

**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,	:	COMPLAINT
	:	
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.	:	

1. The State of Ohio, acting on the relation of its Attorney General Dave Yost, in its sovereign capacity and as *parens patriae* on behalf of its citizens, and pursuant to the Consumer Sales Practices Act (“CSPA”), R.C. 1345.01 *et seq.*, brings this civil action in the public interest to obtain equitable and injunctive relief, including a temporary restraining order and preliminary injunction, disgorgement of unlawful proceeds, civil penalties, and statutory forfeiture against Defendants.

Background

2. The State of Ohio, like the nation and the world, is faced with an unprecedented public health crisis – the COVID-19 virus – a highly communicable, dangerous contagion that has caused serious illness or death in many of those stricken with it, and has taxed Ohio’s

healthcare system and economy to their limits. As a result of important measures taken to control the spread of COVID-19, scores of businesses have been shuttered or caused to greatly scale back operations, and many workers have been furloughed.

3. In the midst of this widespread hardship, many Ohio citizens have risen to the occasion in heroic fashion, with grocery store workers and delivery workers putting in long hours to get essential goods into the hands of the sequestered public, and health care workers and first responders risking their lives to care for the sick – at times without appropriate protective equipment.

4. But unfortunately, others have chosen to take advantage of the crisis in order to personally profit from the panic and product shortages initiated by COVID-19. Defendants are among this group.

5. The purpose of this action is to prevent Defendants from continuing to profiteer from, and exacerbate public panic related to, the COVID-19 health crisis; to prevent them from continuing to deny access to essential, life-saving personal protective equipment to Ohio healthcare workers who are at extreme risk for exposure to the COVID-19 virus; and to redress the harm that Defendants have already caused to Ohioans and consumers throughout the country through these activities.

6. Defendants operate an online commercial business in which they acquire a variety of products and resell those products to the general public through the e-commerce platform e-Bay. Defendants operate their online store on e-Bay under the user name Donkey476. (Defendants will be referred to at times collectively as “Donkey476”.)

7. Early in 2020, news of the arrival of the COVID-19 virus in the United States began to spread.

8. On February 27, 2020, Ohio Governor Mike DeWine ordered mass dissemination throughout the state of information regarding the COVID-19 virus and the need to take preventative measures to retard the spread of the disease, including posting of such messages by the Ohio Department of Transportation along state highways.

9. On March 9, 2020, Governor DeWine issued Executive Order 2020-01D declaring a state of emergency in Ohio in light of confirmation that three (3) patients had tested positive for COVID-19 in the state, “creating a potentially dangerous condition which may affect the health, safety and welfare of citizens of Ohio....”

10. On March 11, 2020, the World Health Organization declared the COVID-19 virus outbreak a pandemic.

11. From March 14, 2020 to April 10, 2020, Governor DeWine and Ohio Department of Health Director Amy Acton, M.D., had issued at least thirty-three (33) additional orders aimed at slowing the spread of the COVID-19 virus, including those mandating the closure of non-essential businesses, limiting access to nursing homes and detention facilities, closing polling locations, and instituting a stay-at-home order for the general public.

12. On March 23, 2020, the President of the United States issued Executive Order 13910 aimed at halting the growing problem of health and medical resources being hoarded and thus made unavailable to the public during the crisis. The Executive Order was aimed at ensuring: (1) that the “health and medical resources needed to respond to the spread of COVID-19, such as personal protective equipment and sanitizing and disinfecting products, are not hoarded” and (2) the Nation’s healthcare systems have the resources they need to respond to the crisis.

13. The Executive Order delegated to the United States Secretary of Health and Human Services (the “Secretary”), under the Defense Production Act of 1950, 50 U.S.C. 4512 (the “Defense Production Act”), the authority to designate certain materials as “scarce materials.” The Act prohibits any person from accumulating scarce materials “(1) in excess of the reasonable demands of business, personal, or home consumption, or (2) for the purpose of resale at price in excess of prevailing market prices.”

14. On March 25, 2020, the Secretary issued a *Notice of Designation of Scarce Materials or Threatened Materials Subject to COVID-19 Hoarding Prevention Measures* designating certain materials as scarce materials under the Act. Among those officially-designated scarce materials were “N-95 Filtering Facepiece Respirators.” 85 Fed. Reg. 17592.

15. In the face of these developments, Ohioans and people across the nation became increasingly frightened.

16. This fear prompted many citizens to bolster their personal supplies of products they believed might be needed and/or in short supply if the crisis continued to worsen. Those products included disinfecting wipes, hand sanitizers, respirator masks, and even toilet paper.

17. Seeing an opportunity to profit from this fear-driven increase in demand for these essential products, Defendants began to rapidly acquire a significant volume of one such type of products – N95 respirator masks (“N95 Masks”) for sale through their Donkey476 e-Bay store.

18. N95 Masks are an important form of personal protective equipment (“PPE”) used to suppress the spread of contagious diseases such as COVID-19. The United States Occupational Safety and Health Administration defines PPE as “...equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. These injuries and illnesses may result from contact with chemical, radiological, physical, electrical, mechanical, or

other workplace hazards. Personal protective equipment may include items such as gloves, safety glasses and shoes, earplugs or muffs, hard hats, respirators, or coveralls, vests and full body suits.”

19. Defendants acquired in excess of one thousand two hundred (1,200) N95 Masks during this period.

20. Defendants’ bulk acquisitions exacerbated the growing shortage of N95 Masks available in the marketplace for purchase by Ohio citizens with health concerns, and by Ohio health care workers.

21. Beginning on March 28, 2020, Defendants made sales on the e-Bay platform to fifteen (15) different purchasers of 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.

22. The highest price charged by Defendants was \$375.00 for a package of ten (10) masks, or \$37.50 per mask. Defendants charged this peak price to two (2) purchasers, one of whom is a resident of Cleveland, Ohio, who made the purchase on March 31, 2020.

23. Prior to the declaration of a State of Emergency in Ohio related to the COVID-19 pandemic, the retail market price of N95 Masks was typically \$1.75 to \$2.35 per mask, for an average retail price of \$2.05 per mask.

24. Defendants increased the prices of the hoarded N95 Masks over pre-emergency retail market prices by an average of 1,700%.

25. On March 28, 2020, an emergency room nurse whose husband is an emergency room physician saw Defendants’ listing for N95 Masks in the Donkey476 store on e-Bay. She reached out to Defendant Salwan to urge him to reconsider his exorbitant prices for this PPE that healthcare workers across the nation so desperately need due to the COVID-19 pandemic.

Salwan's response indicates not only his keen awareness of the crisis, but also his callous indifference to it: "You and your husband should work for free during this crisis, you are greedy!"

Jurisdiction and Venue

26. The State of Ohio brings this action to prevent, restrain, and redress violations of Ohio's antitrust statutes, R.C. 1331.01, *et seq.* The Court has subject matter jurisdiction over this action pursuant to R.C. 1331.03, 1331.08, and 1331.11.

27. The State of Ohio further brings this action to prevent, restrain, and redress violations of Ohio's consumer protection statutes, R.C. 1345.01, *et seq.* The Court has subject matter jurisdiction over this action pursuant to R.C. 1345.04.

28. The State of Ohio further brings this action to prevent, restrain, and redress violations of Ohio common law. Thus, this Court also has subject matter jurisdiction over this action pursuant to R.C. Chapter 2727 governing injunctions; pursuant to R.C. Chapter 2721 governing declaratory judgment actions; and pursuant to R.C. 2305.01 because the sum or matter in dispute exceeds \$15,000.

29. The Court has personal jurisdiction over Defendants because they reside and regularly transact business in the State of Ohio, contract to supply goods and services within the State of Ohio, and have caused and may continue to cause tortious injury in the State of Ohio through their unlawful conduct.

30. Venue is proper in this county pursuant to R.C. 1331.11 and R.C. 109.16. The Attorney General believes that the amount in controversy in this action exceeds five hundred dollars.

31. Plaintiff, having reasonable cause to believe that violations of Ohio’s antitrust and consumer protection laws have occurred, brings this action in his sovereign and quasi-sovereign capacity as *parens patriae* pursuant to R.C. 109.81, the CSPA, R.C. 1345.01 *et seq.*, and Ohio common law to protect the State of Ohio and its citizens.

The Parties

32. The State of Ohio brings this action in its sovereign and quasi-sovereign capacity on relation of the Ohio Attorney General as the chief law enforcement officer of the State of Ohio. The State brings this action to protect the physical and economic health and well-being of its citizens under its *parens patriae* authority, and the CSPA, R.C. 1345.01 *et seq.*

33. The State of Ohio has an interest in ensuring that its citizens’ physical, psychological, and economic health is protected; that the welfare of its general economy is safeguarded; and that its health care system runs efficiently, safely, and cost-effectively.

34. Ohio’s antitrust law, R.C. Section 1331.01 *et seq.*, (the “Valentine Act”) gives the Attorney General broad powers to protect the public and foster fair and honest interstate and intrastate competition by instituting actions against persons who conspire to restrain trade and commerce or monopolize markets in Ohio. R.C. Section 109.81 empowers the Attorney General to bring this action. Under this authority, the Attorney General seeks injunctive and other equitable relief, including but not limited to a temporary restraining order, and preliminary and permanent injunctions, as well as statutory civil forfeiture.

35. Pursuant to R.C. 1331.11, the Ohio Attorney General is authorized to institute and prosecute actions on behalf of the State to enforce the provisions and remedies of Ohio’s antitrust laws, codified in R.C. Chapter 1331. Pursuant to R.C. 109.81, the Ohio Attorney

General is authorized to do all things necessary to properly conduct any antitrust case and to seek equitable relief as provided in Revised Code 109.81 and 1331.11.

36. The Ohio Attorney General, having reasonable cause to believe that violations of Ohio's consumer protection laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by R.C. 1345.07.

37. Defendants, as described below, are "supplier(s)" as that term is defined in R.C. 1345.01(C), as the Defendants were, at all times relevant herein, engaged in the business of effecting consumer transactions by soliciting and selling goods including N95 Masks to individuals in Ohio and throughout the country, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).

38. Mario F. Salwan ("Salwan") is an individual residing at 7071 Bramshill Circle, Chagrin Falls, Ohio 44023.

39. The State lacks information sufficient to specifically identify the true names or capacities, whether individual, corporate, or otherwise, of Defendants sued herein under the fictitious names DOES 1 through 100 inclusive, and they are therefore sued herein pursuant to Civ.R. 15(D). The State will amend this Complaint to show their true names and capacities if and when they are ascertained. The State is informed and believes, and on such information and belief alleges, that each of Defendants named as a DOE is responsible in some manner for the events and occurrences alleged in this Complaint and is liable for the relief sought herein.

40. On July 3, 2002, Salwan entered into an agreement with the Internet platform e-Bay under which e-Bay would provide an e-commerce platform for Salwan to sell merchandise to the general public in exchange for payment of certain fees to e-Bay. Since that time, Salwan

and John Doe(s) have been engaged jointly in the sale of products on the Internet platform e-Bay.

41. At all relevant times herein, Salwan and John Doe(s) have transacted business in the State of Ohio. They have made contracts to be performed in whole or in part in Ohio, and offered for sale, supplied, and placed in the stream of commerce, various products in the State of Ohio. Defendants have committed and continue to commit tortious and other unlawful acts in the State of Ohio.

Count I – Restraint of Trade

42. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 through 41 as if fully set forth herein.

43. Plaintiff brings this action pursuant to R.C. 1331.01, 1331.03, 1331.04 and 1331.06 of the R.C. and the common law of Ohio for equitable and injunctive relief.

44. Beginning at least as early as March 28, 2020, and continuing in some cases through the present, Salwan and John Doe(s) entered into, maintained, and acted in accordance with a continuing agreement to hoard products made scarce by the COVID-19, including N95 Masks, by purchasing those products in bulk for later resale at sharply increased prices.

45. Salwan and John Doe(s) further maintained and acted in accordance with their ongoing agreement by using their combination with e-Bay to sell N95 Masks at sharply increased prices.

46. Defendants' agreement had the purpose, tendency, and effect of decreasing the supply of N95 Masks available in the market at competitive prices, driving up demand for N95 Masks by creating public panic over the artificially-enhanced scarcity, and increasing the price of N95 Masks in the State of Ohio.

47. The hoarding of a commodity and the related increase of prices of that commodity constitutes an unreasonable and unlawful restraint of trade in violation of the Valentine Act.

48. Defendants' agreement to hoard and resell N95 Masks constitutes a combination and conspiracy for the purpose of creating and carrying out restrictions in trade that has decreased the supply and increased the price of such products.

49. Such combination and conspiracy is void pursuant to R.C. 1331.06.

50. Defendants have engaged in one or more overt acts in furtherance of the conspiracy alleged in this complaint.

51. As a result of this unlawful agreement, purchasers of N95 Masks in Ohio have been injured in their business or property by paying inflated prices.

52. As a further result of this unlawful agreement, the State of Ohio has been injured in its business or property by paying these inflated prices.

53. Such conduct will likely continue or recur in the absence of appropriate injunctive relief.

Count II – Unfair and Deceptive Acts and Practices

54. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 through 53 as if fully set forth herein.

55. Defendant committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) by offering goods for sale at prices substantially increased because of unforeseen events that caused an increased demand for the products caused by a national emergency.

Count III – Unconscionable Acts and Practices

56. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 through 55 as if fully set forth herein.

57. Defendants committed unconscionable acts or practices in violation of the CSPA, R.C. 1345.03(A), by offering goods for sale at prices substantially increased because of unforeseen events that caused an increased demand for the products caused by a national emergency.

Count IV – Unconscionable Acts and Practices

58. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 through 57 as if fully set forth herein.

59. Defendants committed unconscionable acts or practices in violation of the CSPA, R.C. 1345.03(A), as set forth in R.C. 1345.03(B)(5), by requiring consumers to enter into consumer transactions on terms the supplier knew were substantially one-sided in favor of the supplier due to a national emergency.

Count V – Profiteering

60. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 through 59 as if fully set forth herein.

61. This action is brought by the State under Ohio common law to remedy the unlawful profiteering engaged in by the Defendants.

62. Defendants, individually and in concert with each other, have conducted commercial activities in a manner that takes advantage of an ongoing public health crisis in this State and in the nation in order to enrich themselves in a manner that has interfered with, and continues to interfere with, the health, safety, and well-being of the public in violation of Ohio law.

63. Defendants have:

- reduced the available supply of N95 Masks in the market by buying these items in bulk thus denying reasonable access to them by the public, first-responders, and healthcare workers;
- exacerbated public panic by demanding unconscionable prices for N95 Masks and other essential products on e-Bay and other e-commerce sites; and
- reaped excessive and unconscionable profits from their sales of N95 Masks during the COVID-19 public health crisis.

64. It would be unjust for Defendants to retain the proceeds of their unlawful profiteering.

Count VI – Public Nuisance

65. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 through 64 as if fully set forth herein.

66. This action is brought by the State under Ohio common law to remedy and abate the public nuisance created by the Defendants.

67. Defendants, individually and in concert with each other, have intentionally contributed to, and/or assisted in creating and maintaining a condition that interferes with the health, safety, comfort, and convenience of the public in violation of Ohio law.

68. Defendants have:

- reduced the available supply of N95 Masks in the market by buying these items in bulk thus denying reasonable access to them by the public, first-responders, and healthcare workers; and
- exacerbated public panic by demanding unconscionable prices for N95 Masks and other essential products on e-Bay and other e-commerce sites.

69. Defendants' intentional actions constitute a substantial and unreasonable public nuisance that has caused and continues to cause significant harm to the community, which harm outweighs any offsetting benefit.

70. Defendants knew or should have known that their hoarding of N95 Masks and demanding of exorbitant prices for the products on e-commerce sites would create a public nuisance.

71. The physical, economic, and psychological health of the citizens of this State, along with their safety, comfort, and convenience, is a matter of great public concern.

72. The health and safety of the State's healthcare workers and first responders is a matter of great public concern.

73. Defendants' conduct has affected and continues to affect a considerable number of citizens of this State and is likely to continue to cause significant harm to those citizens.

74. The public nuisance caused by Defendants can be abated and perpetuation of such harm can be prevented.

75. Each Defendant created or assisted in the creation of this public nuisance, and each Defendant is jointly and severally liable for abating it.

Prayer for Relief

WHEREFORE, Plaintiff State of Ohio prays as follows:

A. That the Court adjudge that the combination formed and engaged in by and among Defendants and e-Bay to reduce the supply of N95 Masks, to artificially drive up demand for N95 Masks by exacerbating public panic regarding the COVID-19 crisis, and to drive up prices for N95 Masks constitutes an unlawful combination or conspiracy in unreasonable restraint of trade in violation of the Valentine Act, R.C. 1331.01 and 1331.04.

B. That the Court adjudge that Defendants' actions in offering N95 Masks for sale at substantially increased prices in light of a national emergency constitute unfair or deceptive acts or practices in violations of the CSPA, R.C. 1345.02(A).

C. That the Court adjudge that Defendants' actions in offering N95 Masks for sale at substantially increased prices in light of a national emergency constitute unconscionable acts or practices in violations of the CSPA, R.C. 1345.03(A).

D. That the Court adjudge that Defendants' actions in requiring consumers to enter into consumer transactions on terms that Defendants knew were substantially one-sided in favor of Defendants constitute unconscionable acts or practices in violations of the CSPA, R.C. 1345.03(A), as set forth in 1345.03 (B)(5).

E. That the Court adjudge that Defendants' actions to reduce the supply of N95 Masks, to artificially drive up demand for N95 Masks by exacerbating public panic regarding the COVID-19 crisis, and to drive up prices for N95 Masks constitutes unlawful profiteering under Ohio common law.

F. That the Court adjudge that Defendants' actions to reduce the supply of N95 Masks, to artificially drive up demand for N95 Masks by exacerbating public panic regarding the COVID-19 crisis, and to drive up prices for N95 Masks constitutes a public nuisance under Ohio common law.

G. For 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.

H. For 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.

I. For an order requiring Defendants to disgorge all of the wrongful proceeds of their sales of N95 Masks from March 28, 2020 to the present, and granting a monetary judgment against Defendants in an amount sufficient to reimburse all consumers found to have been damaged by the Defendants' unfair or deceptive acts and practices;

J. To assess upon the Defendants a civil penalty in the amount of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein pursuant to R.C. 1345.07(D);

K. That this Court order Defendants to pay all the costs of this action, including Plaintiff's attorneys' fees, other extraordinary litigation costs, the costs of collecting on any judgment awarded, and interest as permitted by law;

L. For an order requiring Defendant Salwan to forfeit to the State, pursuant to R.C. 1331.03, the sum of \$500 per day for each day that the combination described herein was in effect;

M. For an order requiring each Defendant John Doe to forfeit to the State, pursuant to R.C. 1331.03, the sum of \$500 per day for each day that the combination described herein was in effect;

N. That this Court retain jurisdiction of this suit for the purpose of making any Order or Decree the Court may deem necessary at any time to enforce and administer Defendants'

compliance with, and to carry out, this Court's judgment; and,

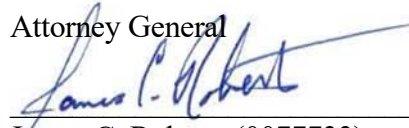
O. For such other relief as the Court may deem appropriate.

Dated: April 13, 2020

Respectfully Submitted,

Dave Yost
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By:



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