

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of the State of
New York,

Petitioner,

-against-

FRANK BORGESE
and
BORGESE HOLDINGS, INC. d/b/a IMPACT
MEDICAL & SURGICAL SOLUTIONS,

Respondents.

VERIFIED PETITION

Index No.: _____

IAS Part: _____

Assigned to Justice: _____

The People of the State of New York, by their attorney, Letitia James, Attorney General of the State of New York, allege:

INTRODUCTION

1. Since at least March of 2020, as the COVID-19 pandemic devastated New York and the United States, Respondent Frank Borgese (“Borgese”) and his company, Respondent Borgese Holdings d/b/a IMPACT Medical & Surgical Solutions (“IMPACT Medical”) (collectively, “Respondents”), have repeatedly engaged in fraud and deception to attempt to sell personal protective equipment (“PPE”), including desperately needed respirator masks, to the State of New York and to hospitals and healthcare systems across the United States.

2. Respondents Borgese and IMPACT Medical have repeatedly employed deception and misrepresentations concerning both the availability of large quantities of critically needed 3M-branded N95 respirator masks and their ability to deliver them quickly, and repeatedly solicited purchases of large quantities of these essential PPE at prices many times

higher than 3M's list prices. In fact, neither Borgese nor IMPACT Medical is an authorized 3M distributor, is able to obtain 3M-branded N95 respirator masks, or has ever delivered a single 3M-branded N95 respirator mask.

3. In addition, Respondents have repeatedly used fraudulent business practices to attempt to sell KN95 respirator masks, including by providing to the Attorney General's undercover investigator a test report that was deceptively edited to disguise the fact that it related to a KN95 respirator mask other than the one Respondents were purporting to sell, and a fraudulent reference who, rather than having purchased large quantities of PPE from Respondents, lied about Respondents' capabilities and past sales.

4. Respondents Borgese and IMPACT Medical have carried out their fraudulent activities through deception and false representations not only to the State of New York, but also to numerous major hospitals and health care systems across the United States including Amedisys, Baystate Health, Blessing Health, the Cleveland Clinic, Intermountain Healthcare, Northern Light Health, and Universal Health Services. In some cases, Respondents succeeded in obtaining purchase orders and substantial up-front payments, but failed to deliver the promised PPE and were subsequently required to make large refunds while the targets of Respondents' fraudulent practices sought needed supplies elsewhere.

5. Respondents Borgese and IMPACT Medical have violated New York Executive Law § 63(12) by repeatedly engaging in fraudulent acts and practices in connection with their solicitation of sales of PPE, including critical N95 and KN95 respirator masks. The People of the State of New York now bring this summary proceeding to enjoin Respondents Borgese and IMPACT Medical from making future solicitations of PPE including N95 and KN95 respirator

masks, and to obtain restitution for any purchaser harmed by their wrongdoing, among other relief.

PARTIES AND JURISDICTION

6. Petitioner is the People of the State of New York, by its attorney Letitia James, Attorney General of the State of New York. The Court has jurisdiction pursuant to Executive Law § 63(12), which empowers Petitioner to seek injunctive relief, an accounting, costs, and other relief against any person or business that has engaged in repeated or persistent fraud or illegality in the conduct of business.

7. Respondent Borgese Holdings, Inc. d/b/a IMPACT Medical & Surgical Solutions is a domestic business corporation located in Erie County, New York.

8. Respondent Frank Borgese is a principal of Borgese Holdings, Inc. d/b/a Impact Medical & Surgical Solutions and on information and belief is its President and sole owner. On information and belief, Borgese resides in Erie County, New York.

FACTS

The COVID-19 Pandemic and the Increased Need for Respirator Masks

9. COVID-19 is a respiratory disease caused by the SARS-CoV-2 coronavirus and was first identified in 2019. COVID-19 can cause mild to severe respiratory illness with many symptoms, including fever, cough, and difficulty breathing. These symptoms can be severe enough to require hospitalization and can result in death.

10. COVID-19 spreads from person to person, and this is thought to occur most commonly during close exposure to a person infected with the virus that causes COVID-19, primarily via respiratory droplets produced when the infected person speaks, coughs, or sneezes.

Those droplets can land in the mouths, noses, or eyes of people who are nearby or possibly be inhaled into the lungs of those within close proximity.

11. In order to limit the spread of COVID-19, the U.S. Centers for Disease Control and Prevention (“CDC”) recommends that hospitals and healthcare systems take a variety of steps to protect health care workers and patients, including by emphasizing hand hygiene, installing barriers to limit contact with patients at triage, cohorting patients with COVID-19, and appropriately using personal protective equipment.

12. A respirator (also referred to as a “respirator mask”) is a piece of personal protective equipment (“PPE”) that is worn on the face or head and covers at least the nose and mouth and which, when properly fitted and worn, reduces the wearer’s risk of inhaling hazardous airborne particles.

13. An N95 respirator mask is a respirator mask that has been certified by the U.S. National Institute for Occupational Safety and Health (“NIOSH”) as meeting the N95 classification of air filtration, meaning that it filters at least 95 percent of very small airborne test particles. N95 respirator masks are the PPE most often used by health care workers to control exposures to infections transmitted via the airborne route, though their effectiveness is highly dependent upon proper fit and use.

14. N95 respirator masks, when properly fitted and worn, provide more protection against airborne particles than surgical masks, which are not designed to form a seal around the nose and mouth and are not designed to filter smaller airborne particles.

15. The CDC has produced a chart explaining the differences between N95 respirator masks and surgical masks, portions of which are depicted below:

		
Surgical Mask		N95 Respirator
Testing and Approval	Cleared by the U.S. Food and Drug Administration (FDA)	Evaluated, tested, and approved by NIOSH as per the requirements in 42 CFR Part 84
Intended Use and Purpose	Fluid resistant and provides the wearer protection against large droplets, splashes, or sprays of bodily or other hazardous fluids. Protects the patient from the wearer's respiratory emissions.	Reduces wearer's exposure to particles including small particle aerosols and large droplets (only non-oil aerosols).
Face Seal Fit	Loose-fitting	Tight-fitting
Filtration	Does NOT provide the wearer with a reliable level of protection from inhaling smaller airborne particles and is not considered respiratory protection	Filters out at least 95% of airborne particles including large and small particles

16. The CDC recommends the use of N95 respirator masks for health care workers who have been medically cleared, trained, and fit tested when providing care for patients with suspected or known COVID-19, particularly in circumstances where a health care worker will be (i) within 6 feet of an unmasked patient with COVID-19 symptoms or (ii) in the room during aerosol generating procedures (like intubation) performed on a patient with COVID-19 symptoms.

3M's Production and Distribution of N95 Respirator Masks

17. The 3M Company ("3M"), headquartered in Minnesota, is a leading manufacturer of N95 respirator masks. 3M is currently producing approximately 35 million of its 3M-brand N95 respirator masks each month in the United States.

18. 3M has not increased the prices that it charges for 3M-brand N95 respirator masks as a result of the COVID-19 pandemic. 3M's list price varies from model to model of N95 respirator mask; the 3M list price for the 3M-branded 1860 N95 respirator mask is \$1.27 per mask, while the 3M list price for the 3M-branded 8210 N95 mask ranges from \$1.02 to \$1.31 per mask.

19. Since the beginning of April 2020, 3M has allocated roughly 20 percent of the N95 respirator masks it produces to the federal government. The remainder of 3M's N95 respirator masks that are allocated for healthcare workers are distributed through 3M's authorized healthcare distributors, which primarily consists of six large and well-known companies with logistical capabilities.

Shortages of N95 Respirator Masks Led the FDA to Approve Certain Chinese-Made KN95 Respirator Masks for Emergency Use, but the Quality of KN95 Respirator Masks Is a Concern

20. On April 3, 2020 the U.S. Food and Drug Administration ("FDA"), recognizing that "respirators are an integral part of routine patient care," and having determined that there were "not sufficient quantities" of respirator masks that are "both NIOSH-approved and meet FDA regulatory requirements to meet the needs of the U.S. healthcare system" during the COVID-19 pandemic, issued an Emergency Use Authorization ("EUA") permitting certain respirator masks that are manufactured in China and are not NIOSH-approved to be imported into the United States for use in healthcare settings by healthcare personnel. Such Chinese-made respirators are generally referred to as "KN95 respirators," and like N95 respirator masks are required to filter at least 95 percent of very small airborne test particles.

21. Although the FDA's April 3 EUA permitted nearly 60 Chinese manufacturers to import KN95 respirator masks into the United States, the FDA has since withdrawn the import

authorization for the majority of those manufacturers because of concerns about the quality of their KN95 respirator masks.

22. In particular, NIOSH has noted that many of the lower quality KN95 respirators have an ear loop design (NIOSH-approved N95 respirator masks typically have head bands), and that a limited assessment of ear loop designs indicates difficulty achieving a proper fit.

23. The CDC has warned that buyers of KN95 respirator masks “should be aware that an unprecedented number of products on the market do not perform as advertised,” and the CDC recommends that “[p]otential purchasers of international respirators [like KN95 respirators] should evaluate the device they plan to purchase, the manufacturer, any third-party intermediary (if applicable), and the contract terms before making purchasing decisions,” including by (i) getting a sample prior to purchase, (ii) obtaining an appropriate test report from a laboratory that is ISO/IEC 17025 accredited, (iii) utilizing every available option to obtain more information about a manufacturer, and (iv) refusing to be pressured into prepaying.

24. Purchasers of respirator masks and other PPE have had to devote considerable resources to evaluating potential suppliers and their products, and time spent screening out fraudulent suppliers harms purchasers by diverting them from pursuing legitimate opportunities.

RESPONDENTS’ FRAUDULENT ATTEMPTS TO SELL N95 AND KN95 RESPIRATOR MASKS

25. Since at least March 2020, Respondents have repeatedly used fraudulent and deceptive practices to solicit sales of desperately needed PPE, including respirator masks, to the State of New York and hospitals and healthcare systems across the United States, often at excessive prices.

26. As set forth in detail below, Respondents' fraudulent and deceptive business practices generally fall into the following categories:

- Falsely claiming possession of or immediate access to a significant quantity of 3M-branded N95 respirator masks located in the United States and ready to ship.
- Falsely claiming the ability to obtain 3M-branded N95 respirator masks from "our factories" or "from Minnesota," and thus falsely misrepresenting that IMPACT Medical or its partner, InterMed Resources TN ("InterMed"), was an authorized 3M distributor or otherwise possessed the ability to obtain 3M-branded respirator masks directly from 3M.
- Falsely claiming to have a "strong relationship with a 3M distributor," to be "currently gaining increased volumes" of 3M-branded N95 respirator masks, to have a "solid pipeline" of 3M-branded N95 respirator masks, and otherwise misrepresenting their ability to obtain legitimate 3M-branded N95 respirators masks through legitimate channels.
- Quoting quick delivery times for 3M-branded N95 respirators masks that they did not possess and could not obtain, and which did not reflect their prior inability to acquire the 3M-branded N95 respirator masks they were purporting to sell.
- Providing misleading depictions or descriptions of the products they purported to sell, including selectively-edited test report excerpts which concealed the fact that the test report did not concern the KN95 respirator masks they were purporting to sell.
- Providing a fictitious reference who falsely claimed to have purchased N95 and KN95 respirator masks from Borgese and InterMed, who, on information and belief, is related to InterMed's owner.

Respondents' Fraudulent Attempt to Sell N95 and KN95 Respirator Masks to New York

27. The Office of General Services ("NYSOGS") is a New York state agency responsible for procuring PPE for the State of New York.

28. In late March 2020, Respondents' purported ability to supply large quantities of PPE came to the attention of NYSOGS.

29. On March 23, 2020, an NYSOGS employee emailed Borgese at his IMPACT Medical email address, asking Borgese to provide "information on the items your company has on hand and can supply at this time to NYS," and specifically requesting that he provide "as much detail as possible," including: (i) "Specifications for all items (**pictures and datasheets help**); (ii) "Vendor name; and (iii) for "respirators, masks, gowns and isolation suits, please provide the name of the item's manufacturer and CE or FDA certificates."

30. Borgese responded on March 25th, touting Respondents' ability to provide the entire amount of certain items, including KN95 respirator masks, "without worry," and providing the following "brief summary of some pertinent information, if needed, for others to ensure comfort with purchasing from IMPACT & InterMed Resources":

My company, IMPACT Medical & Surgical Solutions is located in Orchard Park, NY and I have been able to source large volumes of medical and surgical items like masks and other Med/Surg products. My partner, Roger Biles – InterMed Resources TN, has decades worth of global sourcing experience and global contacts that allows for multi-product sourcing and ordering preference. We have sourced well over **300 million masks** just over the last 3 weeks for locations in and outside of the U.S. We have also taken 5-10 Million unit orders from multiple states like Arkansas, Louisiana & Kentucky.

31. Borgese's March 25th email to NYSOGS also attached a spreadsheet in which Borgese claimed to be able to provide a variety of PPE, including ten million KN95 respirator masks and ten million surgical masks.

32. On March 26th, in response to NYSOGS's request for "the manufacturer name and specifications," Borgese sent an email to NYSOGS identifying the manufacturer of the KN95 respirator masks and surgical masks as Rizhao Sanqi Medical & Health Articles Co., Ltd. ("Rizhao Sanqi").

33. Attached to the March 26th email Borgese sent to NYSOGS was an "IMPACT MASK N95 Sheet", which Borgese described as "some product info." The IMPACT MASK N95 Sheet contains IMPACT Medical's logo on the upper left corner, and contains an image of a mask and information, excerpted below:

IMPACT Medical & Surgical Solutions

Matching INNOVATION with OPPORTUNITY

N95 Equivalent



Material
 Non woven fabric
 Melt Blown Filter
 Non woven fabric Shape Molded Cup/ Cone
Applications:
 Farm buildings, Mining , Weaving, Polishing, Pharmacy, Hardware, working with fiberglass, cement, etc.

34. The purported KN95 respirator mask depicted on the IMPACT MASK N95 Sheet does not bear any apparent brand markings, manufacturer information, serial numbers, or batch/lot information.

35. On information and belief, the mask depicted on the IMPACT MASK N95 Sheet is not a KN95 respirator mask manufactured by Rizhao Sanqi. On information and belief, the mask depicted is not a KN95 respirator mask, but is merely a dust mask; the image (both the mask and the man wearing it) is completely identical to an image of a dust mask offered for sale by Propac USA.

36. On March 31st, Borgese, acting on behalf of IMPACT Medical, sent an email to NYSOGS in which he stated that “attached is our updated PPE product availability and pricing. Note there are new lower minimum ordering levels for most items.”

37. Attached to Borgese’s March 31st email to NYSOGS was a “IMPACT MASK Price Sheet 3-31,” which listed a 3M-branded N95 respirator mask for sale, as depicted below:

ITEM Product #	Description	Ea. per BOX	Box Qty. Levels	Price per Box.	
N95 Mask IMRN9582	<u>3M Brand</u> N95 (8210) Mask Coming from 3M Minnesota, estimated delivery within 3 days	20	5000 *	\$ 119	 N95 Respirator 3M Model 8210

38. Respondents’ claim that the 3M-branded N95 respirator masks were “coming from 3M Minnesota” was deceptive. Neither IMPACT Medical nor InterMed is or was an

authorized distributor of 3M-branded N95 respirator masks, and neither is or was able to order 3M-branded N95 respirator masks from 3M.

39. The statement “estimated delivery within 3 days” was also deceptive, as Respondents did not possess any 3M-branded N95 respirator masks and had no way to obtain any.

40. On April 2nd, NY SOGS asked Borgese if he still had 3M respirator masks available. Borgese responded on April 5th, writing that “we don’t have your requested 3M 1860” but “we do however have the 3M 8210 & 8810 if there is an interest from NY state.” That statement was false; Borgese did not have any model of 3M-branded N95 respirator mask.

41. The next day, April 6th, Borgese sent NY SOGS a spreadsheet listing for sale 200,000 3M 8210 N95 respirator masks at the price of \$5.95 each (more than four times 3M’s list price for that model), and 200,000 3M 8810 N95 respirator masks at the price of \$4.90 each. Borgese represented that “We can supply all 200,000 to be ordered and shipped direct to you,” and further stated that he would require full payment in advance.

42. Borgese’s April 6th solicitation of the NY SOGS was fraudulent, as Respondents did not have access to any 3M-branded N95 respirator masks.

43. The NY SOGS did not purchase anything from Borgese, IMPACT Medical, or InterMed.

Respondents’ Fraudulent Attempt to Sell N95 Respirator Masks to Amedisys

44. Amedisys, Inc. is one of the largest home health and hospice care providers in the United States. It employs more than 21,000 people, many of whom are nurses, nurse practitioners, and other health care workers.

45. On March 29, 2020, Borgese sent an email on behalf of IMPACT Medical with the subject line “3M branded 8210 Masks” to one or more Amedisys employees, claiming that “[w]e just got 1 Million 3M branded 8210 Masks that are already here in the US and available to ship. Delivery to you should be within 3 days of PO.” Borgese quoted a price of “\$137 for a box of 20,” and required “[f]ull payment due at time of shipping.”

46. Borgese’s March 29th email solicitation was fraudulent. Respondents did not have one million 3M-branded 8210 N95 respirator masks anywhere, much less in the United States and ready to ship.

47. The price quoted by Borgese in his March 29th email to Amedisys was \$6.85 per model 8210 N95 respirator, more than five times 3M’s listed price of \$1.02 to \$1.31.

48. But the three day delivery time quoted by Borgese was too good for Amedisys to pass up. In reliance on that promised delivery time, on April 2nd, at Borgese’s direction Amedisys sent a purchase order to InterMed for 100,000 3M-branded N95 respirator masks at a price of \$5.95 each (more than four times 3M’s listed price). And on April 3rd, Amedisys wired \$595,000 to InterMed’s bank account.

49. On April 3rd, an Amedisys employee emailed Borgese (as well as Roger Biles and Latda Vaughn of InterMed) asking them “to provide confirmation once the order has been placed with 3M,” and asking whether Amedisys would be “working directly with 3M representatives on setting up the delivery?”

50. Borgese did not respond, so the Amedisys employee emailed him again on April 6th, writing “Good morning Frank Can you please provide an update on this order?” Borgese ignored that email too, so the Amedisys employee emailed him yet again on April 7th, writing

“We still have not received a formal update on the status of this order. Please provide an update as soon as possible.”

51. Borgese responded on April 7th, but he did not provide the information Amedisys had requested. Instead, he simply stated: “Per our call, InterMed is currently getting the update on your order status. Once I get the details I will let you know as soon as possible.”

52. On April 8th, Borgese finally responded to Amedisys’ requests in more detail. Although Borgese had earlier claimed that he had “just got” the 3M-branded N95 respirator masks and that they were “ready to ship,” Borgese blamed “an increase in volume at 3M” for the delay and stated that “InterMed has confirmed that your order will ship to you, either in whole or in part by the end of next week from Minnesota.” Borgese also wrote that “through InterMed’s relationships and Blanket PO for a large tranche of the 3M 8210s, it still has us well positioned against any new orders going in to 3M.”

53. Borgese’s April 8th email was false and misleading. By blaming 3M and claiming that a shipment would come from Minnesota, Borgese fostered the false impression that an order had actually been placed with 3M (which is headquartered in Minnesota). And Borgese’s statement that he was “well-positioned against any new orders going in to 3M” because of “InterMed’s relationships” was also false: neither IMPACT Medical nor InterMed was an authorized 3M distributor, and neither had any ability to order 3M-branded N95 respirator masks from 3M.

54. And later on April 8th, Borgese emailed Amedisys, writing that “[i]n order to provide an added layer of credibility. I have attached a link where Roger Biles, the owner of InterMed and my partner, appeared on the Nashville news.” Borgese provided a link to a news segment that aired on or about March 12, 2020 on WKRN, an ABC affiliated station in the

Nashville, Tennessee area. During the segment, Roger Biles, who is described as the CEO of InterMed Resources TN (“InterMed”), says on camera that “Two weeks ago I hadn’t sold a mask in almost four years, since last Tuesday we have sold almost 60 million masks,” and the segment reports that Biles claimed to be selling both N95 respirator masks and surgical masks. A respirator that appears to be a 3M-branded N95 respirator mask is prominently displayed throughout the segment.

55. Borgese’s use of the WKRN segment as a marketing tool was deceptive, as it falsely implied that Biles and InterMed were able to provide 3M-branded N95 respirator masks. InterMed is not an authorized 3M distributor, and does not have the ability to order 3M-branded N95 respirator masks from a 3M factory.

56. Amedisys responded by telling Borgese that his explanation was “completely unacceptable,” and reminded him that Amedisys was “told by you last week that we would receive the masks within 3 days of order and payment” and that “we were obviously misled (based on the 3 day delivery timeline communicated to us) in order to place an order with you.”

57. Amedisys subsequently requested, and eventually received, a refund of the \$595,000 payment it had made.

Respondents’ Fraudulent Attempt to Sell N95 Respirator Masks to Northern Light Health

58. Northern Light Health is an integrated health system in Maine. Northern Light Health employs more than 12,000 people, and operates hospitals, nursing homes, and other health care facilities.

59. On April 11, 2020, Borgese sent an email on behalf of IMPACT Medical with the subject line “3M N95 8120 – IMPACT Medical” to at least one Northern Light Health employee, claiming to have “a strong relationship with a 3M Distributor providing access to US

located 3M N95 8210 masks” and representing that he “ha[d] a commitment of a steady stream of this product for the coming weeks.” Borgese provided an estimated delivery time of seven to ten days.

60. Borgese’s April 11th email solicitation was fraudulent. Respondents did not have “a strong relationship with a 3M Distributor” and did not have access to 3M-branded N95 respirator masks in the United States. And Respondents could not honor anything close to the “estimated” 7-10 day delivery time quoted.

61. Once again, Respondents’ fraudulent email solicitation was effective. On or about April 15th, Northern Light Health ordered 200,000 3M-branded 8210 N95 respirator masks from IMPACT Medical at \$5.95 per respirator mask, for a total price of \$1,100,000. The \$5.95 per respirator mask that Borgese charged Northern Light Health was more than four times 3M’s listed price of \$1.02 to \$1.31. Northern Light Health paid a 50% deposit (\$550,000) upon placing the order.

62. Following its payment of \$550,000, a Northern Light Health employee emailed Borgese asking for a “meaningful confirmation” of the order. Instead of providing such confirmation, on April 17th, Borgese wrote back that “InterMed is trying to get confirmation from our 3M distributors, that the US government has nationalized all 3M products from the 3M distributors.”

63. Borgese’s reply to Northern Light Health was false and deceptive. The U.S. government had not nationalized all 3M products from 3M distributors.

64. Despite Borgese’s earlier claims to Northern Light Health of “a strong relationship with a 3M Distributor providing access to US located 3M N95 8210 masks” and the existence of “a commitment of a steady stream of this product for the coming weeks,” on April

20th, Borgese suddenly told Northern Light Health that he was “vetting a west coast order of 200,000 8210 masks that are produced and ready to ship,” but he did not yet know whether “this is real and available to ship to you.”

65. Northern Light Health subsequently requested, and eventually received, a refund of the \$550,000 payment it had made.

Respondents’ Fraudulent Attempt to Sell N95 Respirator Masks to Blessing Health

66. Blessing Health is a health system in Illinois that operates two hospitals, two physician groups, an accredited college of nursing and health sciences, a network of medical specialty businesses, and a charitable foundation.

67. On March 30, 2020, Borgese sent an email on behalf of IMPACT Medical with the subject line “IMPACT Medical - 3M Branded 8210 Masks” to at least one Blessing Health employee. As with Respondents’ solicitation of Amedisys, Borgese told Blessing Health that he possessed the ability to order 3M-branded 8210 N95 respirator masks “from our factories”, and that he had “1 million [3M-branded 8210 N95 respirator masks] currently available in the U.S. and ready to ship.”

68. Borgese’s March 30th email solicitation of Blessing Health was fraudulent. Respondents did not have one million 3M-branded 8210 N95 respirators anywhere, much less in the United States and ready to ship. And by claiming that he and his partner had the ability to order 3M-branded N95 respirators “from our factories,” Borgese falsely represented that he or his partner was able to order 3M-branded N95 respirators from a 3M factory. As stated in Paragraph 19 above, 3M-branded N95 respirator masks for healthcare personnel are distributed only through 3M’s authorized distributors (and recently, the federal government). Neither

IMPACT Medical nor InterMed is or was an authorized distributor of 3M-branded N95 respirator masks, and neither is or was able to order 3M-branded N95 respirator masks from 3M.

69. After a Blessing Health employee expressed interest, on March 30th Borgese sent Blessing Health a price sheet listing “3M Brand N95 (8210) Mask” for \$119 per box of 20 – or \$5.95 per mask, more than four times 3M’s listed price of \$1.02 to \$1.31. The price sheet stated that “3M Branded requires payment in Full.”

70. On March 31st, a Blessing Health employee emailed a purchase order to Borgese for a purchase of 100,000 3M Brand N95 respirator masks (for \$595,000), and 210 boxes of face shields (for \$33,600), for a total \$628,600, and memorialized her understanding that “I will receive genuine 3M 8210 masks with delivery 3 to 4 days from placing the order.”

71. The Blessing Health employee also expressed her nervousness about the order because “the 3M masks are prepaid” and “3M would not verify your company was a distributor,” and asked Borgese: “How do I verify these masks will ship to me? Do you have a name at InterMed that you can give me. Their website has very little information.” She reiterated similar concerns in another email to Borgese on April 1st, asking “Since we are pre-paying, how are you assuring customers the product will ship? Is the delivery time still 3-4 days?”

72. On April 1st, Borgese replied to the Blessing Health employee that delivery was “currently running about 3-5 days from us placing your order. I wish I could you hard dates on delivery (*sic*) but in today’s current environment an estimate is the best I can do.”

73. Borgese’s reply was deceptive. Neither Impact Medical nor InterMed had placed an order for 3M-branded N95 masks with 3M or any authorized 3M distributor. Borgese’s claim that the delivery time was “currently running about 3-5 days from us placing your order” was a complete fabrication.

74. On April 3rd, Blessing Health wired \$605,080 to InterMed's bank account, representing full payment for 100,000 3M-branded N95 respirator masks and a deposit on 210 boxes of face shields.

75. But for nearly two weeks, Blessing Health did not receive an update on their order, even though Borgese had claimed that delivery would be "3-5 days from us placing your order."

76. On April 16th, a Blessing Health employee emailed InterMed expressing her frustration. She noted that even though Blessing Health had prepaid for the order, we "have not been able to get a straight answer on when we will have our product. No one answers the phone and I receive no return calls" and she asked "[w]hat has been the issue that I cannot talk with anyone? Not the way to conduct a legitimate business."

77. An InterMed employee replied to Blessing Health on April 16th, blaming the delivery delay on the fact that "air freight is at a standstill due to the 200% demand over capacity." The InterMed employee's response belied Borgese's prior statement to Blessing Health that he had "1 million [3M N95 respirator masks] currently available in the U.S. and ready to ship." Moreover, the InterMed employee's excuse was also a misrepresentation because, as the Blessing Health employee stated in her response on April 16th, the respirator masks "are not coming air freight." The InterMed employee had no further explanation, other than to say that "Frank Borgese will give you a call" regarding the order.

78. On May 8th, after waiting in vain for more than five weeks for a delivery that was supposed to be made in three to five days, Blessing Health requested, and eventually received, a refund of the \$605,080 payment it had made.

Respondents' Fraudulent Attempt to Sell N95 Respirator Masks to the Cleveland Clinic

79. The Cleveland Clinic is an academic medical center based in Cleveland, Ohio. It has a reputation as one of the best hospitals in the United States and in the world. It is also one of Ohio's largest employers.

80. Early on the morning of April 9, 2020, Borgese sent an email on behalf of IMPACT Medical with the subject line "IMPACT Medical – Masks" to one or more employees of the Cleveland Clinic, touting his ability "to source large volumes of medical and surgical items like masks," and claiming to "still [be] placing very large volume orders with our factory partners." As with prior fraudulent solicitations of other healthcare systems, Borgese specifically claimed that "we currently have the ability to order from our factories...3M Branded N95 8210" respirator masks.

81. Borgese's early morning April 9th email to the Cleveland Clinic once again misrepresented his ability to obtain 3M-branded N95 respirator masks. Neither IMPACT Medical nor InterMed is or was an authorized distributor of 3M-branded N95 respirator masks, and neither is or was able to order 3M-branded N95 respirator masks from a 3M factory.

82. Attached to Borgese's April 9th email to the Cleveland Clinic was a "IMPACT MASK Price Sheet 4-9," which listed a 3M-branded N95 respirator mask for sale, as depicted below:

ITEM Product #	Description	Items per BOX	# of BOXES required for Corresponding Price per BOX	Price per BOX	
N95 Mask IMRN9582	3M Brand N95 (8210) Mask Estimated delivery 7-8 days from order completion 3M product sourced from Minnesota	20	5000 *	\$ 119	
			* Denotes Minimum order quantity		

83. As with Respondents' other solicitations, their claim that the N95 respirator masks were "3M product sourced from Minnesota" was deceptive.

84. Respondents' claimed delivery time of 7 to 8 days was also deceptive. On the same day he was representing to the Cleveland Clinic a delivery time for 3M-branded 8210 N95 respirator masks of 7 to 8 days, Borgese explained his inability to provide a firm ship date of that exact same product to Amedisys by claiming that "[g]lobal constraints and changes have delayed our ability to ship...We like others in supply chain have been impacted like no other time in history." Indeed, because Respondents had no ability to order any 3M-branded N95 respirator masks, any quoted time period for delivery would have been false.

85. Respondents' fraudulent email solicitation got the attention of the Cleveland Clinic. Less than 10 minutes later on April 9th, an employee of the Cleveland Clinic responded to Borgese that "I would like to have a conversation this morning to discuss your 3M mask." He asked Borgese to fill out an attached spreadsheet and indicated that the Cleveland Clinic was interested in purchasing more than 1 million 3M-branded N95 respirator masks. The attached spreadsheet sought a variety of detailed information about the product being offered for sale.

86. After a Skype call on the morning of April 9th with the Cleveland Clinic employee, Borgese sent another email to the Cleveland Clinic in the early afternoon on April 9th, stating that "unfortunately we will not be able to accept anything other than payment in full for the 3M product." Borgese also claimed to be "currently gaining increased volumes from the 3M distributor" and that he would "have a solid pipeline of 3M 8210s over the coming weeks." But Borgese did not provide the detailed information requested by the Cleveland Clinic.

87. Borgese's repeated claims that he was "currently gaining increased volumes" and had "a solid pipeline of 3M 8210s over the coming weeks" were false. Roughly 24 hours earlier,

Borgese had been unable to provide a date for the complete shipment of Amedisys's order for 100,000 of the 3M-branded 8210 N95 respirator masks.

88. On the morning of April 10th, the Cleveland Clinic employee emailed Borgese that "I will be submitting your information to our committee as they will make the final decision," and requested some additional information, including: (i) "We will contact 3M to validate you are an authorized to distribute will this be an issue?"; (ii) "Any evidence you can supply to confirm these mask are legit. (I.E. Certifications, authorize distribute paperwork)"; and (iii) "Any additional pictures you have of the product."

89. Borgese responded by email less than one hour later. Borgese reiterated his earlier false claims to be "currently gaining increased volumes from the 3M distributor" and that he would "have a solid pipeline of 3M 8210s over the coming weeks," and also provided the following false statements in response to the Cleveland Clinic's requests for information:

- a. In response to the Cleveland Clinic's statement that "[w]e will contact 3M to validate you are an authorized to distribute will this be an issue?," Borgese wrote "We are purchasing from a 3M distributor. We will not share as we have been circumvented by other hospitals." Borgese's response was again false: Respondents were not then able to obtain 3M product, let alone from an authorized 3M distributor.
- b. In response to the Cleveland Clinic's request for "[a]ny evidence you can supply to confirm these mask are legit. (I.E. Certifications, authorize distribute paperwork)", Borgese wrote "We can send a picture when we get our next shipment." Borgese's reference to a "next shipment" falsely implied the existence of prior shipments and an ongoing supply of 3M respirator masks.

- c. In response to the Cleveland Clinic's request for "[a]ny additional pictures you have of the product", Borgese deceptively attached a file which appears to depict a 3M-branded 8210 N95 respirator mask, but also bears the logo and web address for Inspect USA, and is identical to a photo on Inspect USA's website.

90. On April 13th, the Cleveland Clinic employee emailed Borgese, informing him that "[a]nyone we purchase 3M supplies we run pass 3M corporate" and asking whether 3M could "reach out to you, to go through the legitimacy of the distributor? If 3M informs us your distributor is approved then [we] might be able to move forward." To address Borgese's stated concern in his April 10th email—that Respondents would be "circumvented"—the Cleveland Clinic employee suggested that "3M would not tell [or] disclose who the distributor is they would only confirm we are purchasing from a reliable source who is authorized to redistribute."

91. Even though a sale of respirator masks worth millions of dollars was at stake, Borgese never responded to the Cleveland Clinic's request to let 3M validate Respondents' purported supplier of 3M-branded N95 respirator masks.

92. After 3M informed the Cleveland Clinic that IMPACT Medical was not an authorized 3M distributor, the Cleveland Clinic did not purchase as respirator masks or any other personal protective equipment from Respondents.

Respondents' Fraudulent Attempts to Sell N95 Respirator Masks to Baystate Health, Intermountain Healthcare, and Universal Health Services

93. Throughout at least April 2020, Respondents also made virtually identical fraudulent solicitations of Baystate Health, Intermountain Healthcare, and Universal Health Services.

94. Baystate Health is a not-for-profit healthcare system that operates five hospitals and provides a variety of other health care services to over 800,000 people throughout western New England. Baystate Health's Chief Physician Executive recently published a letter in the New England Journal of Medicine about Baystate Health's "urgent needs" for N95 respirators and other PPE, and describing the lengths to which Baystate Health had gone to obtain KN95 respirator masks (including disguised delivery trucks, multiple delivery routes, a tense moment with two FBI agents, and intervention by a congressional representative).

95. Intermountain Healthcare is a Utah-based, not-for-profit healthcare system that provides medical care to residents of Utah, Idaho, and Nevada through 24 hospitals and more than 150 clinics.

96. Universal Health Services, Inc. is based in Pennsylvania, and its subsidiaries (collectively, "Universal Health Services") have 90,000 employees and operate 26 acute care hospitals, 328 behavioral health facilities, 42 outpatient facilities and ambulatory care access points, and various related services located in 37 states. Its wholly-owned subsidiary UHS of Delaware, Inc. provides supply chain services to hundreds of health care facilities across the United States.

97. On April 2, 2020, Borgese sent identical emails on behalf of IMPACT Medical with the subject line "IMPACT Medical - 3M Masks and More" to Baystate Health, Intermountain Healthcare, and Universal Health Services that touted his ability "to source large volumes of medical and surgical items like masks," and stated that he was "still placing very large volume orders with our factory partners." Borgese specifically stated that "we currently have the ability to order from our factories...3M Branded N95 8210 & 8810 masks," with the "8210 shipping from the US" and the "8810 shipping from OUS." On information and belief,

“OUS” is an abbreviation for “outside the United States.” An identical email was also sent to the Cleveland Clinic.

98. Borgese’s April 2nd emails to Baystate Health, Intermountain Healthcare, and Universal Health Services yet again misrepresented Respondents’ ability to order 3M-branded N95 respirator masks from 3M.

99. Attached to Borgese’s April 2nd emails Universal Health Services and the Cleveland Clinic was an identical “IMPACT MASK Price Sheet 4-2,” which listed two different types of 3M-branded N95 respirator masks for sale, as depicted below:

ITEM Product #	Description	Ea. per BOX	Required Qty. Corresponding Pricing Per Box	Price per Box.	
N95 Mask IMRN9582	3M Brand N95 (8210) Mask Coming from 3M Minnesota, estimated delivery 4-5 days	20	5000 *	\$ 119	
N95 Mask	3M Brand N95 (8810) Mask Coming from 3M OUS facility, estimated delivery 6-7 days	20	1000 box <u>min.</u> order 2000 box <u>max.</u> order size per PO. Ok to place multiple 2000 box POs. for larger orders	\$ 98	

100. Borgese’s claims that the 3M-branded N95 respirator masks were “coming from 3M Minnesota” and “coming from 3M OUS facility” – as well as the “estimated delivery” times

(4-5 days, and 6-7 days) stated on these price sheets – were also deceptive. As earlier alleged, neither IMPACT Medical nor InterMed is or was an authorized distributor of 3M-branded N95 respirator masks, and neither is or was able to order 3M-branded N95 respirator masks from 3M.

101. Approximately a week later, Borgese again sent virtually identical emails on behalf of IMPACT Medical to employees of Baystate Health (on April 9th) and Intermountain Healthcare (on April 11th), once again stating that “we currently have the ability to order from our factories ... 3M Branded N95 8210” respirator masks. Each of these email solicitations, as with the prior ones, misrepresented Respondents’ ability to obtain 3M-branded N95 respirator masks. And attached to each of these emails was a price sheet that listed a 3M-branded 8210 N95 respirator mask for sale, described those respirator masks as “3M product sourced from Minnesota,” and deceptively estimated the delivery time to be 7 to 8 days.

102. On April 13th, Borgese sent another fraudulent email solicitation for 3M-branded N95 respirator masks to one or more employees of Baystate Health, with slightly modified terms and similarly deceptive estimated delivery times.

103. Borgese’s deceptive April 13th email solicitation got the attention of Baystate Health, and an employee of Baystate Health emailed 3M to ask whether IMPACT Medical was an authorized 3M distributor and “[i]f we make this purchase will we receive authentic 3M product?” The Baystate Health employee told 3M that the “price seems high but we are willing to pay since we are in desperate need.” 3M told Baystate Health that IMPACT Medical was not a 3M authorized distributor.

104. And on April 19th, Borgese sent yet another email on behalf of IMPACT Medical to Baystate Health, falsely claiming that “we now have access to 3M 8160 Surgical masks, as

well as the 8210 masks. The 8160 masks are from OUS but have landed in the US and are available to ship once order is secured” and providing an estimated shipping date of 5 days.

105. Borgese’s April 19th solicitation to Baystate Health, as with his prior solicitations, was fraudulent. Respondents did not have access to 500,000 (the minimum order quantity) of the 3M-branded 1860 N95 respirator masks anywhere, much less in the United States and available to ship.

106. Neither Baystate Health, Intermountain, nor Universal Health Services purchased any respirator masks or any other personal protective equipment from Respondents.

3M Sends Borgese a Cease-and-Desist Letter For Price-Gouging

107. On April 21, 2020, 3M’s outside counsel sent Borgese and IMPACT Medical a cease and desist letter demanding that they stop engaging in price-gouging and spreading false associations with 3M.

108. On April 22, 2020, Borgese replied to 3M’s counsel stating: “To date while attempting to coordinate the sale and delivery of 3M products we have been unsuccessful in doing so thus far.” But Borgese failed to tell 3M’s counsel that at least one hospital he had solicited—Blessing Health—had paid more than \$500,000 and was still awaiting delivery of 3M-branded N95 respirator masks from IMPACT Medical and InterMed. Nor did Borgese immediately cancel Blessing Health’s order.

BORGESE’S FRAUDULENT ATTEMPT TO SELL KN95 RESPIRATOR MASKS TO THE ATTORNEY GENERAL’S UNDERCOVER INVESTIGATOR

Borgese’s Deceptive Statements on the April 29th Phone Call

109. On April 29, 2020, an investigator employed by the New York Attorney General (the “undercover investigator”) placed a recorded phone call to Borgese at 716-912-3761, the

phone number on IMPACT Medical's April 19th price list and on Impact Medical's website (the "April 29th Phone Call"). Posing as a purchasing agent for Metro Home Health Service (a fictitious home health care agency in Nyack, New York), she told Borgese that she was interested in purchasing N95 respirator masks.

110. During the April 29th Phone Call, Borgese told the undercover investigator that he was no longer selling 3M-branded N95 respirator masks: "Yeah, unfortunately, we were providing those but as of a week or so ago, we no longer have access to those." He explained that "to be blunt, we had a lot of access to the 3M N95 masks" but "the price points were just getting ridiculous. We didn't feel good about what we were being charged and then what we had [to] charge you. I mean, our price points were getting above \$6.50 a mask starting to approach \$7." Borgese claimed that "we just wanted to walk away from that because we felt uncomfortable."

111. Those statements were false. Borgese's statements during the April 29th Phone Call that "we were providing those" and "to be blunt, we had a lot of access to the 3M N95 masks" misrepresented Respondents' capabilities, since they had no access to 3M-branded N95 respirator masks and had not delivered a single one. And Borgese's statement during the April 29th Phone Call that "he just wanted to walk away" from selling 3M-branded N95 masks because "we didn't feel good about ... what we had [to] charge you" falsely implied that his decision to stop selling 3M-branded N95 respirator masks was completely voluntary, when in fact he had received a cease-and-desist letter from 3M on April 21, 2020.

112. During the April 29th Phone Call, Borgese then told the undercover investigator that he had KN95 respirator masks for sale – "we have KN95 masks" – and that the minimum order size was "100,000 units of the KN95s." Borgese quoted a price of \$215 for each box of 100 KN95 respirator masks. When the undercover investigator asked how long it would take to

ship the order, Borgese explained that “you place the order, the order goes in directly to the factory. So, you’re looking at the neighborhood of 17-21 days.” But when the undercover investigator asked what brand of KN95 respirator masks IMPACT Medical was selling, Borgese demurred, saying “I can provide you later with FDA certifications and all that stuff.”

113. As he had done in the various email solicitations described above, during the April 29th Phone Call Borgese touted his experience and that of his “partner’s company,” InterMed, claiming that “we’ve probably provided over 300 million masks and other PPE equipment since COVID started.” But in response to the undercover investigator’s request for a “reference to make sure everything’s on the up and up,” Borgese did not identify any satisfied customers, and said merely that “I can provide you some reference ability if you need to” and that “I’ll see what I can do as far as reference-ability for you.”

Borgese’s Deceptive April 30th Email About the Details of the KN95 Respirator Masks

114. On April 30, 2020, Borgese emailed the undercover investigator “our current PPE product sheet as well as pictures of the mask, FDA certification, Spec info and Test Data.” (the “April 30th Email”).

115. Borgese attached a picture of a grey respirator mask with white earloops to the April 30th Email. Other than a marking reading “KN95”, there were no apparent brand markings, manufacturer information, serial numbers, or batch/lot information on the respirator mask or elsewhere in the picture.

116. On the purported “FDA certification” attached to the April 30th Email, the name of the manufacturer and the FDA registration number had been redacted, although Borgese later told the undercover investigator that Rizhao Sanqi was the manufacturer of the KN95 respirator masks he was offering for sale.

117. The purported “Test Data” Borgese attached to the April 30th Email consisted of two excerpts from a test report. The files Borgese provided each bear the report No. XKS2020R02140157E, but lack any identifying information about (i) the manufacturer or model number of the KN95 respirator mask being tested, (ii) the date of the test, or (iii) the person or entity conducting the test.

118. The files Borgese provided are identical (in content, formatting, and watermarks) to portions of a test report bearing report No. XKS2020R02140157E conducted in February 2020 by Shenzhen Xunke Standard Technology Service Co. Ltd. on a KN95 respirator mask manufactured by Shenzhen Jiaxusi Technology Co., Ltd. (“Shenzhen Jiaxusi”).

119. Although the CDC recommends that test reports for KN95 respirator masks should come from laboratories that have are ISO/IEC 17025 accredited, Shenzhen Xunke Standard Technology Service Co. Ltd. is not an ISO/IEC 17025 accredited laboratory. And unlike Rizhao Sanqi, Shenzhen Jiaxusi has not been given an emergency authorization by the FDA to import its KN95 respirator masks into the United States for use by healthcare personnel.

Despite Claiming to Have Provided 300 Million Masks, Borgese Provides a Fake Reference

120. After repeated requests from the undercover investigator for a reference, Borgese finally provided one on the evening of May 1, 2020, writing “Please feel free to contact KN95 reference, Mary Wilson, Vanderbilt 931-409-6994.”

121. Vanderbilt University is a well-known university located in Nashville, Tennessee. The area code 931 covers most of the central portion of Tennessee, including the areas surrounding Nashville.

122. However, the phone number 931-409-6994 is not a phone number registered to Vanderbilt University or Vanderbilt University Medical Center.

123. After two failed attempts by the undercover investigator to contact “Mary Wilson,” on May 4, 2020, at approximately 8:47 PM, the undercover investigator received a phone call from 931-409-6994 (the “May 4th Phone Call”). The caller was a woman who identified herself as Mary Wilson.

124. During the May 4th Phone Call, “Mary Wilson” never mentioned Vanderbilt; instead, she told the undercover investigator that she worked “at Ascension Health in Rutherford” and that she “also work[ed] at a private facility...just to help out.” Ascension Saint Thomas Rutherford is a hospital located in the county of Rutherford, roughly 35 miles southeast of Nashville.

125. Although “Mary Wilson” told the undercover investigator that “I do orthopedics in one hospital, and in the other hospital I do labor and delivery” and never mentioned having any procurement or purchasing-related job, she nevertheless claimed during the May 4th Phone Call to have purchased PPE from Mr. Borgese “more than once. Yes, ma’am, uh-huh. I’m sure I have.”

126. “Mary Wilson” initially claimed only to have purchased N95 respirator masks and surgical masks from Borgese and InterMed. But after the undercover investigator informed her that Borgese “told me they don’t have those anymore, the N95s, so we were getting the – I was going to order the KN95,” “Mary Wilson” replied “Oh, yes, uh-huh, uh-huh. We have gotten some of those too, yes, ma’am. We’ve gotten some of those too.”

127. “Mary Wilson” was not able to give specific answers to the undercover investigator’s basic questions about her purported purchases from Borgese and InterMed: she did not remember how long it took for the masks to be delivered, she did not know the manufacturer of the masks, and she was unsure about how many masks she had purportedly purchased (at first,

she said “it might’ve been more” than a thousand units, but only a few seconds later she said “Yeah, it was quite a bit more, yeah”).

128. “Mary Wilson” was a false reference provided by Borgese.

129. Although Borgese stated that “Mary Wilson” was connected to Vanderbilt University, she never mentioned Vanderbilt to the undercover investigator.

130. Vanderbilt University Medical Center has never purchased N95 or KN95 respirator masks from Borgese, IMPACT Medical, or InterMed.

131. Despite “Mary Wilson’s” claims to have purchased N95 and KN95 respirator masks for local hospitals from Borgese and InterMed, neither Borgese Holdings’ bank records nor InterMed’s QuickBooks accounting records contain any record of any sale of N95 or KN95 respirator masks to any hospital in Tennessee.

132. And finally, the phone number 931-409-6994 is a Verizon wireless number registered to Mary F. Biles. On information and belief, Mary Biles is related to Roger Biles. Mr. Biles is the partner of Borgese and the owner of InterMed. The QuickBooks accounting records of InterMed—which Borgese told the undercover investigator was his “partner’s company”—list a “Mary Wilson” as an employee of InterMed, and record a payment of \$300 to her on January 24, 2019.

133. Borgese deceptively failed to disclose the links between “Mary Wilson” and Roger Biles and InterMed. His provision of “Mary Wilson” as a reference was fraudulent.

134. Despite Respondents’ claim that they had sold 300 million masks and other PPE during the COVID-19 pandemic, they did not provide a single bona fide reference to the undercover investigator.

Respondents Are Continuing to Solicit Sales of Respirator Masks and Other PPE

135. On information and belief, Respondents are continuing to use fraudulent and deceptive business practices to solicit the sales of KN95 respirator masks and other PPE.

136. On May 19, 2020, Borgese sent an email on behalf of IMPACT Medical to NYSOGS soliciting the sales of KN95 respirator masks and other PPE.

137. On May 20, 2020, Borgese sent an email on behalf of IMPACT Medical to the undercover investigator soliciting the sales of KN95 respirator masks and other PPE.

**CAUSE OF ACTION FOR FRAUD
PURSUANT TO EXECUTIVE LAW § 63(12)**

138. Petitioner repeats and re-alleges paragraphs 1 through 137 and incorporates them by reference herein.

139. Executive Law § 63(12) prohibits repeated or persistent fraud in the conduct of business.

140. Executive Law § 63(12) defines fraud and fraudulent conduct broadly to include “any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions.”

141. Respondents Frank Borgese and IMPACT Medical have engaged in repeated and persistent fraudulent business practices relating to the solicitation of orders for personal protective equipment such as 3M-branded N95 respirator masks and KN95 respirator masks, including, but not limited to, the following:

- a. Repeatedly and persistently making false, deceptive, and misleading solicitations;

- b. Offering for sale critically-needed respirator masks which Respondents did not possess and could not deliver;
- c. Providing deceptive delivery times belied by Respondents' own experiences; and
- d. Providing misleading information about the products they purported to sell, as well as a fake reference, to prospective purchasers.

142. By reason of the acts and practices alleged herein, Respondents Frank Borgese and IMPACT Medical have engaged in repeated and persistent fraud in violation of Executive Law § 63(12).

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that the Court grant relief pursuant to Executive Law § 63(12) by issuing an order and judgment as follows:

1. Permanently enjoining Respondents from violating Executive Law § 63(12), and from engaging in the fraudulent and deceptive acts and practices alleged in the Verified Petition;
2. Permanently enjoining Respondents from selling, attempting to sell, advertising, marketing, or otherwise soliciting the sale of personal protective equipment (including N95 respirator masks, KN95 respirator masks, surgical masks, face shields, and gowns);
3. Requiring each Respondent to execute and file with the Attorney General a performance bond in the sum of \$2,000,000 by a surety or bonding company licensed by, and in good standing with, the New York State Department of Insurance, guaranteeing that each Respondent comply with any injunction that may be entered herein, the proceeds of the bond to provide a fund for restitution to customers defrauded or damaged by past or future conduct of Respondents;

4. Directing Respondents to render an accounting to the Attorney General of the dates, products, prices, quantities, names and addresses of relevant parties, and other essential information for each sale of personal protective equipment involving Respondents since February 1, 2020, as well as the details of any profits, commissions, or other payments Respondents received in connection with the sale of personal protective equipment since February 1, 2020;

5. Enjoining Respondents from deleting, allowing to be deleted, destroying, or otherwise disposing of any records pertaining to their business until further order of the Court.

6. Directing Respondents to provide notification to the Attorney General of any change of (i) any Respondent's address or (ii) the name under which any Respondent is doing business within five days of such change.

7. Directing Respondents to pay full monetary restitution to all injured customers, including those not identified at the time of the order;

8. Directing Respondents to disgorge all (i) profits resulting from their fraudulent or deceptive conduct and (ii) commissions they received from or in connection with sales that were the result of their fraudulent or deceptive conduct.

9. Awarding Petitioner \$2,000 against each Respondent pursuant to CPLR § 8303(a)(6); and

10. Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
June 10, 2020

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