

STATE OF COLORADO
OFFICE OF THE ATTORNEY GENERAL

ASSURANCE OF DISCONTINUANCE
IN THE MATTER OF NATIONWIDE MEDICAL SUPPLY INC

This Assurance of Discontinuance (“Assurance”) is entered into between the State of Colorado, *ex rel.* Philip J. Weiser, Attorney General for the State of Colorado (“the State” or “Attorney General”), and Respondent Nationwide Medical Supply Inc (“Nationwide” or “Respondent”). The State and the Respondent are collectively referred to as “the Parties.” This Assurance is entered into pursuant to the Attorney General’s powers under C.R.S. § 6-1-110(2) and constitutes a settlement between the Parties regarding the following allegations.

I. PARTIES

1. Philip J. Weiser is the duly elected Attorney General for the State of Colorado and has express jurisdiction to investigate and prosecute violations of the Colorado Consumer Protection Act (“CCPA”), Colo Rev. Stat. Sections 6-1-101 through 6-1-1214.

2. Nationwide is a Colorado corporation with its principal place of business at 4880 Havana Street, #102, Denver, Colorado 80239. Nationwide is owned and controlled by Jon C. Lewis.

II. DEFINITIONS

3. The term “Effective Date” means the first date upon which both of the following events have occurred: (a) the Parties’ full execution this Assurance, and (b) Respondent’s delivery of the payment described in Section V below.

4. Unless otherwise specified, all definitions found in C.R.S. § 6-1-102 are incorporated herein by this reference, and any term defined in those sections shall have the same meaning when used in this Assurance.

III. ALLEGATIONS

5. On March 10, 2020, Colorado Governor Jared Polis declared a state of emergency as a result of the presence of the coronavirus disease 2019 (“COVID-19”) in the State of Colorado.

6. On April 4, 2020, Lewis formed Nationwide Medical Supply. Prior to the pandemic, Lewis owned and operated a home show and home expo business. He had no prior experience in the medical supplies business. In or around April 2020, Nationwide began selling masks, respirators, latex gloves, hospital gowns, hand sanitizer, and other personal protective equipment and supplies (“PPE”) to Colorado consumers through a website they created, <https://nationwidemedicalsupplies.com/>.

7. Nationwide purchases masks and respirators from third parties and sells them at a markup.

8. Nationwide knowingly, intentionally, and/or recklessly made, authorized, sanctioned, and/or approved false and misleading representations about

the masks and respirators that Nationwide marketed and sold. Nationwide made such representations based on information that was provided to Nationwide by sales distributors, brokers, and other agents. Nationwide, however, failed to conduct proper due diligence as to the accuracy of that information before publishing the information on its website, [https://nationwide medicalsupplies.com/](https://nationwide-medicalsupplies.com/).

9. Nationwide’s website featured individual product pages with product information, price, and, for some products, a picture of the product. In some instances, the individual product pages on the website contained false and misleading representations about masks and respirators. The false and misleading representations include:

- Marketing a KN95 mask as an N95 respirator;
- False claims that a KN95 mask had a “510(k) number for the medical market”;
- False claims that an N95 respirator and a KN95 mask were “FDA/CE approved”; and
- Use of the FDA logo in violation of applicable law.

10. The State tested the filtration of two masks that Nationwide sold. While one mask performed at the advertised 95% removal filtration, a second mask did not meet the advertised 95% removal filtration, testing at approximately 70% removal filtration.

11. On at least one occasion, Lewis made false and misleading claims on social media, specifically LinkedIn. In late April 2020, Lewis claimed on his personal LinkedIn account, “If anyone in healthcare or government is looking for a

N95 Reusable mask, please contact me. We just received Niosh Approval, and start manufacturing this week. This is a USA product!” Neither Lewis nor Nationwide ever manufactured masks or respirators, nor did they ever receive approval from the National Institute of Occupational Safety and Health (“NIOSH”).

12. The above-described misrepresentations violate the CCPA, including but not limited to C.R.S. §§ 6-1-105(1)(b), (c), (e), (g), and (kkk).

13. Nationwide also engaged in price gouging in violation of C.R.S. § 6-1-105(1)(kkk) by charging unreasonably excessive prices for respirators and masks during a declared emergency.

14. For example, in or around April and May 2020, Nationwide sold a KN95 mask that it obtained for approximately \$2.75 per mask for a price that ranged from \$6 to \$9.95 per mask. The \$9.95 price was a markup of 261.82% above Nationwide’s cost.¹ In or around May 2020, Nationwide sold KN95 masks that it obtained for approximately \$1.97 per mask for a price that ranged from \$4 to \$7 per mask. The \$7 price was a markup of 255.33% above Nationwide’s cost.

15. In at least one instance, Lewis authorized his salespeople to negotiate prices with Nationwide’s customers and offered the salespeople a commission based on their ability to sell masks to “Medical and Government” purchasers for higher prices.

¹ For purposes of assessing potential price gouging by a seller who did not market or sell masks or respirators in the relevant market prior to the emergency declaration, the term “cost” is limited to the amount the seller paid for the masks or respirators and the shipping, customs, and distributor/broker fees necessary for the seller to obtain the masks or respirators.

IV. LEGAL AUTHORITY

16. C.R.S. section 6-1-110(2) authorizes the Attorney General to accept a voluntary payment from Nationwide of the costs of the State's investigation and any action or proceeding by the Attorney General and any amount necessary to restore to any person any money or property that may have been acquired by Nationwide by means of any deceptive trade practice. The Attorney General may also recover restitution and unjust enrichment under C.R.S. section 6-1-110(1) and penalties under C.R.S. section 6-1-112.

V. CONSIDERATION

17. The Attorney General and Nationwide enter into this Assurance as a compromise and settlement of the Attorney General's allegations herein and to avoid further expense of protracted litigation. This Assurance is entered into without adjudication of any issue of fact or law or finding of liability, and Nationwide was cooperative and responsive during the State's investigation. Nationwide denies that the State's "Allegations" set forth above violate the CCPA. Nationwide further contends that it has made improvements to its business practices, including, but not limited to the enforcement of a "code of conduct" signed by all employees that requires employees to abide by all state and federal laws, including laws prohibiting price gouging and deceptive trade practices.

18. Nationwide shall pay to the Attorney General \$70,000 on or before February 15, 2021. Payment shall be in the form of a certified check, cashier's

check, or money order made payable to the “Colorado Department of Law,” shall reference “Nationwide Medical Supply Inc” and shall be delivered to:

Mica Moore, Program Assistant
Consumer Protection Section
Colorado Department of Law
1300 Broadway, 7th Floor
Denver, Colorado 80203

All payments under this paragraph 18 are to be held, along with any interest thereon, in trust by the Attorney General to be used in the Attorney General’s sole discretion for reimbursement of the State’s actual costs and attorneys’ fees, the payment of restitution, if any, and for future consumer fraud or antitrust enforcement, consumer education, or public welfare purposes.

VI. RELEASE

19. The State acknowledges by its execution hereof that this Assurance constitutes a complete settlement and release of all claims under the CCPA on behalf of the State against Nationwide with respect to all claims, causes of action, damages, fines, costs, and penalties which were asserted or could have been asserted under the CCPA for the conduct described in this Assurance, that arose prior to the Effective Date and relating to or based upon the acts or practices which are the subject of this Assurance. The State agrees that, except as provided in this Assurance, it shall not proceed with or institute any civil action or proceeding under the CCPA against Nationwide for any conduct or practice prior to the Effective Date which relates to the subject matter of this Assurance.

VII. ASSURANCES OF RESPONDENT

Nationwide, its directors, officers, principals, employees, agents, contractors, assigns, servants, and all other persons in active concert or participation with Nationwide, whether directly or indirectly, agree as follows:

20. Nationwide shall make no false or misleading representations about any mask or respirator that Nationwide markets or sells. This includes but is not limited to false or misleading representations relating to certifications, approvals, registrations, TC numbers, NIOSH approval, country of origin, filtration capacity, or any other attribute or benefit of any mask or respirator.

21. Nationwide shall make no representations as to certifications, approvals, registrations, TC numbers, NIOSH approval, country of origin, or filtration capacity unless Nationwide has verifiable documentation establishing the veracity of such representations.

22. Nationwide shall not use the logo of the United State Food and Drug Administration (“FDA”) or the Centers for Disease Control and Prevention (“CDC”) in any of their advertisements or other communications with consumers.

25. Nationwide shall conduct due diligence to ensure that all masks, respirators, and PPE they sell are authentic and that any and all certifications, approvals, registrations, TC numbers, statements of country of origin, or statements of filtration capacity are authentic and valid. Such due diligence shall include, but not be limited to a) requests for documentation from the manufacturers or

distributors; b) a detailed review of such documentation; c) cross-checking the masks and respirators against the CDC's list of Counterfeit Respirators / Misrepresentation of NIOSH-Approval, currently found at: <https://www.cdc.gov/niosh/npptl/usernotices/counterfeitResp.html>; d) confirming the product description from the manufacturer or distributor matches the product purchased, received, and sold; and e) and ensuring that the sale of the masks, respirators, and other PPE fully complies with all federal laws and regulations, including but not limited to any and all Emergency Use Authorizations by the United States Food and Drug Administration.

26. Nationwide shall not market, advertise, or represent any mask or respirator as "N95," "NIOSH-approved," or similar terms unless Nationwide:
 - a. Maintains complete documentation relating to each purchase they make of the respirator, including the lot number; the TC approval number; the model or part number; and the name, address, phone number, email address of the company from whom Nationwide purchased the respirator;
 - b. Maintains complete and accurate records sufficient to trace the information listed in paragraph 26(a) above to each respirator that Nationwide sells, and the name, telephone number, address, and email address of the person who purchased the respirator;
 - c. Either:

- i. Purchases the respirators directly from the manufacturer or one of the manufacturer's authorized distributors; or
 - ii. Maintains documentation, provided by the person or entity from which Nationwide purchased the respirator(s), that establishes that the respirator(s) Nationwide purchased was purchased from the manufacturer or from one of the manufacturer's authorized dealers; and
- d. Otherwise comply with this Assurance.

27. Nationwide shall not use the words "medical," "medical grade," or similar language to describe any masks, respirators, or other PPE Nationwide sells unless Nationwide clearly and conspicuously explains and discloses the meaning of these terms on the same page of the advertisement or other written communication in which the term appears.

28. Nationwide shall not use the words "medical," "medical grade," or similar language to describe KN95, FFP2, or similar foreign masks or respirators unless such masks or respirators are on the FDA's most recent Emergency Use Authorization, Appendix A: Approved Imported, Non-NIOSH Approved Respirators Manufactured in China or the Umbrella Emergency Use Authorization for Imported, Non-NIOSH-Approved Disposable Filtering Facepiece Respirators, Exhibit 1 (collectively, "FDA Authorized Lists"). The Parties recognize that the FDA Authorized Lists have changed multiple times. To comply with this provision, Nationwide shall review the FDA Authorized Lists three times weekly and update

all representations using the terms “medical” or “medical grade” or similar language accordingly.

29. In all advertisements, sales transactions, and other written communications with consumers, Nationwide shall clearly and conspicuously disclose the following information about each and every respirator and mask they market or sell:

- a. Manufacturer;
- b. Country of manufacture;
- c. The approximate date the respirators, masks, or other PPE are or will be available for shipping from a location in the United States to the Nationwide customer, or pick-up by the customer;
- d. For all KN95, FFP2, or similar foreign masks or respirators, whether or not the mask or respirator is on the FDA Authorized Lists, with a hyperlink to the page on the FDA website containing the most recent list;
- e. If Nationwide is unable, through its due diligence efforts set forth in Paragraph 25, above, to verify any claim or representation about the mask (or other PPE) made by a manufacturer or distributor of the mask or other PPE (e.g., on the packaging of the mask or other PPE), the fact that Nationwide was unable to verify such claim or representation. This subparagraph does not in any way relieve Nationwide of its other obligations under this Assurance.

29. Nationwide may charge customers or accept payment for masks, respirators, or other PPE before Nationwide has received delivery of the product from the Respondent's supplier or distributor ("Pre-Orders"). However, when marketing products for Pre-Order, Nationwide must comply with the provisions in Paragraphs 28(c) above, which includes a clear and conspicuous disclosure of the approximate date the masks, respirators, or other PPE will be available for shipping from a location in the United States to the Nationwide customer, or pick-up by the customer. In the event the masks, respirators or other PPE are not available within seven (7) days from the date of availability Nationwide disclosed at the date of sale, Nationwide shall send an email to all customers who prepaid for the PPE advising them of the delay and offering the option to receive a full refund.

30. If any material attribute of a mask, respirator, or other PPE (including but not limited to regulatory approval, filtration efficacy, presence on FDA Authorized Lists, or other status) changes between the time that Nationwide receives payment from a customer and the time Nationwide ships or the customer picks up the product, Nationwide shall, within two business days, contact the customer to inform the customer of the change and offer the customer a full refund.

31. Within thirty days of the Effective Date of this Assurance, Nationwide shall, at its own expense, contract with a reputable and qualified third party to test the filtration capacity of at least twenty samples of all N95 respirators and KN95, FFP2, or similar foreign masks that Nationwide is marketing or selling as of the Effective Date of this Assurance. Nationwide must propose a third party to conduct

the testing, and the State, in its sole discretion, must approve the third party prior to the third party's commencing testing. If any mask or respirator does not perform at the claimed or advertised filtration capacity, Nationwide shall:

- a. Immediately stop selling the mask or respirator;
- b. Inform all Nationwide customers who previously purchased the mask or respirator, or have placed an order for the mask or respirator, of the test result (including the exact removal filtration); and
- c. Cease purchasing masks made by the manufacturer of the mask or respirator.

32. If, after the Effective Date of this Assurance, Nationwide begins purchasing N95 respirators, KN95, FFP2, or similar foreign masks that are made by a manufacturer whose masks Nationwide was not selling as of the Effective Date of this order, Nationwide shall, at its own expense and prior to beginning the sale of such respirators or masks, contract with a reputable and qualified third party to test the filtration capacity of at least twenty samples of all such respirators and masks. Nationwide must propose a third party to conduct the testing, and the State, in its sole discretion, must approve the third party prior to the third party's commencing testing. If any N95 respirator or KN95, FFP2, or similar foreign mask does not perform at the claimed filtration capacity, Nationwide may not sell such respirator or mask.

33. The testing requirements set forth in Paragraphs 31 and 32 shall not apply to NIOSH-approved N95 respirators that are manufactured by companies

that are incorporated in and based in the United States and that Nationwide purchases from suppliers or distributors that are incorporated in and based in the United States, provided that Nationwide has otherwise complied with its obligations under this Assurance.

34. The testing requirements set forth in Paragraphs 31 and 32 shall not apply to KN95 masks, FFP2, or similar foreign masks if 1) the mask is on the FDA Authorized Lists; 2) Nationwide purchases the mask directly from the manufacturer or from a person or company that appears on the manufacturer's current authorized distributor list; and 3) Nationwide has otherwise complied with its obligations under this Assurance.

35. During the time period of the COVID-19 disaster emergency the Governor has declared pursuant to C.R.S. § 24-33.5-704(4), Nationwide shall not charge any unfair or unconscionable price for masks or respirators.

36. Nationwide shall submit compliance reports – sworn under penalty of perjury by Lewis – six months, twelve months, and eighteen months after the Effective Date of this Assurance. The compliance reports must:

- a. Identify the primary postal and email address and telephone number, as designated points of contact, which the State may use to communicate with Nationwide in connection with this Assurance;
- b. Describe in detail the steps Nationwide has taken to comply with each paragraph of this Assurance;

- c. Identify and explain the circumstances of any failure on the part of Nationwide to comply with any paragraph of this Assurance;
- d. Provide the State all third-party filtration testing reports received under Paragraphs 31 and 32, above, and;
- e. Identify the name, street address, telephone number, job title, and email address of all of Nationwide's directors, officers, agents, servants, employees, and contractors.

37. Nationwide further agrees to cooperate with any proceedings, inquiries, or investigations arising out of the State's monitoring or investigation of compliance with this Assurance. This includes submission of additional compliance reports the State may request, promptly responding to reasonable requests for information made by the State, and making Lewis or any other principals or employees available for interviews and/or Civil Investigative Demand ("CID") testimony.

38. Within fourteen days of the Effective Date, Nationwide shall hire a compliance officer. Nationwide shall comply with the CCPA in conducting business in the State of Colorado.

VIII. ENFORCEMENT

39. The obligations set forth in this Assurance are continuing.

40. A violation of any of the terms of this Assurance shall constitute a prima facie violation of the CCPA in accordance with C.R.S. § 6-1-110(2). Upon a violation of any of the terms of this Assurance by Nationwide, the Attorney General

shall be entitled to file a civil action under the CCPA in any court of competent jurisdiction and to seek an injunction or other appropriate order from such court to enforce the provisions of this Assurance and for appropriate monetary remedies.

41. In addition to any remedies provided under the CCPA, the Attorney General shall be entitled to apply for and seek from a court of competent jurisdiction an order converting this Assurance into a permanent injunction against Nationwide as if the parties had fully litigated all issues contained herein, upon a showing by the Attorney General of a material violation by Nationwide of this Assurance. In such event, Nationwide agrees to waive any and all defenses and counterclaims it may have had to such an action, except as to claims or defenses related to the alleged violation of this Assurance or as to the need for injunctive relief.

42. This Assurance shall not be construed to create, waive, or otherwise affect any rights of any private party to pursue remedies pursuant to C.R.S. § 6-1-113, or any other statute or claim in common law. Nor shall this Assurance create, waive, or otherwise affect any remedies or defenses of the Parties in respect to any third parties.

43. Nothing in this Assurance shall be construed to release claims held by any other governmental authority.

44. Pursuant to C.R.S. § 6-1-110(2), this Assurance shall be a matter of public record.

45. This Assurance may be executed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute the Assurance.

46. The person who signs this Assurance in a representative capacity for Nationwide warrants that he or she is duly authorized to do so. Nationwide acknowledges that it had a full opportunity to review this Assurance and consult with legal counsel regarding same. Nationwide agrees and represents that it has read and understands this Assurance and that it accepts the legal consequences involved in signing it.

IX. MISCELLANEOUS PROVISIONS

47. This Assurance is the final, complete, and exclusive statement of the Parties' agreement on the matters contained herein, and it supersedes, terminates, and replaces any and all previous negotiations, agreements, and instruments as may exist between the Parties. Other than any representation expressly stated in this Assurance, the Parties have not made any representations or warranties to each other, and no Party's decision to enter into this Assurance is based upon any statements by any other Party outside of those in this Assurance. No change or modification of this Assurance shall be valid unless in writing and signed by all Parties. If any provision(s) of this Assurance is held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

48. Under no circumstances shall this Assurance or the name of the Attorney General or any of the State's employees or representatives be used by Nationwide, Lewis, or any person under their direction or control in any way that suggests the State's endorsement of Nationwide's past, present, or future conduct.

49. Nothing herein relieves Nationwide of its duty to comply with all applicable laws, regulations, or rules of the State of Colorado nor constitutes authorization by the State for Nationwide to engage in acts and practices prohibited by such laws.

50. Nationwide acknowledges that it is the State's customary position that an agreement restraining certain conduct by a party does not prevent the State from addressing later conduct that could have been prohibited, but was not, in the earlier agreement, unless the earlier agreement expressly limited the State's enforcement options in that manner. Therefore, nothing herein shall be interpreted to prevent the State from taking enforcement action to address conduct occurring after the Effective Date that the State believes to be in violation of the law. The fact that such conduct was not expressly prohibited by the terms of this Assurance shall not be a defense to any such enforcement action.

51. The terms and provisions of this Assurance may be enforced by the current Colorado Attorney General, and by any of his duly authorized agents or representatives, as well as by any of his successors in interest, and by any of his successors in interest's agents or representatives. Nothing herein precludes the Attorney General from enforcing the provisions of this Assurance pursuant to its

terms, or from pursuing any law enforcement action under the CCPA or any other applicable law with respect to any unrelated acts or practices of Nationwide not covered by the Attorney General's investigation and this Assurance or any acts or practices of Nationwide conducted after the Effective Date of this Assurance.

X. NOTICE

52. All notices regarding this Assurance shall be sent by certified mail, or reputable overnight delivery service (e.g., FedEx, UPS) and email at the addresses set forth below unless any Party notifies the other Parties in writing of another address to which notices should be provided:

To Respondent Nationwide Medical Supply Inc.

Address: 4880 Havana Street, Suite 102
Denver, CO 80239

Email: jon@nationwidemedicalsupplies.com
Phone: 720-227-0576
Fax: 303-592-4515

To the Attorney General:

Mark T. Bailey
Senior Assistant Attorney General II
mark.bailey@coag.gov
Diane Hazel
First Assistant Attorney General
diane.hazel@coag.gov
Consumer Fraud Unit
1300 Broadway, 7th Floor
Denver, CO 80203
Fax: 720-508-6040


[Signature[s] appear on the following pages.]

Respondent Nationwide Medical Supply, Inc.

Date: _____

By: _____

PHILIP J. WEISER
Attorney General



Date: January 17, 2021

By: Mark T. Bailey