

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

3M COMPANY

Plaintiff,

CASE NO. 8:20-cv-1003-T-35CPT

v.

TAC2 GLOBAL LLC

Defendant.

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**SUPPLEMENTAL DECLARATION OF DEREK MCAFEE**

I, Derek McAfee, pursuant to 28 U.S.C. § 1746, and upon penalty of perjury, declare as follows:

1. My name is Derek McAfee, I am over the age of 21 and am qualified to make this Declaration. I am a resident of the State of Florida. I declare under penalty of perjury that the statements herein are true and correct and are within my personal knowledge.
2. I am a principal of TAC2 Global LLC (“TAC2”) and have been personally involved in the business raised in 3M’s lawsuit against TAC2.
3. As set out in my previous Declaration, TAC2 has the contractual right or opportunity to sell 3M N95 Surgical Masks. TAC2 entered into a “Master Purchase Agreement” with a third-party procurement company (the “MPA”). A true and correct copy of the MPA with the supplier’s name and identifying information redacted is attached hereto as **Exhibit A**. The redaction is necessary to protect TAC2’s supply chain which is confidential proprietary information.

4. As discussed at the hearing on the Temporary Restraining Order (“TRO”) TAC2 was expecting a shipment to fill two different customer orders (private hospitals) of 1.15 million masks whereby TAC2 would see a profit of approximately \$500,00 to \$600,000.
5. TAC2 has disclosed this lawsuit to its current customers that are awaiting TAC2’s delivery of masks, yet these customers have not canceled their order under some misapprehension that TAC2 was a reseller versus an authorized distributor.
6. As I stated at the hearing on the TRO there were a few similar letters to the one attached to Plaintiff’s Complaint sent to government agencies, but no sales resulted from any of these similar letters. The only sales TAC2 have contracted for to date are sales to two private hospitals, neither of which received a letter like the one attached to Plaintiff’s Complaint.
7. TAC2 has other prospective customers with additional orders that it is likely to secure once TAC2 had successfully completed its first orders and its customers are satisfied with the product.
8. However, as of the date of this Declaration the masks referenced at the TRO have not yet been delivered and no inspections by 3M under TRO have occurred.
9. Upon information and belief 3M has communicated directly with TAC2’s supplier to confirm the order, and 3M has contacted at least one of TAC2’s customers directly to discuss the order.
10. According to TAC2’s supplier, the 3M distributor overseas from whom the masks were to be sourced was prevented from importing the masks into the U.S. based on 3M’s rules that have recently prohibited imports.
11. However, because of the supplier’s contractual rights, it was able to secure part of TAC2’s order from a 3M domestic manufacturing facility via the 3M Distribution Network.

TAC2's supplier was invited by 3M to enter into direct agreements to fill TAC2's order, and 3M USA would control the identification and delivery of the 3M masks directly from a plant in Missouri, and potentially a plant in Miami (where 1860S masks are manufactured).

12. On Sunday, May 17, 2020, as part of TAC2's supplier's attempt to provide the masks domestically, 3M demanded that TAC2 provide letters from its customers—two hospitals—addressed to 3M and confirming that they had engaged TAC2 to source and supply 3M masks. These were provided the same day after much struggle and work on TAC2's part.
13. TAC2 was afraid that 3M would use these letters to circumvent TAC2 and go after its customers directly. TAC2 nonetheless provided these signed letters to its supplier to provide to 3M, and TAC2's counsel has provided copies of these letters to 3M's counsel under a Confidentiality Stipulation filed with the Court.
14. TAC2 has maintained continual contact with its customers, and during a series of calls beginning the week of May 17th, 2020, one of TAC2's customers advised TAC2 that the customer was able to confirm directly with a 3M representative, Bill Alm, that its order appeared to be in the 3M system and being processed.
15. However, as feared by TAC2, shortly after the phone call appearing to confirm the order Mr. Alm called back TAC2's customer with other members of 3M in a conference call. During this second call, the 3M representatives stated they could not confirm or deny the status of the customer's order, and advised the customer that it could order products directly through 3M.

16. Through its counsel, TAC2 has relayed this information to counsel for 3M in an effort to get clarification from 3M as to its knowledge of TAC2's pending order. The name of TAC2's supplier has also been provided to 3M under a Confidentiality Stipulation.
17. TAC2 has relied on its supplier's representations about the cause of the delay of TAC2's order, which the supplier insists has been caused by 3M.
18. TAC2 is actively seeking information regarding the status of the order from 3M.
19. TAC2 has already suffered damage as a result of this lawsuit. If TAC2's order is further delayed, reduced or canceled it will cause additional damage to TAC2, including irreparable damage.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed the 22nd day of May, 2020.

  
DEREK MCAFEE