

IN THE COURT OF COMMON PLEAS OF
BERKS COUNTY, PENNSYLVANIA

IN THE MATTER OF

COMMONWEALTH OF PENNSYLVANIA
Acting by Attorney General
JOSH SHAPIRO

Petitioner,

v.

NATURE'S GARDEN, LTD.
4290 Perkiomen Avenue
Reading, Pennsylvania 19606

Respondent.

Civil Division - Equity

No. _____

ASSURANCE OF VOLUNTARY COMPLIANCE

AND NOW, comes the Commonwealth of Pennsylvania, Office of Attorney General, by Attorney General Josh Shapiro ("Petitioner" or "Commonwealth"), which has caused an investigation to be made into the business practices of Nature's Garden, LTD. ("Respondent"), pursuant to the Pennsylvania *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. § 201-1, *et seq.* ("Consumer Protection Law"), and states the following:

WHEREAS, Petitioner is the Commonwealth of Pennsylvania, Office of Attorney General, by Attorney General Josh Shapiro, with offices located at 1251 Waterfront Place, Mezzanine Level, Pittsburgh, PA 15222; and 15th Floor, Strawberry Square, Harrisburg, PA 17120;

WHEREAS, Respondent Nature's Garden LTD. is a Pennsylvania Corporation registered with the Pennsylvania Department of State, Bureau of Corporations and

Charitable Organizations: Corporations Section (“Corporation Bureau”), with a business address of 4290 Perkiomen Avenue, Reading, PA 19606;

WHEREAS, based on its investigation, the Commonwealth contends that Respondent has engaged in conduct in violation of the Consumer Protection Law and the Pennsylvania *Price Gouging Act*, 73 P.S. §§ 232.1, *et seq.* (“Price Gouging Law”);

WHEREAS, this Assurance of Voluntary Compliance is accepted by the Commonwealth pursuant to Section 201-5 of the Consumer Protection Law in lieu of commencing statutory proceedings under Section 201-4 thereof;

WHEREAS, this Assurance of Voluntary Compliance does not constitute an approval by the Commonwealth of any of the Respondent’s former or current business practices;

WHEREAS, the Respondent agrees to cease and desist from violating the Consumer Protection Law and the Price Gouging Law and desires to comply with the civil laws of the Commonwealth; and

WHEREAS, the Effective Date of this Assurance of Voluntary Compliance shall be the date upon which it is executed by both parties.

SETTLEMENT TERMS

NOW THEREFORE, Respondent agrees for itself, its successors, assigns, officers, partners, agents, representatives, employees, and all other persons acting on its behalf, jointly or individually, directly or indirectly or through any corporate or business device, as follows:

I. Facts and Legal Violations

A. Under the Price Gouging Law, during and within 30 days of the termination of a state of disaster emergency declared by the Governor pursuant to the provisions of 35 Pa. C.S § 7301(c) (relating to general authority of the Governor), it is unlawful for any party within the chain of distribution of consumer goods or services or both to sell or offer to sell goods or services within the geographic region that is the subject of the declared emergency for an amount which represents an unconscionably excessive price. 73 P.S. § 232.4(a).

B. In addition, it is *prima facie* evidence that a price is unconscionably excessive if, during and within thirty (30) days of the termination of a state of disaster emergency, any party within the chain of distribution charges a price that exceeds an amount equal to or in excess of twenty percent (20%) of the average price at which the same or similar consumer goods or services were obtainable in the affected area during the last seven (7) days immediately prior to the declared state of emergency. 73 P.S. § 232.4(b).

C. On March 6, 2020, the Governor of Pennsylvania declared a State of Disaster Emergency for the Commonwealth of Pennsylvania related to the COVID-19 pandemic.

D. As of the Effective Date of this Assurance of Voluntary Compliance, a State of Disaster Emergency is currently in place for the Commonwealth of Pennsylvania.

E. Respondent is involved in the chain of distribution of KN95 Masks. Respondent sells KN95 Masks to consumers primarily for personal, family, or household purposes.

F. During the period of a State of Disaster Emergency, as declared on March 6, 2020, Respondent sold or offered to sell KN95 Masks for an unconscionably excessive price in violation of the Price Gouging Law and the Consumer Protection Law.

G. In at least twenty-eight (28) instances during the State of Disaster Emergency, Respondent charged a price for KN95 Masks in excess of twenty percent (20%) of the average price at which the same or similar products were obtainable in the affected area seven (7) days prior to March 6, 2020.

H. The Commonwealth alleges that by reason of the aforesaid conduct, Respondent's methods, acts or practices constitute violations of the Price Gouging Law, including, but not limited to, Section 232.4(a), which prohibits any party within the chain of distribution of consumer goods or services or both to sell or offer to sell the goods or services within the geographic region that is the subject of the declared emergency for an amount which represents an unconscionably excessive price. 73 P.S. § 232.4(a).

I. The Commonwealth alleges that by reason of the aforesaid conduct, Respondent's aforesaid methods, acts or practices constitute unfair methods of competition and unfair acts or practices in the conduct of trade or commerce prohibited by Section 201-3 of the Consumer Protection Law, as defined by Section 201-2 of said Law, including, but not limited to, the following:

1. Section 201-2(4)(v), which prohibits representing that goods or services have a sponsorship, approval, characteristics, ingredients, uses, benefits

or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have, 73 P.S. § 201-2(4)(v); and

2. Section 201-2(4)(xxi), which prohibits engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding. 73 P.S. § 201-2(4)(xxi).

73 P.S. §§ 201-3 and 201-2(4)(v) and(xxi).

II. Injunctive Relief & Affirmative Relief

A. Respondent SHALL NOT, in the future, engage in conduct which violates the Consumer Protection Law and any future amendments thereto, including, but not limited to:

1. Respondent SHALL NOT represent that goods or services have a sponsorship, approval, characteristics, ingredients, uses, benefits or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have as prohibited by the Consumer Protection Law at 73 P.S. § 201-2(4)(v); and

2. Respondent SHALL NOT engage in other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding as prohibited by the Consumer Protection Law at 73 P.S. § 201-2(4)(xxi).

73 P.S. §§ 201-3 and 201-2(4)(v) and(xxi).

B. Respondent SHALL NOT, in the future, engage in conduct which violates the Price Gouging Law and any future amendments thereto, including, but not limited to, selling or offering to sell the goods or services within the geographic region that is the

subject of the declared emergency for an amount which represents an unconscionably excessive price as prohibited by the Price Gouging Law at 73 P.S. § 232.4(a).

C. Respondent SHALL fully comply with any and all provisions of the Consumer Protection Law, including any amendments thereto, and is permanently enjoined from any violation thereof.

D. Respondent SHALL fully comply with any and all provisions of the Price Gouging Law, including any amendments thereto, and is permanently enjoined from any violation thereof.

III. Monetary Relief

A. Respondent hereby agrees to pay the amount of ONE THOUSAND EIGHT HUNDRED TWENTY-SIX and 75/100 Dollars (\$1,826.75) ("Monetary Payment") to the Commonwealth of Pennsylvania, Office of Attorney General, to be allocated as follows:

1. **Civil Penalties** - The sum of ONE THOUSAND FOUR HUNDRED and 00/100 Dollars (\$1,400.00) as Civil Penalties ("Civil Penalties") to be distributed to the Commonwealth of Pennsylvania, Treasury Department.

2. **Public Protection and Education Purposes** - The sum of TWO HUNDRED TWO and 75/100 Dollars (\$202.75) ("Costs") to be distributed to the Commonwealth of Pennsylvania, Office of Attorney General, to be deposited in an interest-bearing account from which both principal and interest shall be expended for public protection and education purposes.

3. **Restitution** - The sum of TWO HUNDRED TWENTY-FOUR and 60/100 Dollars (\$224.00) ("Restitution") shall be allocated as Restitution and distributed to affected consumers in accordance with subparagraph III(C) below.

B. **Payment Terms**- Respondent agrees to pay the above-referenced amounts toward Civil Penalties, Restitution, and Costs in accordance with the terms of Paragraph III(A) herein, by certified check, cashier's check, or money order, made payable to the "Commonwealth of Pennsylvania, Office of Attorney General," and forwarded to the Office of Attorney General, 1251 Waterfront Place, Mezzanine Level, Pittsburgh, PA 15222, upon Respondent's execution of the Assurance of Voluntary Compliance.

C. **Restitution** - Respondent acknowledges that there may be consumers who have been harmed by the conduct cited herein; and, Respondent agrees to pay restitution, as follows:

1. Consistent with Section 201-4.1 of the *Consumer Protection Law*, any consumer who submits a claim to the Commonwealth within sixty (60) days of the Effective Date of this Assurance of Voluntary Compliance, and who provides adequate documentation which supports his or her claim and/or complaint in the form of a receipt showing purchase of KN95 Masks from Respondent between March 6, 2020 and the Effective Date of this Assurance of Voluntary Compliance, shall be eligible for restitution.

2. Any claim submitted by a consumer that is postmarked by the sixtieth (60th) day after the Effective Date of the Assurance of Voluntary Compliance shall be deemed timely.

3. The determination of whether a consumer shall receive Restitution hereunder, the determination of the amount of any such Restitution paid to such consumer, and the manner of payment shall be within the sole discretion of the Commonwealth.

4. If the amount of money allocated as Restitution exceeds the amount of consumer claims, the remaining Restitution money, after all consumer complainants have been reimbursed, shall be distributed to the Commonwealth of Pennsylvania, Department of Treasury as Civil Penalties.

5. If the amount of consumer claims exceeds the amount allocated as Restitution, each eligible consumer shall receive a *pro rata* share of the Restitution proceeds.

IV. Miscellaneous Terms

A. Time shall be of the essence with regards to Respondent's obligations hereunder.

B. Respondent certifies that Susanne S. Fiori, President of Nature's Garden, LTD., is authorized to enter into this Assurance of Voluntary Compliance on behalf of Respondent and her signature on this document binds the Respondent to all terms contained herein.

C. Respondent further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance of Voluntary Compliance, whether required prior to, contemporaneous with or subsequent to the execution of this Assurance of Voluntary Compliance.

D. The Court of Common Pleas of Berks County, Pennsylvania shall have jurisdiction over the subject matter of this Assurance of Voluntary Compliance and over Respondent for purposes of enforcement of this Assurance of Voluntary Compliance, violation of which shall be deemed a violation of an injunction issued pursuant to Section 201-4 of the Consumer Protection Law, so that a violation of this Assurance of Voluntary Compliance shall provide a jurisdictional basis for the Attorney General of this Commonwealth to request the Court to impose penalties as provided in the Consumer Protection Law and any other equitable relief which the Court deems necessary or proper.

E. Nothing contained herein shall be construed to waive any individual right of action by any consumer, person or entity, or any local, state, federal or other governmental entity.

F. Any failure of the Commonwealth to exercise any of its rights under this Assurance of Voluntary Compliance shall not constitute a waiver of its rights hereunder.

G. If any clause, provision or section of this Assurance of Voluntary Compliance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance of Voluntary Compliance and the Assurance of Voluntary Compliance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

H. This Assurance of Voluntary Compliance may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Assurance of Voluntary

Compliance may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof.

I. Respondent understands and agrees that if its officers and/or agents have made any false statements in or related to this Assurance of Voluntary Compliance, that such statement is made pursuant to and under penalty of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.

J. Respondent shall not represent or imply that the Commonwealth acquiesces in, or approves of, Respondent's past or current business practices, efforts to improve its practices, or any future practices that Respondent may adopt or consider adopting.

K. This Assurance of Voluntary Compliance sets forth all of the promises, covenants, agreements, conditions and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Assurance of Voluntary Compliance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance of Voluntary Compliance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

L. The terms of this Assurance of Voluntary Compliance are effective upon execution of the agreement by both parties. Due to limited courthouse operations in Berks County, the parties acknowledge that the filing of this Assurance of Voluntary Compliance with the Court may be delayed. The parties agree that that this Assurance of

Voluntary Compliance will be filed within thirty (30) days of resumption of normal courthouse functions in Berks County.

WHEREFORE, Respondent agrees by the signing of this Assurance of Voluntary Compliance to abide by each and every one of the aforementioned provisions and that breach of any of the terms of this Assurance of Voluntary Compliance shall be sufficient warrant for the Commonwealth of Pennsylvania to petition the Court, to assess penalties including but not limited to civil and other penalties as provided for under Sections 201-8, 201-9 and 201-9.1 of the Consumer Protection Law, and to order any other relief which the Court deems necessary or proper in accordance with the Consumer Protection Law.

Signatures on following page.

WITNESSETH, that the parties, intending to be legally bound, have hereto set their hands and seals:

FOR THE PETITIONER:
COMMONWEALTH OF PENNSYLVANIA
JOSH SHAPIRO
Attorney General

Date: May 26, 2020

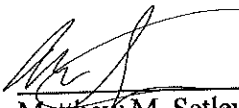
By: /s/ Francesca Iovino
Francesca Iovino, Esquire
Deputy Attorney General
Attorney ID #324229
Office of Attorney General
1251 Waterfront Place
Mezzanine Level
Pittsburgh, Pennsylvania 15222
(724) 858-4664

**FOR THE RESPONDENT:
NATURE'S GARDEN, LTD.**

Date: 5.29.20

By Susanne S. Fiori
Susanne S. Fiori, President

Date: June 1, 2020

By: 
Matthew M. Setley, Esquire
Georgeadis Setley
Four Park Plaza, Second Floor
Wyomissing, PA 19610
Attorney for Respondent

CORPORATE RESOLUTION

**RESOLUTION OF THE BOARD OF DIRECTORS
OF NATURE'S GARDEN, LTD.**

The Board of Directors of Nature's Garden, LTD. met on the 29th day of
June, 2020, and approved the following resolution:

RESOLVED, that Susanne S. Fiori, President
of Nature's Garden, LTD. is hereby authorized and empowered on behalf
of Nature's Garden, LTD., to enter into an Assurance of Voluntary
Compliance with the Commonwealth of Pennsylvania, Office of Attorney
General, upon the terms and conditions contained in the proposed
Assurance of Voluntary Compliance attached hereto and made a part
hereof.

Filed with and attested to by the Secretary of the Corporation, this 29 day of
May, 2020.

Cynthia S. Bayn
Signature of Secretary