

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil
(Consumer Protection)

Court File No. _____

In the Matter of Kevin Liu

**ASSURANCE OF
DISCONTINUANCE**

WHEREAS, this Assurance of Discontinuance (“Assurance”) is entered into pursuant to Minn. Stat. § 8.31, subd. 2b, between the State of Minnesota, through its Attorney General, Keith Ellison, and Kevin Liu (“Liu”);

WHEREAS, on March 20, 2020, as a result of the COVID-19 pandemic, Minnesota Governor Tim Walz issued Executive Order 20-10, which prohibits price-gouging for essential consumer goods or services beginning at 5:00 p.m. on March 21, 2020 and continuing for the duration of the peacetime emergency declared in Executive Order 20-01 on March 13, 2020. A true and correct copy of Executive Order 20-10 is attached hereto as “**Exhibit A.**”

WHEREAS, beginning at 5:00 p.m. on March 21, 2020, Executive Order 20-10 prohibits persons from selling, offering to sell, or causing to sell in Minnesota any essential consumer goods or services for an amount that represents an unconscionably excessive price. Executive Order 20-10 further vests the Attorney General with enforcement authority, including obtaining a civil penalty of up to \$10,000 per sale or transaction, as well as any other relief available in accordance with Minnesota Statutes section 8.31. Pursuant to Minn. Stat. § 12.32, “[o]rders and rules promulgated by the governor under authority of section 12.21, subdivision 3, clause (1), when approved by the Executive Council and filed in the Office of the Secretary of State, have, during a . . . peacetime emergency . . . the full force and effect of law.”

WHEREAS, it is alleged that, on or after 5:00 p.m. on March 21, 2020, Liu sold, offered to sell, or caused to sell essential consumer goods or services in Minnesota for an unconscionably excessive price in violation of Executive Order 20-10;

WHEREAS, the Attorney General and Liu (collectively, the “Parties”) desire to resolve fully this matter by Assurance; and

WHEREAS, Liu has executed a separate Confession of Judgment related to this Assurance;

NOW THEREFORE, the Attorney General and Liu hereby agree to entry of an order with the following terms and conditions:

FACTUAL ALLEGATIONS

1. Liu primarily conducts business over the internet using eBay.com. Liu is located at 9 Red Forest Way, St. Paul, Minnesota 55127.

2. The Attorney General alleges that on or after 5:00 p.m. on March 21, 2020, Liu sold, offered to sell, or caused to sell essential goods or services in St. Paul, Minnesota for an amount that represents an unconscionably excessive price in violation of Executive Order 20-10.

3. Specifically, the Attorney General alleges that Liu offered to sell and sold over 1,000 N-95 masks, including, but not limited to:

- 3M model 8210 masks at \$24.17/mask;
 - 3M has indicated that this mask’s list price is \$1.31/mask, making Liu’s markup roughly 1,744% over retail;
- 3M model 8210plus masks at \$16.67/mask;
 - 3M has indicated that this mask’s list price is \$1.50/mask, making Liu’s markup roughly 1,011% over retail;

- 3M model 8511 masks at \$14.50/mask;
 - 3M has indicated that this mask's list price is \$3.11/mask, making Liu's markup roughly 366% over retail;
- 3M model 8200 masks at \$8.75/mask;
 - 3M has indicated that this mask's list price is \$0.80/mask, making Liu's markup roughly 993% over retail;

4. Liu alleges that his prices above reflect shipping and administrative fees, in addition to higher-than-normal inventory acquisition costs charged by retailers from whom he purchased the masks.

5. The products listed above are essential consumer goods pursuant to Executive Order 20-10, because they are "health care goods and services, . . . medical supplies, and personal hygiene [and] sanitation" goods that are vital and necessary for the health, safety, and welfare of the public.

6. The Attorney General alleges that the prices at which Liu offered to sell or sold the above products after 5:00 P.M. on March 21, 2020, were unconscionably excessive in violation of Executive Order 20-10, because:

a. The amount charged by Liu for these products represents a gross disparity between the price of the good or service and price of the same good or service that was sold or offered for sale in the usual course of business during the thirty (30) days immediately prior to the peacetime emergency declared by Executive Order 20-01 on March 13, 2020;

b. The amount charged by Liu for these products is more than twenty percent (20%) greater than the price of the same good that was sold or offered for sale in the usual course of business during the thirty (30) days immediately prior to the peacetime emergency;

c. The amount charged grossly exceeds the price at which the same or similar good or service is readily obtainable by other purchasers in the trade area; and

7. The Attorney General alleges that Liu has failed to demonstrate that the excessive prices at which it has offered to sell or sold these products are substantially attributable to significant additional costs outside the control of Liu. The Attorney General alleges that the above-described alleged conduct violates Executive Order 20-10.

INJUNCTIVE RELIEF

9. Liu, including his principals, employees, agents, independent contractors, affiliates, as well as other persons in active concert or participation with Liu who receive actual notice of this order, shall comply with the following injunctive terms and provisions for the duration of the peacetime emergency declared in Executive Order 20-01 or until Executive Order 20-10 is rescinded:

- a. Liu shall not sell or offer to sell any essential good—including but not limited to N-95 face masks— as defined in Executive Order 20-10, for the duration of the peacetime emergency declared by Minnesota Governor Tim Walz in Executive Order 20-01, or until Executive Order 20-10 is rescinded.
- b. Liu shall not sell or offer to sell goods or services for an unconscionable price in violation of Minn. Stat. § 336.2-302.

10. Liu shall fulfill the terms of this Assurance, and all of his principals, employees, agents, independent contractors, affiliates, as well as other persons in active concert or participation with Liu who receive actual notice of this order shall be bound by this Assurance as if they had signed this Assurance, so as to accomplish the full relief contemplated by this

Assurance. Liu shall not affect any change in his form of doing business as a method or means of attempting to avoid the requirements of this Assurance.

MONETARY PAYMENT

11. Liu shall pay to the Attorney General the sum of \$6,806.82 (the “Settlement Sum”) pursuant to Minn. Stat. § 8.31. Liu shall pay \$450 per month to the Attorney General by the first day of each month, beginning on ~~August~~ September 1, 2020 until the Settlement Sum has been paid in full. All or any portion of the Settlement Sum may be used for any lawful purpose, including, but not limited to, distribution to consumers by the Attorney General in his discretion pursuant to Minn. Stat. § 8.31. Monies from the Settlement Sum may also be used for settlement administration expenses, including payment to a settlement administrator. Any remaining funds shall be remitted to the general fund of the State of Minnesota pursuant to Minn. Stat. § 8.31.

12. If Liu fails to pay the Settlement Sum as provided in Paragraph 11, or violates the injunctive relief as provided in Paragraphs 10 and 11, Liu consents to and authorizes the Attorney General to, *ex parte*, immediately file with the Court the Confession of Judgment that Liu executed in relation to this Assurance pursuant to Minnesota Statutes section 548.22, thereby rendering Liu immediately liable for the entire payment referenced in Paragraph 11, minus any amounts already paid by Liu pursuant to this Assurance. Liu further consents to and authorizes the Attorney General, at his sole discretion, to request and receive a copy of Liu’s credit reports from Equifax, Experian, and TransUnion after entry of this Assurance, and Liu acknowledges and admits that such procurement of credit reports constitutes a permissible purpose for a consumer reporting agency to furnish the reports under 15 U.S.C. § 1681b(a).

13. The above-referenced Settlement Sum payments shall be made payable to the State of Minnesota and sent by check to Assistant Attorney General Noah Lewellen, Minnesota Attorney General's Office, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101.

STAYED CIVIL PENALTY

14. Liu shall pay a stayed civil penalty of \$10,000 to the Attorney General upon application to the Court and a showing by the Attorney General that Liu has violated any of the terms of this Assurance and Order. The Court shall decide whether the stayed civil penalty shall be imposed and may hold an evidentiary hearing, if it deems such hearing necessary. The release in Paragraph 15 does not prevent the Attorney General from moving for, or collecting, the stayed civil penalty described in this Paragraph.

GENERAL TERMS

15. Nothing in this Assurance shall relieve Liu of its obligation to comply with all applicable Minnesota and federal laws and regulations.

16. In consideration of the stipulated relief and contingent upon the Court's entry of this Assurance, the Attorney General, by execution of this Assurance, hereby fully and completely releases Liu of any and all claims of the Attorney General under Executive Order 20-10, connected with or arising out of the allegations contained in this Assurance, up to and including the date of this Assurance. The Attorney General through this Assurance does not settle, release, or resolve any claim against Liu or any other person or entity involving any private causes of action, claims, and remedies, including, but not limited to, private causes of action, claims, or remedies provided for under Minn. Stat. § 8.31. This release does not apply in any way to claims of any other Minnesota state agency, department, official, or division.

17. This Assurance is neither an admission nor denial of liability by Liu.

18. This Assurance may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement. This Assurance may be executed by facsimile or electronic copy in any image format.

19. The person signing this Assurance for Liu warrants that Liu has authorized the person to execute this Assurance and that he or she executes this Assurance in an official capacity that binds Liu and its successors.

20. This Assurance constitutes the full and complete terms of the agreement entered into by Liu and the Attorney General.

21. The Parties agree that this Assurance, including any issues related to interpretation or enforcement, shall be governed by the laws of the State of Minnesota.

22. The Ramsey County District Court shall retain jurisdiction of this matter for purposes of enforcing this Assurance. The Attorney General may make such application as appropriate to enforce or interpret the provisions of this Assurance or, in the alternative, maintain any action within his legal authority for such other and further relief as he determines is proper and necessary for the enforcement of this Assurance. The parties agree that, in any action brought by the Attorney General to enforce the terms of this Assurance, the Court shall have the authority to award equitable relief, including specific performance.

23. The failure of a party to exercise any rights under this Assurance shall not be deemed to be a waiver of any right or any future rights.

24. Nothing in this Assurance shall be construed to limit the power or authority of the State of Minnesota or the Attorney General except as expressly set forth herein.

25. Liu understands that if a Court of competent jurisdiction holds that Liu has committed a violation of this Assurance, that such violation may subject Liu to sanctions for

contempt pursuant to Minn. Stat. § 8.31, subdivision 2b, and that the Attorney General may thereafter, in his sole discretion, initiate legal proceedings against Liu for any and all violations of this Assurance.

26. Each party shall perform such further acts and execute and deliver such further documents as may reasonably be necessary to carry out this Assurance.

27. Liu shall not state or imply, directly or indirectly, that the State of Minnesota or the Attorney General have approved of, condone, or agree with any conduct or actions by Liu.

28. Liu agrees that the Attorney General, without further notice to Liu, may file this Assurance with the Ramsey County District Court on an *ex parte* basis, and that the Court may issue the Order below without further proceedings.

29. Service of notices required by this Assurance shall be served on the following persons, or any person subsequently designated by the parties to receive such notices:

Noah Lewellen, Assistant Attorney General
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101

Kevin Liu
9 Red Forest Way
St. Paul, Minnesota 55127

Kevin Liu
9 Red Forest Way
St. Paul, MN 55127

KEITH ELLISON
Attorney General
State of Minnesota

Noah Lewellen

Date: August 12, 2020

By: _____
Noah Lewellen
Assistant Attorney General

Date: 8/12/2020

By: _____

Kevin Liu

ORDER

Having reviewed the terms of the foregoing Assurance of Discontinuance, which is incorporated herein by reference, and which the Court finds reasonable and appropriate, it is SO ORDERED.

Date: _____

JUDGE OF DISTRICT COURT

THERE BEING NO CAUSE FOR FURTHER DELAY, LET JUDGMENT BE ENTERED IMMEDIATELY.