS to be needed to respond to the spread of COVID-19 and which are, or are likely to be, in short supply (scarce materials) or the supply of which would be threatened by hoarding (threatened materials). Designated scarce materials or threatened materials are subject to periodic review by the Secretary.

The following materials are designated pursuant to section 102 of the Defense Production Act (50 U.S.C. 4512) and Executive Order 13190 of March 23, 2020 (Preventing Hoarding of Health and Medical Resources to Respond to the Spread of COVID-19) as scarce materials or threatened materials:

1. N-95 Filtering Facepiece Respirators, including devices that are disposable half-face-piece non-powered air-purifying particulate respirators intended for use to cover the nose and mouth of the wearer to help reduce wearer exposure to pathogenic biological airborne particulates
2. Other Filtering Facepiece Respirators (e.g., those designated as N99, N100, R95, R99, R100, or P95, P99, P100), including single-use, disposable half-mask respiratory protective devices that cover the user's airway (nose and mouth) and

- offer protection from particulate materials at an N95 filtration efficiency level per 42 CFR 84.181
3. Elastomeric, air-purifying respirators and appropriate particulate filters/cartridges
 4. Powered Air Purifying Respirator (PAPR)
 5. Portable Ventilators, including portable devices intended to mechanically control or assist patient breathing by delivering a predetermined percentage of oxygen in the breathing gas
 6. Drug product with active ingredient chloroquine phosphate or hydroxychloroquine HCl
 7. Sterilization services for any device as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act and sterilizers as defined in 21 CFR 880.6860, 880.6870, and 880.6880, including devices that already have FDA marketing authorization and those that do not have FDA marketing authorization but are intended for the same uses
 8. Disinfecting devices intended to kill pathogens and other kinds of microorganisms by chemical means or physical means, including those defined in 21 CFR 876.1500, 880.6992, and 892.1570 and other sanitizing and disinfecting products suitable for use in a clinical setting
 9. Medical gowns or apparel, *e.g.*, surgical gowns or isolation gowns
 10. Personal protective equipment (PPE) coveralls, *e.g.*, Tyvek Suits
 11. 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
 12. PPE surgical masks, including masks that covers the user's nose and mouth and provides a physical barrier to fluids and particulate materials
 13. PPE face shields, including those defined at 21 CFR 878.4040 and those intended for the same purpose
 14. PPE gloves or surgical gloves, including those defined at 21 CFR 880.6250 (exam gloves) and 878.4460 (surgical gloves) and such gloves intended for the same purposes
 15. Ventilators, anesthesia gas machines modified for use as ventilators, and positive pressure breathing devices modified for use as ventilators (collectively referred to as "ventilators"), ventilator tubing connectors, and ventilator accessories as those terms are described in FDA's March 2020 Enforcement Policy for Ventilators

and Accessories and Other Respiratory Devices During the Coronavirus Disease 2019 (COVID-19) Public Health Emergency located at <https://www.fda.gov/media/136318/download>

Authority

The authority for this Notice is Executive Order 13910 and section 102 of the Defense Production Act of 1950, 50 U.S.C. 4512, as amended.

Wilma M. Robinson,

Deputy Executive Secretary, Department of Health and Human Services.

[FR Doc. 2020-06641 Filed 3-26-20; 11:15 am]

BILLING CODE 4150-03-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA-2020-0002]

Notice of Request for Extension of a Currently Approved Information Collection for Chemical-Terrorism Vulnerability Information (CVI)

AGENCY: Cybersecurity and Infrastructure Security Agency, DHS.

ACTION: 60-Day notice and request for comments; extension of Information Collection Request: 1670-0015.

SUMMARY: The Infrastructure Security Division (ISD) within the Cybersecurity and Infrastructure Security Agency (CISA) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The submission proposes to renew the information collection for an additional three years and update the burden estimates.

DATES: Comments are encouraged and will be accepted until May 29, 2020.

ADDRESSES: You may send comments, identified by docket number through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for sending comments.

Instructions: All submissions received must include the agency name "CISA" and docket number CISA-2020-0002. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Comments that include trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI),¹

¹ For more information about CVI see 6 CFR 27.400 and the CVI Procedural Manual at www.dhs.gov/publication/safeguarding-cvi-manual.

Sensitive Security Information (SSI),² or Protected Critical Infrastructure Information (PCII)³ should not be submitted to the public docket.

Comments containing trade secrets, confidential commercial or financial information, CVI, SSI, or PCII should be appropriately marked and packaged in accordance with applicable requirements and submitted by mail to the DHS/CISA/Infrastructure Security Division, CFATS Program Manager at CISA, 245 Murray Lane SW, Mail Stop 0610, Arlington, VA 20528-0610. Comments must be identified by docket number CISA-2020-0002.

FOR FURTHER INFORMATION CONTACT:

Lona Saccomando, 703-235-5263, cfats@hq.dhs.gov.

SUPPLEMENTARY INFORMATION: The CFATS Program identifies and regulates the security of high-risk chemical facilities using a risk-based approach. Congress initially authorized the CFATS Program under Section 550 of the Department of Homeland Security Appropriations Act of 2007, Public Law 109-295 (2006) and reauthorized it under the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014⁴ or "CFATS Act of 2014" (Pub. L. 113-254, 6 U.S.C. 621 *et seq.*). The Department implemented the CFATS Program through rulemaking and issued an Interim Final Rule (IFR) on April 9, 2007 and a final rule on November 20, 2007. See 72 FR 17688 and 72 FR 65396.

Pursuant to 6 U.S.C. 623, the CFATS regulations establish the requirements under 6 CFR 27.400 that covered persons must follow to safeguard certain documents and other information developed under the regulations from unauthorized disclosure. This information is identified as CVI and, by law, receives protection from public disclosure and misuse. This collection will be used to manage the CVI program in support of CFATS. The current information collection for the CVI program (IC 1670-0015) will expire on January 31, 2021.⁵

CISA proposes one revision from the previously approved collection. Specifically, to increase the loaded

² For more information about SSI see 49 CFR part 1520 and the SSI Program web page at www.tsa.gov/for-industry/sensitive-security-information.

³ For more information about PCII see 6 CFR part 29 and the PCII Program web page at www.dhs.gov/pcii-program.

⁴ The CFATS Act of 2014 codified the CFATS program into the Homeland Security Act of 2002. See 6 U.S.C. 621 *et seq.*, as amended by Public Law 116-2.

⁵ The current information collection for CVI (*i.e.*, IC 1670-0015) may be viewed at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201704-1670-002.

ATTACHMENT B



Covid-19 Affidavit with Exhibits.pdf

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E-Signature Summary

E-Signature 1: Robert E. Morgan (REM)

April 13, 2020 12:40:37 -8:00 [FE429F5E94EC] [10.0.0.5]
Robert.Morgan@ohioattorneygeneral.gov (Principal) (Personally Known)

E-Signature Notary: Lisa Reid (lis)

April 13, 2020 12:40:37 -8:00 [4F58F4E07BDB] [10.0.0.5]
lisa.reid@ohioattorneygeneral.gov
I, Lisa Reid, did witness the participants named above electronically sign this document.



**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

STATE OF OHIO, ex rel. Dave Yost :
ATTORNEY GENERAL OF OHIO, :
 :
Plaintiff, :
 :
v. :
 :
MARIO F. SALWAN, et al., :
 :
Defendants. :

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

AFFIDAVIT OF INVESTIGATOR ROBERT E. MORGAN

I, Robert E. Morgan, being first duly sworn according to law, hereby depose and state that I am of full legal age and competent to testify as to the matters herein, and state the following based on my personal knowledge:

1. I am the Supervising Investigator in the Antitrust Section of the Office of the Ohio Attorney General. I have been an investigator in the Antitrust Section of the Office of the Ohio Attorney General for approximately fifteen (15) years. I have held the position of Investigator in the Office of the Ohio Attorney General (“OAG”) for approximately twenty-nine (29) years, since February 11, 1991, having served in other Sections prior to joining the Antitrust Section on May 1, 2005.

2. The OAG has received numerous complaints regarding shortages, hoarding, and the advertising and sale at artificially inflated prices of various types of products related to the global epidemic known as COVID-19. Among those products are N95 respirators.

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3. In relation to the COVID-19 epidemic, the OAG has initiated investigations in response to complaints received from third parties and on its own initiative.

4. In relation to the COVID-19 epidemic, I have: (a) worked with employees in numerous Sections of the OAG triaging incoming complaints related to the COVID-19; (b) coordinated investigations with other law enforcement agencies; (c) assigned investigators and supervised investigations in the Antitrust Section; and (d) myself, conducted investigations of matters related to the COVID-19 epidemic.

5. On March 28, 2010, the OAG received a complaint from a consumer, an Emergency Room Nurse, who alleged a seller with the username donkey476 was selling N95 respirators on eBay at inflated prices.

6. Upon receiving the appropriate OAG approval, I opened an investigation into donkey476's sale of N95 respirators. As part of that investigation, I requested and received a user profile and a transaction history from eBay related to user account donkey476 on April 2, 2020.

7. eBay identified the registrant of the donkey476 account as Mario F. Salwan.

8. Donkey476 began selling N95 respirators on eBay on March 28, 2020.

9. Donkey476 sold at least fifteen (15) packages of ten (10) N95 respirators each at prices ranging from \$360.00 to \$375.00, for an average price of \$363.43 per package, or \$36.34 per respirator.

10. On April 2, 2020, eBay shut down donkey476's account for repeated violations of eBays internet site policy.

11. Based on internet advertisements from large chain retail stores, pre-COVID-19 prices ranged from \$1.75 to \$2.24 per respirator. The price at which donkey476 advertised and



sold N95 respirators amounts to a price between one thousand five hundred and twenty two percent (1,522%) to one thousand nine hundred and seventy seven percent (1,977%) above the pre-COVID-19 price of N95 respirators.

12. Donkey476 listed for sale on eBay N95 respirators at a price of \$360.00 for a pack of ten (10) respirators [Exhibit #1]. This amounts to a price of \$36.00 per respirators. Using a covert account, I contacted donkey476 through its representative that I believe to have been Mario Salwan on April 30, 2020. At that time, Mr. Salwan indicated that he had one thousand two hundred and eighty (1,280) respirators that he would sell at a bulk discount of twenty dollars (\$20.00) per respirator. Shortly thereafter, Mr. Salwan rescinded his prior offer to sell respirators in bulk for a discount. At that time Mr. Salwan stated that he would only sell the N95 respirators for three hundred and sixty dollars (\$360.00) for a box of ten (10) respirators, or ninety-six (96) boxes of ten (10) N95 respirators for thirty-four thousand five hundred and sixty dollars (\$34,560.00) [Exhibit #2].

13. During my communications with Mr. Salwan, he used the pronoun “we” when referring to what he could do in the sale and distribution of the N95 respirators. I was unable to obtain information related to the other individual or individuals and/or coconspirator or coconspirators to whom Mr. Salwan was referring to using the pronoun “we” in the communications.

14. eBay identified the donkey476’s contact address as 3512 Sutton Rd, Pepper Pike, OH 44122 and its shipping address as 4530 Renaissance Pkwy, Cleveland, OH 44128. Upon subsequent additional investigation, I identified 7071 Bramshill Circle, Chagrin Falls, OH 44023, as Mr. Salwan’s residential address.

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AFFIANT FURTHER SAYETH NAUGHT.

Robert E. Morgan

Signed on 2020/04/13 12:40:37 -8:00

Robert E. Morgan, Affiant
Supervising Investigator, Antitrust Section
Office of the Ohio Attorney General

Subscribed and sworn before me on this 04/13/2020 day of April, 2020.



Lisa A. Reid

Signed on 2020/04/13 12:40:37 -8:00

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3/30/20

eBay Listing for a 10 pack of 3M N95 8511 Respirators

Seller: donkey476 (from Pepper Pike, OH)

3M 10 Pack Cool Flow Respirator Factory Sealed! / Same day shipping



Price: \$360.00

Buy it now

Watchers: 5

Quantity Remaining: 0

Free Shipping

Buy it now

Get to know the seller [donkey476](#)

- Located: Pepper Pike, OH, United States
- Member since: Jul 03, 2002
- Positive Feedback: 100%

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3/30/20

David Mitchell communications with donkey476 regarding N95 respirators

Delete Archive Reply Move To

Print | Back to Inbox : All messages

Re: damitc_4195 sent a message about 3M 10 Pack Cool Flow Respirator Factory Sealed! / Same day shipping #114163172001

From: donkey476
To: damitc_4195
Sent: Mar-30-20 14:06

New message: 96 boxes of 10 each, total of 960 mas...



New message from: donkey476 (71 ★)

96 boxes of 10 each, total of 960 masks
96 x \$360 = \$34560

Reply

Your previous message

How many boxes can you do at that price?

donkey476:

Sorry I can no longer do bulk purchase, just \$360 for box of 10

Your previous message

Ok is that 1280 masks or 1280 10 packs (or 12800 masks) at \$20 per mask

donkey476:

These masks are sold out for the next year so can not get any more than What I have in inventory. We can sell 1280 for \$20 a mask

Your previous message

I am interested in volume. How many masks/10 packs do you have access too and is there a volume discount?

Thanks
Dave

3M 10 Pack Cool Flow Respirator Factory Sealed! / Same day shipping



Price: \$360.00

Buy it now

Watchers: 5
Quantity Remaining: 0
Free Shipping

Buy it now

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ATTACHMENT C



McGlone Affidavit - OHA 002.DOCX

DocVerify ID: C4352E4F-3462-443B-9D90-59BE8B2AE972
Created: April 13, 2020 11:05:54 -8:00
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E-Signature Summary

E-Signature 1: Sean Michael Mcglone (SMM)

April 13, 2020 13:16:12 -8:00 [8FA0E242E035] [10.0.0.5]
Sean.McGlone@OhioHospitals.org (Principal)

E-Signature Notary: Lisa Reid (lis)

April 13, 2020 13:16:12 -8:00 [2B46323A8708] [10.0.0.5]
lisa.reid@ohioattorneygeneral.gov

I, Lisa Reid, did witness the participants named above electronically sign this document.



Affidavit of Sean McGlone

State of Ohio,

County of Franklin, ss:

I, Sean McGlone, being of sound mind and the age of majority, and having been duly sworn, state the following based on my personal knowledge:

1. I have a Bachelor's degree in Economics from Wittenberg University and a J.D. from The Ohio State University.
2. I am a member of the American Health Lawyers Association and the Society of Ohio Healthcare Attorneys.
3. I am currently employed as Senior Vice President and General Counsel of the Ohio Hospital Association ("OHA") located at 155 East Broad Street, Suite 301, Columbus, Ohio 43215.
4. In my position at OHA, my responsibilities include: leadership of the OHA legal team; frequent interaction with OHA members and their employees on a wide array of legal and health care policy issues; and advocacy on behalf of OHA members before legislative and regulatory bodies.
5. The OHA is an association that represents 236 hospitals and 14 health systems throughout Ohio that employ roughly 255,000 workers. The work of the OHA focuses on three key areas: advocacy, economic sustainability of hospitals and healthcare systems in Ohio, and patient safety and quality.
6. Because COVID-19 is a highly-contagious illness, it is vital that all hospital employees involved in the intake, transport, diagnosis, treatment, and care of individuals who present to the hospital with symptoms of, and/or are diagnosed with, the COVID-19 virus, have access to personal protective equipment, including N95 respirator masks, at all times.
7. Since the outset of the COVID-19 public health crisis, OHA members have had significant difficulty acquiring sufficient supplies of N95 respirator masks for their employees' needs.
8. Since the outset of the COVID-19 public health crisis, OHA members have reported to me that they have incurred sharply increased prices for the supplies of N95 respirator masks when they are able to find them.
9. The payment of exponentially higher prices for supplies of N95 respirator masks is having a material negative impact on the budgets of hospitals in Ohio.

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10. The inability of hospitals to secure sufficient supplies of N95 respirator masks during the current public health crisis creates a risk that healthcare workers will become ill with COVID-19, and thus that hospitals may face a shortage of able-bodied staff to care for the public.

FURTHER, AFFIANT SAYETH NAUGHT.

Sean Michael Meglone
Signed on 2020/04/13 13:16:12 -0000

Sean McGlone

State of Ohio

County of Franklin, ss:

Sworn to before me and subscribed to in my presence, and in witness whereof I have set my hand and seal this 13th day of April, 2020.



Lisa A. Reid
Signed on 2020/04/13 13:16:12 -0000

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