

EXHIBIT 85

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

BLUE FLAME MEDICAL LLC,

Plaintiff,

v.

CHAIN BRIDGE BANK, N.A.,

JOHN J. BROUGH, and

DAVID M. EVINGER,

Defendants.

Civil Action No. 1:20-cv-00658

EXPERT REPORT OF LAURA B. STAMM

March 19, 2021

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I. QUALIFICATIONS

1. I am a current Affiliate and former Managing Principal of Analysis Group, Inc. (“Analysis Group”), an economics, finance, and strategy consulting firm. Since the company’s founding in 1981, it has assisted many of the nation’s largest law firms and corporations on thousands of cases. Headquartered in Boston, Massachusetts, Analysis Group has fourteen offices throughout the U.S., Canada, and Asia with more than 1,000 professionals.

2. As a consulting economist and accountant, I have conducted damages assessments and lost profit analyses in over 50 cases involving commercial disputes in a wide range of industries, including medical equipment and pharmaceutical products, among others. I have provided testimony on matters involving legal claims of breach of contract, torts, accounting malpractice, fraudulent conveyance, and breach of fiduciary duty. I have directed analyses that involved gathering and organizing accounting and contract records, determining ex-ante expectations, analyzing sales trends, assessing profitability, preparing projections, and analyzing changing market conditions.

3. I have provided company valuations for those engaged in litigation and to assist prospective buyers, and have assisted numerous businesses in a variety of industries with the development of business plans and financial projections, often through the use of complex integrated financial models. I have consulted on financial and economic issues related to the licensing, selling, and alleged unauthorized use of patents, copyrights, trademarks, trade dress, and trade secrets. I have also served as an expert witness on damages assessments involving intellectual property disputes related to reasonable royalty determinations and price erosion.

4. Prior to joining Analysis Group in 1993, I was a Manager at Price Waterhouse in Dispute Analysis and Corporate Recovery Services, where I managed several projects involving the analysis of damages in business litigation. I also served as a Senior Associate in the Business Investigation Services division of Coopers & Lybrand providing auditing services, due diligence analysis in support of mergers and acquisitions, and consulting services to financially distressed companies.

5. I received a Bachelor of Arts from Williams College in 1984 and a Master of Science in Management from the Sloan School of Management at M.I.T. in 1989. I am a certified public accountant and am accredited in business valuation by the Association of International

Certified Professional Accountants (“AICPA”). My curriculum vitae is attached hereto as **Appendix A**. A list of my testimony in the last four years is attached hereto as **Appendix B**.

II. ALLEGATIONS AND ASSIGNMENT

6. I have been retained by Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP, counsel for Defendants Chain Bridge Bank, N.A. (“Chain Bridge”), John J. Brough, and David M. Evinger (collectively, “Defendants”), as well as by Wilmer Cutler Pickering Hale and Dorr LLP, counsel for Third-Party Defendant JPMorgan Chase Bank, N.A. (“JPMorgan”), in connection with the lawsuit *Blue Flame Medical LLC v. Chain Bridge Bank, N.A., John J. Brough, and David M. Evinger*.

7. Plaintiff Blue Flame Medical LLC (“Blue Flame”)¹ brings claims related to a wire transfer of \$456.89 million, related to the State of California’s (“California”) initial deposit to purchase 100 million N95 masks from Blue Flame for \$609.16 million (the “California Order”).² I understand this wire transfer was sent on March 26, 2020 by California, through its bank JPMorgan, to Chain Bridge, where Blue Flame had a bank account.³ The wire transfer was subsequently reversed, and Chain Bridge returned the funds to California.⁴ I refer to these wire transfer events collectively as the “California Wire Transactions.” Blue Flame alleges that Chain Bridge’s actions resulted in substantial harm to Blue Flame’s business and reputation.⁵ In particular, Blue Flame alleges that the reversal of the wire transfer “caused Blue Flame to suffer damages including, among other harms, its lost profits for the transaction with California, lost

¹ Blue Flame Medical LLC is affiliated with Blue Flame Strategies LLC, which had entered into referral fee agreements with various companies. See, Referral Fee Agreement between Velox Medical, Inc. and Blue Flame Strategies LLC, dated March 13, 2020, BFM000000675 - 681; Referral Fee Agreement between Healthcom Pacific Inc. and Blue Flame Strategies LLC, dated March 13, 2020, BFM000000668 - 674; First Amendment and Addendum to Referral Fee Agreement between Healthcom Pacific Inc. and Blue Flame Strategies LLC, dated March 25, 2020, BFM000116345 - 346.

² Complaint, *Blue Flame Medical LLC v. Chain Bridge Bank, N.A., John J. Brough, and David M. Evinger*, Civil Action No. 20 Civ 658, In the United States District Court for the Eastern District of Virginia Alexandria Division, filed June 12, 2020 (“Complaint”), ¶¶ 1-3, 25, 61.

³ Complaint, ¶¶ 1-3 and 61.

⁴ Fedwire Funds Processor Message, March 26, 2020, CBB00002780; Complaint, ¶ 70.

⁵ Complaint, ¶ 1.

future business opportunities with California and other customers, and reputational damage as a result of the subsequent media coverage of the incident.”⁶

8. On February 12, 2021, William T. Baskett submitted an expert report (“Baskett Report”) on behalf of Plaintiff, in which Mr. Baskett purported to “calculate the profits Blue Flame would have realized from sales of personal protective equipment (‘PPE’) that were aborted in the event Blue Flame establishes that those sales would not have been aborted but for actions taken by” Defendants.⁷ On March 8, 2021, Mr. Baskett submitted a revised report (“Revised Baskett Report”) in which he made several corrections to his calculations of lost profits and to his final opinion of the total lost profits.⁸ Mr. Baskett opined “that for the period of March 25, 2020 through April 27, 2020, Blue Flame Medical, LLC has incurred Lost Profits of \$168,574,049.”⁹ In forming this opinion, Mr. Baskett assumed that Defendants’ alleged actions and statements “depriv[ed] Blue Flame of capital that it intended to use to finance PPE purchases,” “caused [damage] to Blue Flame’s supplier relationships,” and caused Blue Flame “reputational harm”¹⁰ — and thereby, Mr. Baskett further assumes, caused Blue Flame’s PPE sales to certain customers not to be successfully completed.

9. I have been asked by counsel for Chain Bridge and JPMorgan to review and respond to the damages methodology and conclusions set forth in the Revised Baskett Report.

10. All opinions expressed in this report are my own. In preparing this report, I relied upon my experience, education, and my work to date in this matter. A list of the materials that I considered in preparing my report is attached hereto as **Appendix C**.

11. I am being compensated at a rate of \$800 per hour for my independent review and analysis in connection with this case. Part of the work was performed by employees of Analysis Group working under my direction and supervision. These individuals have been billed at their

⁶ Complaint, ¶ 97.

⁷ Expert Report of William T. Baskett on Behalf of Plaintiff Blue Flame Medical, LLC, *Blue Flame Medical LLC v. Chain Bridge Bank, N.A., John J. Brough, and David M. Evinger*, Civil Action No. 20 Civ 658, In the United States District Court for the Eastern District of Virginia Alexandria Division, filed February 12, 2021 (“Baskett Report”), ¶ 1.

⁸ Expert Report of William T. Baskett on Behalf of Plaintiff Blue Flame Medical, LLC, *Blue Flame Medical LLC v. Chain Bridge Bank, N.A., John J. Brough, and David M. Evinger*, Civil Action No. 20 Civ 658, In the United States District Court for the Eastern District of Virginia Alexandria Division, Revised March 8, 2021 (“Revised Baskett Report”).

⁹ Revised Baskett Report, ¶ 7.

¹⁰ Revised Baskett Report, ¶ 6.

standard hourly rates. I receive as compensation a portion of the fees charged by Analysis Group. This compensation is not contingent on the nature of my findings or the outcome of this litigation.

III. SUMMARY OF OPINIONS

12. This summary provides an overview of my opinions. I explain the bases for these opinions in more detail in the sections that follow. My report reflects the work I have undertaken to date, which is also informed by my experience and education.

13. Mr. Baskett has calculated lost profits on a list of customer orders and uncompleted transactions, including the California Order, given to him by Blue Flame and its Counsel (the “Disputed Transactions”).¹¹ He was asked to assume that Defendants’ actions caused the Disputed Transactions to be “aborted.”¹² Mr. Baskett concluded, based on a supposed analysis of Blue Flame’s operations, that Blue Flame could have achieved these profits but for Defendants’ alleged actions and alleged statements about Blue Flame.¹³

14. In my opinion, the Revised Baskett Report does not provide the necessary analysis and support to establish that these claimed profits should be considered economic damages. Mr. Baskett has also provided an unreliable calculation of the anticipated profits Blue Flame might have realized on each of the Disputed Transactions had they been completed.

15. Based on my analysis of the Revised Baskett Report and documents produced in this matter, I conclude that Mr. Baskett’s assumption that Blue Flame could have completed the Disputed Transactions in the contemplated time frame even absent the alleged wrongdoings of Defendants lacks a factual basis. Market conditions in the spring of 2020 of heightened demand, constrained supply, and highly volatile prices all posed significant obstacles to Blue Flame completing the Disputed Transactions even absent the alleged wrongdoings of Defendants. Indeed Blue Flame has stated publicly that factors unrelated to Defendants’ alleged conduct (such as

¹¹ Revised Baskett Report, ¶ 19. In this report, “Disputed Transactions” refers to entries in Schedule 1 of the Revised Baskett Report.

¹² Revised Baskett Report, ¶ 6.

¹³ In apparent contradiction, Mr. Baskett stated that he has “assumed that Blue Flame had the capacity to and would have delivered on the Lost Sales,” but also stated that his “analysis of Blue Flame’s operations ... indicates that the company could have achieved the profitability it envisioned but for Defendants’ actions and the resulting loss of capital and negative press coverage.” Revised Baskett Report, ¶¶ 8, 33; Deposition of William T. Baskett, March 15, 2021, pp. 12-15, 55-58.

seizures of PPE items by the Chinese government, and the inability of Blue Flame to meet customers' pricing requirements) prevented Blue Flame from fulfilling the majority of the Disputed Transactions. I do not find any consideration or analysis of these obstacles, or any consideration or analysis of Blue Flame's ability to overcome them, in the Revised Baskett Report. Without such an analysis, Mr. Baskett has not established his calculation of profits on each of the Disputed Transactions constitutes economic damages.¹⁴

16. Even assuming it can be established that the orders identified in the Revised Baskett Report Schedule 1 would have been finalized and completed absent Defendants' alleged misconduct, the product catalogues, pricing sheets, and mark-up assumption used by Mr. Baskett as the basis for his damages inputs are not reliable indicators of what Blue Flame or its customers would have paid to complete the Disputed Transactions during this period of unprecedented market challenges. Given the highly volatile pricing for PPE products at the beginning of the pandemic and the lack of any certainty with respect to the ultimate transaction prices both for sellers and buyers, any attempted quantification of potential profits from the Disputed Transactions using these source documents would be unduly speculative.

17. My opinions, and the bases for my opinions, are explained in more detail in this report and the exhibits attached hereto. My work on this matter is ongoing, and I may supplement or amend my report should new information become available. I am prepared to testify at trial on the topics discussed in this report; I also anticipate using certain demonstrative exhibits at trial to illustrate and support the concepts described in this report.

IV. BUT-FOR WORLD ANALYSIS

18. Economic damages captures the difference between the value the plaintiff would have received but for the alleged wrongdoings and the actual value the plaintiff did receive.¹⁵ A standard framework for estimating economic damages that arise from alleged misconduct is to compare the plaintiff's actual economic position with the plaintiff's economic position in a scenario where the alleged misconduct did not take place (or is replaced with the defendant's

¹⁴ Mr. Baskett appears to use the terms "lost profits" and "economic damages" interchangeably.

¹⁵ Allen, M.A., Hall, R.E., and Lazear, V.A. (2011), "Reference Guide on Estimation of Economic Damages," in National Research Council, *Reference Manual on Scientific Evidence: Third Edition* (pp. 425-502) ("Allen, *et al.*, 2011"), at p. 432.

proper conduct). The latter represents the world as it would have been but for the alleged wrongful conduct, or the “but-for world.”

19. A properly constructed but-for world differs from the actual world *only* with respect to the alleged misconduct. Therefore, properly estimated economic damages isolate only the losses, if any, caused by the alleged misconduct and do not include losses caused by other contemporaneous factors (also referred to as “confounding factors”) that would have affected plaintiff’s economic position even in the but-for world.¹⁶

20. Importantly, unlike economic damages, a simple calculation of anticipated profits may not consider the impact of confounding factors on profits. Therefore, a calculation of anticipated profits is not an adequate measure of damages because, as explained above, a proper measure of economic damages must exclude the loss of profits that stemmed from confounding factors.

21. Mr. Baskett was asked to assume that Defendants’ actions caused the Disputed Transactions to be “aborted.”¹⁷ Specifically, he was asked to assume that each of the Disputed Transactions was not successfully completed because Defendants’ actions caused those orders to be aborted by depriving Blue Flame of capital, harming Blue Flame’s supplier relationships, and injuring Blue Flame’s reputation.¹⁸ In other words, Mr. Baskett was asked to assume there were no confounding factors that could have caused the Disputed Transactions to fail and to simply calculate estimated profits for each transaction. While Mr. Baskett’s calculations may have computed estimated lost profits with this underlying assumption, establishing the amount of economic damages still requires consideration of how confounding factors may have affected the ability of Blue Flame to complete the Disputed Transactions in the but-for world. Mr. Baskett seemingly agrees.¹⁹ In his section entitled “Viability of Claim for Lost Profits,” he states: “Lost Profits can only be claimed if the entity claiming the Lost Profits had the capacity to fulfill the

¹⁶ Allen, *et al.*, 2011, at p. 432.

¹⁷ Revised Baskett Report, ¶ 6. See, also, Deposition of William T. Baskett, March 15, 2021, pp. 12-15, 55-58.

¹⁸ Mr. Baskett testified that he did not “perform any analysis of [his] own to determine whether the losses that [he] calculated were caused by [Defendants].” Deposition of William T. Baskett, March 15, 2021, pp. 12-13; Revised Baskett Report, ¶ 6.

¹⁹ He testified that “any company that hasn’t got the capacity to do its operations shouldn’t be allowed to claim lost profits. ... [Y]ou have to have the capacity to incur the loss.” Deposition of William T. Baskett, March 15, 2021, pp. 259-260. See, also, Revised Baskett Report, ¶ 33;

sales or services requested of it.”²⁰ Although the Baskett Revised Report refers to conducting an “analysis of Blue Flame’s operations [that] ... indicates that the company could have achieved the profitability it envisioned but for Defendant’s actions,”²¹ the Revised Baskett Report does not describe or present any analysis of Blue Flame’s capability to procure scarce PPE items and deliver them to customers at prices they were willing to pay at a time when I understand global demand for such items far outpaced supply.

22. At his deposition, Mr. Baskett admitted that he simply assumed that only Defendants’ actions, and no other factors, caused the Disputed Transactions not to go forward.²² He also testified that the reason for a Disputed Transaction not being completed, whether if a customer did not want to move forward with its order, or whether Blue Flame could not deliver the ordered products, is not relevant to his opinion.²³ Mr. Baskett also testified that if a transaction were not completed for a reason unrelated to Defendants’ alleged actions, someone “could suggest” that transaction be removed from any estimate of damages,²⁴ and that “[s]ome investigation would have to go into [an analysis] to determine how much [impact] was done by defendant, how much was done by other instances.”²⁵ Mr. Baskett’s statements confirm that he simply calculated Blue Flame’s anticipated profits for each of the Disputed Transactions, but did not attempt to measure Blue Flame’s economic damages in this case.

A. Economic Conditions of the PPE Marketplace

23. Following the outbreak of the COVID-19 pandemic, there was an unprecedented and unanticipated increase in the demand for PPE items, resulting in constrained supply, and

²⁰ Revised Baskett Report, ¶ 33.

²¹ Revised Baskett Report, ¶ 33.

²² Mr. Baskett also testified that he “didn’t conduct an investigation” of potential confounding factors. Deposition of William T. Baskett, March 15, 2021, pp. 57-58, 104-106, 135-136.

²³ Deposition of William T. Baskett, March 15, 2021, pp. 54-55.

²⁴ Deposition of William T. Baskett, March 15, 2021, pp. 95-96.

²⁵ Mr. Baskett also testified that an analysis would be needed “[t]o prove one way or the other ... what’s the reason why the sales [were] canceled.” Deposition of William T. Baskett, March 15, 2021, pp. 68-69, 97-99.

volatile pricing.²⁶ In this section, I briefly present a summary of relevant economic conditions in the market for PPE as a backdrop for the damages-related discussions that follow.

24. Demand for PPE increased dramatically following the outbreak of the COVID-19 pandemic.²⁷ For example, U.S. hospitals and healthcare organizations increased purchases of N95 masks by 400 percent, 585 percent, and up to 1,700 percent relative to their pre-pandemic levels in January, February, and March 2020, respectively.²⁸ Similar demand patterns were occurring in countries across the world.²⁹ Supply constraints caused by limited production capacities and shortages of raw materials led to months-long backlogs for orders.³⁰ These demand and supply factors resulted in extreme price volatility and large price increases for PPE items. In February 2020, the Director-General of the World Health Organization stated that prices for masks, gowns, gloves, and other PPE items had increased by up to 20 times.³¹ In April 2020, these conditions led to price changes that were “volatile and continue[d] to change daily,” and customers reported prices fluctuating multiple times within the course of one day.³² Further, domestic access to PPE

²⁶ See, e.g., Expert Report of Mark Faulkner, *Blue Flame Medical LLC v. Chain Bridge Bank, N.A., John J. Brough, and David M. Evinger*, Civil Action No. 20 Civ 658, In the United States District Court for the Eastern District of Virginia Alexandria Division, dated February 12, 2021 (“Faulkner Report”), ¶¶ 28-30, 34.

²⁷ Faulkner Report, ¶ 28.

²⁸ “COVID-19 Related Goods: The U.S. Industry, Market, Trade, and Supply Chain Challenges,” United States International Trade Commission, Publication No. 5145, Investigation No. 332-580,” December 2020, available at: <https://www.usitc.gov/publications/332/pub5145.pdf>, at pp. 89-90.

²⁹ In February 2020, the Director-General of the World Health Organization said that global demand for masks, gowns, gloves, and other PPE items had increased “up to 100 times higher than normal.” Nebehay, Stephanie, “Demand for masks soars 100-fold, disrupting coronavirus fight: WHO,” Reuters, February 7, 2020, available at: <https://www.reuters.com/article/us-china-health-who-masks/demand-for-masks-soars-100-fold-disrupting-coronavirus-fight-who-idUSKBN20121J>.

³⁰ In April 2020 the Asian Development Bank warned that the “PPE supply chain has not been properly functioning” and that “[t]he dramatic rise in demand for surgical masks, goggles, gloves, and gowns has depleted stockpiles, prompted significant price increases, and led to production backlogs of 4-6 months in fulfilling orders.” Park, Cyn-Young, et al., “Global Shortage of Personal Protective Equipment amid COVID-19: Supply Chains, Bottlenecks, and Policy Implications,” Asian Development Bank, April 2020, available at: <https://www.adb.org/publications/shortage-ppe-covid-19-supply-chains-bottlenecks-policy>, at p. 3.

³¹ Nebehay, Stephanie, “Demand for masks soars 100-fold, disrupting coronavirus fight: WHO,” Reuters, February 7, 2020, available at: <https://www.reuters.com/article/us-china-health-who-masks/demand-for-masks-soars-100-fold-disrupting-coronavirus-fight-who-idUSKBN20121J>.

³² Berkland, James M., “Analysis: PPE costs increase over 1,000% during COVID-19 crisis,” McKnight’s Long-Term Care News, April 9, 2020, available at: <https://www.mcknights.com/news/analysis-ppe-costs-increase-over-1000-during-covid-19-crisis/>; Rogalski, Jeremy, “Texas’ PPE orders reveal roller coaster pricing early in pandemic,” KHOU 11, December 28, 2020, available at: <https://www.khou.com/article/news/health/coronavirus/state-of-texas-ppe-orders-reveal-roller-coaster-pricing-early-in-pandemic/285-0b09e50d-30a4-4464-907e-54eae2127f6f>.

items was disrupted due to the U.S. federal government claiming large quantities of U.S. manufacturers' PPE production through its use of the Defense Production Act,³³ as well as foreign countries' export restrictions on PPE items.³⁴ I understand these export restrictions led to reduced and delayed shipments of PPE items to the United States.³⁵ Great Health, one of Blue Flame's asserted supply partners,³⁶ wrote in April 2020 that the Chinese government's intervention "in the operations of manufacture and export" of certain PPE items made "it extremely difficult, if not impossible, for us to fulfill [certain of Blue Flame's] [o]rder[s] without causing undue delay."³⁷

B. The California Order

25. Mr. Baskett calculated economic damages on the California Order to be approximately \$141.7 million.³⁸ I have reviewed the Expert Report of Mark Faulkner, an expert in PPE procurement retained by Defendants and JPMorgan in this matter.³⁹ In his report, Mr. Faulkner assessed whether Blue Flame could have fulfilled California's order of 100 million N95 masks.⁴⁰ Mr. Faulkner concludes that Blue Flame could not have fulfilled California's order of

³³ "Defense Production Act," United States Government Accountability Office, GAO-21-108, November 2020, available at: <https://www.gao.gov/assets/720/710806.pdf>, at p. 1. See, also, Faulkner Report, ¶ 59.

³⁴ Between March and April 2020, approximately 65 countries issued bans or restrictions on the export PPE items, including N95, surgical, and other masks, isolation gowns, hand sanitizer, gloves, and other items. "COVID-19 Temporary Trade Measures," International Trade Centre Market Access Map, updated January 29, 2021, available at: <https://www.macmap.org/covid19>; Bradsher, Keith, and Liz Alderman, "The World Needs Masks. China Makes Them, but Has Been Hoarding Them," *The New York Times*, March 13, 2020, available at: <https://www.nytimes.com/2020/03/13/business/masks-china-coronavirus.html>.

³⁵ See, e.g., O'Keeffe, Kate, *et al.*, "China's Export Restrictions Strand Medical Goods U.S. Needs to Fight Coronavirus, State Department Says," *The Wall Street Journal*, April 16, 2020, available at: <https://www.wsj.com/articles/chinas-export-restrictions-strand-medical-goods-u-s-needs-to-fight-coronavirus-state-department-says-11587031203>.

³⁶ Letter from Howard Waltzman (Mayer Brown) to Hon. Frank Pallone, Jr. and Hon. Diana DeGette (United States Congress), Re: Response to Committee Request, dated June 22, 2020, Exhibit A to "Memorandum in Support of Defendants' Motion to Dismiss," *Blue Flame Medical LLC v. Chain Bridge Bank, N.A., John J. Brough, and David M. Evinger*, Civil Action No. 20 Civ 658, In the United States District Court for the Eastern District of Virginia Alexandria Division, filed July 20, 2020 ("Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette"), at p. 2.

³⁷ Letter from Great Health to Blue Flame, April 29, 2020, BFM000076873 - 874 at 873.

³⁸ Revised Baskett Report, Schedule 1.

³⁹ I have also reviewed the Rebuttal Expert Report of Marc S. Prisament, an expert in medical procurement and purchasing retained by Plaintiff in this matter. Rebuttal Expert Report of Marc S. Prisament, *Blue Flame Medical LLC v. Chain Bridge Bank, N.A., John J. Brough, and David M. Evinger*, Civil Action No. 20 Civ 658, In the United States District Court for the Eastern District of Virginia Alexandria Division, dated March 12, 2021.

⁴⁰ Faulkner Report, ¶ 9.

100 million N95 masks within 30, or even 60, days as a result of multiple factors unrelated to the alleged misconduct, including:⁴¹

- Insufficient supply of N95 masks due to production constraints, foreign countries' export restrictions on PPE items, and increased demand from buyers worldwide;
- Particularly constrained supplies of the particular models of N95 masks ordered by California; and
- Blue Flame's lack of experience and sophistication in the PPE procurement industry, and its repeated failures to comply with standard industry practice for PPE procurement.

26. All of these factors are independent of the allegations against Defendants. In addition, even if Blue Flame could have located a sufficient supply of N95 masks, their procurement costs may have been different from what Mr. Baskett assumed. All of these are confounding factors. In the but-for world, these factors would have been obstacles that could have prevented Blue Flame from fulfilling the California Order under the agreed upon terms, and from recognizing Mr. Baskett's estimation of profit on the order, or any profit on the order. Mr. Baskett's computed profits on the California Order cannot be construed as damages without consideration of these confounding factors.

C. Subsequent Disputed Transactions

1. Confounding Factors

27. As discussed, Mr. Baskett relied on a broad set of instructions to assume that Defendants' alleged misconduct caused certain orders subsequent to the California Order (the "Subsequent Disputed Transactions") not to be successfully completed, and then proceeded to calculate Blue Flame's anticipated profits from each of these transactions. However, as I discussed, an analysis of economic damages requires consideration of whether the Subsequent Disputed Transactions would have been fulfilled in the but-for world. Mr. Baskett merely assumed they would have been completed.⁴² I am aware of documents that even Mr. Baskett admitted cast

⁴¹ Faulkner Report, ¶ 12.

⁴² Deposition of William T. Baskett, March 15, 2021, pp. 57-58.

significant doubt as to whether Blue Flame could have procured and delivered the PPE items from the Subsequent Disputed Transactions, even in the absence of Defendants' alleged wrongful conduct.⁴³

28. Mr. Baskett included transactions with 29 customers in addition to California (some with multiple types of PPE included in their transactions) in his Schedule 1.⁴⁴ As a preliminary matter, I note that for 21 customers, Blue Flame admits there was no fully executed contract or purchase order.⁴⁵ Blue Flame also does not identify any "contract, order, or agreement" with another seven of these customers.⁴⁶ In these seven instances, while the customers discussed their PPE needs with Blue Flame, and in some instances Blue Flame provided sales quotes, the documents I have seen appear to show that these discussions did not end with these customers agreeing to purchase PPE items from Blue Flame. A prospective order with the State of Washington — the largest of the Subsequent Disputed Transactions — is included among these seven. Between April 2 and 7, 2020, Blue Flame and a representative of the State of Washington discussed Washington's PPE needs and Blue Flame's capabilities. On April 7, 2020, Blue Flame sent a "sales order" to the customer, on April 9, 2020 it sent a "quote" that the parties discussed, and on April 13, 2020 it informed the customer that it has "arranged financing to procure Washington's need for" PPE. On April 17 and 18, the customer told Blue Flame that it "would love to do a deal, but the price quoted ... was just way too high" and that other suppliers were charging less. Blue Flame then followed up on May 5 and 7, 2020 "to check back here if you might be interested in the" PPE, but I am unaware of any further communication between the parties.⁴⁷ Mr. Baskett has not described or considered any evidence to demonstrate that

⁴³ For example, Mr. Baskett testified that the communication between Blue Flame and Tennessee "doesn't look favorably for the plaintiff," and that communication between Blue Flame and Alabama also "doesn't look good for the plaintiff." Deposition of William T. Baskett, March 15, 2021, pp. 47-50, 53-54, 57-64, 99-100, 193-194, 198-199.

⁴⁴ Revised Baskett Report, Schedule 1.

⁴⁵ See **Exhibit 1**. See, also, Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette, at pp. 4-9.

⁴⁶ Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette, at pp. 4-10.

⁴⁷ Emails between Elena McGrew (Washington) and Mike Gula (Blue Flame) *et al.*, April 2-3, 2020, BFM000024349 - 355 at 349 - 350; Emails between Elena McGrew and Ethan Bearman (Blue Flame) *et al.*, April 7-13, 2020, BFM000044870 - 872 at 870 - 871; Emails between Elena McGrew and Mike Gula, April 16-18, 2020, BFM000050658 - 659; Emails from Michael Collins (Blue Flame) to Elena McGrew, May 5-7, 2020, BFM000082935. I understand from counsel that Michael Collins is an alias for Mike Gula.

Washington, or any of these other seven customers, would have agreed to purchase products from Blue Flame but for Defendants' alleged actions. (See **Exhibit 1**). Those seven customers account for over 96 percent of Mr. Baskett's damages estimate for the Subsequent Disputed Transactions.⁴⁸

29. In **Exhibit 2**, I identify the factors cited by either Blue Flame or the prospective customer for 27 of the Subsequent Disputed Transactions for why an order was not completed. Common factors include:

- Blue Flame voluntarily refunded payment to customers because of significant disruptions in the supply chain coming out of China;
- Blue Flame increased the sales price resulting in the customer requesting a refund;
- The customer requested updates on shipping and cancelled after not receiving a response; and
- Blue Flame admitted it was unable to source the quantities of PPE at the prices and within the schedule required by the customer.

30. If all of these factors are independent of these allegations against Defendants, and if these factors alone would have prevented Blue Flame from earning profits on the Subsequent Disputed Transactions, even in the but-for world, then they ought to be excluded from Blue Flame's purported damages in this case. By not considering confounding factors, Mr. Baskett cannot offer an opinion regarding whether any of the Subsequent Disputed Transactions resulted in economic damages to Blue Flame. Instead, his report only measures Blue Flame's purported anticipated profits.

2. Apportionment of Damages by Specific Cause of Harm

31. I understand that Mr. Baskett simply assumed that some undetermined combination of three alleged wrongdoings — depriving Blue Flame of capital that it intended to use to finance PPE purchases for customers; damaging Blue Flame's supplier relationships; and inflicting reputational harm associated with Defendants' statements to third parties and news reports — caused each of the Disputed Transactions to not be successfully completed. Mr. Baskett did not present any analysis or any discussion that attributes the loss of any of the Disputed Transactions

⁴⁸ Revised Baskett Report, Schedule 1.

to any specific assumed cause of harm. If the finder of fact concludes that only one or two of the allegations can be proven, Mr. Baskett's analysis is incapable of allocating his claimed lost profits to only the relevant assumed causes of harm. Mr. Baskett admitted this limitation of his analysis in his deposition.⁴⁹

32. I understand that it is Plaintiff's burden to put forward damages, and I have not tried to parse Mr. Baskett's claimed economic damages among the various allegations. However, by way of example, I present evidence that could be considered to determine whether Defendants' reversal of the wire transfer and subsequent claimed deprivation of capital is likely to have been the cause of lost profits for each of the Subsequent Disputed Transactions. Similarly, I am aware of evidence that could be considered to determine whether harm to supplier relationships or reputational harm was likely to have been the cause of lost profits for each of the Subsequent Disputed Transactions.⁵⁰

33. At least 22 of the customers for which Mr. Baskett calculates lost profits made upfront payments on their orders.⁵¹ Mr. Baskett recognized and listed 20 of these customers'

⁴⁹ When asked if Mr. Baskett is "able to tell us, for the transactions listed on schedule 1, which ones failed for which of these three reasons," Mr. Baskett responded: "No." Deposition of William T. Baskett, March 15, 2021, p. 91. See, also, Deposition of William T. Baskett, March 15, 2021, pp. 90-93, 108-110, 125-127.

⁵⁰ For example, on March 27, 2020, which is the day after the California Wire Transactions, Suuchi told Blue Flame that it "understand[s] things happen" and that it "remain[s] optimistic about orders through other contracts [Blue Flame] will secure." On April 1, 2020, Suuchi emails Blue Flame to check in if there are any more orders and asks that Blue Flame "[p]lease keep us updated!" if it has any new orders. On March 27, 2020, Great Health provided Blue Flame with a letter to distribute to prospective customers, which stated that "Blue Flame Medical LLC holds a preferred status so they receive priority production and allocation [from Great Health] as needed." On April 3, 2020, Blue Flame placed a large order with Great Health for products associated with several different customers' orders. Then on April 29, 2020, Great Health writes to Blue Flame stating that it wants to take actions "to preserve the ongoing business relationship between [the] companies under the Agreement which shall remain in full force and effect." Further, public reports regarding Blue Flame's transaction with California occurred on May 5, 2020, which post-dates all of the Disputed Transactions listed on the Revised Baskett Report Schedule 1. Email from Suuchi Ramesh (Suuchi) to Ethan Bearman *et al.*, March 27, 2020, BFM000116903 - 904 at 903; Email from Suuchi Ramesh to Mike Gula *et al.*, April 1, 2020, BFM000021447; Email from Henry Huang (Great Health) to Mike Gula and John Thomas (Blue Flame), March 27, 2020, BFM000013991 - 992; Email from Marc Serrio (Blue Flame) to Joy Xu (Great Health), April 3, 2020, BFM000026012 - 017; Letter from Henry Huang to John Thomas, April 29, 2020, BFM000076873 - 874 at 874; Rosenhall, Laurel, "Exclusive: California wires mask dealer half a billion dollars, then claws it back," CalMatters, May 5, 2020, available at: <https://calmatters.org/health/coronavirus/2020/05/california-mask-deal-blue-flame-collapsed-republican-vendor-maryland-porter-gula-thomas/>.

⁵¹ 19 of these 22 customers made prepayments equal to the entire invoiced amount. Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette, at pp. 5-9; Revised Baskett Report, Schedule 1.

upfront payments in his Schedule 3.⁵² These customers' upfront payments provided Blue Flame with the capital to purchase the PPE items from suppliers.⁵³ Despite his inclusion of this information, Mr. Baskett did not acknowledge that the failure to successfully complete these orders does not seem to be linked to the lack of capital.

34. Other Subsequent Disputed Transactions which might have required financing could have been facilitated through Blue Flame Medical's April 13, 2020 agreement with Atlys Global Finance, LLC ("Atlys Global"). The agreement gave Blue Flame Medical access to up to \$500 million in financing to fulfill purchase orders related to services, products, materials, and equipment needed to respond to the COVID-19 pandemic.⁵⁴ This financing was available for PPE transactions between Blue Flame and any state and certain other government entities.⁵⁵ To that end, Blue Flame drafted and partially executed notices of assignment for at least five of the Subsequent Disputed Transactions, including the State of Washington, the State of Rhode Island (Quonset Development), the Florida State Emergency Operations Center, University Hospital, and the County of San Mateo California.⁵⁶ I understand that upon execution by these customers, these

⁵² Two additional customers, St. John's Child Wellness Center and the State of Alabama, made upfront payments via wire transactions, and are not included in Mr. Baskett's Schedule 3. The State of Tennessee, which is listed in Mr. Baskett's Schedule 3, also made a partial payment via an ACH transaction. Revised Baskett Report, Schedule 3; Emails between Tim Neiman (St. John's Child Wellness Center) and Marc Serrio *et al.*, April 28-30, 2020, BFM000077360 - 365 at 360 - 361; Bank of America Payment Details Report, April 30, 2020, BFM000133932; Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette, at p. 5.

⁵³ For example, Blue Flame informed San Mateo County, California that it required a pre-payment so that Blue Flame could "pay [its] manufacturer in full up front." It similarly informed the Takoma Park Police that pre-payment was required so that Blue Flame could pay its "manufacturer ... at the time the order is placed." Email from Mike Gula to Tamara Seney (San Mateo County), April 3, 2020, BFM000081134 - 140 at 135; Email from Claire Cuddy (Blue Flame) to Ron Hardy (Takoma Park Police), April 1, 2020, BFM000075639 - 643 at 641.

⁵⁴ The Procurement Funding Term Sheet signed by Blue Flame and Atlys Global indicated that the lender was to be Recovery Finance IV US, LLC, Recovery Finance III US, LLC, Recovery Finance II Inc., Recovery Finance II US, LLC, Recovery Finance Limited, or one of its affiliates. Procurement Funding Term Sheet between Atlys Global and Blue Flame, BFM000002715 - 719 at 715; Notice of Assignment, Acknowledgment and General Obligation Pledge between Blue Flame and the State of Florida, April 14, 2020, BFM000073172 - 173.

⁵⁵ Eligible purchase orders included those "to service or supply any of the 50 States, select U.S. cities or U.S. Territories, [or] Federal Agencies." Procurement Funding Term Sheet between Atlys Global and Blue Flame, BFM000002715 - 719 at 716.

⁵⁶ Notice of Assignment, Acknowledgment and General Obligation Pledge between Blue Flame and the State of Florida, April 14, 2020, BFM000073172 - 173; Notice of Assignment, Acknowledgment and General Obligation Pledge between Blue Flame and the County of San Mateo, April 15, 2020, BFM000047291 - 292; Notice of Assignment, Acknowledgment and General Obligation Pledge between Blue Flame and University Hospital, April 16, 2020, BFM000048369 - 370; Notice of Assignment, Acknowledgment and General Obligation Pledge between Blue Flame and Rhode Island Emergency Management Agency, April 13, 2020, BFM000200454 - 455; Notice of

notices of assignment would have entitled Atlys Global to receive payments from Blue Flame's customers for their respective purchase orders "in connection with providing [Blue Flame] with [the] necessary funding."⁵⁷ Mr. Baskett made no mention of this funding source or the role it would have played in mitigating any damages from Defendants' alleged actions related to the California Wire Transactions.⁵⁸

V. QUANTIFICATION OF PROFITS ON DISPUTED TRANSACTIONS

35. Even assuming Mr. Baskett could determine that the orders identified in his Schedule 1 would have been finalized and completed absent Defendants' alleged misconduct, Mr. Baskett's quantification of lost profits is unreliable. Mr. Baskett calculated Blue Flame's lost profits as "Lost Revenue less [Blue Flame's] Unincurred Incremental Costs,"⁵⁹ where Unincurred Incremental Costs includes predominantly Blue Flame's costs of goods sold (*i.e.*, costs to procure the products Blue Flame planned to sell to its customers).⁶⁰ First, Mr. Baskett calculated lost revenue by multiplying the quantity of PPE he claims would have been sold but for the alleged misconduct by a sales price that he obtained from the "canceled or unexecuted purchase order, sales order, or invoice."⁶¹ Then, he subtracted from his estimated lost revenue an estimate of Blue Flame's cost of purchasing the product from suppliers, which he either obtained from "Supplier Product Pricing Sheets" or calculated based on what he claims was Blue Flame's anticipated mark-up from "Blue Flame's Item Cost and Bulk Sales Pricing Sheets."⁶² Lastly, he subtracts other costs Blue Flame would have incurred to complete the transactions to derive his claimed lost-profits.⁶³ As I discuss in more detail in this section of my report, the product catalogues, pricing

Assignment, Acknowledgment and General Obligation Pledge between Blue Flame and the State of Washington, April 13, 2020, BFM000044873 - 874.

⁵⁷ See, *e.g.*, Notice of Assignment, Acknowledgment and General Obligation Pledge between Blue Flame and the State of Florida, April 14, 2020, BFM000073172 - 173.

⁵⁸ Mr. Baskett testified that he does not "know anything about" Blue Flame's financing agreement with Atlys Global. Deposition of William T. Baskett, March 15, 2021, p. 119.

⁵⁹ Revised Baskett Report, ¶ 18.

⁶⁰ Revised Baskett Report, ¶ 16.

⁶¹ Revised Baskett Report, ¶ 20.

⁶² For the California Order, Mr. Baskett instead relied on purchase orders between Blue Flame and its suppliers. Revised Baskett Report, ¶ 21, Schedule 1.

⁶³ Revised Baskett Report, ¶¶ 25-32.

sheets, and mark-up assumptions used by Mr. Baskett as the basis for his lost profit inputs are not reliable indicators of what Blue Flame or its customers would have paid to complete the Disputed Transactions during this period of unprecedented market challenges. Given the highly volatile pricing for PPE products at the beginning of the pandemic and the lack of any reasonable basis to determine the ultimate transaction prices both for sellers and buyers, Mr. Baskett's attempted quantification of the profit on the Disputed Transactions is speculative.

A. Significant Price Volatility

36. The State of Tennessee's order provides an illustrative example for why Mr. Baskett's method for determining the price and profit margin at which Blue Flame might have fulfilled an order is unduly speculative. The Revised Baskett Report Schedule 1 assumed that Blue Flame would have sold 500,000 N95 masks to Tennessee at a price of \$3.96 from an invoice dated April 6, 2020. It also assumed that Blue Flame could have purchased these masks at a price of \$3.12, which Mr. Baskett takes from a Great Health products catalog from April 1, 2020.⁶⁴ Tennessee made a deposit for the entire order by April 15, 2020 based on the April 6, 2020 invoice price; however, according to Blue Flame, "[b]etween April 6 and April 15, market prices increased significantly," and Blue Flame informed Tennessee that it would need to reprice the goods at then-current market prices.⁶⁵ In response, Tennessee requested a refund.⁶⁶ The Revised Baskett Report's methodology is completely untethered to these facts. It simply assumed the transaction would have been completed at prices and costs that Blue Flame admits were not plausible.⁶⁷ It is impossible to know with any reasonable degree of certainty what price Tennessee might have been willing to accept, and how much profit margin Blue Flame might have been willing to give up in order to complete the sale.

37. The Tennessee example is not unique. As discussed above in Section IV.A, market prices for PPE items were highly volatile during March and April 2020. Mr. Baskett acknowledges

⁶⁴ Invoice from Blue Flame to Tennessee Emergency Management Agency, April 6, 2020, BFM000071193; Great Health Products Catalog, April 1, 2020, BFM000069053.

⁶⁵ Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette, at p. 5; Email from John Thomas to Matthew Hayes (Tennessee), April 16, 2020, BFM000054611 - 614 at 612 - 613.

⁶⁶ Email from Matthew Hayes to John Thomas, April 17, 2020, BFM000054611 - 614 at 611.

⁶⁷ Mr. Baskett testified that the communication between Blue Flame and Tennessee "doesn't look favorably for the plaintiff." Deposition of William T. Baskett, March 15, 2021, p. 193-194.

that “prices were constantly changing” from March to May 2020,⁶⁸ and even that they “would change probably sometimes daily.”⁶⁹ Documents available to Mr. Baskett confirm that various price indicators Mr. Baskett relied upon were subject to change without notice, and that these prices did, in fact, change frequently and without warning. This volatility caused problems for Blue Flame because it was not able to lock in prices for its purchases. For example, on April 6, 2020, Marc Serrio, Blue Flame’s Chief Financial Officer, wrote to others at Blue Flame regarding purchase orders placed with Great Health, “[w]e placed the orders, [Great Health] need[s] to execute and not hold it up because the prices are always changing between the last quote and the time we get their PO in.”⁷⁰ The problem was not limited to Great Health. Suuchi told Blue Flame on March 23, 2020 that its quoted “prices are valid 12 hours, since our factories are facing very high demand.”⁷¹

38. The purchase price volatility in turn caused problems for Blue Flame’s customers when their price changed unexpectedly. For example, on April 9, 2020, Ethan Bearman, Blue Flame’s Chief Legal Officer, wrote to a potential referral partner that “[t]he fluctuating marketplace can catch deals where the buyer, typically a government agency, expects a price to hold for days while they work through the bureaucracy to get a payment out the door. Meanwhile, the price on the backend increased 25%. ... I suspect you get the idea of the margin variability.”⁷² In response, Blue Flame made clear that item costs on the price sheets that Mr. Baskett relies on applied for short periods of time, usually no more than one day. For example, on April 7, 2020, Ethan Bearman told others at Blue Flame with regard to the bulk order price sheet to “[p]lease remember that this is the price for today, we’ll honor today’s quote tomorrow ONLY.”⁷³ John Thomas similarly also told California on April 10, 2020 that Blue Flame “can honor this current pricing estimate only for another 24 hours.”⁷⁴ In many cases, it appears that Blue Flame voluntarily

⁶⁸ Revised Baskett Report, ¶ 23.

⁶⁹ Deposition of William T. Baskett, March 15, 2021, p. 183.

⁷⁰ Email from Marc Serrio to Ethan Bearman and John Thomas, April 6, 2020, BFM000113285 - 289 at 285.

⁷¹ Email from Suuchi Ramesh to Ethan Bearman *et al.*, March 23, 2020, BFM000012279 - 285 at 283.

⁷² Email from Ethan Bearman to Pacha Resources, April 9, 2020, BFM000126268 - 270 at 269.

⁷³ Email from Ethan Bearman to John Thomas and Mike Gula, April 7, 2020, BFM000034630.

⁷⁴ Email from John Thomas to Michael Wong (State of California), April 10, 2020, BFM000109726 - 730 at 726. See, also, Signal Messages between Ethan Bearman and Mike Gula, March 26, 2020, BFM000202859; Email from Mike Gula to Mark Bonacci (Recovery Road Addiction Network) *et al.*, April 8, 2020, BFM000036196 - 198 at 197.

issued refunds to customers because prices had risen so far above the price as of the order date. For example, Blue Flame told the Takoma Park Police: “[we] are hearing that there is no available supply of hand sanitizer available in the quantity ordered anywhere near the price quoted at the time of order. Rather than continuing to make you wait while we continue to search for the product that isn’t several times more expensive than your order, at this time we would like to fully refund your purchase”⁷⁵ This example not only illustrates the fact that price volatility of PPE items in the spring of 2020 makes price quotes an unreliable estimate of future transaction prices, but it also shows that price volatility was an important independent obstacle that may have caused Blue Flame to not realize any profits on any particular transaction.

39. Despite the price volatility and admitted limitations of any pricing information, the Revised Baskett Report’s methodology relies on pricing information that may not still have been valid once payment was made as a basis for the profits Blue Flame would have earned on each Disputed Transaction. For some of the Disputed Transactions, the Revised Baskett Report used pricing information even earlier than the order date, and these prices may have been superseded by markedly higher prices by the order date.⁷⁶ Mr. Baskett relied on bulk order price sheets that predate the Disputed Transactions by days or even weeks as a basis for Blue Flame’s cost to purchase the goods.⁷⁷ For example, Mr. Baskett relied on a Great Health product catalogue from April 1, 2020 to determine Blue Flame’s purchase prices for items he identifies as being ordered on April 10 (by the State of Rhode Island) and April 15, 2020 (by San Mateo County, California).⁷⁸

40. Mr. Baskett asserted that he was “able to accurately determine the price of the product that Blue Flame would have paid had Blue Flame’s sale not been aborted.”⁷⁹ Given the

⁷⁵ Email from Marc Serrio to Ron Hardy, April 24, 2020, BFM000075639 - 643 at 639.

⁷⁶ For example, the most recent Great Health product catalogue prior to California’s March 25, 2020 order of N95 masks was dated from March 24, 2020. This March 24, 2020 product catalogue listed N95 masks priced at between \$2.50 and \$3.00, depending on the brand. However, the March 26, 2020 order confirmation between Great Health and Blue Flame for N95 masks includes a purchase price of \$3.30 for N95 masks. That is, the prices Great Health charged Blue Flame just two days after the issuance of its latest product catalogue were \$0.30-\$0.80 higher than were listed on the outdated product catalogue. Great Health Products Catalogue, March 24, 2020, BFM000012250; Email from Henry Huang to Mike Gula, March 26, 2020, BFM000013610 - 611.

⁷⁷ Mr. Baskett admitted in deposition that the pricing sheets he relies on are less “reliable” than documents that would be “very specific to that sale.” Deposition of William T. Baskett, March 15, 2021, p. 153.

⁷⁸ Revised Baskett Report, ¶ 21 and Schedule 1.

⁷⁹ Revised Baskett Report, ¶ 23.

evidence cited above, and the volatile marketplace, it is impossible to make any pricing determination based on the documents used by Mr. Baskett that is not unduly speculative.

B. Uncertain Profit Margins

41. Because Blue Flame did not actually procure the PPE items that it required for most of the transactions listed in Schedule 1 of the Revised Baskett Report, Mr. Baskett attempted to estimate the prices “that would have been paid by Blue Flame” had it fulfilled those orders.⁸⁰ In all but two instances,⁸¹ Mr. Baskett’s estimates rely on two types of documents: (1) product catalogues from Blue Flame’s alleged supply partner Great Health, and (2) Blue Flame’s item cost pricing sheets for bulk orders, which Mr. Baskett assumes incorporate a mark-up of 30 percent over Blue Flame’s supply cost. Mr. Baskett primarily relies on Great Health product catalogues for the cost of PPE he assumes would have been obtained by Blue Flame. Specifically, he generally takes the listed cost of the PPE item from the most recently published catalogue prior to the alleged order date. As discussed above, however, Blue Flame was frustrated by the rapidly changing prices that meant by the time the customer completed the paperwork and Blue Flame sent a purchase order to Great Health the price had already changed. The Revised Baskett Report’s methodology has no way to capture this marketplace reality, which resulted in numerous cancelled transactions.

42. For most of the Disputed Transactions dated on or after April 7, 2020, Mr. Baskett determined Blue Flame’s purchase price through reference to a Blue Flame Bulk Price Sheet (price being quoted to customers) and an assumed 30 percent mark-up. There are three problems with the use of this information. First, these price sheets were subject to change as prices were sharply increasing on a daily basis. Second, the bulk price list was intended to show prices that customers would pay to Blue Flame on large orders, which presumably would have been at lower prices as a result of volume.⁸² While it would also be reasonable to assume that Blue Flame would receive a lower price on its large purchases from its suppliers, Mr. Baskett applies this methodology to small

⁸⁰ Revised Baskett Report, ¶ 21.

⁸¹ For the California Order, Mr. Baskett relies on purchase orders between Blue Flame and its suppliers, and for the State of Colorado’s order, Mr. Baskett relies on a Blue Flame “Cost Price” sheet. Revised Baskett Report, Schedule 1.

⁸² Mr. Baskett testified that he “didn’t notice that” Blue Flame’s bulk price lists included language that they only showed prices related to large orders. Deposition of William T. Baskett, March 15, 2021, pp. 177-178.

volume orders, thus understating Blue Flame's purchase price and overstating the profit margin. In **Exhibit 3**, I show the implied mark-up for each of the orders included in Mr. Baskett's Schedule 1. Because of the mismatch between the timing of the customer price quotes and the purchase price source documents, Mr. Baskett's calculations resulted in implied mark-ups far greater than 30 percent. Mr. Baskett's implied average mark-up is 87 percent, with mark-ups as high as 246 percent.

43. Finally, Mr. Baskett provided no support for his assumed "built-in mark-up of 30%."⁸³ He testified that he was told by his counsel that Blue Flame's bulk price lists included a 30 percent mark-up, and although he claims to have "verified one or two items on" one of Blue Flame's price lists, Mr. Baskett does not appear to have fully investigated the anticipated margins for the Subsequent Disputed Transactions.⁸⁴ I am aware of documents in the record that indicate an anticipated price mark-up of considerably less than 30 percent for some customers. For example, Mike Gula told a representative from the State of Rhode Island (Quonset Development) on April 1, 2020 that Blue Flame "do[es] a 15% markup on purchases."⁸⁵ He told a prospective customer in New York on April 6, 2020 that there is a "10% business fee of what we are selling for. Strict 10% ceiling,"⁸⁶ which appears to have been as a result of New York's rules on price gouging for PPE items at the time.⁸⁷

44. Mr. Baskett claimed he is "able to accurately determine the price of the product that Blue Flame would have paid had Blue Flame's sale not been aborted."⁸⁸ Given the economic reality of the marketplace in which there was no certainty as to prices all along the supply chain,

⁸³ Revised Baskett Report, ¶ 21.

⁸⁴ Mr. Baskett testified that he reviewed two documents, a Blue Flame bulk price sheet and a Blue Flame cost price sheet, from the same day in verifying the 30 percent assumption. However, I am unaware of these documents being available on the same day. Deposition of William T. Baskett, March 15, 2021, pp. 159-168.

⁸⁵ Email from Mike Gula to Steven King (Rhode Island, Quonset Development), April 1, 2020, BFM000060331 - 339 at 335.

⁸⁶ Email from Mike Gula to Cheryl Schlesinger (New York City Department of Sanitation), April 6, 2020, BFM000037228 - 233 at 232.

⁸⁷ On March 17, New York's Department of Consumer and Worker Protection instituted a rule that made it "illegal to increase prices by 10 percent or more" on "any personal or household good or any service that is needed to prevent or limit the spread of or treat new coronavirus (COVID-19)." "Department of Consumer and Worker Protection Issues Emergency Rule That Makes Price Gouging Illegal for Any Item or Service Needed to Limit the Spread of Coronavirus," New York City Department of Consumer and Worker Protection Press Release, March 17, 2020, available at: <https://www1.nyc.gov/site/dca/media/pr031720-DCWP-Emergency-Rule-Price-Gouging-Illegal.page>.

⁸⁸ Revised Baskett Report, ¶ 23.

and the evidence considered above, I conclude that Mr. Baskett's estimation of the profits that might have been made on the Disputed Transactions is unduly speculative.

C. Calculation Errors

45. The Revised Baskett Report corrected various errors in the Baskett Report. However, in addition to the methodological flaws discussed above, the Revised Baskett Report still contains several errors, including:

- Calculating lost profits on components of customers' orders that Blue Flame actually fulfilled;⁸⁹
- Relying on superseded order information;⁹⁰
- Not using the available pricing data closest in time to an order;⁹¹
- Applying incorrect mark-ups to customer orders;⁹² and
- Applying incorrect prices from Great Health product catalogues.⁹³

⁸⁹ For example, Mr. Baskett calculated lost profits on the South Carolina Law Enforcement Division's order of anti-fog safety face shields even though Blue Flame admits to having "procured and delivered the face shields," as well as the Northern Arizona University's order of surgical masks even though Blue Flame admits to having "shipped 1,000 surgical masks to the University, which the University agreed to accept as a donation." Revised Baskett Report, Schedule 1; Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette, at pp. 5-6.

⁹⁰ For example, Mr. Baskett relied on a superseded April 1, 2020 draft order estimate to the Arizona Department of Public Safety even though Blue Flame issued a "new estimate with the most current prices" to the customer later that day. Revised Baskett Report, Schedule 1; Emails between Claire Cuddy and Patricia Blute (Arizona Department of Public Safety), April 1, 2020, BFM000069397 - 399; Draft Order Estimate from Blue Flame to Patricia Blute, April 1, 2020, BFM000069332; Draft Order Estimate from Blue Flame to Patricia Blute, April 1, 2020, BFM000069400 - 401.

⁹¹ Mr. Baskett relied on a Great Health product catalogue from April 1, 2020 to estimate Blue Flame's wholesale procurement cost for the State of Alabama's April 8, 2020 order of Makrite-brand N95 masks even though there exists a Blue Flame pricing sheet for bulk orders from April 8, 2020. Revised Baskett Report, Schedule 1; Blue Flame Bulk Order Price Sheet, April 8, 2020, BFM000002469 - 470.

⁹² For the South Carolina Law Enforcement Division's order of disposable nonwoven safety gowns, Mr. Baskett divided the retail sales price listed on Blue Flame's pricing sheet for bulk orders by 1.7 instead of his purported 1.3 (*i.e.*, he applies a 70 percent mark-up instead of a 30 percent mark-up). Revised Baskett Report, Schedule 1. See, also, Deposition of William T. Baskett, March 15, 2021, p. 230.

⁹³ For the Idaho State Police's order of Dasheng-brand foldable N95 masks, Mr. Baskett estimated Blue Flame's wholesale procurement cost by relying on the average cost of non-Dasheng-brand N95 masks from Great Health's March 24, 2020 product catalogue. Revised Baskett Report, Schedule 1; Draft Order Estimate from Blue Flame to Stephen Srodawa (Idaho State Police), March 30, 2020, BFM000117675 - 676 at 675; Great Health Products Catalogue, March 24, 2020, BFM000012250.

Submitted on March 19, 2021



Laura B. Stamm

Exhibit 1**Unfinalized Subsequent Disputed Transactions**

	Customer	Order Dates	Lost Profits
No Evidence of Finalized Order			
[1]	State of Washington	04/09/20	\$17,556,579
[2]	State of Rhode Island (Quonset Development)	04/10/20	\$2,329,696
[3]	Medical University of South Carolina	04/11/20	\$497,345
[4]	Florida State Emergency Operations Center	04/14/20	\$1,535,647
[5]	University Hospital	04/15/20	\$124,307
[6]	San Mateo County, California	04/15/20	\$772,059
[7]	State of Colorado	04/27/20	\$3,258,342
	Subtotal		\$26,073,977
Blue Flame States No "Fully Executed Contract or Purchase Order"			
[8]	Idaho State Police	03/30/20	\$3,018
[9]	Maryland Department of State Police	03/30/20	\$3,267
[10]	Melbourne Airport Police	03/30/20	\$1,584
[11]	Florida Department of Law Enforcement	03/31/20	\$6,978
[12]	Melbourne Police Department	03/31/20	\$151
[13]	Arizona Department of Public Safety	04/01/20	\$94
[14]	Iowa DCI Crime Laboratory	04/01/20	\$1,326
[15]	Santa Rosa County Sheriff's Office	04/01/20	(\$2,635)
[16]	North Carolina State Bureau of Investigation	04/02/20	\$1,663
[17]	Oklahoma State Bureau of Investigation	04/02/20	\$2,153
[18]	Takoma Park Police	04/02/20	\$344
[19]	Dixie County Sheriff's Office	04/02/20	\$384
[20]	Douglas County Sheriff's Office	04/02/20	\$336
[21]	Marion County Sheriff's Office	04/02/20	\$1,490
[22]	Northern Arizona University	04/02/20; 04/03/20	\$4,004
[23]	Riverside University Health System	04/03/20	\$145,697
[24]	State of Alabama	04/06/20; 04/08/20	\$453,199
[25]	State of Tennessee	04/06/20	\$544,642
[26]	Lone Star College	04/07/20	\$281
[27]	North Carolina State Department of Safety	04/07/20	\$3,304
[28]	South Carolina Law Enforcement Division	04/10/20	(\$89,986)
	Subtotal		\$1,081,293
Total			\$27,155,270

Exhibit 1**Unfinalized Subsequent Disputed Transactions**

Notes:

- [A] Customer, Order Dates, and Lost Profits are from the Revised Baskett Report, Schedule 1.
- [B] This exhibit combines the product-specific orders listed in Mr. Baskett's Schedule 1 for ease of exposition.

Sources:

- [1] Emails between Mike Gula *et al.* and Elena McGrew, April 2-3, 2020, BFM000024349 - 355 at 349 - 350; Emails from Michael Collins to Elena McGrew, May 5-7, 2020, BFM000082935. I understand from counsel that Michael Collins is an alias for Mike Gula.
- [2] Emails between Steven King (State of Rhode Island (Quonset Development)) and Mike Gula *et al.*, April 1-28, 2020, BFM000060331 - 339 at 331 - 337.
- [3] Emails from Brielle Appelbaum *et al.* to Lisa Goodlett *et al.* (Medical University of South Carolina), April 11-14, 2020, BFM000127087 - 088.
- [4] Emails between Virgil Howard *et al.* (Florida State Emergency Operations Center) and Mike Gula *et al.*, April 13-16, 2020, BFM000047677 - 687 at 677 - 683.
- [5] Emails between Mike Gula *et al.* and Robert Sharbaugh (University Hospital), April 9-23, 2020, BFM000056355 - 372 at 355 - 364.
- [6] Emails between Ethan Bearman *et al.* and Tamara Seney (San Mateo County), April 2-15, 2020, BFM000047399 - 416 at 399 - 415; Email from Michael Collins to Tamara Seney, May 5, 2020, BFM000081134 - 140 at 134.
- [7] Email from Colorado to John Thomas *et al.*, May 4, 2020, BFM000080369; Email from Ethan Bearman to John Thomas *et al.*, May 4, 2020, BFM000080065.
- [8]-[28] Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.

Exhibit 2

Stated Reasons For Subsequent Disputed Transactions Not Being Successfully Completed

From Revised Baskett Report, Schedule 1			
	Customer	Order Dates	Lost Profits
			Reasons For Transactions Not Completed
[1]	Idaho State Police	03/30/20	\$3,018
			"There are a lot of fraudulent offerings and support to federal and state agencies for PPE going on right now, and your business's continued lack of providing us firm and accurate shipping status with tracking numbers is beginning to make us very weary. Please provide me with true and accurate shipping status, including tracking number via UPS or FedEx, no later than 1500 Mountain Standard Time today, or we will need this order canceled and a full refund returned." (Customer)
			"[T]here have been significant disruptions in the supply chain coming out of China and unfortunately, we are not immune. ... [W]e are unable to fulfil your order in a timely manner." (Blue Flame)
[2]	Maryland Department of State Police	03/30/20	\$3,267
			"Blue Flame was unable to source such small quantities of PPE at the prices and within the schedule the Department required." (Blue Flame)
[3]	Melbourne Airport Police	03/30/20	\$1,584
			"Unfortunately, the N95 masks and hand sanitizer you ordered is no longer available and we'd like to immediately process your refund with your permission." (Blue Flame)
			"Blue Flame was unable to source such small quantities of PPE at the prices and within the schedule the Department required." (Blue Flame)
[4]	Florida Department of Law Enforcement	03/31/20	\$6,978
			"I have not received an update. At this time, I would like to just request a refund for this order please." (Customer, two days after asking for an update on order status)
			"Blue Flame was unable to source such small quantities of PPE at the prices and within the schedule the Department required." (Blue Flame)
[5]	Melbourne Police Department	03/31/20	\$151
			"Blue Flame procured and delivered the digital thermometers and the face shields, but it was unable to procure the bottles of hand sanitizer and surgical masks at the price and within the schedule the Department required." (Blue Flame)
[6]	Arizona Department of Public Safety	04/01/20	\$94
			"Unfortunately, we still don't have good news for you, hand sanitizer remains tremendously backlogged and we don't have a delivery date from our manufacturer. At this point it's best that we refund the rest of your payment." (Blue Flame)
			"Blue Flame was unable to source such small quantities of hand sanitizer at the prices and within the schedule the Department required." (Blue Flame)

Exhibit 2

Stated Reasons For Subsequent Disputed Transactions Not Being Successfully Completed

From Revised Baskett Report, Schedule 1			
	Customer	Order Dates	Lost Profits
			Reasons For Transactions Not Completed
[7]	Iowa DCI Crime Laboratory	04/01/20	\$1,326
			"I haven't heard anything. Are you able to cancel the order for me?" (Customer, three days after asking for an update on order status)
			"Blue Flame was unable to source such small quantities of PPE at the prices and within the schedule the Crime Laboratory required." (Blue Flame)
[8]	Santa Rosa County Sheriffs Office	04/01/20	(\$2,635)
			"Blue Flame was unable to source such small quantities of PPE at the prices and within the schedule the Sheriff's Office required." (Blue Flame)
[9]	North Carolina State Bureau of Investigation	04/02/20	\$1,663
			"[T]here have been significant disruptions in the supply chain coming out of China, and unfortunately we are not immune. ... In light of the current situation and rather than continue to wait until we have an answer from our manufacturer, we want to get your money back until we can be assured a delivery is possible." (Blue Flame)
			"Blue Flame was unable to source such small quantities of PPE at the prices and within the schedule the Bureau required. Blue Flame issued a full refund to the Bureau on April 23, 2020." (Blue Flame)
[10]	Oklahoma State Bureau of Investigation	04/02/20	\$2,153
			"Blue Flame was unable to source such small quantities of PPE at the prices and within the schedule the Bureau required." (Blue Flame)
[11]	St. John's Child Wellness Center	04/02/20	(\$55,741)
			"St. John's placed an order for nitrile gloves, hand sanitizer, disposable caps and gowns, and surgical masks. Blue Flame procured and delivered the nitrile gloves, but it was unable to source the remaining PPE at the prices and within the time frame required by St. John's." (Blue Flame)
[12]	Takoma Park Police	04/02/20	\$344
			"We have had extensive discussions with our manufacturers over the last few days and are hearing that there is no available supply of hand sanitizer available in the quantity ordered anywhere near the price quoted at the time of order. Rather than continuing to make you wait while we continue to search for product that isn't several times more expensive than your order, at this time we would like to fully refund your purchase" (Blue Flame)
			"Blue Flame was unable to source such small quantities of hand sanitizer at the prices and within the schedule the Department required." (Blue Flame)

Exhibit 2

Stated Reasons For Subsequent Disputed Transactions Not Being Successfully Completed

From Revised Baskett Report, Schedule 1			
	Customer	Order Dates	Lost Profits
[13]	Dixie County Sheriff's Office	04/02/20	\$384
			"[T]here have been significant disruptions in the supply chain coming out of China, and unfortunately we are not immune. ... In light of the current situation and rather than continue to wait until we have an answer from our manufacturer, we want to get your money back until we can be assured a delivery is possible." (Blue Flame)
			"Blue Flame was unable to source such small quantities of digital thermometers and hand sanitizer at the prices and within the schedule the Sheriff's Office required." (Blue Flame)
[14]	Douglas County Sheriff's Office	04/02/20	\$336
			After being asked twice for an order status update, Blue Flame said: "We checked again with our manufacturer, unfortunately they still cannot commit to a delivery date for your order. Rather than continuing to make you wait, we would like to immediately process a refund to the credit card used for the purchase, inclusive of processing fees." (Blue Flame, after being asked twice for an update on order status)
			"Blue Flame was unable to source such small quantities of digital thermometers at the prices and within the schedule the Sheriff's Office required." (Blue Flame)
[15]	Marion County Sheriff's Office	04/02/20	\$1,490
			"Blue Flame was unable to source such small quantities of PPE at the prices and within the schedule the Sheriff's Office required." (Blue Flame)
[16]	Northern Arizona University	04/02/20; 04/03/20	\$4,004
			"Blue Flame was unable to source such small quantities of PPE at the prices and within the schedule the University required. Accordingly, after discussion with the University, Blue Flame issued a full refund on May 8, 2020." (Blue Flame)

Exhibit 2

Stated Reasons For Subsequent Disputed Transactions Not Being Successfully Completed

From Revised Baskett Report, Schedule 1			
	Customer	Order Dates	Lost Profits
			Reasons For Transactions Not Completed
[17]	Riverside University Health System	04/03/20	\$145,697
			"Blue Flame Medical heard from the CEO of our main Chinese supplier, from where your order was sourced. He said ... the Chinese government nationalized all N95 production and forced re-certification of all factories. As such, the supplier invoked force majeure yesterday and canceled our contract. We are feverishly working on sourcing alternate suppliers to fulfill your order." (Blue Flame). "At this time the goods that the County ordered from Blue Flame Medical early in April are overdue for delivery, have not been received and you now advise are not available from the supplier you identified during the negotiations. Therefore the County is cancelling the order" (Customer reply)
			"On April 29, Great Health informed Blue Flame that it could not deliver the N95 masks because of the actions of the Chinese Government. Blue Flame also encountered difficulty procuring the remaining goods at the prices and within the schedule Riverside required. After being informed of these developments, Riverside requested a full refund." (Blue Flame)
[18]	State of Alabama	04/06/2020; 04/08/2020	\$453,199
			"I have tried to use every resource even working with another firm to source the supply. ... I cant wait another day and we must issue a full and complete refund within 48 hours." (Blue Flame)
			"Blue Flame was unable to procure the ordered goods at the prices and within the schedule Alabama required." (Blue Flame)
[19]	State of Tennessee	04/06/20	\$544,642
			"[O]ur cost from the manufacturer has gone up significantly since the original price quote to when we received the funds from the state. So much so that Blue Flame Medical would actually take a loss if we did this transaction." (Blue Flame). Blue Flame offered to issue a refund or proceed with the transaction at a higher sales price. Tennessee then "request[ed] a full refund of all monies paid." (Customer)
			"Between April 6 and April 15, market prices increased significantly. Upon receipt of the full deposit on April 15, Blue Flame informed Tennessee that, because of significant global market shifts in pricing, Blue Flame could either order the goods at then-current prices or issue a full refund. Tennessee requested a refund." (Blue Flame)
[20]	Lone Star College	04/07/20	\$281
			"Blue Flame procured and delivered the KN95 masks and the face shields, but it was unable to procure the nitrile gloves at the price and within the schedule the College required." (Blue Flame)

Exhibit 2

Stated Reasons For Subsequent Disputed Transactions Not Being Successfully Completed

From Revised Baskett Report, Schedule 1			
Customer	Order Dates	Lost Profits	Reasons For Transactions Not Completed
[21] North Carolina State Department of Safety	04/07/20	\$3,304	"Unfortunately, the N95 masks and hand sanitizer you ordered is no longer available and we'd like to immediately process your refund with your permission." (Blue Flame) "Blue Flame was unable to source such small quantities of PPE at the prices and within the schedule the Department required." (Blue Flame)
[22] State of Washington	04/09/20	\$17,556,579	"The price quoted by [Blue Flame] was just way too high." (Customer)
[23] South Carolina Law Enforcement Division	04/10/20	(\$89,986)	"Blue Flame procured and delivered the face shields, but it was unable to procure the remaining goods at the prices and within the schedule the Division required." (Blue Flame)
[24] Florida State Emergency Operations Center	04/14/20	\$1,535,647	"Can you please resend [the sales quote] with spec sheets attached? We need to have for vetting purposes. Subsequent to that, we will submit for need/approval/non-approval." (Customer) "If [our Logistics desk] decide[s] they want your product they will reach out to you accordingly." (Customer)
[25] University Hospital	04/15/20	\$124,307	Regarding possible payment terms, "I asked for N10 terms, not for financing. The point of the request is that I want to see the product on our dock before payment. Giving your lender a 100% security interest in the goods defeats the entire purpose. We cannot execute this." (Customer) "[W]e were unable to receiv[e] [a]dvanced financing from our bank to purchase the order. We apologize." (Blue Flame)

Exhibit 2**Stated Reasons For Subsequent Disputed Transactions Not Being Successfully Completed**

From Revised Baskett Report, Schedule 1			Reasons For Transactions Not Completed
Customer	Order Dates	Lost Profits	
[26] San Mateo County, California	04/15/20	\$772,059	Regarding shipping logistics, "But have you actually secured airfreight space and costs? Whats the current price and guaranteed lead-time[?]" (Customer) "I'm skeptical about the freight cost and predictability." (Customer) Regarding possible payment terms, "So your company has net 60 terms and the County would be obligated to encumber the full amount of its PO up front without guarantee of either shipping cost or delivery date? ... I'll give the documents to legal but I think they'll be concerned about the lack of a timeframe and solid cost." (Customer) "Can you put together a quote with your company's name on it? The document that you sent looks like an order YOU'D be placing. Can you accept net terms (if so-please define)? Can you get these items into the US and through customs right away[?]" (Customer)
[27] State of Colorado	04/27/20	\$3,258,342	"After reviewing your submitted quotation regarding product details, pricing and more, the State of Colorado has decided to decline moving forward with issuing a PO at this time." (Customer) "[Colorado] will not be ordering from [Blue Flame]. Specifically the news over the weekend And then added that they could get lower pricing elsewhere as well." (Blue Flame)
Total		\$24,272,487	

Note:

[A] This exhibit combines the product-specific orders listed in Mr. Baskett's Schedule 1 for ease of exposition.

Sources:

- [1] Emails between Randy Byrne (Idaho State Police) and Marc Serrio (Blue Flame), Paris Pope (Blue Flame), and Ethan Bearman (Blue Flame), April 21, 2020, BFM000054264 - 267 at 264; Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [2] Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [3] Email from Brielle Appelbaum (Blue Flame) to Sean Riordan (Melbourne Airport Police) and Marc Serrio, May 11, 2020, BFM000087719 - 721 at 720; Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [4] Emails between Jennifer Miller (Florida Department of Law Enforcement) and Paris Pope, April 21-23, BFM000075328 - 330 at 328; Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [5] Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.

Exhibit 2

Stated Reasons For Subsequent Disputed Transactions Not Being Successfully Completed

- [6] Email from Marc Serrio to Patricia Blute (Arizona Department of Public Safety) and Claire Cuddy (Blue Flame), April 28, 2020, BFM000077698 - 709 at 699; Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [7] Emails between Bruce Reeve (Iowa DCI Crime Laboratory) and Paris Pope, May 5-8, 2020, BFM000083538 - 540 at 538; Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [8] Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [9] Email from Marc Serrio to Brent Culbertson (North Carolina State Bureau of Investigation), April 22, 2020, BFM000075179 - 180 at 179; Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [10] Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [11] Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [12] Email from Marc Serrio to Ron Hardy (Takoma Park Police), April 24, 2020, BFM000075639 - 643 at 639; Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [13] Email from Marc Serrio to Scotty Osteen (Dixie County Sheriff's Office), April 22, 2020, BFM000075173 - 174 at 173; Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [14] Emails between Mathew Martin (Douglas County Sheriff's Office), Claire Cuddy, and Marc Serrio, April 22-28, 2020, BFM000076541 - 544 at 541 - 542; Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [15] Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [16] Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [17] Email from Ethan Bearman to Suzanna Hinckley (Riverside University Health System), April 30, 2020, BFM000134116 - 119 at 118; Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [18] Email from Mike Gula (Blue Flame) to Julia Pickle (State of Alabama), April 29, 2020, BFM000063226; Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [19] Emails between Mathew Hayes (State of Tennessee) and John Thomas (Blue Flame), April 16-17, 2020, BFM000054611 - 614; Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [20] Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [21] Email from Brielle Appelbaum to Angela Hayes (North Carolina Department of Public Safety) and Marc Serrio, May 11, 2020, BFM000085325 - 326 at 325; Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [22] Email from Elena McGrew (State of Washington) to Mike Gula, April 17, 2020, BFM000050658 - 659 at 659.
- [23] Letter from Howard Waltzman to Hon. Frank Pallone, Jr. and Hon. Diana DeGette.
- [24] Emails between Virgil Howard *et al.* (Florida State Emergency Operations Center) and Mike Gula *et al.*, April 14-16, 2020, BFM000047677 - 687 at 677 - 678.
- [25] Email from Robert Sharbaugh (University Hospital) to Mike Gula *et al.*, April 16, 2020, BFM000056355 - 372 at 359; Email from Mike Gula to Angela Gibbons (University Hospital) *et al.*, May 4, 2020, BFM000135372 - 383 at 372.
- [26] Emails between Ethan Bearman *et al.* and Tamara Seney (San Mateo County), April 14-15, 2020, BFM000047399 - 416 at 399, 407; Emails from Tamara Seney to Mike Gula, April 14-15, 2020, BFM000048551 - 567 at 554, 557.

Exhibit 2**Stated Reasons For Subsequent Disputed Transactions Not Being Successfully Completed**

[27] Email from Colorado to John Thomas *et al.*, May 4, 2020, BFM000080369; Email from Ethan Bearman to John Thomas *et al.*, May 4, 2020, BFM000080065.

Exhibit 3**Mr. Baskett's Implied Pricing Mark-ups for the Disputed Transactions**

Customer	Order Date	Product Name and Description	Retail Sales Unit Price	Wholesale Purchase Unit Price	Implied Pricing Mark-up
State of California	03/25/20	N95 Protective Mask	\$4.76	\$3.33	43.0%
Idaho State Police	03/30/20	N95 Protective Mask - Cup Full Respirator	\$6.23	\$2.81	122.1%
Idaho State Police	03/30/20	N95 Protective Mask - (foldable)	\$6.69	\$2.70	147.8%
Idaho State Police	03/30/20	Surgical Masks - Sterile 10 pcs/pack	\$1.03	\$0.59	74.6%
Maryland Dept of State Police	03/30/20	N95 Protective Mask - (foldable) - Dasheng	\$6.69	\$2.90	130.7%
Maryland Dept of State Police	03/30/20	16.9 oz bottles of hand sanitizer	\$5.24	\$2.76	89.9%
Maryland Dept of State Police	03/30/20	Surgical mask- Sterile 10 pcs/pack	\$1.03	\$0.59	74.6%
Maryland Dept of State Police	03/30/20	Disposable Nonwoven Safety Coverall	\$12.00	\$5.80	106.9%
Maryland Dept of State Police	03/30/20	Digital thermometers	\$77.96	\$40.00	94.9%
Melbourne Airport Police	03/30/20	N95 Protective Mask - Foldable - Dasheng	\$6.69	\$2.90	130.7%
Melbourne Airport Police	03/30/20	16.9 oz bottles of hand sanitizer	\$5.24	\$2.76	89.9%
Florida Dept of Law Enforcement	03/31/20	N95 Protective Mask - Cup Full Respirator - Makrite	\$6.87	\$3.30	108.2%
Florida Dept of Law Enforcement	03/31/20	Face Shields - Antifog	\$4.50	\$1.70	164.7%
Florida Dept of Law Enforcement	03/31/20	16.9 oz bottles of hand sanitizer	\$9.54	\$2.76	245.7%
Florida Dept of Law Enforcement	03/31/20	Disposable caps	\$0.35	\$0.18	94.4%
Florida Dept of Law Enforcement	03/31/20	Disposable shoe covers	\$0.74	\$0.38	94.7%
Melbourne Police Dept	03/31/20	16.9 oz bottles of hand sanitizer	\$5.24	\$2.76	89.9%
Melbourne Police Dept	03/31/20	Surgical mask- Sterile 10 pcs/pack	\$1.03	\$0.66	56.1%
Arizona Dept of Public Safety	04/01/20	1 oz bottles of hand sanitizer	\$0.90	\$0.47	91.5%
Arizona Dept of Public Safety	04/01/20	2 oz bottles of hand sanitizer	\$1.20	\$0.63	90.5%
Iowa DCI Crime Laboratory	04/01/20	Surgical Masks - Sterile 10 pcs/pack - Xin Lun	\$1.33	\$0.66	101.5%
Santa Rosa County Sheriffs Office	04/01/20	N95 Protective Mask - Cup Full Respirator - Makrite	\$6.87	\$3.10	121.6%
Santa Rosa County Sheriffs Office	04/01/20	Disposable shoe covers	\$0.74	\$0.38	94.7%
Santa Rosa County Sheriffs Office	04/01/20	Coveralls	\$1.28	\$5.80	(77.9%)
North Carolina State Bureau of Investigation	04/02/20	2 oz bottles of hand sanitizer	\$1.86	\$0.63	195.2%
North Carolina State Bureau of Investigation	04/02/20	16.9 oz bottles of hand sanitizer	\$9.54	\$2.76	245.7%
North Carolina State Bureau of Investigation	04/02/20	Disposable shoe covers	\$0.74	\$0.38	94.7%
North Carolina State Bureau of Investigation	04/02/20	Surgical Masks - Sterile 10 pcs/pack	\$1.33	\$0.66	101.5%
Oklahoma State Bureau of Investigation	04/02/20	N95 Protective Mask - Cup Full - Makrite	\$6.87	\$3.10	121.6%
Oklahoma State Bureau of Investigation	04/02/20	Surgical Masks - Sterile 10 pcs/pack	\$1.33	\$0.66	101.5%

Exhibit 3**Mr. Baskett's Implied Pricing Mark-ups for the Disputed Transactions**

Customer	Order Date	Product Name and Description	Retail Sales Unit Price	Wholesale Purchase Unit Price	Implied Pricing Mark-up
St. John's Child Wellness Center	04/02/20	16.9 oz bottles of hand sanitizer	\$9.04	\$2.76	227.5%
St. John's Child Wellness Center	04/02/20	2 oz bottles of hand sanitizer	\$1.07	\$0.63	69.8%
St. John's Child Wellness Center	04/02/20	Disposable caps	\$0.35	\$0.18	94.4%
St. John's Child Wellness Center	04/02/20	Disposable surgical gowns - non sterile	\$1.82	\$0.96	89.6%
St. John's Child Wellness Center	04/02/20	Surgical Masks, ASTM level 2 ear loop	\$0.12	\$0.66	(82.3%)
Takoma Park Police	04/02/20	2 oz bottles of hand sanitizer	\$1.86	\$0.63	195.2%
Takoma Park Police	04/02/20	27 oz bottles of hand sanitizer	\$13.67	\$4.04	238.4%
Dixie County Sheriff's Office	04/02/20	16.9 oz bottles of hand sanitizer	\$9.54	\$2.76	245.7%
Dixie County Sheriff's Office	04/02/20	27 oz bottles of hand sanitizer	\$13.67	\$4.04	238.4%
Dixie County Sheriff's Office	04/02/20	Digital Forehead Infrared Thermometers	\$77.96	\$40.00	94.9%
Douglas County Sheriff's Office	04/02/20	Digital Forehead Infrared Thermometers	\$77.96	\$40.00	94.9%
Marion County Sheriff's Office	04/02/20	N95 Protective Mask - Cup Full Respirator - Makrite	\$6.87	\$3.10	121.6%
Northern Arizona University	04/02/20	N95 Protective Mask - (foldable) - Dasheng	\$6.89	\$3.11	121.5%
Northern Arizona University	04/03/20	2 oz bottles of hand sanitizer	\$1.86	\$0.63	195.2%
Northern Arizona University	04/03/20	Surgical Masks - Sterile 10 pcs/pack	\$1.33	\$0.66	101.5%
Riverside University Health System	04/03/20	N95 Protective Mask - Cup Full Respirator - Makrite	\$4.76	\$3.10	53.5%
Riverside University Health System	04/03/20	Disposable caps	\$0.34	\$0.18	88.9%
Riverside University Health System	04/03/20	Disposable shoe covers	\$0.63	\$0.38	65.5%
State of Alabama	04/06/20	N95 Protective Mask , Sekura (Makrite)	\$3.96	\$3.10	27.7%
State of Tennessee	04/06/20	N95 Protective Mask - (foldable) 20 pcs/box	\$3.96	\$3.12	26.9%
State of Tennessee	04/06/20	Gowns (non-sterile) isolation	\$1.22	\$0.96	27.1%
Lone Star College	04/07/20	Disposable Nitrile Gloves	\$13.98	\$8.67	61.3%
North Carolina State Dept of Safety	04/07/20	N95 Protective Mask - Cup Full Respirator - Makrite	\$6.98	\$3.10	125.2%
North Carolina State Dept of Safety	04/07/20	2 oz bottles of hand sanitizer	\$1.86	\$0.63	195.2%
State of Alabama	04/08/20	N95 Protective Mask , Sekura (Makrite)	\$3.96	\$3.10	27.7%
State of Alabama	04/08/20	Disposable Isolation Gowns, non-sterile	\$1.22	\$2.02	(39.7%)
State of Alabama	04/08/20	Disposable Nitrile Gloves, box of 100	\$8.68	\$8.35	3.9%
State of Washington	04/09/20	Disposable surgical gowns - sterile	\$10.43	\$4.40	137.0%
State of Washington	04/09/20	Disposable isolation gowns - non sterile	\$3.42	\$2.63	30.0%
South Carolina Law Enforcement Division	04/10/20	Anti Fog Safety Face Shields	\$4.62	\$1.70	171.8%

Exhibit 3**Mr. Baskett's Implied Pricing Mark-ups for the Disputed Transactions**

Customer	Order Date	Product Name and Description	Retail Sales Unit Price	Wholesale Purchase Unit Price	Implied Pricing Mark-up
South Carolina Law Enforcement Division	04/10/20	16.9 oz bottles of hand sanitizer	\$9.54	\$2.76	245.7%
South Carolina Law Enforcement Division	04/10/20	Surgical mask- Sterile 10 pcs/pack - ear loop	\$1.35	\$0.56	140.4%
South Carolina Law Enforcement Division	04/10/20	Disposable Nonwoven Safety GOWN	\$5.36	\$18.35	(70.8%)
State of Rhode Island (Quonset Development)	04/10/20	Disposable surgical isolation gowns - sterile	\$10.02	\$4.40	127.7%
State of Rhode Island (Quonset Development)	04/10/20	Reg. Medical Face Mask	\$0.75	\$0.56	34.3%
State of Rhode Island (Quonset Development)	04/10/20	Digital Forehead Infrared Thermometers	\$48.33	\$40.00	20.8%
Medical University of South Carolina	04/11/20	Antifog Safety Face Shield	\$2.14	\$1.70	25.9%
Medical University of South Carolina	04/11/20	Box of 100 Nitrile Gloves - Medium	\$10.43	\$8.35	24.9%
Medical University of South Carolina	04/11/20	Box of 100 Nitrile Gloves - Large	\$10.43	\$8.35	24.9%
Medical University of South Carolina	04/11/20	Box of 100 Nitrile Gloves - XLarge	\$10.43	\$8.35	24.9%
Florida State Emergency Operations Center	04/14/20	N95 Protective Mask - Full Cup	\$5.01	\$3.85	30.0%
Florida State Emergency Operations Center	04/14/20	Disposable isolation gowns - non sterile	\$3.42	\$2.63	30.0%
University Hospital	04/15/20	Disposable isolation gowns - non sterile	\$3.42	\$2.63	30.0%
University Hospital	04/15/20	Medical Surgical Mask -non sterile	\$0.81	\$0.58	40.4%
San Mateo County, California	04/15/20	N95 Protective Mask - Full Cup	\$5.05	\$3.85	31.0%
San Mateo County, California	04/15/20	Disposable Nitrile Gloves size large - box of 100	\$10.86	\$8.35	30.0%
San Mateo County, California	04/15/20	Anti Fog Safety Goggle	\$3.38	\$2.60	30.0%
San Mateo County, California	04/15/20	Anti Fog Safety Face Shield	\$2.21	\$1.70	30.0%
San Mateo County, California	04/15/20	Disposable isolation gowns - non sterile	\$3.42	\$2.63	30.0%
State of Colorado	04/27/20	N95 Protective Mask - Cup Full Respirator	\$5.38	\$4.35	23.6%
State of Colorado	04/27/20	KN95 Protective Mask - Zhejiang Baiyi	\$2.52	\$2.20	14.5%
State of Colorado	04/27/20	Surgical Masks - Sterile	\$0.75	\$0.62	21.0%
State of Colorado	04/27/20	Nitrile Gloves - 100 pcs per box	\$17.98	\$12.50	43.8%
State of Colorado	04/27/20	Disposable Isolation Gowns, sterile	\$9.28	\$8.02	15.7%

Notes:

[A] All columns are from the Revised Baskett Report, Schedule 1, except for Implied Pricing Mark-up, which I calculate from Mr. Baskett's Data.

[B] Implied Pricing Mark-up is calculated as (Retail Sales Unit Price/Wholesale Purchase Unit Price) - 1.

Source:

[1] Revised Baskett Report, Schedule 1.