

**IN THE COURT OF COMMON PLEAS OF  
WESTMORELAND COUNTY, PENNSYLVANIA**

**IN THE MATTER OF**

**COMMONWEALTH OF PENNSYLVANIA**  
**Acting by Attorney General**  
**JOSH SHAPIRO**

**Petitioner,**

**v.**

**BAY-FY, INC., D/B/A THE MEDICINE SHOPPE 0430:**  
**501 Harrison Avenue**  
**Jeannette, Pennsylvania 15644**

**Respondent.**

**Civil Division - Equity**

**No.**

*3114 of 2020*

**FILED IN  
PROTHONOTARY'S OFFICE**

**SEP 09 2020**

**BY:**

*cu*  
**CLERK**

**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 Bay-Fy, Inc., d/b/a The Medicine Shoppe 0430 ("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 15<sup>th</sup> Floor, Strawberry Square, Harrisburg, PA 17120;

**WHEREAS**, Respondent is a Pennsylvania S-Corp, registered with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations:

Corporations Section (“Corporation Bureau”), with a business address of 501 Harrison Avenue, Jeannette, PA 15644;

### **BACKGROUND**

**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 Act”), as more specifically alleged as follows:

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 consumer goods and services;

F. During the period of a State of Disaster Emergency, as declared on March 6, 2020, the Commonwealth alleges that Respondent sold or offered to sell N95 Masks, KN95 Masks and 2 oz. hand sanitizer for an unconscionably excessive price in violation of the Price Gouging Law and the Consumer Protection Law;

G. The Commonwealth alleges that in at least two-hundred sixty-seven (267) instances during the State of Disaster Emergency, the Respondent charged a price for N95 Masks, KN95 Masks and 2 oz. hand sanitizer 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 Act, 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); and

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, 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);

**WHEREAS**, the Respondent believes that it, at all times, acted lawfully and denies Petitioner's allegations and any violation of the law, as more fully set forth below:

A. Respondent denies that it sold or offered to sell N95 Masks or 2 oz. hand sanitizer for an unconscionably excessive price in violation of the Price Gouging Act or the Consumer Protection Law;

B. Respondent denies that it engaged in methods, acts or practices that constitute violations of the Price Gouging Act or the Consumer Protection Law in the sale of any of its products during the declared state of emergency;

**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**, this Assurance of Voluntary Compliance shall not be considered an admission of any violation on the part of the Respondent for any purpose.

**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. Injunctive Relief & Affirmative Relief**

Respondent shall cease and is permanently enjoined from selling or offering 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 as prohibited by the Price Gouging Act at 73 P.S. § 232.4(a), subject to the notice and cure provisions in Article III, Section D.

**II. Monetary Relief**

A. Respondent hereby agrees to be liable for and to pay, upon Respondent's execution of the Assurance of Voluntary Compliance, the amount of ONE THOUSAND TWENTY-NINE and 33/100 Dollars (\$1,029.33) ("Monetary Payment") to the Commonwealth of Pennsylvania, Office of Attorney General, to be allocated as follows:

1. **Public Protection and Education Purposes** - The sum of FIFTY-SIX and 25/100 Dollars (\$56.25) ("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; and

2. **Restitution** - The sum of NINE HUNDRED and SEVENTY-THREE and 08/100 Dollars (\$973.08) ("Restitution") shall be allocated as Restitution and distributed to affected consumers in accordance with subparagraph II(C) below.

3. **Suspended Civil Penalties** - The sum of THIRTEEN THOUSAND THREE HUNDRED FIFTY and 00/100 Dollars (\$13,350.00) as Civil Penalties ("Civil Penalties") shall be suspended and shall not become due and payable by Respondent to the Commonwealth unless and until a court

determines that Respondent has engaged in acts or practices that violate any of the terms of this Assurance of Voluntary Compliance and were not cured in accordance with Article III, Section D. Should the Civil Penalties be found to be due and payable by a court, the payment shall become immediately due and owing by Respondent.

4. Respondent acknowledges that the requirement to pay the Civil Penalties, resulting from a violation of any of the terms of this Assurance of Voluntary Compliance, shall be in addition to, and not in lieu of, any other sanctions that may be imposed under Section 201-8 of the Consumer Protection Law or any other applicable statute or rule of law. 73 P.S. § 201-8(a).

**B. Form of Payment** - All payments made by Respondent to the Commonwealth, pursuant to this Assurance of Voluntary Compliance, shall be in the form of a certified check, cashier's check, or money order made payable to the "Commonwealth of Pennsylvania, Office of Attorney General" and shall be forwarded to Francesca Iovino, Deputy Attorney General, Commonwealth of Pennsylvania, Office of Attorney General, Bureau of Consumer Protection, 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania 15222.

**C. Restitution Terms**

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 N95 face masks, KN95 face masks, or 2 ounce bottles of hand sanitizer 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 (60<sup>th</sup>) 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, 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.

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.

### **III. Miscellaneous Terms**

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

B. Respondent certifies that James P. Beatty, President of Bay-Fy, Inc., d/b/a The Medicine Shoppe 0430, is authorized to enter into this Assurance of Voluntary



Compliance on behalf of Respondent and his 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. If the Commonwealth determines that Respondent has failed to comply with any of the terms of this Assurance of Voluntary Compliance, the Commonwealth will notify the Respondent in writing of such failure to comply. The writing shall include reasonably sufficient information for the Respondent to determine the basis of the alleged violation. The Respondent shall then have fifteen (15) business days from receipt of such written notice to provide a good faith written response to the Commonwealth's determination. The response shall include an affidavit containing, at a minimum, either:

1. A statement explaining why the Respondent believes it is in full compliance with the Assurance of Voluntary Compliance; or
2. A detailed explanation of how the alleged violation(s) occurred; and
  - (i) a statement that the alleged breach has been addressed and how; or
  - (ii) a statement that the alleged breach cannot be reasonably addressed within fifteen (15) business days from receipt of the notice, but (1) the Respondent has begun to take corrective action to cure the alleged breach; (2) the Respondent is pursuing such corrective action with reasonable due diligence; and (3) the Respondent has

provided the Commonwealth with a detailed and reasonable timetable for curing the alleged breach.

3. Nothing herein shall prevent the Commonwealth from agreeing, in writing, to provide Respondent with additional time beyond the fifteen (15) business day period to respond to the notice.

4. As long as Respondent timely provides the written response outlined in Article III, Section D and takes the appropriate actions outlined in that response to comply with the law, if applicable, within the time required under subparagraph (1) or (2), no violation of this Assurance of Voluntary Compliance shall be deemed to have occurred in relation to any matter which is related to or the subject of the Commonwealth's written notice provided under this Article III, Section D.

5. Notwithstanding the aforementioned part of this section, in no event shall the Commonwealth be precluded from exercising remedies if: (i) after reviewing the proffered written response and related affidavit, it finds the Respondent's written reply was not provided in good faith; or (ii) the Respondent does not cure the default within fifteen (15) days or within the agreed upon time period after the first notice of default is given.

E. Further, the Commonwealth may take any action authorized by law without prior notice, except where such notice is required under law, where the Commonwealth reasonably concludes that, because of a specific practice, a threat to the health, safety, or welfare of the public requires immediate action.

F. The Court of Common Pleas of Westmoreland 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.

G. 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.

H. 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. 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.

I. 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.

J. 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.

K. 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.

L. 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.

**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 penalties as provided for under Sections 201-8 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.

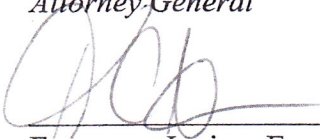
**Signatures on following page.**

**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: 9/8/20

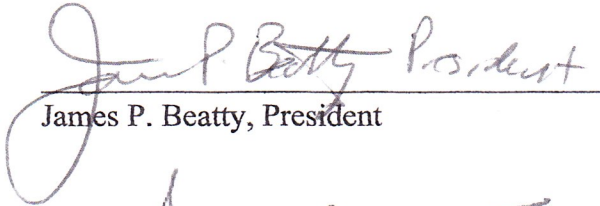
By: \_\_\_\_\_

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

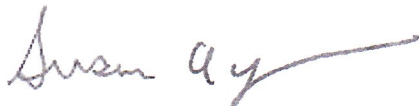
**FOR THE RESPONDENT:**

BAY-FY, INC., D/B/A THE MEDICINE  
SHOPPE 0430

Date: August 27, 2020

By:   
James P. Beatty, President

Date: August 26, 2020

By:   
Susan A. Yocum, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street  
8<sup>th</sup> Floor  
Harrisburg, PA 17101  
*Attorney for Respondent*



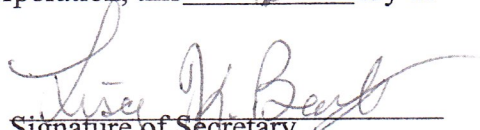
**CORPORATE RESOLUTION**

**RESOLUTION OF THE BOARD OF DIRECTORS  
OF  
BAY-FY, INC. D/B/A THE MEDICINE SHOPPE 0430**

The Board of Directors of Bay-Fy, Inc. d/b/a The Medicine Shoppe 0430 met on the 27<sup>th</sup> day of August, 2020, and approved the following resolution:

**RESOLVED**, that JAMES P. Beatty, President of Bay-Fy, Inc. d/b/a The Medicine Shoppe 0430, is hereby authorized and empowered on behalf of Bay-Fy, Inc. d/b/a The Medicine Shoppe 0430 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 27<sup>th</sup> day of August, 2020.

  
Signature of Secretary