

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

June 24, 2021

Westchester County Board of Legislators
800 Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601

Re: Request for Authorization to Commence Legal Action, Including a
Lawsuit, against Essential Manufacturing Corporation and Jason Brand to Recover
Moneys paid by the County of Westchester for 3M Brand N95 Respirator Masks

Dear Honorable Members of the Board of Legislators:

At the request of Richard G. Wishnie, Commissioner of the Westchester County Department of Emergency Services (the "WCDES"), attached for your consideration is an Act which, if approved, would authorize the commencement of legal action, including a lawsuit, against Essential Manufacturing Corporation ("Essential") and Jason Brand ("Brand"), individually, to recover payments made by the County of Westchester (the "County") for 3M brand N95 respirator masks (the "3M Masks") pursuant to a September 2, 2020 Purchase Order and December 11, 2020 Revised Purchase Order.

In or about May 2020, the County issued a "Request for Bid" seeking *inter alia* to establish a "File Price" for items of Personal Protection Equipment, inclusive of 3M Masks. In response to the Request for Bid, Essential and Brand, a representative of Essential, submitted to the County, a "Bid Response" dated June 6, 2020 and a "Sales Quote" dated August 24, 2020 (collectively, the "Proposal"), soliciting from the County an order for the purchase and delivery of 3M Masks. 3M Masks are considered the gold standard in reliance on the Proposal and the representations communicated by Brand that Essential was capable of supplying to the County the 3M Masks contemplated by the Proposal, the County entered into an agreement to Purchase from Essential 1,500 boxes of 3M Masks (the "Purchase Order"). On December 11, 2020, the County revised the Purchase Order to include an additional 33 boxes of 3M Masks (the "Revised Purchase Order"). Pursuant to the Proposal, the Purchase Order, and the Revised Purchase Order, the County paid to Essential \$206,955.00.

On or about February 11, 2021, 3M issued a notification (the "Notification") identifying increasing reports of fraud, inclusive of reports of counterfeit 3M Masks sold. In response to the Notification, the WCDES contacted the "3M Covid Fraud Hotline" that ultimately confirmed that

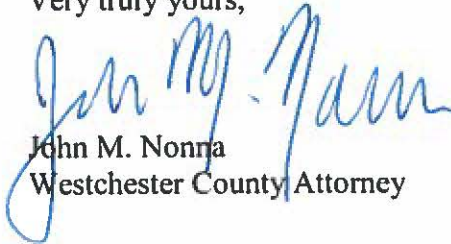


the 3M Masks purchased from and delivered by Essential are counterfeit. 3M further advised the WCDES not to use any of the masks purchased from and delivered by Essential.

By letter dated April 1, 2021, the Office of the County Attorney demanded the return of the \$206,955.00 paid by the County to Essential no later than April 12, 2021 on behalf of WCDES. As of the date hereof, Essential has failed and/or refused to return to the County the moneys paid by the County to Essential.

At the request of WCDES Commissioner Richard G. Wishnie, I am respectfully requesting authorization on behalf of the County to commence legal action, including a lawsuit to recover moneys paid by the County to Essential, plus interest, costs, and disbursements.

Very truly yours,



John M. Nonna
Westchester County Attorney

JNM/ggm
Encls.

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act which, if approved by your Honorable Board, would authorize the commencement of legal action, including a lawsuit against Essential Manufacturing Corporation (“Essential”) and Jason Brand (“Brand”), individually, to recover \$206,995.00 paid by the County to Essential for 3M brand N95 respirator masks (“3M Masks”).

Pursuant to a September 2, 2020 Purchase Order and December 11, 2020 Revised Purchase Order (the “Purchase Orders”), the County by its Department of Emergency Services (the “WCDES”) purchased from Essential 1,533 boxes of 3M Masks based upon the representations of Essential by way of Brand that Essential would deliver authentic 3M Masks to the County upon its purchase.

Notwithstanding Essential and Brand’s representations to the contrary, communication with the “3M Covid Fraud Hotline” confirms that the 3M Masks purchased from and delivered by Essential are counterfeit. By letter dated April 1, 2021, the WCDES, by way of the County Attorney’s Office, demanded the full return of the \$206,995.00 paid by the County to Essential no later than April 12, 2021. As of the date hereof, Essential fails and/or refuses to comply.

The County Attorney seeks authorization to commence a lawsuit against Essential and Brand to recover the \$206,995.00 paid by the County to Essential, plus interest, costs, and disbursements.

[Remainder of page intentionally left blank]

Your Committee concurs with the Westchester County Attorney, and therefore recommends that your Board approve the annexed Act to commence legal action, including a lawsuit against Essential and Brand, individually, to recover moneys paid by the County to Essential, plus interest, costs, and disbursements.

Dated: White Plains, New York
_____, 2021

COMMITTEE ON

AN ACT authorizing the County Attorney commence legal action, including a lawsuit, against Essential Manufacturing Corporation and Jason Brand, individually, to recover moneys paid by the County of Westchester to Essential Manufacturing Corporation for 3M brand N95 respirator masks.

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. The County Attorney is hereby authorized on behalf of the County of Westchester to commence legal action, including a lawsuit, against Essential Manufacturing Corporation (“Essential”) and Jason Brand (“Brand”), individually, and any other necessary parties, to recover moneys paid by the County of Westchester to Essential for 3M brand N95 respirator masks (“3M Masks”), plus interest, costs, and disbursements, pursuant to a September 2, 2020 Purchase Order and December 11, 2020 Revised Purchase Order (collectively, the “Purchase Orders”). Pursuant to the Purchase Orders, the County of Westchester paid to Essential \$206,955.00 based upon the representations of Brand—a representative of Essential—that Essential would deliver to the County of Westchester 1,533 boxes of 3M Masks, considered the gold standard in personal protection equipment respirator masks. Notwithstanding Brand’s representations, and the County’s explicit request and purchase of 3M Masks, Essential delivered to the County 1,533 boxes of personal protection equipment respirator masks.

Section 2. The County Attorney or her duly designated representative is hereby authorized and empowered to undertake such legal proceedings and prepare all documents necessary or desirable to accomplish the purpose of this Act.

Section 3. This Act shall take effect immediately.

FISCAL IMPACT STATEMENT

SUBJECT: Initiate legal action-Essential/Brand NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ -

Total Current Year Revenue \$ -

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: _____

Potential Related Operating Budget Expenses: Annual Amount _____

Describe: _____

Potential Related Operating Budget Revenues: Annual Amount \$206,995

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: _____

Next Four Years: _____

Prepared by: Mark Medwid

Title: Associate Budget Director

Department: Budget

Date: June 23, 2021

Reviewed By: MM

[Signature]
Budget Director

Date: 6/23/21