

EXHIBIT 117

**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

**REBUTTAL EXPERT REPORT OF
MARC S. PRISAMENT ON BEHALF OF
PLAINTIFF BLUE FLAME MEDICAL LLC**

March 12, 2021

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I. INTRODUCTION AND ASSIGNMENT

1. I have been retained by Schulte Roth & Zabel LLP, counsel for Plaintiff, Blue Flame Medical LLC ("Blue Flame"), as a rebuttal expert witness in medical supply chain practices, in connection with the lawsuit *Blue Flame Medical LLC v. Chain Bridge Bank, N.A., John J. Brough, and David M. Evinger*.

2. Counsel requested that I review Blue Flame Medical's Complaint in the lawsuit (the "Complaint") as well as the Expert Report of Mark Faulkner dated February 12, 2021 (the "Faulkner Report") in order to apply my knowledge and experience in hospital procurement and respond to some of the assertions and opinions set forth in the Faulkner Report. I reserve the right to supplement my opinions should I become aware of additional facts or information, if Mr. Faulkner clarifies, changes, or supplements his opinions, or if I am asked to perform additional analyses.

II. QUALIFICATIONS

3. I have over 35 years of hands-on experience and expertise in the medical, manufacturing and service sectors. I am principal of the Berrynether Group, which provides hands-on consulting services for healthcare and other organizations on a per-diem, temporary, or project basis. I work as an "expert consultant" in the medical procurement and purchasing fields for organizations like GLG, AlphaSights, Emissary, and Third Bridge.

4. From 2016 until 2019, I was the Director of Purchasing Operations for the NewYork-Presbyterian Healthcare System ("NYP") in its "Procurement and Strategic Sourcing Department." In this role I and a team of over 40 individuals were responsible for ensuring that the 250,000+ purchase orders placed annually by the hospital were completed and executed in a timely, cost effective, and efficient manner. This included responding to the demands of NYP's internal stakeholders and addressing their concerns and interfacing with NYP's valued suppliers.

All the hospital orders, whether capital (tangible equipment and services), clinical (consumable supplies and products used in treating patients) or non-clinical (services, repairs, IT, etc.) in nature were handled by me and my team, including many of the personal protective equipment ("PPE") products and supplies used daily by hospital staff.

5. Prior to that, I was the Director of Product Development and Global Sourcing at NYP. In this position from 2010-2018, I led the creation, development and implementation of a unique Global Sourcing initiative, expanding the hospital's supply chain options by taking advantage of efficiencies and lower costs available in the world marketplace, achieving savings of 30% or more. Among the many products I sourced included a number of PPE items and supplies, with the goal of ensuring the quality and functionality of those products remained equivalent to domestic providers. As part of this initiative, I made a dozen extended trips to China and visited a number of Chinese manufacturing facilities to conduct quality and capability audits per relevant guidelines from the Food and Drug Administration and other regulatory bodies.

6. From 2002 to 2010, I was the Director of Strategic Sourcing for the Capital Portfolio, which was responsible for all of NYP's capital requirements, encompassing a broad spectrum of medical and non-medical goods and services, representing more than \$400 million in annual expenditures. This included all tangible equipment and software used at the hospital with a value of over \$1000 and a three-year useful life. Examples range from MRI machines, to IV pumps, to hospital beds, to smaller items like laptops and wheel chairs. Significant cost reductions, standardization initiatives and value-add benefits were achieved for the hospital from these investments in the latest and best medical technology.

7. Earlier in my career, I worked for a variety of world-class global organizations.

These included being an Industrial Engineer for Union Carbide; General Manager and Production Director for Magna-Tech Electronic, an academy-award winning manufacturer of motion picture sound recording equipment; Adjunct Professor of Operations Management and Business at SUNY New Paltz; Lead Consultant/Project Manager for the Hudson Valley Technology Development Center funded by the National Institute of Science and Technology; Director of Operations for Eventide, Inc., a leader in professional audio, communications and aviation products; and the Vice President of Procurement for Datek Online Brokerage Firm.

8. I earned a BS in Industrial Management/Engineering and a MBA degree (cum laude) from Rensselaer Polytechnic Institute in Troy, New York.

9. I have been a keynote speaker and participant in many professional forums in both the United States and Asia. In addition, I interacted regularly with NYP's Group Purchasing Organization (Vizient, formerly Novation) serving on several councils and attending many of their annual conferences and workshops. NYP was also a member of the Large Integrated Service Network group run by Vizient, which Mr. Faulkner mentioned in his report.¹ My resume is attached at Appendix A.

10. I have not provided any other expert testimony in the last four years or authored any published articles in the past ten years.

III. COMPENSATION

11. I am being compensated for this project at a rate of \$275 per hour by Gerson Lehrman Group (GLG), Inc., an expert consulting firm engaged by Schulte Roth & Zabel LLP, to provide expert testimony. This compensation is not in any way contingent on the nature of the findings presented or the outcome of this lawsuit.

¹ Faulkner Report ¶ 4.

IV. SUMMARY OF OPINIONS

12. From my review of the Complaint, I understand that Blue Flame has brought claims related to a wire transfer of \$456.8 million sent on March 26, 2020 by the State of California ("California"), through its bank JPMorgan Chase, N.A. ("JPMorgan Chase") to Blue Flame's account at Chain Bridge Bank, N.A. ("Chain Bridge Bank").² This wire transfer was California's initial deposit to on a purchase 100 million N95 masks from Blue Flame for \$609.16 million (with shipping and tax).³ The wire transfer was subsequently recalled, and the funds were returned to California, which Blue Flame alleges caused it "to lose profits it expected to receive from the transaction as well as substantial future business opportunities with California and other governmental entities."⁴

13. Based on my experience and knowledge of the PPE procurement process and N95 market, and the materials I have reviewed in this case, I disagree with Mr. Faulkner's opinion that Blue Flame could not have fulfilled the California order. Mr. Faulkner's opinion relies on a selective and biased presentation of information concerning Chinese N95 production capacity, a misreading of the record in this case, and a failure to consider the exponential growth and changing dynamics of the PPE market over the first half of 2020. Specifically, Mr. Faulkner fails to appreciate the buying power that a single PPE order worth over \$300 million would wield in China, falsely equating the California order with small orders placed on the spot market at a later date. Mr. Faulkner also makes unwarranted criticisms of Blue Flame that neglect the extreme volatility of the PPE market in late March 2020, which forced market participants to act quickly in order to secure product. Ultimately, Mr. Faulkner's opinion concerning the

² Complaint ¶¶ 1-3, 61.

³ See Complaint ¶ 25.

⁴ Complaint ¶ 80.

negotiation and documentation of the California order boils down to Monday-morning quarterbacking of California's decision to purchase N95 masks from Blue Flame at the onset of a once-in-a-century public health emergency.

14. This report is organized around four key questions regarding Blue Flame's ability to fulfill California's order of 100 million N95 masks, in response to Mr. Faulkner's opinions: 1) Was there adequate capacity, or was there soon going to be adequate capacity, in China to manufacture the 100 million N95 masks ordered by California? I believe the answer is yes; 2) Would import/export restrictions have prevented Blue Flame from delivering the masks for California's order; 3) Was it reasonable for Blue Flame to rely on its suppliers' representations regarding their ability to obtain the volumes of N95 masks necessary to fulfill California's order given Blue Flame's knowledge of its suppliers and their connections (guanxi) in China? Again, the answer is yes; 4) Finally, was Blue Flame too "inexperienced and unsophisticated" to procure the masks for California's order? Here, the answer is no, as Mr. Faulkner's criticisms of Blue Flame does not take into account the realities of the PPE marketplace in the spring of 2020 or how smaller companies generally operate.

15. I certify the opinions expressed in this report are my own. I hold all my opinions as provided in this report to a reasonable degree of professional certainty. In preparing this report, I relied upon my extensive experience and knowledge of procurement and strategic sourcing; background in manufacturing and production processes; data and documents produced in discovery; and publicly available articles. A list of the materials considered are attached as Appendix B. My work on this matter is ongoing, and I reserve the right to supplement my report should new information become available that is relevant.

V. MR. FAULKNER'S ASSERTION THAT THERE WAS NOT SUFFICIENT CAPACITY WITHIN CHINA TO PRODUCE 100 MILLION N95 MASKS IS NOT SUPPORTED BY THE FACTS.

16. The key events in this lawsuit took place during late March 2020, when Blue Flame committed to deliver 100 million N95 masks to California. Mr. Faulkner opines that Blue Flame would not have been able to fulfill its commitment to California, under either the rough shipping schedule Blue Flame provided to California that would have resulted in 100 million masks being delivered prior to the end of April, or over a longer timeframe.⁵ Mr. Faulkner bases his opinion in part on his belief that the face mask market, especially for N95 masks, was chaotic and tight, as well as his belief that China as a whole had insufficient export capacity for N95 masks to accommodate California's order. Based on my professional experience, research, and review of the record, I believe that Mr. Faulkner's opinion is incorrect regarding China's capacity to produce N95 masks, which greatly increased during the period in which Blue Flame committed to supply masks to California.

17. The world was coming off a perfect storm where the coronavirus health emergency was growing into a world-wide event, beyond just China. Inventories at most hospitals and in government warehouses were low and limited (hospitals operate with just a few days of inventory usually), and production was just resuming after the annual Chinese New Year celebrations, where most factories are closed for up to 3-4 weeks.⁶ Adding to this confusion was the federal government's response to helping states and hospitals obtain needed supplies. In a Wall Street Journal article titled How Trump Sowed Covid Supply Chaos. 'Try Getting It Yourself' they state: *"In a March 16 conference call, President Trump told governors that the*

⁵ See Faulkner Report ¶ 45.

⁶ Reality Check Team, "Coronavirus: Does China have enough face masks to meet its needs?," BBC News, February 5, 2020.

*federal government would try to help, but that for respirators (N95 masks) and ventilators, all of the equipment – try getting it yourselves."*⁷ The federal government's hands-off approach is what led states like California to search out any and all potential suppliers, beyond just the large and established PPE distributors, and to consider buying directly as many masks and other PPE supplies as they could. As one article put it, *"for medical providers on the front lines of the crisis, the administration's most consequential move was to put the burden on states to figure things out for themselves."*⁸

18. Nevertheless, based on my experience and knowledge of the PPE procurement process and N95 market, and the materials I have reviewed in this case, it appears to me that Blue Flame's supply chain had the capacity to fulfill California's order of 100 million N95 masks. Mr. Faulkner's contention that fulfilling California's order "would have required Blue Flame to secure more N95 masks than were available from China"⁹ is not supported by the facts and relies heavily on some misleading statistics and references to traditional PPE distributors' struggles importing N95 masks from China.

19. While making much of the fact that China exported approximately 74 million N95 masks to the United States between March 1 and April 14, Mr. Faulkner glides over the fact that China was already producing 150 million N95 masks per month by the end of April,¹⁰ which is the far more relevant figure given that Blue Flame's delivery of N95 masks over this time period would have substantially increased the number imported to the U.S. from China. To the extent U.S. imports are a relevant indicator of China's capacity to produce enough N95 masks to fulfill

⁷ Bender, Michael and Ballhaus, Rebecca, "How Trump Sowed Covid Supply Chaos," Wall Street Journal, August 31, 2020, available at: <https://www.wsj.com/articles/how-trump-sowed-covid-supply-chaos-try-getting-it-yourselves-11598893051>.

⁸ Id.

⁹ Faulkner Report ¶ 26.

¹⁰ Faulkner Report ¶ 30.

the California order, Mr. Faulkner fails to mention that China exported approximately 1.6 billion N95 masks to the U.S. between July 2020—when the United States began specifically tracking N95 imports from China—through September 2020,¹¹ an average of more than 500 million per month.¹² Given that China was producing 150 million N95 masks per month by the end of April and *exporting* over 500 million masks to the U.S. alone by July, it is evident that Chinese N95 production was growing at a tremendous rate from April through June—roughly the timeframe in which Blue Flame would have delivered the masks to California.¹³

20. Those public reports regarding the tremendous rate of growth in N95 mask production is consistent with my own knowledge and experience with Chinese manufacturing. China has a remarkable ability to rapidly expand and react to crisis situations—two new hospitals and 16 temporary treatment centers were built in just days when the pandemic first hit Wuhan¹⁴—and during the early spring of 2020, it was doing so in the area of PPE manufacturing too, as evidenced by the drastic increase in N95 mask production and exports to the United States. From my own experience in procurement at NYP, I saw firsthand how a smaller producer of medical grade scrubs expanded production capacity exponentially in a matter of weeks, after receiving an order from NYP for over 100,000 of these gowns. That added capacity

¹¹ "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> ("USITC, December 2020"), at p. 95. Specific data on U.S. imports of N95 masks are not available from before July 2020 because N95 masks were not individually classified in the Harmonized Tariff Schedule of the United States (HTS). *Id.* at 93.

¹² Mr. Faulkner fails to mention this fact despite citing the relevant U.S. International Trade Commission report seven times in his own report. Faulkner Report ¶¶ 25, 26, 28, 55.

¹³ Contributing to the United States' increasing success in importing masks from China was an early April emergency use authorization, under which "46 manufacturers in China, including 3M and Creative Concepts' factories in China, and local Chinese companies, will be able to produce and export their respirators to the USA." Yiran, Zheng, "Washington approves purchase of respirators from Chinese companies," China Daily Information, April 15, 2020, available at: <https://global.chinadaily.com.cn/a/202004/15/WS5e9646eaa3105d50a3d16356.html>. This represented a huge increase in the number of potential companies that could produce face masks sought by American buyers.

¹⁴ "Fighting Covid-19: China in Action," The State Council Information Office of the People's Republic of China, June 2020, available at: <http://www.scio.gov.cn/zfbps/32832/Document/1681809/1681809.htm>.

for facemasks from China continued to expand during each month of 2020.

21. China demonstrated its manufacturing prowess over the first half of 2020 by rapidly ramping up its production of face masks in general and N95 masks in particular. In addition to producing enough N95 masks by July to export over 500 million per month to the U.S. alone,¹⁵ Chinese manufacturing achieved the following:

- China already produced half the world's face masks before the pandemic and undertook "a mobilization of wartime proportions" to expand its daily output from about 10 million disposable surgical masks at the start of February to 115 million at the end of the month, according to the Chinese government.¹⁶
- By mid-March, China was producing 200 million face masks per day, which was *"more than 20 times the amount it made at the start of February."*¹⁷
- "[T]housands of factories in China have nimbly turned to a new and very profitable market – face masks for export."¹⁸ In the first two months of the year, a staggering number of new manufacturers started producing masks in China, according to business data platform Tianyancha.¹⁹ Some of these new manufacturers were able to get off the ground incredibly quickly. For example: *"At the height of China's outbreak in early February, Guan Xunze's company created a new mask factory in just eleven days. The factory made the much*

¹⁵ Mexico exported an average of 21 million N95 masks per month to the United States from July through September, for a total of 63 million over that time period. USITC, December 2020, at p. 100. Domestically, there was added capacity to produce N95 masks within the U.S. by companies like 3M and others, as domestic production reached more than 160 million per month by the end of 2020, a 300% to 400% increase.

¹⁶ 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>.

¹⁷ Huaxia, "China's daily mask output exceeds 110 million units," Xinhua, March 2, 2020, available at: http://www.xinhuanet.com/english/2020-03/02/c_138835152.htm.

¹⁸ "Booming mask producers in China meet global demand," DT News, March 28, 2020.

¹⁹ Id.

needed N95 face masks which were in huge demand...."²⁰

- New manufacturers of N95-mask making machines also emerged amazingly rapidly in China in early 2020. For example:
 - A factory that produces N95 mask-making machines has been in 24-hour continuous production since January 25. "Cost recovery is certainly not a problem," [Qi Guangtu] said, adding that 70 sets of equipment have been sold for more than 500,000 yuan (\$71,000) each. He has more than 200 additional orders in hand, worth over 100 million yuan (\$14 million). "The machines pay for themselves in 15 days, " said Qi, saying the investment is worth it for his clients.²¹
 - "Manufacturer You Lixin had never set foot in a mask factory before. But as the market soared and he saw the opportunity, it took him just ten days from first deciding to enter the industry to delivering automated machines capable of producing masks."²²
- Chinese factories exported 224 billion face masks from March through December 2020, almost 40 masks for every person in the world outside of China.²³ Those mask shipments were worth \$52 billion total, almost 2% of all Chinese exports in 2020. Chinese firms also exported almost \$15.5 billion worth of other PPE in 2020.
- U.S. imports of N95 respirators in July 2020 totaled 620 million respirators (\$1.1

²⁰ Id.

²¹ Id.

²² Id.

²³ "Export opportunity: China made 40 masks for every person in the world," Business Standard News, January 14, 2021, available at: https://www.business-standard.com/article/current-affairs/export-opportunity-china-made-40-masks-for-every-person-in-the-world-121011400489_1.html.

billion), falling in August to 469 million respirators (\$798 million), and then rebounding to 555 million respirators (\$828 million) in September 2020.²⁴

Ninety-five percent of those imported N95 masks came from China.²⁵

22. BYD Co., an electric car maker that began manufacturing face masks in February 2020, provides a particularly relevant example of the ability of Chinese manufacturers to ramp up PPE production rapidly.²⁶ Within a month of beginning production, BYD was manufacturing five million face masks per day,²⁷ and by May it reported that it was able to produce 50 million face masks per day.²⁸ That explosive production growth allowed BYD to post a net profit of 1.66 billion yuan (\$241.80 million), up from 1.45 billion yuan in the same period a year earlier.²⁹ After enjoying such success with non-N95 face masks, in April BYD entered into a \$1 billion contract to supply the State of California with 300 million N95 masks—about two weeks after California abandoned its contract with Blue Flame following Chain Bridge Bank's return of California's down payment.³⁰ California gave BYD that contract despite the fact that BYD was not then certified by NIOSH to produce N95 masks and despite the fact it had no history of manufacturing any PPE at all prior to 2020.³¹ In fact, BYD missed two contractual deadlines to obtain NIOSH certification and did not deliver any N95 masks to California until June 2020,³²

²⁴ USITC, December 2020, at p. 95.

²⁵ Id. at 96.

²⁶ Daniel Newhauser, "Trump Blacklisted This Chinese Company. Now It's Making Coronavirus Masks for U.S. Hospitals." Vice News, Apr. 11, 2020, available at <https://www.vice.com/en/article/qjdqnb/trump-blacklisted-this-chinese-company-now-its-making-coronavirus-masks-for-us-hospitals>.

²⁷ Id.

²⁸ "UPDATE 1-Electric car maker BYD says profits up as becomes leading mask maker," Reuters, Aug. 28, 2020, available at <https://www.reuters.com/article/byd-results/update-1-electric-car-maker-byd-says-profits-up-as-becomes-leading-mask-maker-idUSL4N2FU3ZD>.

²⁹ Id.

³⁰ Daniel Newhauser, "Trump Blacklisted This Chinese Company. Now It's Making Coronavirus Masks for U.S. Hospitals." Vice News, Apr. 11, 2020.

³¹ Melody Gutierrez, "Newsom says 150 million N95 masks will arrive after BYD earns federal approval," Los Angeles Times, June 8, 2020, available at <https://www.latimes.com/california/story/2020-06-08/byd-earns-federal-approval-for-n95-masks>.

³² Id.

but was nevertheless granted a \$316 million contract by California in July to supply an additional 420 million face masks.³³

23. Earlier in his report, Mr. Faulkner also questioned whether a sufficient supply of melt-blown fabric existed to satisfy California's order.³⁴ Like the production of N95 masks themselves, China's production of melt-blown fabric was exploding in the late winter and early spring of 2020. In fact, Chinese production was expected to reach *200 tons of melt-blown filter media per day by the beginning of April, enough to produce 60 million N95 masks per day, or 1.8 billion per month.*³⁵ Given China's high rate of production of melt-blown fabric, it is unsurprising that Mr. Faulkner does not directly assert that China did not possess a sufficient supply of melt-blown fabric to produce 100 million N95 masks.³⁶ Thus, while supply was tight and demand was high, during April to June of last year China was adding a tremendous amount of N95 production capacity that would have been sufficient to satisfy an order of 100 million N95 type masks.³⁷ While a 30-60 day delivery timeframe might have been tight, it was certainly possible, and if California had been willing to accept deliveries outside of that timeframe,³⁸ it would have been even easier for Blue Flame to satisfy the California order.

24. Also, this assessment only considered new masks that would have been made

³³ Emily Hoeven, "Newsom inks another big mask deal," CalMatters, July 23, 2020, available at <https://calmatters.org/newsletters/whatmatters/2020/07/california-byd-masks-gavin-newsom/>.

³⁴ Faulkner Report ¶ 26.

³⁵ Van der Lugt, Sanne, "Taking back responsibility: A joint effort to increase the production of medical masks in Europe," Clingendael Netherlands Institute of International Relations, April 2020, at p. 3.

³⁶ According to the U.S. International Trade Commission, "[f]or the PPE produced in China that incorporate nonwoven fabrics, those fabrics are also predominantly produced in China." USITC, December 2020, at p. 85.

³⁷ My analysis only considers masks that would have been produced specifically for California's order after it was placed, and not the additional inventory that Blue Flame's suppliers indicated they already possessed or had access to in various locations, nor work-in-progress (WIP) product that would be ready to ship immediately after receipt of a deposit.

³⁸ Melody Gutierrez, "Newsom says 150 million N95 masks will arrive after BYD earns federal approval," Los Angeles Times, June 8, 2020, available at <https://www.latimes.com/california/story/2020-06-08/byd-earns-federal-approval-for-n95-masks>.

specifically for the California order after it was placed, not the additional inventory that their partners indicated already existed in various locations, or was work-in-progress (WIP) and ready to be shipped immediately.

VI. IMPORT/EXPORT RESTRICTIONS WOULD NOT HAVE PREVENTED BLUE FLAME FROM DELIVERING CALIFORNIA'S ORDER IN A REASONABLY TIMELY MANNER

25. Mr. Faulkner opines that export restrictions, and particularly Chinese export restrictions, were one factor that made it unlikely that Blue Flame could have fulfilled California's order.³⁹ Based on my experience and review of publicly available data regarding Chinese export restrictions, I disagree.

26. In early 2020, Chinese mask production was below pre-pandemic levels because of factory closures due to the New Year holiday and the spread of the novel coronavirus.⁴⁰ However, China then swiftly ramped up mask production, producing 1.66 million N95 masks per day by February 29, and 150 million per month by the end of April 2020.⁴¹ Although many countries enacted restrictions on the export of masks and other PPE, the United States primarily imported N95 masks from China,⁴² where restrictions were minor and short-lived. On March 17, the United States lifted tariffs on disposable respirators and surgical masks, making those items less expensive and thus facilitating importation of N95 masks and other PPE.⁴³ Unsurprisingly,

³⁹ Faulkner Report ¶¶ 12(c), 31.

⁴⁰ "Coronavirus: Does China have enough face masks to meet its needs?," BBC News, February 6, 2020, available at: <https://www.bbc.com/news/world-asia-china-51363132>.

⁴¹ "China's daily mask output exceeds 110 million units," Xinhua, March 2, 2020, available at: http://www.xinhuanet.com/english/2020-03/02/c_138835152.htm; "Fighting Covid-19: China in Action," The State Council Information Office of the People's Republic of China, June 2020, available at: <http://www.scio.gov.cn/zfbps/32832/Document/1681809/1681809.htm>.

⁴² "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> ("USITC, December 2020"), at p. 95.

⁴³ Bown, Chad P., "COVID-19: Trump's curbs on exports of medical gear put Americans and others at risk," Peterson Institute for International Economics, April 9, 2020, available at: <https://www.piie.com/blogs/trade-and-investmentpolicy-watch/covid-19-trumps-curbs-exports-medical-gear-put-americans-and>.

U.S. imports of N95 masks and similar products increased dramatically after that.⁴⁴

27. China's export restrictions were not an export ban. On March 31, 2020 "Chinese authorities ordered that exporters of the specified pandemic control supplies must provide a declaration certifying that their products had been duly registered in China and conformed to the importing country's quality standards."⁴⁵ Following that, Chinese authorities issued an April 10, 2020 order that medical masks and other types of PPE be subjected to statutory inspection.⁴⁶ In the Wall Street Journal article that Mr. Faulkner cites, the authors give examples of circuit boards used in ventilators sitting in a warehouse for five days due to confusion over the new rules and how Illinois Deputy Gov. Christian Mitchell said at least one vendor told him to expect delays of six to 10 days for a shipment from China because of the new certifications.⁴⁷ Mr. Faulkner also quotes logistics companies and PPE distributors as saying that "companies are preparing to wait an extra one to three weeks for supplies ... because of China's newly implemented export restrictions, and limited space to fly items out of China."⁴⁸ Even if Blue Flame were affected by such a delay, I believe it is unlikely that a delay of six days, or even three weeks, would have thwarted Blue Flame's deal with California. More importantly, China's certification and inspection requirements were eased within a month. As Mr. Faulkner explains,⁴⁹

⁴⁴ USITC, December 2020, at p. 95.

⁴⁵ Zhang, Laney, "China: New Medical Supplies Export-Control Measures Issued," Global Legal Monitor, May 13, 2020, available at: <https://www.loc.gov/law/foreign-news/article/china-new-medical-supplies-export-control-measures-issued/>.

⁴⁶ Id.

⁴⁷ 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>.

⁴⁸ Faulkner Report ¶ 31, quoting Sandler, Rachel, "It's Chaos: Medical Supply Shipments From China Are Being Delayed Because Of Export Restrictions, Limited Cargo Space," Forbes, April 17, 2020, available at: <https://www.forbes.com/sites/rachelsandler/2020/04/17/its-chaos-medical-supply-shipments-from-china-are-being-delayed-because-of-export-restrictions-limited-cargo-space/>.

⁴⁹ Faulkner Report n.75. The specified pandemic control supplies can be exported if they have obtained foreign certifications or registrations that are accepted by the importing countries. Zhang, Laney, "China: New Medical Supplies Export-Control Measures Issued," Global Legal Monitor, May 13, 2020, available at: <https://www.loc.gov/law/foreign-news/article/china-new-medical-supplies-export-control-measures-issued/>.

certain of China's export restrictions related to new certifications were eased on April 26, 2020.

VII. MR. FAULKNER'S OPINION THAT BLUE FLAME'S SUPPLIERS DID NOT HAVE THE ABILITY TO SUPPLY 100 MILLION N95 MASKS DOES NOT ACCOUNT FOR CERTAIN MARKET REALITIES AND RELEVANT EVIDENCE.

28. Mr. Faulkner questions the ability of Blue Flame's primary suppliers, Great Health Companion ("Great Health") and Suuchi, Inc. ("Suuchi"), to supply the quantities of N95 masks they promised in fulfillment of California's order. I consider Mr. Faulkner's comments largely unwarranted, as they reflect on a lack of understanding of the Chinese market and a biased presentation of some relevant facts.

A. Mr. Faulkner's conclusion that Great Health could not have procured the masks for California's order lacks factual support.

29. Mr. Faulkner's analysis regarding Great Health's capacity to supply the N95 masks for California's order contains three flaws. First, he contests the common procurement wisdom that large purchase orders are more attractive to manufacturers than small purchase orders and thereby give the purchaser (or broker) more leverage in negotiating with the manufacturer. Second, he appears not to consider evidence of the representations made to Blue Flame by the person with the greatest knowledge and visibility into Great Health's ability to supply the masks for California's order: Great Health's own CEO, Henry Huang. Third, he neglects the principle of guanxi, an important tenet of Chinese business.

30. Mr. Faulkner contests the notion that Great Health would have been better able to satisfy large N95 mask orders than small ones.⁵⁰ That surprises me and is counter to my own experiences. In an extremely volatile market like the one for PPE in the first half of 2020, sellers seek the certainty provided by large orders representing longer-term demand for their product.

⁵⁰ Faulkner Report ¶ 74.

All other things equal, larger orders, even those that might yield lower per-unit margins, represent a better value proposition for sellers because sellers can rely on a steady stream of revenue, which allows them to plan and operate more efficiently. As the Director of Purchasing at NYP, we usually found our large purchase orders got more attention from suppliers and manufacturers than smaller ones. Mr. Faulkner also does not take into account the documentary evidence for this concept quoted in his report. He writes: "On March 24, 2020, Henry Huang told Mike Gula that he could not confirm his ability to fulfill orders without a deposit payment, and that if Great Health were unable 'to get a spot' with N95 manufacturers, '[p]lan b is we just have to scavage [sic] for what we can as we go. ... But nowhere near the volumes of [N]95s we talked about. ... [A f]ew million per month a[t] best from diff[erent] brands collectively.'"⁵¹ Not only is Mr. Huang's statement to Mr. Gula consistent with the notion that large orders wield more purchasing power than small ones, his statement seems to demonstrate that notion. Mr. Huang said he could not confirm his ability to fulfill orders *without a deposit* and that if Great Health were unable to "*get a spot*" with N95 manufacturers, it would have to scavenge for smaller orders. I understand Mr. Huang's statement to mean that Great Health needed to place a deposit with a manufacturer in order to secure a large quantity of inventory, or else it would have to "scratch and claw" just to procure much smaller quantities of N95 masks.

31. It appears that the representations of Mr. Huang and Great Health in his discussion of Great Health's product catalogues were not considered. Mr. Faulkner also states that had he received one of Great Health's product catalogues, he "would have expected the monthly capacity figures to represent the maximum quantity of N95 masks that Great Health

⁵¹ Faulkner Report ¶ 64 (quoting Texts between Mike Gula and Henry Huang, March 24, 2020, BFM000011979 - 982 at 979).

would receive from manufacturers each month" ⁵² Mr. Faulkner does not mention the deposition testimony of John Thomas, Blue Flame's president, that the products catalogues were "more of a guide for what brands of masks and product types Great Health Companion could procure at that moment. . . . so the monthly capacity that was on that sheet really wasn't pertinent to my discussions with Great Health Companion." ⁵³ Based on my professional experiences in dealing with counterparties in China, I find this to also be true.

32. Mr. Gula also testified that Mr. Huang told him "on a number of occasions" that Great Health could supply greater quantities of N95 masks than were indicated by the monthly capacity column on its products catalogues." ⁵⁴ Based on my experience, I would put more credence in the word of the CEO of a medical supply company, over what may be in a routine document put together on a near daily basis by just office staff.

33. Lastly, and importantly, it appears that Mr. Faulkner's analysis did not account for the Chinese concept of "guanxi." Guanxi is a "Chinese term meaning 'networks or connections' that open doors for new business and facilitate deals. A person who has a lot of guanxi will be in a better position to generate business than someone who lacks it." ⁵⁵ As stated in an article from Harvard Law School titled The Importance of Relationship Building in China, "The Chinese often go to great lengths in relationship building to open doors The value that Confucianism places on interpersonal obligations underlies this focus on relationships. Your Chinese counterparts will trust you to fulfill your end of a deal, not because you signed a binding contract, but because guanxi obligates you to do so." ⁵⁶ Based on my experience and review of

⁵² Faulkner Report ¶ 67.

⁵³ Thomas Tr. at 155:3 – 156:1.

⁵⁴ Gula Tr. at 99:10-15.

⁵⁵ PDN Staff, "The Importance of Relationship Building in China," Harvard Law School, PON, September 17, 2020.

⁵⁶ Id.

the record, Mr. Huang had "guanxi" with the principals of Blue Flame. In a letter, Mr. Huang wrote about Great Health's relationship with Blue Flame, stating "I can also confirm that Blue Flame Medical holds a preferred status, so they receive priority production and allocation as needed. This special relationship [i.e., guanxi] was created with the intent to help reduce the friction in getting critical protection products to those that need it most."⁵⁷ Thus, while Blue Flame and Great Health of course entered into a legally binding Product Reseller Agreement laying out the terms under which they would do business, Mr. Huang and Blue Flame's principals could have reasonably relied on their guanxi—and on Mr. Huang's guanxi with Chinese manufacturers—to fulfill California's order.

34. During my numerous dealings and visits with Chinese companies as part of NYP's global sourcing program, I became familiar with the importance of guanxi and how it can and does open doors to successful business transactions. In one instance during my tenure as Director of Global Sourcing and Product Development for NYP, we asked a Chinese company to replace a model of thermometer in a very short time frame, with different specifications and features. After visiting the factory personally, and establishing guanxi with the owner, he pushed our order to the front of the line, allowing us to meet our delivery requirements and improve patient care.

B. Mr. Faulkner's opinion that Suuchi likely could not have procured six million N95 masks for California's order lacks factual support.

35. Based on my review of the record, I believe Mr. Faulkner's criticisms of Suuchi Inc., the anticipated supplier of the first six million N95 masks for California's order, to be flawed, as they again stem from a limited understanding of the facts and a lack of consideration for the urgency with which Suuchi and its partners were conducting business. First, Mr.

⁵⁷ Id.

Faulkner quotes an email from Suuchi to Blue Flame that mentions Shaoxing Yikui Textile Co., Ltd.⁵⁸ It is my understanding that this email does not concern California's order, but a different potential PPE transaction that Suuchi and Blue Flame were discussing at the time. Therefore, I find Mr. Faulkner's concern about Shaoxing Yikui Textile not being certified by NIOSH to produce any N95 masks to be misplaced.

36. Mr. Faulkner then notes that Suuchi's communications with Blue Flame refer to "draft" purchase orders with manufacturers and opines that it is "implausible" that Suuchi could have secured six million N95 masks "[t]o the extent that Suuchi only had 'draft' purchase orders."⁵⁹ Here again, Mr. Faulkner does not adequately account for the extreme volatility and urgency faced by buyers and suppliers of Chinese-made N95 masks in March 2020. It is my understanding that Suuchi had "draft" purchase orders because manufacturers would not act on a purchase order until they had received a down payment, which is consistent with why Blue Flame asked for 75% prepayment from California. Until Blue Flame provided Suuchi with the funds to purchase the masks from the manufacturer, Suuchi could not "lock in" the order with the manufacturer. Additionally, the principle of "guanxi" would have existed also for Suuchi, between the factories they dealt with and in their promises to Blue Flame.

VIII. MR. FAULKNER'S CRITICISMS THAT BLUE FLAME WAS INEXPERIENCED AND FAILED TO COMPLY WITH STANDARD INDUSTRY PRACTICE ARE OVERSTATED, IGNORE THE PARTIES' DISCUSSIONS, AND DO NOT MEAN BLUE FLAME COULD NOT DELIVER.

37. I disagree with Mr. Faulkner's opinions in the final sections of his report that Blue Flame was an "inexperienced and unsophisticated" participant in the market for PPE who would not be able to perform due to what Mr. Faulkner terms "serious 'red flags.'"⁶⁰

⁵⁸ Faulkner Report ¶ 70.

⁵⁹ Faulkner Report ¶ 71.

⁶⁰ Faulkner Report ¶¶ 76, 93.

38. As a general matter, Mr. Faulkner's opinion indicates a level of naivety regarding the capabilities of newer and less established vendors, especially when put into the perspective of the situation at that time and the urgent need by California (and many other hospitals and states) to obtain N95 masks and other PPE. Based on my experience as Director of Purchasing Operations at NYP, I am aware that hospital systems like NYP and Mass General, where Mr. Faulkner works, prefer to deal with large, established vendors or distributors, like Cardinal Health, Johnson and Johnson, Medtronic, Owens and Minor, Medline, General Electric, Baxter, and Boston Scientific, who are familiar with institutional procurement and purchasing processes. Dealing with such parties offers a level of comfort due to the opportunity to fully vet the vendor or distributor, establish standard forms, terms, and conditions for transactions, and sometimes utilize sophisticated ordering mechanisms such as EDI to streamline the ordering process.

39. However, that does not mean that newly established vendors cannot perform, and I worked with smaller and newer vendors on behalf of NYP who were able to deliver needed products notwithstanding their relative lack of experience and sophistication, often with greater speed and less "red tape" than larger suppliers, even if they did not offer conveniences like having an enterprise resource planning ("ERP") system in place, or did not have standardized SKUs for each item they offered. In working with those vendors, I vetted their product offerings and organizational structure, consistent with NYP's policies, and it is my understanding that a large governmental purchaser like the State of California would have and did do the same in connection with its agreement with Blue Flame.

40. For example, I contracted while at NYP with a new vendor with a small factory in upstate New York and fewer than 100 employees to convert NYP's fleet of over 3,000 infusion pumps. When doing so, I was aware that the vendor had never delivered such a large order

before to anyone, but I selected them because the product offered was critical to NYP's mission and it only needed one supplier to satisfy the total equipment needs for this product. While choosing such a vendor carries a larger degree of uncertainty based on its lack of a track record, when you need a product or technology available from a limited source, you make the best business decision you can, and move forward. During my research, it was mentioned there were some companies with no prior experience in supplying PPE, who were able to successfully do so in 2020 in response to the demand and opportunity created by the COVID-19 pandemic.⁶¹

41. This notion that a newer, smaller vendor may operate differently or less formally than a larger, more established company is not unusual. In another article from the Harvard Business Review, it discusses that *"A traditional assumption among managers has been that small businesses should use essentially the same management principles as big businesses, only on a smaller scale. We would argue, though, that the very size of small businesses creates a special condition – which can be referred to as resource poverty – that distinguishes them from their larger counterparts and requires some very different management approaches."*⁶² Earlier in my career at both Magna-Tech and Eventide, I worked in smaller businesses with only limited staff, and as the HBR indicates, your approach is much more focused on getting things done and satisfying your client needs. One wears many different hats, but this flexibility ensures you are in touch with all aspects of your business operations.

⁶¹ BusinessLive, "CCM Group supplies 28m items of PPE during record year, with rising turnover, more staff and new spin-offs," available at <https://www.business-live.co.uk/retail-consumer/ccm-group-supplies-28m-items-19980643>, last accessed March 12, 2021 (discussing Welsh "creative agency and product supplier" that "successfully deliver[ed] more than 28 million items" of PPE); Occupational Health & Safety, "U.S. Companies Pivot to Meet Demand for PPE During COVID-19 Crisis," (Nov. 20, 2020), available at: <https://ohsonline.com/Articles/2020/11/20/US-Companies-Pivot-to-Meet-Demand-for-PPE-During-COVID-19-Crisis.aspx>, last accessed March 12, 2021 (discussing clothing companies with no prior PPE supply history that delivered millions of items of PPE).

⁶² Welsh, John and White, Jerry, "A Small Business Is Not a Little Big Business," Harvard Business Review, July 1981.

42. Turning from the general to the specific, Mr. Faulkner identifies several actions by Blue Flame that he states were "serious 'red flags'" that would have caused him to stop a transaction with a potential supplier until they were resolved.⁶³ Mr. Faulkner's opinion exaggerates certain facts in connection with those items, none of which demonstrate Blue Flame was too unsophisticated or unable to perform. Furthermore, while I agree it is true that certain aspects of the deal negotiated between California and Blue Flame do not reflect standard industry practices under normal procurement conditions, Mr. Faulkner ignores instances of California's awareness and agreement regarding these issues, which reflected its understanding of the need for flexibility, given the volatility and competition in the PPE market at that point in time. These concerns broadly fall in three categories concerning the documentation for California's purchase, the shipping terms for California's purchase, and efforts to verify the product being purchased. I will address each of those categories below:

A. Providing an invoice with a "product description error" and "missing information regarding purchase quantities"⁶⁴

43. Mr. Faulkner's opinion that Blue Flame's inclusion of a typo in the model number of one of four masks on its invoice and lack of detail regarding specific mask model quantities is exaggerated and indicates a lack of understanding of the negotiations between Blue Flame and California.⁶⁵

44. Mr. Faulkner is correct that Blue Flame's invoice to California contained a typographical error resulting in the "DTC 3X" mask model mistakenly being listed as "DTX 3X."⁶⁶ However, that error was inconsequential and did not appear to reflect any

⁶³ Faulkner Report ¶ 93.

⁶⁴ See Faulkner Report ¶ 93.

⁶⁵ See Faulkner Report ¶ 79.

⁶⁶ See Faulkner Report ¶ 79.

misunderstanding between Blue Flame and California. Blue Flame had previously provided to California specification sheets and NIOSH certification letters regarding available masks from its supplier, including all four models selected by California based upon review of those materials and direction by a representative of California's Department of Public Health.⁶⁷ The materials provided by Blue Flame to California correctly identified the DTC 3X mask model, and it appears the error in the model number on the invoice was based on a typo by California in communicating the mask models it wished to purchase to Blue Flame. While the use of a sophisticated ERP system that Mr. Faulkner indicates would be consistent with industry standards⁶⁸ might have avoided such a typographical error on Blue Flame's Invoice, I am not aware of any facts indicating that this typo resulted in any confusion between Blue Flame and California as to whether Blue Flame should supply one of the mask models California had vetted (DTC 3X) versus a non-existent "DTX 3X" model. Based on my experience, I do not believe that such a minor error on an invoice was consequential or should have prevented a purchaser seeking scarce supplies in an emergency environment from moving forward.

45. Mr. Faulkner's criticism that Blue Flame's invoice did not specify the specific number of each model of N95 masks that would be delivered to California similarly ignores the discussions between the parties and the flexibility required by the emergency nature of the procurement environment.⁶⁹ Both California and Blue Flame understood that California would accept delivery of up to 100 million units in any combination of the four selected mask models, and California did not request any specific quantities of any of those four models.⁷⁰ Furthermore, the record indicates that Blue Flame explicitly discussed with its suppliers the need

⁶⁷ BFM000116042-100; DGS5563; BFM000200135 at 200138; BFM000116156.

⁶⁸ See Faulkner Report ¶ 79.

⁶⁹ See Faulkner Report ¶ 86.

⁷⁰ See Wong Tr. at 202:8-16; BFM000095501.

to obtain the particular models of N95 masks that California had ordered, confirmed that its suppliers could provide those masks, and obtained Purchase Orders and Order Confirmations from those suppliers for those specific models.⁷¹

B. Lack of "detail related to shipping logistics" and finalized shipping schedule prior to finalizing order.

46. Mr. Faulkner criticizes Blue Flame for entering into the contract with California prior to finalizing a shipping schedule or confirming details concerning shipping logistics.⁷² Again, Mr. Faulkner's criticisms ignore the factual record reflecting the negotiations between the parties and the urgency of the transaction. Based on my review of the record, it is clear that California and Blue Flame agreed that they would continue to discuss details regarding shipping—including whether California would handle shipping the masks itself—after agreeing to the basic terms of the deal regarding mask models, quantity, and price.⁷³ In addition, while Blue Flame provided a schedule to California regarding an anticipated shipping schedule, it was expressly indicated as being "rough timing" and not a firm commitment as to the delivery dates for the masks.⁷⁴

47. Mr. Faulkner's criticisms about shipping terms in connection with the Purchase Order prepared by the State of California and the Invoice prepared by Blue Flame Medical are further proof of his failure to understand the pertinent facts and effort to substitute his own judgment for those of the parties to this transaction.⁷⁵ Blue Flame Medical's invoice listed the essential terms of the transaction apart from shipping—consistent with the negotiations described above—and was the document used internally by the State of California as the basis for its

⁷¹ See BFM000116424; BFM000013610 at 13611; BFM00198753 at 198763; Thomas Tr. at 179:14-22, 202:1-5.

⁷² See Faulkner Report ¶¶ 87-89.

⁷³ See Wong Tr. at 80:19-22, 81:11-14, 107:12-20.

⁷⁴ See Thomas Tr. at 117:9-14; BFM000129957 at 129960.

⁷⁵ Faulkner Report ¶¶ 90-91.

payment.⁷⁶ . Mr. Faulkner also criticizes Blue Flame for failing to point out that the Purchase Order prepared by the State of California referenced a "required delivery date" of April 3, but apparently ignores that the California official who prepared that purchase order testified that the April 3 date on that purchase order meant "[a]t least the initial shipment of the masks should have been received by April 3rd"—consistent with the rough schedule Blue Flame had provided—not the entire order had to be delivered by that date.⁷⁷ In my experience at NYP, unless otherwise overridden, the stated delivery date on any PO was defaulted to the next business day, regardless what may have been discussed or promised by the vendor. Candidly, little attention was ever paid to this field unless it was very important, in which case, additional notes would be on the PO and in any agreements.

48. In a similar vein, Mr. Faulkner criticizes the method that Blue Flame used to estimate the shipping price for the invoice.⁷⁸ His criticism evidently ignores that the parties agreed California would only pay the actual shipping cost as a pass-through and that the final price would be adjusted to reflect the actual shipping expense. He also criticizes Blue Flame for requiring a 75% up-front payment on the cost of shipping, noting that under "normal market conditions, shipping is not typically a cost that is prepaid" and that even during the "outset of the COVID-19 pandemic, I am not aware of a supplier that charged more than 50 percent of the shipping cost up front."⁷⁹ Again, Mr. Faulkner is simply second-guessing a term agreed to by California and Blue Flame because it was higher than prepayment percentages for shipping he indicates he did see in other contracts at the time, without any indication that seeking prepayment for shipping fees suggested Blue Flame could not deliver.

⁷⁶ See DGS0212 at 215.

⁷⁷ Wong Tr. at 108:3-109:2.

⁷⁸ Faulkner Report ¶ 88; see Thomas Tr. 195:15-17.

⁷⁹ Faulkner Report ¶ 89.

49. While the open shipping arrangements were certainly unusual, it is important to remember that this entire negotiation took place over a period of a few days, and the negotiations regarding shipping remained fluid at the request of the buyer. Based on my review of the record, all of the parties understood that final delivery schedules and quantities would not be known until the order was placed and the deposit was paid. For those reasons, it is not surprising that those details were never finalized given that the deal fell apart shortly after California had wired the deposit funds.

C. Failure to authenticate product through independent testing or a review of production-specific data.

50. Mr. Faulkner's comment that Blue Flame failed to authenticate the N95 masks that its suppliers represented it could provide, again ignores evidence about the steps it took and its discussions with suppliers.⁸⁰ Specifically, Mr. Faulkner notes that it is customary to request "information on the masks' model numbers, NIOSH testing, and certification numbers (*i.e.*, 'TC-approval') numbers," among other things.⁸¹ Based on my review of the record, Blue Flame did request and obtain that information from its supplier and provide it to California for each of the four N95 mask models California requested to purchase, including listed TC approval numbers.⁸²

51. While Blue Flame did not obtain samples to send to an independent laboratory for testing or other steps Mr. Faulkner states are industry standard practices, that is not surprising given the rush nature of this procurement and in this marketplace. Indeed, Mr. Faulkner states in his report that in March and April 2020, Mass General Brigham "did not have time to, for example, obtain N95 mask samples and send them to an independent laboratory for testing (for products obtained from new-to-us suppliers), it nevertheless continued to do its best to

⁸⁰ See Faulkner Report ¶¶ 84-85.

⁸¹ Faulkner Report ¶ 84(a).

⁸² See BFM000116042-100 at 116051, 116067, 116071, 116089.

authenticate products by instead asking suppliers for data on models, NIOSH testing and certification, and lot numbers (*i.e.*, 'TC-approval' numbers)."⁸³ Based on my review of the record, it appears that Blue Flame did the same, obtained that information from its supplier, and provided that information to California.

52. Finally, on the subject of verification, Mr. Faulkner's suggestion that California could not have inspected all 100 million masks within 48 hours after delivery and that therefore offering such a term demonstrated Blue Flame did not understand the procurement process⁸⁴ reflects a total misunderstanding of the terms of the agreement between Blue Flame and California. That 48 hour inspection period logically must have concerned each delivery of masks—19 of which were anticipated under the rough delivery schedule provided by Blue Flame to the State of California—and not all 100 million masks at once.⁸⁵ Also, using standard quality sampling techniques, such as those that Mr. Faulkner identifies Mass General Brigham used,⁸⁶ only a small percentage of each shipment would need to be examined.

53. The fact that Blue Flame's operations may not be what Mr. Faulkner describes as "industry standard practice" is not surprising to me based on its new entry into the marketplace and the chaotic nature of the marketplace. It does not, however, indicate to me in any way that it was not possible for Blue Flame to deliver the N95 masks it promised to California. One must recall that last March, at the start of the pandemic in the USA, when this order was being finalized, it was a very difficult time in the marketplace for anyone looking for PPE products. Some people and articles label it as the "Wild West."⁸⁷ In this referenced WSJ article it states:

⁸³ Faulkner Report ¶ 92.

⁸⁴ See Faulkner Report ¶ 89.

⁸⁵ BFM000129957 at 129960.

⁸⁶ See Faulkner Report n.186.

⁸⁷ Lin, Liza and Xiao, Eva, "China's Medical Goods Market is 'Wild West' Amid Surging Coronavirus Demand," Wall Street Journal, April 23, 2020.

*"Left with few alternatives, buyers now pay for almost everything upfront with Chinese manufacturers."*⁸⁸ It goes on to mention *"You have to accept the level of risk that you normally would not do on the taxpayer dollar."*⁸⁹ This was the market environment at the time, and Blue Flame felt it could help and use its business connections to obtain badly needed facemasks for California. California evidently made the decision, within its approval process, that working with Blue Flame for this critical need was important. Yes, the order and deposit needed to be expedited, but that was still within the state's acceptable business practices. That alone in no way infers or implies that Blue Flame was somehow incompetent or incapable.

54. Mr. Faulkner further opines that Blue Flame's difficulty in meeting smaller orders "confirms" that it would not have been able to fulfill the larger order for California.⁹⁰ Again, I disagree with Mr. Faulkner's premise. Based on my experience, larger orders often get the priority and the attention of a supplier, as well as providing much more leverage to incentivize and ensure performance. An order of the magnitude of California's would have been very important to all parties involved in China.

55. Based on my review of the record, it appears to me that despite being smaller in size, and recently incorporated, Blue Flame operated with professionalism. In addition to Blue Flame's formal agreements with its two main supply partners for California's order, Blue Flame's correspondence with California indicates a level of professional diligence and transparency, to ensure they understood all their requests and requirements. They provided invoices, order confirmations, shipping schedules, specifications sheets and other documents as needed and when needed, to different parties. It is apparent that they did not take any step in this process for

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Faulkner Report ¶ 74.

granted and worked hard to make sure that nothing was missed and everything was communicated. These were unprecedented times and in my professional assessment, Blue Flame was a vendor that did as much as they could, and that I would have considered working with at NYP.

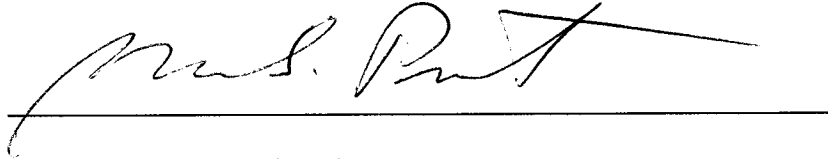
IX. CONCLUSIONS/CERTIFICATION

56. In my opinion and based on my professional experience, Mr. Faulkner's report failed to fully consider and access all the information and details around the Blue Flame-California transaction, focusing instead on a number of smaller issues not as relevant or important to the actual facts. It is always easier to see things differently based on hindsight. One must reflect on what the situation was at that time, and the critical and urgent need to obtain as much PPE (especially N95 masks) as one could get, from any legitimate provider. No one knew when the pandemic would end, and if or when more supply would become available again. In good faith and with full transparency, Blue Flame contacted vendor partners they felt they could trust and who were reliable, and then negotiated with the State of California to meet their requests for the N95 product. Whatever experience Blue Flame may have lacked in this market from being a "newer vendor," I see no reason to conclude that Blue Flame and its trading partners, based on their stated connections and contacts in China and evident knowledge regarding N95 mask supply, would not have been able to supply and deliver the N95 masks to California during these trying times.

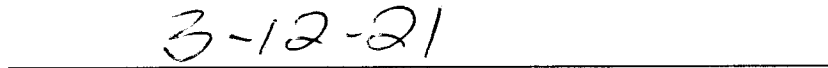
CONFIDENTIAL

In my professional opinion, based on all the materials I reviewed, studied, and analyzed, I disagree with Mr. Faulkner to the extent he opines that Blue Flame could not have met its commitments for California's order.

Submitted and Signed:

A handwritten signature in black ink, appearing to read "Marc S. Prisament", written over a horizontal line.

Marc S. Prisament

A handwritten date "3-12-21" in black ink, written over a horizontal line.

Date

APPENDIX A – MARC S. PRISAMENT'S RESUME

OPERATIONS | STRATEGIC SOURCING | GLOBAL LEADER

A seasoned and accomplished Operations, Sourcing, Supply Chain and Project Management Professional for leading healthcare, manufacturing, and finance organizations, including NewYork-Presbyterian Hospital (NYP), a top 5 academic medical center. Expertise in driving and optimizing procurement, project management, and vendor selection via effective coordination of cross-functional teams. Apply creative problem and industry best practices to achieve optimal results and stated goals, in a timely and efficient manner.

Core Competencies:

- Procurement Processes
- Strategic Sourcing
- Value Analysis Teams
- Capital/Med-Surg Purchasing (Lean)
- Global/Int'l Buying
- Improved Workflows
- Project Leadership
- RFP Prep, Selection & TCO
- Supply Chain Efficiencies

PROFESSIONAL EXPERIENCE

The Berrynether Group, Westchester County, NY **2019 - Present**
Principal and Solutions Provider

Provide hands-on consulting services in operations and strategic sourcing for key healthcare accounts. While at NYP, significant projects included: ICU/Med-Surg Hospital Beds, Major Radiology (CT, MRI, X-Ray), IT/IS Systems, Ventilators, PPE, Cath Labs, Patient Monitoring, Automated Labs, IV and Pain Pumps, Ambulances, and Anesthesia/OR Equipment. Registered "expert" on the GLG, AlphaSights and Third-Bridge Platforms.

NewYork-Presbyterian Hospital, Procurement and Strategic Sourcing, New York, NY
2002 - 2019

Director, Purchasing Operations, 2016 – 2019

Daily management and leadership for all buying operations and the placement of over **250K PO's**. Worked closely with internal clinical/supply chain/sourcing teams on item/product selections and implementations for new products and devices.

- Managed 40+staff in ensuring all hospital orders were placed cost-effectively.
- Resolved challenges via proactive communication with stakeholders and suppliers regarding receiving, payment, identification, financial impacts, and process roadblocks via root cause analysis.

- Improved efficiencies and key performance indicators (KPI's) thru the application of cooperative collaboration with colleagues, stakeholders and departmental end-users and automated methods.

Director, Product Development and Global Sourcing, 2010 – 2018

Led the creation, development, and implementation of the hospitals unique International Global Sourcing program. Expanded NYP's supply chain options by taking advantage of lower costs and resources in the world marketplace, while ensuring no impacts on the usability or quality.

- Managed all vendor/trading partner relations/negotiations; made multiple Asian factory visits; obtained clinical stakeholder approvals; controlled product development, selection and adoption; handled the implementation challenges and processes to ensure a smooth transition.
- Focused on standardization and efficiency in selecting the best options; defined quality and inspection protocols and managed inventory levels and reorder points.
- Set customer expectations and achieved needed service levels, while saving the hospital **30+%** on numerous commodities and class 1 clinical products, like thermometers, gowns, amenities, etc.

Director, Capital Purchasing Portfolio, 2002 - 2012

Hands-on accountability for NYP's **\$500M** of annual capital spend. Realized over **\$25M** in savings/avoidance.

- Focused on improved outcomes and cost savings by utilizing Strategic Sourcing and 6-Sigma methodologies, incorporating TCO, Lean, and Statistical tools, for large categories of major capital spend. Assisted in the implementations of new equipment and platforms, to ensure standardization.
- Formed alliances and value-driven partnerships with key suppliers, clinical leadership and internal customers; chaired project stakeholder teams and enhanced service levels by defining true needs.
- Created and led custom training programs for PSS in Customer Service ("Providing Good, if not GREAT Customer Service" and "Communications- The Key to Proactive Customer Support"), Innovation ("Fostering Innovation in the Workplace"), Global Sourcing ("Shrinking the World"), and Vendor Collaboration ("Value Driven Partnerships").

ADDITIONAL BACKGROUND AND WORK EXPERIENCE

Vice President of Procurement, Datek Online Holding Corporation, Edison, NJ and New York, NY

Director of Manufacturing Operations, Eventide Incorporated, Little Ferry, NJ

Project Manager and Lead Consultant (MEP – NIST programs), Hudson Valley Technology Development Center, Fishkill, NY

Adjunct Professor of Operations Management, SUNY New Paltz, School of Business, New Paltz, NY

Business/Industry Trainer and Instructor, Ulster County BOCES, Vo-Tec Center, Port Ewen, NY

General Manager and Treasurer, Magna-Tech Electronic Company, New York, NY

Industrial/Material Handling Engineer, Union Carbide Corp., Home & Automotive Products, Wayne, NJ

EDUCATION

Rensselaer Polytechnic Institute, Troy, NY

Master of Business Administration (MBA) – Business/Manufacturing Operations; Cum-Laude, 1974

Bachelor of Science (BS) – Technical Management/Industrial Engineering, 1973

TECHNICAL SKILLS, LECTURES/SPEAKERS, AND CERTIFICATIONS

- ERP applications & Microsoft Office Suite - Word, Excel, Access, Visio, PowerPoint, GHX, Lawson, SAP
- Panelist, World Congress Supply Chain Summit, "Impacts from Global Sourcing"
- Presenter, Fall IDN Summit and Expo, Lunch and Learn on "Global Sourcing Opportunities"
- Speaker, Healthcare Supply Chain Officer Summit, Shanghai, China on "Going Global – Flattening the World: An Overview of One Hospital's Journey to Directly Source Medical Commodities"
- Moderator, "'Global Sourcing and International Initiatives;" Peer to Peer Exchange; IDN Summit
- Interviewee, Health Leaders Article, "Health Systems Scour the World for Low Cost Supplies," Christopher Cheney, May 23, 2016
- Managing for Excellence; GE Change Acceleration Process (6σ); Strategic Sourcing Process Wheel (McKinsey); and Related Advanced Procurement and Leadership Training – Presented at NYP
- Member, "OR of the Future" and EPG (Equipment Planning Group) Committees at NYP
- VHA/Novation/Vizient Leadership Conference Presenter – "Value-Driven Partnerships," "Strategic Sourcing Models" and "Global Sourcing"
- AHRMM participant, HCRMA (local) Executive Board, and Supply Chain Week Chairperson
- RSNA Attendee (multiple conferences) and NCI Participant, Panel Expert and Speaker
- Certified NYS Educator – Mathematics (secondary) and Business Education
- Avid Traveler and World Adventurer

APPENDIX B – MATERIALS REFERENCED AND CONSIDERED

Pleadings and Court Papers

- Complaint, *Blue Flame Medical LLC v. Chain Bridge Bank, N.A., et al.*, Case No. 20 Civ. 658 (June 12, 2020).

Deposition Transcripts

- Deposition of John Thomas, January 11, 2021.
- Deposition of Mike Gula, January 12, 2021.
- Deposition of Michael Wong, January 19, 2021.

Documents Produced in Litigation (Beginning Bates Number)

- BFM000111121.
- BFM000109726.
- BFM000013610.
- BFM000116042.
- BFM000116497.
- BFM000116128.
- BFM000200135.
- BFM000117824.
- BFM000117813.
- BFM000116156.
- BFM000095501.
- BFM000129957.
- BFM000013992.
- BFM000116424.
- BFM000198753.
- BFM000013611.
- BFM000011979.
- BFM000013617.
- CBB00002368.
- DGS0212.
- DGS5563.

- DGS0212.

Opposing Party Expert Reports

- Expert Report of Mark Faulkner, February 12, 2020.

Reports, Articles, Regulations, Statutes, Manuals, and Advisories

- "About Us," Suuchi, available at: <https://www.suuchi.com/about-suuchi-inc/>.
- "Fighting Covid-19: China in Action," The State Council Information Office of the People's Republic of China, June 2020, available at:
<http://www.scio.gov.cn/zfbps/32832/Document/1681809/1681809.htm>.
- "N95 Masks Explained," Honeywell, available at
<https://www.honeywell.com/us/en/news/2020/03/n95-masks-explained>.
- "Surgical N95 vs. Standard N95 - Which to Consider?," 3M Company, June 2020, available at:
<https://multimedia.3m.com/mws/media/1794572O/surgical-n95-vs-standard-n95-which-to-consider.pdf>.
- "Suuchi, Personal Protective Equipment Catalog," available at: <https://www.suuchi.com/wp-content/uploads/2020/06/Suuchi-Inc.-PPE-Catalog-V.1.4-5.19-May-2020-Compressed.pdf>.
- ADB Briefs, "Global Shortage of Personal Protective Equipment amid COVID-19: Supply Chains, Bottlenecks, and Policy Implications," April 2020.
- Beijing Staff, "Booming mask producers in China meet global demand," DT News, March 28, 2020.
- Bender, Michael and Ballhaus, Rebecca, "How Trump Sowed Covid Supply Chaos," Wall Street Journal, August 31, 2020.
- Bown, Chad P., "COVID-19: Trump's curbs on exports of medical gear put Americans and others at risk," Peterson Institute for International Economics, April 9, 2020, available at:
<https://www.piie.com/blogs/trade-and-investmentpolicy-watch/covid-19-trumps-curbs-exports-medical-gear-put-americans-and>.
- Bown, Chad, "Covid-19: China's exports of medical supplies provide a ray of hope," PIIE, March 26, 2020.
- Boykoff, Pamela and Sebastian, Clare, "With no shipments from China, medical mask suppliers have to choose whom to supply," CNN.com, March 5, 2020.
- Bradsher, Keith and Alderman, Liz, "The World Needs Masks. China Makes Them, but Has Been Hoarding Them," The New York Times, March 13, 2020.

- Bradsher, Keith, "China delays mask and ventilator exports after quality complaints," Boston Globe, April 11, 2020.
- Bradsher, Keith, "China Dominates Medical Supplies, in This Outbreak and the Next," The New York Times, July, 5, 2020.
- 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>.
- Brunnstrom, David "U.S. appeals to China to revise export rules on coronavirus medical gear," Reuters, April 16, 2020, available at: <https://www.reuters.com/article/us-heath-coronavirus-usa-china/u-s-appeals-to-china-to-revise-export-rules-on-coronavirus-medical-gear-idUSKBN21Z07G>.
- Business Standard, "Export opportunity: China made 40 masks for every person in the world," January 14, 2020
- BusinessLive, "CCM Group supplies 28m items of PPE during record year, with rising turnover, more staff and new spin-offs," available at <https://www.business-live.co.uk/retail-consumer/ccm-group-supplies-28m-items-19980643>, last accessed March 12, 2021 (discussing Welsh "creative agency and product supplier" that "successfully deliver[ed] more than 28 million items" of PPE).
- Cheny, Christopher, "Health Systems Scour the Globe for Low-Cost Supplies," Health Leaders, May 23, 2016
- Client Services Staff, "Use of Imported N95-Style Masks," ECRI, Technology Decision Support, September 22, 2020.
- Clingendael, "Taking back responsibility, A joint effort to increase the production of medical masks in Europe," Netherlands Institute of International Relations, April 2020.
- Congressional Research Service, "COVID-19: China Medical Supply Chains and Broader Trade Issues", Updated December 23, 2020.
- Congressional Research Service, COVID-19 and Domestic PPE Production and Distribution: Issues and Policy Options, December 7, 2020.
- Daniel Newhauser, "Trump Blacklisted This Chinese Company. Now It's Making Coronavirus Masks for U.S. Hospitals." Vice News, Apr. 11, 2020, available at <https://www.vice.com/en/article/qjdqnb/trump-blacklisted-this-chinese-company-now-its-making-coronavirus-masks-for-us-hospitals>.
- Doug Bock Clark, " Inside the Chaotic, Cutthroat Gray Market for N95 Masks," New York Times, November 17, 2020.

- Emily Hoeven, "Newsom inks another big mask deal," CalMatters, July 23, 2020, available at <https://calmatters.org/newsletters/whatmatters/2020/07/california-byd-masks-gavin-newsom/>.
- Eurostat, " Which country imported the most face masks?", June 10, 2020.
- Feng, Emily and Amy Cheng, "COVID-19 Has Caused A Shortage Of Face Masks. But They're Surprisingly Hard To Make," National Public Radio, March 16, 2020, available at: <https://www.npr.org/sections/goatsandsoda/2020/03/16/814929294/covid-19-has-caused-a-shortage-of-face-masks-but-theyre-surprisingly-hard-to-make>.
- Feng, Emily and Cheng, Amy, "Covid-19 Has Caused A Shortage of Face Masks," NPR, March 16, 2020.
- Financial Crimes Enforcement Network, "Advisory on Medical Scams Related to the Coronavirus Disease 2019 (COVID-19)," May 18, 2020, pp. 1-2 and 8, available at: <https://www.fincen.gov/sites/default/files/advisory/2020-0518/Advisory%20Medical%20Fraud%20Covid%2019%20FINAL%20508.pdf>.
- Fuchs, Andrea and et.al., "China's mask diplomacy: Political and business ties facilitate access to critical medical goods during the coronavirus pandemic," VOX, CEPR Policy Portal, September 16, 2020.
- Goh and Sullivan, "What Guanxi is: The most misunderstood business concept in China," Business Insider, 2020.
- Healy, Beth and Christine Willmsen, "'I Have A Guy In China': Inside The Pandemic Market For Medical Masks," New England Public Media, June 11, 2020, available at: <https://www.nepm.org/post/i-have-guy-china-inside-pandemic-market-medical-masks#stream/0>.
- Healy, Beth and Will, Christine, "I Have A Guy in China: Inside the Pandemic Market for Medical Masks," NEPM.org, June 11, 2020.
- Hongpei, Zhang, "Mask production full speed ahead," Global Times, February 3, 2020, available at: <https://www.globaltimes.cn/content/1178390.shtml>.
- Huaxia, "China's daily mask output exceeds 110 million units," Xinhua, March 2, 2020, available at: http://www.xinhuanet.com/english/2020-03/02/c_138835152.htm.
- Huaxia, "China's daily mask output exceeds 110 million units," Xinhua Net, March 2, 2020.
- Huaxia, "Mask production in China resumes 60 pct capacity," Xinhua Net, February 2, 2020.
- Hufford, Austen, "New Manufacturers Jump Into Mask Making as Coronavirus Spreads," The Wall Street Journal, March 21, 2020, available at: https://www.wsj.com/articles/new-manufacturers-jump-into-mask-making-as-coronavirus-spreads-11584792003?mod=article_inline.

- John Xie, " World Depends on China for Face Masks But Can Country Deliver," Voa News, March 19, 2020.
- Kenton, Will, "What Is Guanxi," Investopedia, July 3, 2019.
- Li You, " Under COVID-19, China's Mask Market Surged. Now It's Gone Bust", Sixtthtone, June 12, 2020.
- Lin, Liza and Xiao, Eva, "China's BYD Gets Extension on \$1 Billion California Mask Deal," Wall Street Journal, June 2, 2020.
- Lin, Liza and Xiao, Eva, "China's Medical Goods Market is 'Wild West' Amid Surging Coronavirus Demand," Wall Street Journal, April 23, 2020.
- Melody Gutierrez, "Newsom says 150 million N95 masks will arrive after BYD earns federal approval," Los Angeles Times, June 8, 2020, available at <https://www.latimes.com/california/story/2020-06-08/byd-earns-federal-approval-for-n95-masks>.
- Mendoza, Martha and Juliet Linderman, "Imports of medical supplies plummet as demand in US soars," Associated Press, March 20, 2020, available at: <https://apnews.com/article/6d9382c1e8ee36f9ed1a4dfe7815ceb1>.
- Mendoza, Martha, et al., "Scarcity of key material squeezes medical mask manufacturing," The Detroit News via Associated Press, September 10, 2020, available at: <https://www.detroitnews.com/story/life/wellness/2020/09/10/coronavirus-outbreak-mask-shortages/3460060001/>.
- 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>.
- Occupational Health & Safety, " U.S. Companies Pivot to Meet Demand for PPE During COVID-19 Crisis," (Nov. 20, 2020), available at: <https://ohsonline.com/Articles/2020/11/20/US-Companies-Pivot-to-Meet-Demand-for-PPE-During-COVID-19-Crisis.aspx>, last accessed March 12, 2021 (discussing clothing companies with no prior PPE supply history that delivered millions of items of PPE).
- 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/chinasexport-restrictions-strand-medical-goods-u-s-needs-to-fight-coronavirus-state-department-says-11587031203>.
- PDN Staff, "The Importance of Relationship Building in China," Harvard Law School, PON, September 17, 2020.

- Reality Check Team, "Coronavirus: Does China have enough face masks to meet its needs?," BBC News, February 5, 2020.
- Reuters Staff, "UPDATE 1-Electric car maker BYD says profits up as becomes leading mask maker," Reuters, Aug. 28, 2020, available at <https://www.reuters.com/article/byd-results/update-1-electric-car-maker-byd-says-profits-up-as-becomes-leading-mask-maker-idUSL4N2FU3ZD>.
- Staff, "Fighting Covid-19: China in Action," SCIO.Gov.CN, May 2020.
- Staff, "N95 Mask Market Size, Share & Trends Analysis Report ...," Grandview Research, November 2020.
- Steve Dickinson, "Buying Face Masks and Other PPE from China Just Got a LOT Tougher," Harris Bricken, April 2, 2020.
- Sun, Lena H. and Rachel Siegel, "As demand spikes for medical equipment, this Texas manufacturer is caught in coronavirus's supply chain panic," The Washington Post, February 15, 2020, available at: <https://www.washingtonpost.com/business/2020/02/15/coronavirus-mask-shortage-texas-manufacturing/>.
- Supplier Assessment Report: Guangzhou Harley Commodity Company, Ltd., TÜV Rheinland, May 18, 2020, available https://harleymask.en.alibaba.com/company_profile/capability_assessment.html#preview-report-1.
- United States International Trade Commission, Publication Number: 5145 Investigation Number: 332-580, "COVID-19 Related Goods: The U.S. Industry, Market, Trade, and Supply Chain Challenges," December 2020.
- USITC, "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>.
- Welsh, John and White, Jerry, "A Small Business Is Not a Little Big Business," Harvard Business Review, July 1981.
- Wu, Wendy, "Coronavirus: China loosens controls on medical exports after suppliers complain they were 'banned'," South China Morning Post, April 26, 2020, available at: <https://www.scmp.com/news/china/politics/article/3081632/coronavirus-china-loosens-controls-medical-exports-after>.
- Yiran, Zheng, "Washington approves purchase of respirators from Chinese companies," China Daily Information, April 15, 2020.
- Zhang, Dian, et al., "U.S. companies kept shipping masks overseas even as hospitals ran out and despite warnings," USA Today, May 8, 2020, available at:

<https://www.usatoday.com/story/news/investigations/2020/05/08/u-s-companies-kept-shipping-masks-overseas-despite-warnings/3090505001/>.

- Zhang, Laney, "China: New Medical Supplies Export-Control Measures Issued," Global Legal Monitor, May 13, 2020, available at: <https://www.loc.gov/law/foreign-news/article/china-new-medical-supplies-export-control-measures-issued/>.
- Zoe Schlanger, "Corona Virus Is Causing a Huge PPE Shortage in the U.S.," Time, April 20, 2020.