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12  
13 **UNITED STATES DISTRICT COURT**  
14 **EASTERN DISTRICT OF CALIFORNIA**

15 3M COMPANY,

16 Plaintiff,

17 vs.

18 RX2LIVE, LLC,

19 Defendant.  
20

Case No.

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

**JURY TRIAL DEMANDED**

1 **COMPLAINT**

2 Plaintiff 3M Company (“3M” or “Plaintiff”), by and through its undersigned attorneys, as  
3 and for its Complaint against Defendant Rx2Live, LLC (“Rx2Live” or “Defendant”), hereby  
4 alleges as follows based on knowledge of its own actions, and on information and belief as to all  
5 other matters:

6 **NATURE OF THE ACTION**

7 1. This lawsuit concerns Defendant’s use of 3M’s famous trademarks to perpetrate a  
8 false and deceptive price-gouging scheme on unwitting customers and consumers, including  
9 Fresno-based healthcare provider Community Medical Centers, Inc. (“CMC”), during the global  
10 COVID-19 pandemic.

11 2. Throughout its history, 3M has been providing state-of-art, industry-leading  
12 scientific and medical products to consumers throughout the world under its famous 3M marks.  
13 Based on this longstanding, continuous use, consumers associate the 3M marks uniquely with 3M.  
14 Now, more than ever, consumers are also relying on the famous 3M marks to indicate that the  
15 products offered thereunder are of the same superior quality that consumers have come to expect  
16 over the past century. This is especially true with respect to 3M’s numerous industry-leading  
17 healthcare products and personal protective equipment (“PPE”), including Plaintiff’s 3M-brand  
18 N95 respirators.

19 3. Healthcare professionals and other first responders are heroically placing their  
20 health and safety on the line to battle COVID-19. To assist in the battle against COVID-19, 3M is  
21 supplying healthcare workers and other first responders with 3M-brand N95 respirators. For  
22 example, in the last week of March 2020, 3M supplied healthcare workers throughout the United  
23 States with 10 million of its 3M-brand N95 respirators. 3M also recently announced that it will  
24 import 166.5 million of its 3M-brand N95 respirators into the United States in the next three months  
25 to supplement its U.S. production, and has invested the capital and resources necessary to double  
26 its current annual global production of 1.1 billion respirators. In response to the COVID-19  
27 outbreak and surge in need for N95 respirators, 3M has doubled its global output rate to nearly 100  
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1 million respirators per month, and it expects to produce around 50 million respirators per month in  
2 the United States by June 2020.

3 4. The demand for 3M-branded respirators has grown exponentially in response to the  
4 pandemic, and 3M has been committed to seeking to meet this demand while keeping its respirators  
5 priced fairly. 3M is working with customers, distributors, governments, and medical officials to  
6 direct 3M supplies to where they are needed most. Importantly, 3M has *not* increased the prices  
7 that it charges for 3M respirators as a result of the COVID-19 outbreak.

8 5. Unfortunately, any number of wrongdoers seek to exploit the current public health  
9 emergency and prey on innocent parties through a variety of scams involving 3M N95 respirators  
10 and other products in high demand. These scams include unlawful price-gouging, fake offers,  
11 counterfeiting, and other unfair and deceptive practices – all of which undercut the integrity of the  
12 marketplace and constitute an ongoing threat to public health and safety.

13 6. In response to fraudulent activity, price-gouging and counterfeiting related to N95  
14 respirators that has spiked in the marketplace in response to the pandemic, 3M is taking an active  
15 role to combat these activities. 3M's actions include working with law enforcement authorities  
16 around the world, including the U.S. Attorney General, state Attorneys General and local  
17 authorities to combat price-gouging. 3M has also created a website where people can report  
18 potential price-gouging and the "3M COVID-19 Fraud hotline" for end-users and purchasers of 3M  
19 products in the United States and Canada to call for information and to help detect fraud and avoid  
20 counterfeit products. Moreover, 3M is publishing information about its anti-price-gouging and  
21 counterfeiting efforts on the 3M website, including disclosure of 3M's list prices for its N95  
22 respirators and the web address and phone numbers that can be used to identify 3M authorized  
23 distributors and dealers in the United States and Canada. Further information about 3M's efforts  
24 are set forth in the 3M press release and publication attached hereto as **Exhibits 1 and 2**. This  
25 Complaint is another part of these efforts.

26 7. Despite 3M's extensive efforts during COVID-19, deplorable pandemic profiteers  
27 continue their quests to take advantage of healthcare workers, first responders, and others in a time  
28

1 of need and trade off the fame of the 3M brand and marks. Defendant is a prime example of this  
2 behavior.

3 8. On March 27, 2020, Virginia Cooper, who is an employee or agent of Defendant  
4 Rx2Live, contacted CMC via email to advertise PPE products available through Rx2Live, including  
5 purported 3M-brand N95 respirators. Over the next several days, Ms. Cooper perpetuated the fraud  
6 by providing CMC with additional promotional materials, including a pricing list and a PowerPoint  
7 presentation reflecting that both documents were last edited by a management-level employee of  
8 Defendant, Alex Myers. The PowerPoint presentation provided to CMC advertised the availability  
9 of “3M N95 1860” surgical respirators and “3M N95 8210” standard respirators, “Direct from 3M.”  
10 *See Exhibits 3, 4.* Moreover, the PowerPoint presentation stated that a minimum order of 10  
11 million masks was required (at grossly inflated purchase prices of \$52 million for surgical masks  
12 and \$49.5 million for standard masks in contrast to 3M’s list prices of \$12.7 million and \$10.2-  
13 \$13.1 million, respectively). The PowerPoint presentation further indicated that “3M requires  
14 payment in full before order can be placed. Payment is held in escrow until the order is completed.”  
15 *See Exh. 4.* Virtually all of these statements are false, deceptive, and/or unlawful.

16 9. Defendant is not, and never has been, an authorized distributor of any of 3M’s  
17 products and has no rights to use 3M’s famous marks. By using 3M’s famous marks in Rx2Live’s  
18 promotional materials and product listing, and holding itself out to be an authorized distributor of  
19 3M products, Defendant confused and deceived consumers in the State of California by offering  
20 for purchase products at unconscionably high prices that were approximately 4-5 times *above* 3M’s  
21 list prices. This offer constituted extreme price-gouging by any measure, including under  
22 California law (Penal Code § 396). Not only does such price-gouging further strain the limited  
23 resources available to combat COVID-19, but such conduct justifiably has caused public outrage  
24 which threatens imminent and irreparable harm to 3M’s brand as Defendant and similar pandemic  
25 profiteers promote an improper association between 3M’s marks and exploitative pricing behavior.

26 10. 3M does not – and will not – tolerate individuals or entities deceptively trading off  
27 the fame and goodwill of the 3M brand and marks for their personal gain. This is particularly true  
28 against those who seek to exploit the surge in demand for 3M-brand products during the COVID-

1 19 global pandemic which already has claimed tens of thousands of lives worldwide and nearly 500  
2 lives in California State alone.

3 11. Accordingly, to further protect consumers from confusion and mistake, to reduce  
4 the amount of time and energy that healthcare providers and procurement officers are forced to  
5 waste interacting with such schemes, as well as to forestall any further diminution to the 3M brand  
6 and marks' reputation, fame, and goodwill, Plaintiff brings this lawsuit against Defendant for  
7 federal and state trademark infringement, unfair competition, false association, false endorsement,  
8 false designation of origin, trademark dilution, false advertising, unlawful, unfair, and fraudulent  
9 business acts and practices. Plaintiff also seeks preliminary and permanent injunctive relief. As  
10 described below, any damages, costs, or fees recovered by 3M will be donated to charitable  
11 COVID-19 relief efforts.

12 **THE PARTIES**

13 12. Plaintiff 3M Company is a Delaware corporation, with a principal place of business  
14 and corporate headquarters located at 3M Center, St. Paul, Minnesota 55144. 3M is a diversified  
15 technology company with a global presence and is among the leading manufacturers of products  
16 for many of the markets it serves, including PPE such as 3M-brand N95 respirators.

17 13. On information and belief, Defendant Rx2Live, LLC is a Utah limited liability  
18 company with its corporate headquarters and principal place of business located at 597 South  
19 Pleasant Grove Boulevard, Pleasant Grove, Utah 84062. Rx2Live describes itself as a franchisor  
20 in healthcare services, which provides healthcare professionals access to products, education, and  
21 services, including workplace and senior wellness programs. Rx2Live supplies a range of PPE  
22 products to hospitals and healthcare providers, including the counterfeit 3M-brand N95 respirators  
23 at issue in this action, as well as other N95 respirators, surgical masks, nitrile and PVC gloves, hand  
24 sanitizer, isolation gowns, and supposed COVID-19 test kits.

25 **JURISDICTION AND VENUE**

26 14. The claims for trademark infringement, unfair competition, false association, false  
27 endorsement, false designation of origin, trademark dilution, and false advertising, respectively,  
28 asserted in Counts I – IV, *infra*, arise under the Trademark Act of 1946 (as amended; the “Lanham

1 Act”), namely, 15 U.S.C. §§ 1051 *et seq.* Accordingly, this Court has original and subject-matter  
2 jurisdiction over Counts I – IV pursuant to 28 U.S.C. §§ 1331, 1338(a), and 15 U.S.C. § 1121(a).

3 15. The claims for unlawful, unfair, and fraudulent business acts or practices and false  
4 advertising in violation of California Business and Professions Code §§ 17200 *et seq.* and 17500 *et*  
5 *seq.*, trademark dilution, unfair competition, and trademark infringement, asserted in  
6 Counts V – VIII, *infra*, arise under California statutory and common law, and are so related to the  
7 federal claims asserted in Counts I – IV, *infra*, that they form part of the same case or controversy.  
8 Accordingly, this Court has supplemental jurisdiction over Counts V – VIII pursuant to 28 U.S.C.  
9 §§ 1338(b) and 1367(a). This Court also has subject matter jurisdiction on the separate and  
10 independent ground of diversity of citizenship pursuant to 28 U.S.C. § 1332(a). There is complete  
11 diversity of citizenship between the parties and the amount in controversy exceeds \$75,000,  
12 exclusive of interest and costs.

13 16. Defendant Rx2Live has purposefully availed itself of the privilege of transacting  
14 business within the State of California, including in this District. Rx2Live has also committed and  
15 intentionally directed tortious acts towards residents of the State of California, including in this  
16 District. For example, Rx2Live recently used 3M’s famous marks as part of a price-gouging  
17 scheme to deceive CMC into believing that Rx2Live was authorized by 3M to sell millions of 3M-  
18 brand N95 respirators for an aggregate price of nearly \$50 million – several multiples of the 3M  
19 list price. Plaintiff’s claims arise out of and relate to Rx2Live’s transaction of business and tortious  
20 acts committed within the State of California, including in this District. Based on the foregoing,  
21 this Court has long-arm jurisdiction over Rx2Live pursuant to Cal. Code Civ. Proc. § 410.10 and  
22 FED. R. CIV. P. 4(k).

23 17. A substantial part of the events giving rise to the claims asserted, *infra*, occurred in  
24 this District. Accordingly, venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2).

25 18. Defendant is subject to personal jurisdiction in this District. Accordingly, venue is  
26 also proper in this District pursuant to 28 U.S.C. § 1391(b)(3).

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**FACTS COMMON TO ALL CLAIMS FOR RELIEF**

**I. Plaintiff 3M**

19. 3M has grown from humble beginnings in 1902 as a small-scale mining venture in Northern Minnesota to what it is today, namely: an industry-leading provider of scientific, technical, and marketing innovations throughout the world. Today, 3M’s portfolio includes more than 60,000 goods and services, ranging from household and school supplies, to industrial and manufacturing materials, to medical supplies and equipment.

**A. The 3M Brand**

20. 3M offers its vast array of goods and services throughout the world under numerous brands, including, for example: ACE; POST-IT; SCOTCH; NEXCARE; and more. Notwithstanding the widespread goodwill and resounding commercial success enjoyed by these brands, 3M’s most famous and widely recognized brand is its eponymous “3M” brand.

21. The 3M brand is associated with products and materials for a wide variety of medical devices, supplies, PPE, including, for example: respirators; stethoscopes; medical tapes; surgical gowns, blankets, and tape; bandages and other wound-care products; and more. As such 3M-branded products are highly visible throughout hospitals, nursing homes, and other care facilities where patients, care providers, and procurement officers value and rely upon the high quality and integrity associated with the 3M brand.

**B. The Famous “3M” Marks**

22. Over the past century, 3M has invested hundreds of millions of dollars in advertising and promoting its 3M-brand products to consumers throughout the world (including, without limitation, its 3M-brand N95 respirator) under the standard-character mark “3M” and the inset 3M design mark (together, the “3M Marks”):



23. For decades, products offered by under the 3M Marks have enjoyed enormous commercial success (including, without limitation, its 3M-brand N95 respirator). Indeed, in 2019, alone, sales of products offered under the 3M Marks exceeded several hundred million USD.

1           24.     Over the same period of time, products offered under the 3M Marks have regularly  
2 been the subject of widespread, unsolicited media coverage and critical acclaim.

3           25.     Based on the foregoing, consumers associate the 3M Marks uniquely with 3M and  
4 recognize them as identifying 3M as the exclusive source of goods and services offered under the  
5 3M Marks. Based on the foregoing, the 3M Marks have also become famous among consumers in  
6 the United States.

7           26.     To strengthen 3M’s common-law rights in and to its famous 3M Marks, 3M has  
8 obtained numerous federal trademark registrations, including, without limitation: (i) U.S.  
9 Trademark Reg. No. 3,398,329, which covers the standard-character 3M mark in Int. Classes 9 and  
10 10 for, *inter alia*, respirators (the “‘329 Registration”), and (ii) U.S. Trademark Reg. No. 2,793,534,  
11 which covers the 3M design mark in Int. Classes 1, 5, and 10 for, *inter alia*, respirators (the “‘534  
12 Registration”). See **Exhibits 5-6**.

13           27.     The ‘329 and ‘534 Registrations are valid, in effect, and on the Principal Trademark  
14 Register.

15           28.     The ‘329 and ‘534 Registrations are “incontestable” within the meaning of 15  
16 U.S.C. § 1065. Accordingly, the ‘329 and ‘534 Registrations constitute conclusive evidence of: (i)  
17 3M’s ownership of the 3M Marks; (ii) the validity of the 3M Marks; (iii) the validity of the  
18 registration of the 3M Marks; and (iv) 3M’s exclusive right to use the 3M Marks throughout the  
19 United States for, *inter alia*, respirators.

20           29.     Plaintiff’s famous 3M Marks do more than identify 3M as the exclusive source of  
21 goods and services offered thereunder. Indeed, the famous 3M Marks also signify to consumers  
22 that 3M-brand products offered under the 3M Marks are of the highest quality and adhere to the  
23 strictest quality-control standards. Now, more than ever, consumers rely on the famous 3M Marks’  
24 ability to signify that products offered under the 3M Marks are of the same high quality that  
25 consumers have come to expect of the 3M brand over the past century.

26     / / /

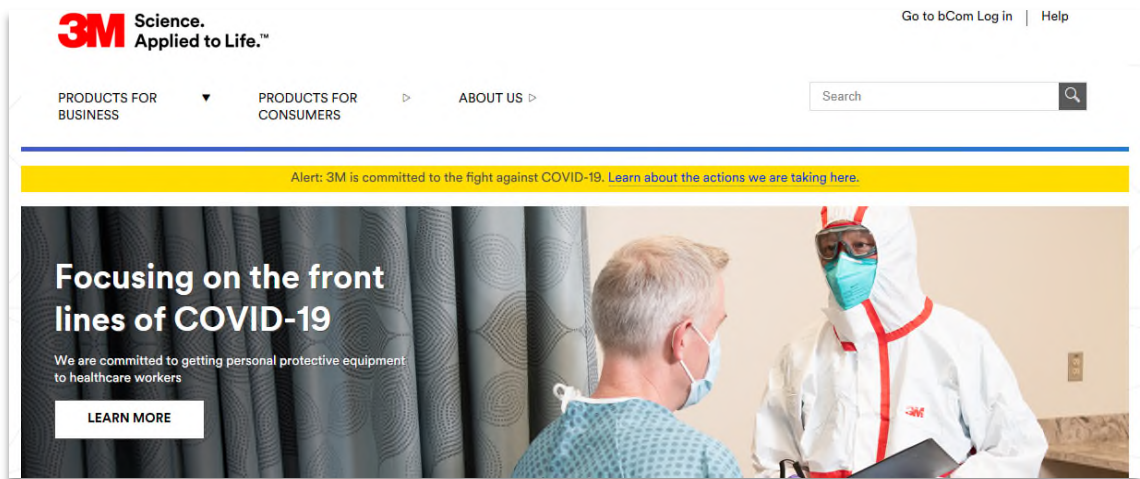
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1           **C.     3M’s Extensive Efforts to Assist With the Battle Against COVID-19**

2           30.     Medical professionals and first responders throughout the world are donning  
3     extensive PPE as they place their health and safety on the line in the battle against COVID-19. As  
4     3M states on the homepage of its website, it is “committed to getting personal protective equipment  
5     to healthcare workers”:



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14           31.     Among the PPE that 3M is providing to the heroic individuals on the front lines of  
15     the battle against COVID-19 are its 3M-brand N95 respirators.

16           32.     Inset, below, is an image of 3M’s branded Model 8210 respirator:



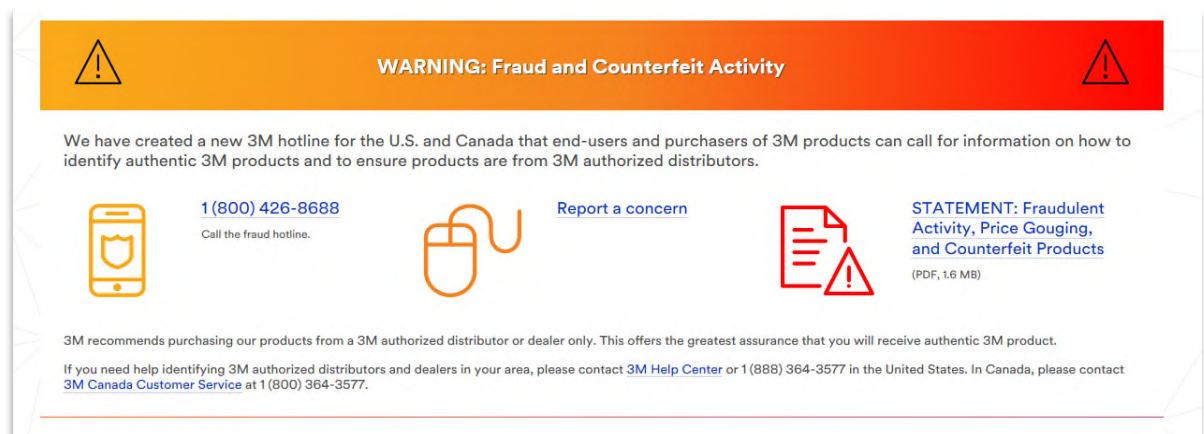
23           33.     Authentic N95 respirators reduce exposure to airborne biological particles and  
24     liquid contamination when appropriately selected, fitted, and worn.

25           34.     Based on the exponential increase in demand for 3M-branded N95 respirators, 3M  
26     has invested in the necessary capital and resources to double its annual production of 1.1 billion  
27     N95 respirators. *See* Exhs. 1, 2. **What 3M has not done in the face of the global COVID-19**  
28     **pandemic is increase its prices.** *See id.*

1 35. Unfortunately, certain third parties do not share 3M's sense of civic responsibility  
2 during this time of crisis. Indeed, opportunistic third parties are seeking to exploit the increased  
3 demand for 3M-branded N95 respirators by offering to sell them for exorbitant prices, selling  
4 counterfeit versions of them, and accepting money for 3M-brand N95 respirators despite having no  
5 product to sell or never intending to deliver the product in the first place.

6 36. Accordingly, to protect both consumers and healthcare workers on the front lines of  
7 the COVID-19 battle from deception and inferior products, to reduce time wasted by healthcare  
8 providers and procurement officers on scams, as well as to protect 3M's goodwill, reputation, and  
9 carefully curated 3M brand, 3M is working diligently with law enforcement, retail partners, and  
10 others to combat unethical and unlawful business practices related to 3M-brand N95 respirators.  
11 For example, in late-March 2020, 3M's Chief Executive Officer, Mike Roman, sent a letter to U.S.  
12 Attorney General, William Barr, and the President of the National Governor's Association, Larry  
13 Hogan of Maryland, to offer 3M's partnership in combatting price-gouging. As shown in the inset  
14 image, additional examples of 3M's efforts to combat price-gouging, counterfeiting, and other  
15 unlawful conduct during COVID-19 include:

- 16 a. 3M posted on its website the list price for its 3M-brand N95 respirators so that  
17 consumers can readily identify price-gouging (*See Exhibit 7*);  
18 b. 3M created a form on its website that consumers can use to report suspected  
19 incidents of price-gouging and counterfeiting (*See Exhibit 8*); and  
20 c. 3M created a fraud "hotline" that consumers can call to report suspect incidents of  
21 price-gouging and counterfeiting.



**II. Defendant’s Unlawful Conduct**

37. Despite 3M’s extensive measures to combat price-gouging and counterfeiting of its 3M-brand N95 respirators, illicit activities by bad actors continue. Defendant is a prime example of this unlawful behavior, which is damaging the 3M brand and public health and safety in a time of unprecedented crisis.

38. According to promotional materials created and disseminated by Defendant, Defendant purports to have millions, if not billions, of 3M’s N95 respirators available for sale to healthcare providers and other customers throughout the United States.

39. Because Defendant is not an authorized 3M dealer or distributor, this claim is implausible at best. But still, Defendant attempted to exploit the feelings of panic and desperation surrounding the COVID-19 public health emergency.

40. On March 27, 2020, Virginia Cooper contacted CMC, a prominent Fresno-area healthcare provider, to advertise the availability of PPE products at exorbitant prices. Ms. Cooper provided a spreadsheet listing the availability of “Face Mask N95 #8210 direct from 3M.” See Exh. 3 (excerpted below).



ITEM #	DESCRIPTION	MIN. QTY / unit	UNIT PRICE per each piece unless noted
00A	Face Mask N95 #8210 direct from 3M	10,000,000 ea.	\$ 4.95
001	Face Mask N95 (ICE, FDA)	100,000 ea.	\$ 3.89

41. On March 30, 2020, Ms. Cooper provided CMC with a PowerPoint presentation containing “pictures, catalog codes, pricing and minimum requirements.” See Exh. 4. The metadata on the pricing spreadsheet and the PowerPoint show that both documents were last modified by Alex Myers, the Los Angeles Regional Developer for Rx2Live. See **Exhibit 9** (excerpted below).

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Last Modified	3/30/2020 3:36 PM
Created	3/25/2020 10:10 AM
Last Printed	
<b>Related People</b>	
Manager	Specify the manager
Author	 Kendel
	Add an author
Last Modified By	 Alex Myers

42. Defendant’s PowerPoint presentation expressly references two models of 3M-brand N95 respirators: Model 1860 and Model 8210. The presentation, an excerpt of which is depicted below, prominently displays a photo of a respirator bearing the 3M Mark. The presentation also represents that the respirators are “Direct from 3M” and “3M requires payment in full before order can be placed. Payment is held in escrow until the order is completed.” Exh. 4, at p. 2. None of these statements are true.



43. The contents of Defendant’s above-referenced PowerPoint presentation are intended to defraud, mislead and/or deceive a reasonable consumer into believing that Defendant is an authorized distributor of 3M’s products and/or has an association or affiliation with 3M, which is not the case. Defendant does not, and never has, represented 3M, and 3M has never authorized Defendant or any other affiliates, agents, employees, or franchisees of Defendant to manufacture,

1 distribute, advertise, market, offer for sale, receive payments on 3M’s behalf, escrow funds on 3M’s  
2 behalf, and/or sell 3M-brand N95 respirators.

3 44. What is more, in an effort to profit from the public’s dire need of PPE during the  
4 global COVID-19 pandemic, Defendant’s quote of \$5.20 per 3M brand, N95 Model 1860 respirator  
5 is more than quadruple 3M’s posted list price of \$1.27 per respirator. *See* Exhs. 4, 7.

6 45. Defendant’s quote of \$4.95 per 3M brand, N95 Model 8210 respirator is  
7 approximately 4-5 times 3M’s posted list price of \$1.02-\$1.31 per respirator. *See id.*

8 46. Based on the foregoing, 3M seeks relief against Defendant for federal and state  
9 trademark infringement, unfair competition, false association, false endorsement, false designation  
10 of origin, trademark dilution, false advertising, and unlawful, unfair, and fraudulent business acts  
11 and practices.

12 **CLAIMS FOR RELIEF**

13 **FIRST CLAIM FOR RELIEF**

14 *(Trademark Infringement Under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1))*

15 *(Infringement of the Federally Registered 3M Marks)*

16 47. 3M repeats and incorporates by reference the statements and allegations in  
17 paragraphs 1 – 46 of the Complaint as though set forth fully herein

18 48. Count I is a claim for trademark infringement under 15 U.S.C. § 1114.

19 49. 3M is the exclusive owner of each of the federally registered 3M Marks.

20 50. 3M has the exclusive right to use each of the 3M Marks in United States commerce  
21 for, *inter alia*, advertising, promoting, offering for sale, and selling Plaintiff’s 3M-brand N95  
22 respirators.

23 51. 3M’s exclusive rights in and to each of the 3M Marks predate any rights that  
24 Defendant could establish in and to any mark that consists of “3M” in whole and/or in part.

25 52. Both of the 3M Marks are fanciful and/or arbitrary when used for respirators and,  
26 therefore, are inherently distinctive.

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1           53. Both of the 3M Marks identify 3M as the exclusive source of products offered under  
2 the 3M Marks (including, without limitation, 3M-brand N95 respirators) and, therefore, the 3M  
3 Marks have acquired distinctiveness.

4           54. Defendant is using the 3M Marks in commerce to advertise, promote, offer for sale,  
5 and sell 3M-branded N95 respirators, including, for example, in communications to healthcare  
6 providers listing the products that Defendant purportedly has available for sale.

7           55. Defendant's use of the 3M Marks in commerce on, for, and/or in connection with  
8 the advertising, promotion, offering for sale, and/or sale of products, as alleged, herein, is causing,  
9 and is likely to continue to cause, consumer confusion, mistake, and/or deception about whether  
10 Defendant is 3M, and/or whether Defendant is a licensee, authorized distributor, and/or affiliate of  
11 3M and/or products that 3M offers under its 3M Marks, including, without limitation, 3M-brand  
12 N95 respirators.

13           56. Defendant's use of the 3M Marks in commerce on, for, and/or in connection with  
14 the advertising, promotion, offering for sale, and/or sale of products, as alleged, herein, is causing,  
15 and is likely to continue cause, consumer confusion, mistake, and/or deception about whether  
16 Defendant and/or Defendant's products are affiliated, connected, and/or associated with 3M and/or  
17 products that 3M offers under its 3M Marks, including, without limitation, 3M-brand N95  
18 respirators.

19           57. Defendant's use of the 3M Marks in commerce on, for, and/or in connection with  
20 the advertising, promotion, offering for sale, and/or sale of products, as alleged, herein is causing,  
21 and is likely to continue to cause, consumer confusion, mistake, and/or deception about whether  
22 Defendant and/or Defendant's products originate with, and/or are sponsored or approved by, and/or  
23 offered under a license from, 3M or vice versa.

24           58. 3M has not consented to the use of its famous 3M Marks by Defendant.

25           59. Based on 3M's longstanding and continuous use of its 3M Marks in United States  
26 commerce, as well as the federal registration of the 3M Marks, Defendant had actual and  
27 constructive knowledge of 3M's superior rights in and to the 3M Marks when Defendant began  
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1 using the 3M Marks as part its bad-faith scheme to confuse and deceive consumers, as alleged,  
2 herein.

3 60. Upon information and belief, Defendant adopted and used the 3M Marks in  
4 furtherance of Defendant's willful, deliberate, and bad-faith scheme of trading upon the extensive  
5 consumer goodwill, reputation, fame, and commercial success of products that 3M offers under its  
6 3M Marks, including, without limitation, 3M-brand N95 respirators.

7 61. Upon information and belief, Defendant has made, and will continue to make,  
8 substantial profits and gain from its unauthorized use of the 3M Marks, to which Defendant is not  
9 entitled at law or in equity.

10 62. Upon information and belief, Defendant's acts and conduct complained of herein  
11 constitute trademark infringement in violation of 15 U.S.C. § 1114(a).

12 63. 3M has suffered, and will continue to suffer, irreparable harm from Defendant's acts  
13 and conduct complained of herein, unless restrained by law. The damage suffered by 3M is  
14 exacerbated by the fact that Defendant is advertising and offering for sale 3M-branded N95  
15 respirators at exorbitantly inflated prices during a global pandemic when 3M's products are  
16 necessary to protect public health. Such conduct has inspired intense public criticism of the manner  
17 in which 3M's respirators are being distributed and sold during the COVID-19 pandemic and  
18 significant confusion about 3M's role in the marketplace for masks that are essential to  
19 safeguarding public health. Whereas 3M's corporate values and brand image center around the  
20 application of science to improve lives, Defendant's conduct imminently and irreparably harms  
21 3M's brand.

22 64. 3M has no adequate remedy at law.

23 **SECOND CLAIM FOR RELIEF**

24 *(Unfair Competition, False Endorsement, False Association, and False Designation of Origin*

25 *Under Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A))*

26 *(Use of the 3M Marks)*

27 65. 3M repeats and incorporates by reference the statements and allegations in  
28 paragraphs 1 - 64 of the Complaint as set forth fully herein.

1 66. Count II is a claim for federal unfair competition, false endorsement, false  
2 association, and false designation of origin under 15 U.S.C. § 1125(a)(1)(A).

3 67. Upon information and belief, Defendant's acts and conduct complained of herein  
4 constitute unfair competition, false endorsement, false association, and/or false designation of  
5 origin in violation of 15 U.S.C. § 1125(a)(1)(A).

6 68. Upon information and belief, Defendant's use of Plaintiff's famous 3M Marks to  
7 advertise, market, offer for sale, and/or sell purported 3M-brand N95 respirators to consumers at  
8 exorbitant prices, in general, and during a global pandemic such as COVID-19, specifically, also  
9 constitutes unfair competition in violation of 15 U.S.C. § 1125(a)(1)(A).

10 69. Defendant has also falsely held itself out to be an agent of and/or authorized by 3M  
11 to sell and/or distribute 3M-branded products, when this is not the case.

12 70. 3M has suffered, and will continue to suffer, irreparable harm from Defendant's acts  
13 and conduct complained of herein, unless restrained by law.

14 71. 3M has no adequate remedy at law.

15 **THIRD CLAIM FOR RELIEF**

16 *(Trademark Dilution Under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c))*

17 *(Dilution of the Famous 3M Marks)*

18 72. 3M repeats and incorporates by reference the statements and allegations in  
19 paragraphs 1 – 71 of the Complaint as though set forth fully herein.

20 73. Count III is a claim for federal trademark dilution under 15 U.S.C. § 1125(c).

21 74. The 3M Marks were famous before and at the time Defendant began using the 3M  
22 Marks in commerce on, for, and/or in connection with the advertising, promotion, offering for sale,  
23 and/or sale of products (including, without limitation, 3M's branded N95 respirators).

24 75. Defendant's use of Plaintiff's famous 3M Marks in commerce on, for, and/or in  
25 connection with the advertising, promotion, offering for sale, and/or sale of products (including,  
26 without limitation, 3M's branded N95 respirators) is likely to dilute the distinctive quality of the  
27 famous 3M Marks, such that the famous 3M Marks' established selling power and value will be  
28 whittled away.



1           76. Defendant's use of Plaintiff's famous 3M Marks in commerce on, for, and/or in  
2 connection with the advertising, promotion, offering for sale, and/or sale of products (including,  
3 without limitation, 3M's branded N95 respirators) is likely to dilute the distinctive quality of the  
4 famous 3M Marks, such that the famous 3M Marks' ability to identify 3M as the exclusive source  
5 of products offered under the 3M Marks (including, without limitation, 3M's branded N95  
6 respirators) will be whittled away.

7           77. Defendant's use of Plaintiff's famous 3M Marks in commerce on, for, and/or in  
8 connection with the advertising, promotion, offering for sale, and/or sale of products (including,  
9 without limitation, 3M's branded N95 respirators) at exorbitant prices, in general, and during a  
10 global pandemic such as COVID-19, specifically is likely to dilute the reputation of the famous 3M  
11 Marks, such that the famous 3M Marks' established ability to indicate the superior quality of  
12 Products offered under such Marks (including, without limitation, 3M's branded N95 respirators),  
13 will be whittled away.

14           78. Upon information and belief, Defendant's acts and conduct complained of herein  
15 constitute trademark dilution in violation of 15 U.S.C. § 1125(c).

16           79. 3M has suffered, and will continue to suffer, irreparable harm from Defendant's acts  
17 and conduct complained of herein, unless restrained by law. The damage suffered by 3M is  
18 exacerbated by the fact that Defendant is advertising and offering for sale 3M-branded N95  
19 respirators at exorbitantly inflated prices during a global pandemic when 3M's products are  
20 necessary to protect public health. Such conduct has inspired intense public criticism of the manner  
21 in which 3M's respirators are being distributed and sold during the COVID-19 pandemic and  
22 significant confusion about 3M's role in the marketplace for masks that are essential to  
23 safeguarding public health. Whereas 3M's corporate values and brand image center around the  
24 application of science to improve lives, Defendant's conduct imminently and irreparably harms  
25 3M's brand.

26           80. 3M has no adequate remedy at law.

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**FOURTH CLAIM FOR RELIEF**

(False Advertising Under Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B))

(Defendant's March 27 and 30 Emails)

81. 3M repeats and incorporates by reference the statements and allegations in paragraphs 1 – 80 of the Complaint as though set forth fully herein.

82. Count IV is a claim for false and deceptive advertising under 15 U.S.C. § 1125(a)(1)(B).

83. The statements that Defendant made in its March 27 and March 30 emails with CMC and the PowerPoint presentation and pricing list provided to CMC, constitute commercial advertising and/or commercial promotion.

84. The statements that Defendant made in its March 27 and March 30 emails with CMC and the PowerPoint presentation and pricing list provided to CMC, contained false, misleading, and/or deceptive statements about the nature, characteristics, qualities, and/or geographic origin of Defendant and/or the products that Defendant allegedly had available for sale.

85. The statements that Defendant made in its March 27 and March 30 emails with CMC and the PowerPoint presentation and pricing list provided to CMC, contained false, misleading, and/or deceptive statements about the nature, characteristics, qualities, and/or geographic origin of 3M and the 3M-brand products, including, without limitation, 3M's branded N95 respirators.

86. The false, misleading, and/or deceptive statements in Defendant's March 27 and March 30 emails, PowerPoint presentation, and pricing list were material to CMC's purchasing decisions.

87. Defendant placed the March 27 and March 30 emails, PowerPoint presentation, and pricing list into interstate commerce by, *inter alia*, sending them to CMC

88. Defendant's March 27 and March 30 emails, PowerPoint presentation, and pricing list have directly and/or proximately caused and/or are likely to cause 3M to suffer harm in the form of lost sales (including, without limitation, lost sales of 3M's branded N95 respirators), as well as irreparable diminution to the 3M brand and 3M Marks' reputation, fame, and goodwill.

1 89. Upon information and belief, Defendant’s acts and conduct complained of herein  
2 constitute false advertising in violation of 15 U.S.C. § 1125(a)(1)(B).

3 90. 3M has suffered, and will continue to suffer, irreparable harm from Defendant’s acts  
4 and conduct complained of herein, unless restrained by law. The damage suffered by 3M is  
5 exacerbated by the fact that Defendant is advertising and offering for sale 3M-branded N95  
6 respirators at exorbitantly inflated prices during a global pandemic when 3M’s products are  
7 necessary to protect public health. Such conduct has inspired intense public criticism of the manner  
8 in which 3M’s respirators are being distributed and sold during the COVID-19 pandemic and  
9 significant confusion about 3M’s role in the marketplace for masks that are essential to  
10 safeguarding public health. Whereas 3M’s corporate values and brand image center around the  
11 application of science to improve lives, Defendant’s conduct imminently and irreparably harms  
12 3M’s brand.

13 91. 3M has no adequate remedy at law.

14 **FIFTH CLAIM FOR RELIEF**

15 *(Trademark Dilution, Cal. Bus. Prof. Code §§ 14247)*

16 *(Dilution of the Famous 3M Marks)*

17 92. 3M repeats and incorporates by reference the statements and allegations in  
18 paragraphs 1 – 91 of the Complaint as though set forth fully herein, including, but not limited to  
19 the Third Claim for Relief above.

20 93. Count V is for trademark dilution under California Business and Professions Code  
21 § 14247.

22 94. Upon information and belief, Defendant’s acts and conduct complained of herein  
23 constitute trademark dilution under California Business and Professions Code § 14247.

24 95. 3M has suffered, and will continue to suffer, irreparable harm from Defendant’s acts  
25 and conduct complained of herein, unless restrained by law..

26 96. 3M has no adequate remedy at law.

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**SIXTH CLAIM FOR RELIEF**

*(Unfair Competition, Cal. Bus. Prof. Code §§ 17200 et seq.)*

*(Price-Gouging and False Advertising of 3M-branded Products)*

97. 3M repeats and incorporates by reference the statements and allegations in paragraphs 1 – 96 of the Complaint as though set forth fully herein.

98. Count VI is for unfair competition in violation of California Business and Professions Code § 17200 *et seq.*

99. On March 4, 2020, California Governor Gavin Newsome declared a state of emergency to exist in California in response to COVID-19.

100. That same day, California Attorney General Xavier Becerra issued a price-gouging alert reminding all Californians that, under Penal Code § 396, price-gouging is illegal in all California communities during the declared state of emergency.

101. On March 12, 2020, Governor Newsome issued an executive order further enhancing the ability of the California state and local government’s ability to respond to COVID-19.

102. On information and belief, Defendant sold or offered to sell consumer goods, emergency supplies, and medical supplies (including, but not limited to 3M’s branded N95 respirators) for a price of more than 10 percent greater than the price charged by Defendant for those goods prior to the proclamation or declaration of emergency, in violation of Penal Code § 396.

103. Defendant’s violation of Penal Code § 396 constitutes an unlawful business practice and an act of unfair competition within the meaning of California Business & Professions Code § 17200 *et seq.* It is also a crime under California law.

104. Defendant’s unauthorized use in commerce of the 3M Marks is also likely to cause consumer confusion or mistake or to deceive consumers into believing that Defendant’s products and/or services are sponsored by, endorsed by, or originate from 3M or are otherwise connected or affiliated with or approved by 3M, thereby causing loss, damage, and injury to 3M and to the purchasing public, constituting unlawful, unfair, and fraudulent business practices in violation of California Business & Professions Code § 17200 *et seq.*



1 untrue, misleading, and likely to deceive the reasonable consumer and the public. Defendant's  
2 untrue or misleading representations include, but are not limited to the following:

- 3 a. Representing that Defendant was an agent of and/or authorized by 3M to sell and/or  
4 distribute 3M-branded products.
- 5 b. Representing that Defendant could supply 3M-branded N95 respirators "Direct from  
6 3M."
- 7 c. Representing that "3M requires payment in full before order can be placed."
- 8 d. Representing that "Payment is held in escrow until the order is completed."
- 9 e. Representing that Defendant had available for sale millions, if not billions, of 3M-  
10 branded N95 respirators and that the minimum order was 10 million units.

11 111. Such statements are untrue, false, and misleading because 3M has not authorized  
12 the use or direct sale of its 3M-branded products by Defendant. Likewise, 3M never authorized  
13 Defendant to accept deposits or payments on 3M's behalf or to hold any such funds in escrow.

14 112. Defendant knew, or by the exercise of reasonable care should have known at the  
15 time of making the statements, or causing the statements to be made, that it was untrue or  
16 misleading to hold itself out as an authorized distributor of 3M's branded N95 respirators.

17 113. Defendant engaged in the false and/or misleading advertising and marketing of the  
18 3M-branded N95 respirators, as alleged herein, with the intent to directly or indirectly induce  
19 consumers to purchase those respirators.

20 114. Had Defendant truthfully advertised that it was not authorized to sell 3M-branded  
21 products, consumers would not have purchased the products or would have purchased a different  
22 product from another manufacturer or distributor.

23 115. This false and misleading advertising of 3M-branded products by Defendant  
24 presents a continuing threat to consumers, as such conduct is ongoing to this day.

25 116. As a direct and proximate result of the aforementioned acts and omissions by  
26 Defendant, Defendant received and continue to hold monies rightfully belonging to 3M.

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**EIGHTH CLAIM FOR RELIEF**

*(Unfair Competition and Trademark Infringement under California Common Law)*

*(Use of the 3M Marks)*

117. 3M repeats and incorporates by reference the statements and allegations in paragraphs 1 – 116 of the Complaint as though set forth fully herein.

118. Count VIII is for unfair competition and trademark infringement under California common law.

119. Upon information and belief, Defendant’s acts and conduct complained of herein constitute unfair competition and trademark infringement in violation of California common law.

120. 3M has suffered, and will continue to suffer, irreparable harm from Defendant’s acts and conduct complained of herein, unless restrained by law.

121. 3M has no adequate remedy at law.

**PRAYER FOR RELIEF**

**WHEREFORE**, based on Defendant’s conduct complained of, herein, Plaintiff asks this Court:

A. To enter an Order, finding in Plaintiff’s favor on each Claim for Relief asserted herein;

B. Pursuant to 15 U.S.C. § 1116:

1. To preliminarily and permanently enjoin Defendant, its agents, servants, employees, officers and all persons and entities in active concert and participation with them from using the 3M Marks (or any other mark(s) confusingly similar thereto) for, on, and/or in connection with the manufacture, distribution, advertising, promoting, offering for sale, and/or sale of any goods or services, including, without limitation, 3M-brand N95 respirator Marks;

2. To preliminarily and permanently enjoin Defendant, its agents, servants, employees, officers and all persons and entities in active concert and participation with them from falsely representing themselves as being distributors, authorized retailers, and/or licensees of 3M and/or any of 3M’s products (including, without limitation, 3M-brand N95 respirator) and/or otherwise

1 falsely representing to have an association or affiliation with, sponsorship by, and/or connection  
2 with, 3M and/or any of 3M’s products; and

3 3. To order Defendant to file with the Court and serve upon Plaintiff’s counsel, within  
4 30 days after service of the order of injunction, a report in writing under oath setting forth in detail  
5 the manner and form in which Defendant has complied with the injunction;

6 C. Pursuant to 15 U.S.C. § 1117:

7 1. To order Defendant to provide 3M with a full accounting of all manufacture,  
8 distribution and sale of products under the 3M Marks (including, without limitation, 3M-brand N95  
9 respirators), as well as all profits derived therefrom;

10 2. To order Defendant to pay to 3M – so as to be donated charitably pursuant to subpart  
11 H, *infra* – all of Defendant’s profits derived from the sale of infringing goods offered under the 3M  
12 Marks (including, without limitation, 3M-brand N95 respirators);

13 3. To award 3M – so as to be donated charitably pursuant to subpart H, *infra* – treble  
14 damages in connection with Defendant’s infringement of the 3M Marks;

15 4. To find that Defendant’s acts and conduct complained of herein render this case  
16 “exceptional”; and

17 5. To award 3M – so as to be donated charitably pursuant to subpart H, *infra* – its costs  
18 and reasonable attorneys’ fees incurred in this matter;

19 D. Pursuant to 15 U.S.C. § 1118, to order the destruction of all unauthorized goods and  
20 materials within the possession, custody, and control of Defendant that bear, feature, and/or contain  
21 any copy or colorable imitation of 3M’s Marks;

22 E. To award restitution as authorized by law;

23 F. To award Plaintiff pre-judgment and post-judgment interest against Defendant;

24 G. To award Plaintiff such other relief that the Court deems just and equitable;

25 H. To order that all monetary payments awarded to Plaintiff be donated to a COVID-  
26 19 charitable organization(s)/cause(s) of Plaintiff’s choosing.

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**DEMAND FOR JURY TRIAL**

Plaintiff requests a trial by jury for all issues so triable pursuant to FED. R. CIV. P. 38(b) and 38(c).

Dated: April 10, 2020

**MAYER BROWN LLP**

By: /s/ Dale Giali

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