

# *New Jersey Office of the Attorney General*

Division of Consumer Affairs  
Office of Consumer Protection  
124 Halsey Street, 7<sup>th</sup> Floor, Newark, NJ 07102



PHILIP D. MURPHY  
Governor

SHEILA Y. OLIVER  
Lt. Governor

June 10, 2020



GURBIR S. GREWAL  
Attorney General

PAUL R. RODRÍGUEZ  
Acting Director

## **VIA HAND DELIVERY, CERTIFIED MAIL, AND REGULAR MAIL**

Performance Supply, LLC  
c/o Ronald Romano, Registered Agent  
3 Westbrook Way  
Manalapan, New Jersey 07226

*Mailing Address:*  
P.O. Box 45025  
Newark, NJ 07101  
(973) 504-6200

## **NOTICE OF VIOLATION AND OFFER OF SETTLEMENT**

Dear Mr. Romano:

The New Jersey Division of Consumer Affairs, Office of Consumer Protection ("Division") is charged with the enforcement of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -224 ("CFA"), and the Regulations Governing General Advertising Practices, N.J.A.C. 13:45A-9.1 to -9.8 ("Advertising Regulations"). The Division conducted an investigation of Performance Supply, LLC ("You" or "Your") after receiving information raising concerns regarding Your advertising and sales practices in the midst of the current public health crisis related to the coronavirus (COVID-19) pandemic ("Investigation"). Specifically, the Division received information that You were advertising and offering for sale personal protective equipment ("PPE") at excessive prices and making false and misleading statements in Your advertisement of PPE. As part of the Investigation, the Division issued a Subpoena to You on May 14, 2020. You failed to produce documents in response to the Subpoena.

The World Health Organization declared COVID-19 a global health emergency on January 30, 2020 and subsequently declared COVID-19 a pandemic on March 11, 2020. On March 9, 2020, Governor Philip D. Murphy issued Executive Order No. 103 (2020), declaring both a Public Health Emergency and a State of Emergency. Shortly thereafter, a national emergency was declared in the United States on March 13, 2020. As set forth in the attached Certification of Investigator Demetra Murray (Investigator Murray), You have been found to have violated the CFA and the Advertising Regulations by charging unconscionable prices in the sale of 3M N95 Respirators after the issuance of Executive Order No. 103 (2020) and the declaration of the national emergency on March 13, 2020.

On or about March 30, 2020, You advertised and offered PPE for sale to personnel from the New York City Office of Citywide Procurement ("Formal Quote"), specifically "3M Particulate Respirator 8210, N95 160 EA/Case" masks and "3M Health Care Particulate Respirator 1860, N95 120 EA/Case" masks. You offered the masks for \$6.05 per mask for the 8210 model and \$6.35 per mask for the 1860 model, at least 400% to 500% above 3M Company's list prices for the masks. The Formal Quote also contained false or misleading

statements relating to the sale of the masks and suggesting Performance Supply is an authorized dealer or distributor of 3M Company Masks. The Attorney General of New Jersey and the Division will not tolerate unfair business practices, or any other attempt to prey on or profit from consumers' need for essential items relating to the COVID-19 pandemic.

Based on its review of documents and information identified in the course of the Investigation, and as provided in the attached certifications, the Division has determined that You have violated the CFA and the Advertising Regulations.

The CFA, specifically N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing[] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby . . . .

Without limiting the application of the CFA, the Advertising Regulations govern general advertising practices and identify unlawful advertising practices which include:

9. The making of false or misleading representations of facts concerning . . . the nature of an offering.

[N.J.A.C. 13:45A-9.2(a)(9).]

As set forth in the attached certifications, You have engaged in unconscionable commercial practices and acts of deception, and have made misrepresentations to consumers by: (1) advertising and offering for sale PPE at excessive prices; (2) falsely implying that You are affiliated with a manufacturer of PPE products; and (3) providing false or misleading representations of facts concerning the nature of an advertised offer. As a result of the Division's Investigation, You have been found to have violated the CFA and the Advertising Regulations by:

1. Engaging in an unconscionable commercial practice in the advertising and offering for sale of merchandise consumed or used as a direct result of an emergency and/or which is consumed or used to preserve, protect, or sustain the life, health, safety or comfort of a person or their property, specifically 3M Particulate 8210, N95 masks and 3M Health Care Particulate Respirator 1860 N95 masks, at excessive prices; and
2. Engaged in the advertising and offering for sale of merchandise which included false or misleading representations of fact concerning the nature of an offering.

Each of these violations constitutes a separate violation of the CFA, subjecting You to civil penalties, pursuant to **N.J.S.A. 56:8-13**.



**IF YOU DO NOT CONTEST THE VIOLATIONS ALLEGED** and wish to avail Yourself of this opportunity to settle the Investigation, within **fifteen (15)** days from the date of this Notice, You should sign and return the **enclosed Answering Certification** and agree to:

1. Cease and desist from engaging in any practices in violation of the CFA and the Advertising Regulations;
2. Cease and desist from the advertising, offering for sale, and sale of PPE in violation of the CFA and the Advertising Regulations; and
3. Pay a civil penalty in the amount of \$12,500.00.

**If the above-referenced payment in the total amount of \$12,500.00 is received by the Division within 15 days of the date of this Notice, along with your signed Answering Certification, You need not do anything further.**

**IF YOU DO NOT CONTEST THE VIOLATIONS ALLEGED**, but want to present information to Division representatives about any mitigating circumstances in Your case that may persuade the Division to reduce the civil penalty, You may request an informal **Mitigation Conference**. If You request a Mitigation Conference, **You will waive Your right to an Administrative Hearing**. The Mitigation Conference date is **July 9, 2020 at 11:30 a.m., at 124 Halsey Street, 7th Floor, Newark, New Jersey 07102 with Investigator Murray, a representative of the Division. You may be accompanied by an attorney. Should you have any questions regarding this procedure, or seek an adjournment of this date, please contact Investigator Murray at (973) 504-6244 or MurrayD@dca.njoag.gov. Alternatively, You may send written documentation to the Division concerning any mitigating circumstances that You believe may persuade the Division to reduce the civil penalty. To elect either of these options, You must return the enclosed Answering Certification within fifteen (15) days from the date of this Notice.** The Division will then review this material and respond to You.

**IF YOU CONTEST THE VIOLATIONS ALLEGED**, and do not wish to settle the matter consistent with the terms set forth above, **You may request a formal Administrative Hearing by returning the enclosed Answering Certification within fifteen (15) days from the date of this Notice to Investigator Murray at the email address indicated above.** In that event, this Notice will serve as notice of the violations against you. You should be aware that in making his final decision, the Director of the Division may, if violations of the above-referenced statute and regulations have been proven, order civil penalties and remedies other than the settlement offer above. **Specifically, You may be ordered to: pay civil penalties in an amount up to \$10,000 for the first violation and up to \$20,000 for the second violation and each subsequent violation pursuant to N.J.S.A. 56:8-13; pay consumer restitution pursuant to N.J.S.A. 56:8-15; pay investigative costs and attorneys' fees to the Division, pursuant to N.J.S.A. 56:8-11 and 56:8-19; and cease and desist from any act or practice in violation of the CFA, pursuant to N.J.S.A. 56:8-18.**

Before a determination is made with regard to whether an **Administrative Hearing** will be conducted before the Director of the Division or referred to the Office of Administrative Law, a **Pre-Hearing Conference** will be held. If You request an




**Administrative Hearing**, your **Pre-Hearing Conference** will be scheduled on **July 9, 2020 at 11:30 a.m., at 124 Halsey Street, 7th Floor, Newark, New Jersey 07102** with **Investigator Murray**, a representative of the Division. **You may be accompanied by an attorney.** Should You have any questions regarding this procedure, or seek an adjournment of this date, please contact **Investigator Murray**, who may be reached at **(973) 504-6244 and MurrayD@dca.njoag.gov.** **Your attendance at this Pre-Hearing Conference is mandatory.** Any failure to appear without a satisfactory explanation may result in an order barring You from raising certain defenses at the **Administrative Hearing**, pursuant to **N.J.A.C. 1:1-14.4.** The purpose of this **Pre-Hearing Conference** is to discuss the issues in this matter and the defenses which You may wish to raise. You should be prepared to discuss the evidence You will propose to offer at the **Administrative Hearing.** It may be helpful if You bring to the **Pre-Hearing Conference** a copy of any documentation that supports Your position. If the Director of the Division determines that there are no material facts in dispute, You will have an opportunity to submit legal arguments and any documentation that may be relevant to the ultimate disposition of this matter. If there are material facts in dispute, an **Administrative Hearing** will be scheduled. During the **Administrative Hearing**, You, either personally or with the assistance of an attorney, will have an opportunity to respond to the alleged violations and submit evidence and present testimony as may be necessary for the Director of the Division to make a final determination. **Pursuant to N.J.A.C. 1:1-5.1, and except as provided in N.J.A.C. 1:1-5.4, a corporation must be represented by an attorney.**

**IF YOU FAIL TO RESPOND to this Notice within fifteen (15) days of the date of this Notice, the settlement offer will be withdrawn, and You will be deemed in default.** The allegations against You will be deemed uncontested. Thereafter, this Notice and the underlying proofs may be reviewed by the Director of the Division, and a **Final Decision and Order on Default (“Order”)** will be issued, and **You may be ordered to: pay civil penalties in an amount up to \$10,000 for the first violation and up to \$20,000 for the second violation and each subsequent violation pursuant to N.J.S.A. 56:8-13; pay consumer restitution pursuant to N.J.S.A. 56:8-15; pay investigative costs and attorneys’ fees to the Division pursuant to N.J.S.A. 56:8-11 and 56:8-19; and cease and desist from any act or practice in violation of the CFA, pursuant to N.J.S.A. 56:8-18. You will receive no further notice from the Division prior to issuance of an Order.** Once an **Order** has been entered, Your failure to pay any civil penalties, attorneys’ fees, investigative costs and/or restitution within the time allowed will result in the filing of a **Certificate of Debt.** **Any subsequent violation of an Order with a cease and desist provision may subject You to a penalty of up to \$25,000 per violation pursuant to N.J.S.A. 56:8-18.** Service of an **Order** will be deemed effective if sent by first-class mail and certified mail, return receipt requested, to your last known mailing address.

Should You have any questions, please contact **Investigator Murray** at **(973) 504-6244 and MurrayD@dca.njoag.gov.**

New Jersey Division of Consumer Affairs  
Office of Consumer Protection

By:   
\_\_\_\_\_  
Gregory K. Turner  
Assistant Deputy of Enforcement

**ANSWERING CERTIFICATION**  
**Performance Supply, LLC**

I, \_\_\_\_\_, hereby acknowledge that I have read and reviewed the Notice, regarding alleged violations of the **CFA, N.J.S.A. 56:8-1 to -224**, and **the Advertising Regulations, N.J.A.C. 13:45A-9.1 to -9.8**.

**PLEASE CHECK ONE OF THE OPTIONS BELOW:**

**(OPTION 1): Performance Supply, LLC**

\_\_\_\_\_ **I DO NOT CONTEST THE VIOLATIONS ALLEGED** and acknowledge the conduct that has been alleged and **agree** to:

1. Cease and desist from engaging in any acts and practices in violation of the CFA and the Advertising Regulations;
2. Cease and desist from the advertising, offering for sale, and sale of PPE in violation of the CFA and the Advertising Regulations; and
3. Pay a civil penalty in the amount of \$12,500.00.

**I understand that if the above-referenced payment in the total amount of \$12,500.00 is received by the Division, along with my signed Answering Certification, I need not do anything further.**

I am also aware that the action taken against Performance Supply, LLC by the Division herein is a matter of public record and that the Division's **Notice** and this Answering Certification are public documents. I am enclosing herewith a cashier's check or money order in the sum of **\$12,500.00** made payable to the "New Jersey Division of Consumer Affairs," which I am mailing or delivering to: New Jersey Department of Law and Public Safety, Division of Consumer Affairs, Office of Consumer Protection, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101, ATTN: **Van Mallett, Lead Investigator**.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

SIGN NAME

Name: \_\_\_\_\_

PRINT NAME



**(OPTION 2): Performance Supply, LLC**

\_\_\_\_\_ **I DO NOT CONTEST THE VIOLATIONS ALLEGED** and hereby waive any rights I may have to a hearing in this matter to defend Performance Supply, LLC against any alleged violations, **BUT** I ask the Division to consider mitigating circumstances before rendering its final decision.

\_\_\_\_ I request a **Mitigation Conference** to present information to Division representatives; I understand that the Mitigation Conference will be held **on July 9, 2020 at 11:30 a.m., at 124 Halsey Street, 7th Floor, Newark, New Jersey 07101. I am aware that I may be represented by an attorney at the Mitigation Conference.**

\_\_\_\_ I am submitting **written documentation concerning mitigating circumstances**; I understand that the Division will consider this material before rendering a final decision.

I understand that, if, after considering the mitigation evidence presented, the Division is not persuaded that any reduction in the amounts set forth above and in the **Notice** is warranted or that any of the other terms or conditions should be modified, the following terms may be ordered and Performance Supply, LLC will be obligated to:

1. Cease and desist from engaging in any practices in violation of the CFA and the Advertising Regulations;
2. Cease and desist from the advertising, offering for sale, and sale of PPE in violation of the CFA and the Advertising Regulations; and
3. Pay a civil penalty in the amount of \$12,500.00.

If a modification in these terms is accepted by the Division, I will be notified of the amounts that I must pay. I am also aware that the action taken against Performance Supply, LLC by the Division herein is a matter of public record and that the Division's **Notice** and this Answering Certification are public documents. I am further aware that failure to comply may subject Performance Supply, LLC to further enforcement proceedings and any failure to make a required payment will result in the filing of a **Certificate of Debt**.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
SIGN NAME

Name: \_\_\_\_\_  
PRINT NAME

**(OPTION 3): Performance Supply, LLC**

**I CONTEST THE VIOLATIONS ALLEGED** and **request a formal Administrative Hearing**. I understand that I am required to attend a **Pre-Hearing Conference on July 9, 2020 at 11:30 a.m., at 124 Halsey Street, 7th Floor, Newark, New Jersey 07102**, at which the issues in this matter will be discussed. **I am aware that I may be represented by an attorney at the Pre-Hearing Conference.**

If the Division and I agree upon any essential settlement terms at the **Pre-Hearing Conference**, I understand that:

1. These terms will be included in a document ("Pre-Hearing Settlement Sheet");
2. The Division representative and I will sign the Pre-Hearing Settlement Sheet and Performance Supply, LLC will be bound by it; and
3. The Division will send me a **Consent Order**, which will include all settlement terms. I also understand that **I must sign and return the Consent Order and any required payment to the Division within thirty (30) days** of the date that the Division sends it to me.

I further understand that if I fail to do so, the Division will present this matter to the Director of the Division based upon the **Notice**, and a **Final Decision and Order After NOV ("Order")** will be issued. **I will receive no further notice from the Division prior to issuance of an Order.**

If the Division and I do not agree upon settlement terms at the **Pre-Hearing Conference**, I will thereafter be advised of the time, date and place for the **Administrative Hearing** if a determination has been made that there are material facts in dispute. **I am aware that I may be represented by an attorney at the Administrative Hearing.** I am also aware that at the time of the **Administrative Hearing**, I may offer testimony, documentation and legal argument relevant to the alleged violations. **I understand that in making a final decision, the Director of the Division may, if unlawful activity has been proven, assess civil penalties, restitution, attorneys' fees and investigative costs and/or issue a cease and desist order exceeding the settlement offer in the Notice**, and may order such other remedies as deemed appropriate. I am also aware that this proceeding is a matter of public record and that the **Notice** and this **Answering Certification** are public documents.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
SIGN NAME

Name: \_\_\_\_\_  
PRINT NAME

**PERFORMANCE SUPPLY, LLC**  
**3 Westbrook Way**



**Manalapan, New Jersey 07226**

**INVESTIGATIVE CERTIFICATION**

I, Demetra Murray, being of full age, do hereby certify as follows:

1. I am employed as an Investigator by the Office of the Attorney General, Division of Consumer Affairs, Office of Consumer Protection (“Division”), located at 124 Halsey Street, Newark, New Jersey 07101, and have held that position at all times relevant to this Certification.
2. In that capacity, I am responsible for investigating possible violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -224 (“CFA”), and related statutes and regulations, including the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 to -9.8 (“Advertising Regulations”).
3. On or about April 13, 2020, the Division commenced an official investigation to determine whether Performance Supply, LLC (“Performance Supply”) was engaged in conduct in violation of the CFA and/or the Advertising Regulations through the advertisement, offering for sale, and/or sale of personal protective equipment (“PPE”) to consumers.
4. On April 20, 2020, I obtained information from the New Jersey Department of Treasury, Division of Commercial Recording as to Performance Supply. That information indicates that Ronald Romano is the managing member and registered agent of Performance Supply with an active registered agent address at 3 Westbrook Way, Manalapan, New Jersey 07726. (See New Jersey Corporate Records, attached as Exhibit A).
5. On April 30, 2020, I obtained and reviewed documents filed in connection with 3M Company v. Performance Supply, LLC, Case No. 1:20-cv-02949-LAP, S.D.N.Y., filed April 13, 2020. Among the documents received and reviewed was a formal quote from Performance Supply that was provided to personnel from the New York City Office of Citywide Procurement on or about March 30, 2020 (“Formal Quote”). (See Formal Quote attached as Exhibit B.) The Formal Quote advertised and offered PPE for sale, specifically “3M Particulate Respirator 8210, N95 160 EA/Case” masks and “3M Health Care Particulate Respirator 1860, N95 120 EA/Case” masks. Performance Supply offered the masks for \$6.05 per mask for the 8210 model and \$6.35 per mask for the 1860 model. (Id.)

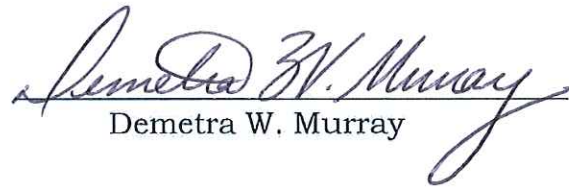
6. The Formal Quote also stated that, “Due to the national emergency, acceptance of the purchase order is at the full discretion of 3M and supplies are based upon availability. The N95 masks 3M can begin shipping in 2-4 weeks CIF at any of 3M plants in the USA or 3M Plants Overseas according to their manufacturing schedule. 3M chooses the plant. Order may be shipped in whole or in part.” (See Exhibit B.)
7. The Formal Quote references a “Headquarters” located in “St. Paul, Minnesota, USA,” and also states, “Please address Purchase Order to: Mr. Ron Romano, President, Performance Supply, LLC, P.O. Box 672, Englishtown, NJ 07726, via 3BP, Inc.” (See Exhibit B.)
8. Attached to the Formal Quote are 3M Technical Specification Sheets for each of the two offered mask models. (See Exhibit B.)
9. On April 30, 2020, I also reviewed a document published by 3M Company in response to the Coronavirus pandemic. The document states that the company has “not increased the prices we charge for 3M respirators in this crisis.” (See 3M Company Statement entitled, “Helping the World Respond to COVID-19,” published April 9, 2020, available at [https://www.3m.com/3M/en\\_US/company-us/coronavirus/](https://www.3m.com/3M/en_US/company-us/coronavirus/) attached as Exhibit C.)
10. On April 30, 2020, I reviewed a document published by 3M Company in response to the Coronavirus pandemic and potential price gouging in the marketplace. The document advises consumers to purchase products only from a 3M authorized distributor or dealer and also provides list prices for various 3M brand respiratory models, including 8210 and 1860 models. The list price for 8210 models is \$1.02 to \$1.31 per mask. The list price for 1860 models is \$1.27 per mask. (See 3M Company Statement entitled, “Fraudulent Activity, Price Gouging, and Counterfeit Products,” published March 31, 2020, available at <https://multimedia.3m.com/mws/media/18036700/fraudulent-activity-price-gouging-and-counterfiet-products.pdf> attached as Exhibit D.)
11. On May 1, 2020, I reviewed the declaration of Charles Stobbie, 3M Company Marketing Technologies and Digital Experience Director, in support of plaintiff 3M Company’s application for a temporary restraining order and preliminary injunction, 3M Company v.



Performance Supply, LLC, Case No. 1:20-cv-02949-LAP, S.D.N.Y., filed April 24, 2020. The declaration states that Performance Supply “is not authorized to solicit purchase orders from customers for submission to 3M for approval. Nor is Performance Supply authorized to state how, when, where, or in what quantity such order would be filled. The Formal Quote does not accurately describe how 3M fills N95 orders. Indeed, 3M fills orders for its N95 respirators by accepting purchase orders from 3M’s authorized distributors and wholesalers and, to a lesser extent, directly from the government. 3M does not accept purchase orders from unauthorized resellers.” The declaration also states, “Performance Supply was not associated with 3M” at the time it solicited the New York City Office of Citywide Procurement (See Deputy Attorney General Certification, Exhibit A.)

12. A review of the Formal Quote and the list pricing provided by 3M Company shows a markup by Performance Supply of PPE of approximately at least 400% to 500%.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
Demetra W. Murray

Dated: June 10, 2020  
Newark, New Jersey