

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

HAPPY HEALTHCARE, S.A. de C.V.

Plaintiff,

v.

ONLINE TRANSPORT INTL, LLC,
TAYLOR BIO ARMOR, LLC,
JOSEPH LASSEN,
ENRIQUE G. SERNA, and
SERNA & ASSOCIATES, PLLC

Defendants.

Civil Action No. 5:20-cv-1038

SERNA & ASSOCIATES, PLLC,

Cross-Claimant and Third-Party
Plaintiff,

v.

AUSTIN TAYLOR, and
TAYLOR & PERRY INVESTMENT
GROUP, LLC,

Third-Party Defendants.

SERNA & ASSOCIATES, PLLC'S CROSSCLAIMS AND THIRD-PARTY COMPLAINT

TO THE HONORABLE COURT:

Defendant/Cross-Claimant/Third-Party Plaintiff Serna & Associates, PLLC ("S&A") files these crossclaims against Defendants Online Transport Intl, LLC ("OTI"), Taylor Bio Armor, LLC ("Taylor Bio Armor"), and Joseph Lassen ("Lassen") (collectively, "OTI Defendants") and Third-Party Complaint against Austin Taylor ("Taylor") and Taylor & Perry Investment

Group, LLC (“**TPI**”) (collectively, “**Third-Party Defendants**”), and respectfully states the following:

**I. INTRODUCTION**

1. In March of 2020, as the COVID-19 pandemic accelerated throughout the United States, Lassen approached S&A’s principal Enrique Serna (“**Serna**”) with a business opportunity. Lassen told Serna that he and his business partners (which included Taylor) had secured a purchase order from the Texas Division of Emergency Management (“**TDEM**”) for the sale of protective face masks, which were increasingly in high demand due to the COVID-19 Pandemic. Lassen and his associates needed Serna’s help to identify potential suppliers of those masks in Mexico and elsewhere. Serna had connections with the business community in Mexico and believed that he could find suppliers for this proposed venture. Relying on Lassen’s promises and representations, Serna agreed to enter into a partnership with Lassen, Taylor, and the other OTI Defendants and Third-Party Defendants.

2. Serna then reached out to former clients in Mexico, who he knew were affiliated with a medical supplies company – Plaintiff Happy Healthcare, S.A. de C.V. (“**Happy Healthcare**”). Happy Healthcare agreed to provide masks to the State of Texas through Serna, who worked with Lassen and Taylor to ship the masks to the State of Texas and collect payments. In total, Serna coordinated five shipments of masks from Happy Healthcare to Lassen, Taylor, and their entities, and ultimately to the State of Texas.

3. But in each successive shipment, it became more and more clear that Lassen, Taylor, and their associates had not been honest with Serna or Happy Healthcare. Lassen and Taylor lied to Serna about how much TDEM was paying for the masks – and pocketed the difference between what TDEM paid and what they told Serna that TDEM had paid. Lassen and Taylor also repeatedly lied to Serna and Happy Healthcare about when TDEM had paid for the

masks and failed to pay Happy Healthcare as agreed for the masks that Happy Healthcare had provided.

4. Serna acknowledges his role in bringing Happy Healthcare into business with Lassen, Taylor, and the other OTI Defendants and Third-Party Defendants. But Lassen, Taylor, and their affiliated entities defrauded *both* S&A and Happy Healthcare, causing millions of dollars in damages in the process. Through these crossclaims and Third-Party Complaint, S&A seeks to hold Lassen, Taylor, and the other OTI Defendants and Third-Party Defendants accountable for their misdeeds and the damage that they have caused to both S&A and Happy Healthcare.

## **II. PARTIES**

5. Defendant/Cross-Claimant/Third-Party Plaintiff Serna & Associates PLLC is a Texas professional limited liability company, with Serna as the sole member.

6. Defendant Online Transport Intl, LLC is a Florida limited liability company and has already appeared in this case.

7. Defendant Taylor Bio Armor, LLC is a Texas limited liability company and has already appeared in this case.

8. Defendant Joseph Lassen is a Texas citizen residing in San Antonio, Texas and has already appeared in this case.

9. Third-Party Defendant Austin Taylor is a Texas citizen residing in San Antonio, Texas. Taylor may be served at 19730 La Sierra Blvd., San Antonio, Texas 78256, or wherever he may be found.

10. Taylor & Perry Investment Group, LLC is a Florida limited liability company with its principal place of business at 2381 Guy N. Verger Blvd., Tampa, Florida 33605. TPI may be served at that location or through its registered agent, Joseph Lassen. Based on information and belief, the members of the TPI are Taylor and Perry.

### **III. JURISDICTION**

11. Jurisdiction is proper under 28 U.S.C. §1332(a)(2), because, as set forth above, Plaintiff is a citizen of a foreign state and Defendants are citizens of different U.S. states and the amount in controversy exceeds \$75,000.00, excluding interests and costs.

12. The Court has supplemental jurisdiction under 28 U.S.C. § 1367 over S&A's crossclaims and claims against Third-Party Defendants because those claims are so related to the claims within the Court's original jurisdiction that they form part of the same case or controversy under Article 3 of the U.S. Constitution.

### **IV. VENUE**

13. Venue is proper in this Division under 28 U.S.C. §1391(b)(2), where a substantial part of the events or omissions giving rise to the claims occurred and where Defendants Serna, Lassen, and Third-Party Defendant Taylor reside.

### **V. FACTUAL BACKGROUND**

14. Serna is an attorney and businessman who lives and works in San Antonio, Texas. He is the sole owner of S&A, a law firm based in San Antonio, Texas.

15. On March 27, 2020, Serna was contacted by Imad Khalil ("**Khalil**"), a person with whom he had previously been acquainted. Khalil introduced Serna to Lassen, who represented himself to be the Vice President/General Counsel of Taylor Shipping Solutions, Inc. ("**TSS**").

16. In telephone conversations on March 27, 2020, as well as on other dates, Lassen represented to Serna that he and his business associates had previously entered into contracts with TDEM to provide shipping and logistics services. Lassen further represented that he and his business associates had received a purchase order from TDEM for the purchase of protective face masks, which were in high demand due to the COVID-19 pandemic. Lassen represented that

TDEM was looking for a supplier based in Mexico. Serna told Lassen that he had contacts in Mexico that could provide those masks.

17. During that same initial call, Lassen further represented that TDEM had agreed to pay \$0.98 per mask. Later that day, Lassen sent Serna an email attaching what he represented was the TDEM purchase order and which indicated that TDEM had agreed to pay \$0.98 per mask:

<b>Include PO No. on Invoice(s)</b>			
<b>Purchase Order No.</b>	20-0003-575EM-056	<b>DATE:</b>	3/25/2020
<b>EMERGENCY PURCHASE</b>		<b>INCIDENT</b>	20-0003 nCoV 2020
<b>CONTRACTOR:</b>		<b>CONTRACTOR CONTACT INFORMATION:</b>	
<b>VID#:</b>		<b>Name:</b>	Joseph Lassen
Online Transport International		<b>Phone:</b>	917-816-3634
18911 Hardy Oak Blvd, Ste. 239		<b>Email:</b>	joseph.lassen@taylor-corp.net
San Antonio, TX 78258		<b>Website:</b>	

...

2.	800,000	3-Layer Face Mask (8-week distribution schedule = 100,000 masks to be shipped and delivered each week)	\$0.98/ea.	\$784,000.00
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Serna later learned that this representation was false and that TDEM had actually agreed to pay Lassen \$1.25 per mask through an updated or separate purchase order. Serna did not become aware of the price differential until approximately July 31, 2020.

18. That same day, Lassen proposed the creation of a general partnership between TSS, S&A, and Khalil. Lassen informed Serna that the principals of TSS included Taylor and Arthur Perry, Jr. (“**Perry**”). The parties executed the General Partnership Agreement on March 27, 2020 (the “**First Partnership Agreement**”).

19. The First Partnership Agreement identified the partnership as “Taylor, Serna, and Khalil” and the purpose as “acquiring/shipping of COVID-19 supplies.” The First Partnership

Agreement further provided that the profits and expenses were to be divided by the partners as follows: 50% to TSS; 25% to Khalil; and 25% to S&A.

20. After executing the First Partnership Agreement, Serna made contact with Sergio Elizondo and Fernando Garcia, for whom S&A had previously provided legal representation in unrelated matters. Serna knew that Elizondo and Garcia were affiliated with an entity known as Happy Healthcare, a Mexico-based company that sells medical supplies.

21. In several telephone conversations and messages, Serna informed Happy Healthcare that Texas was willing to purchase masks from a supplier in Mexico for \$0.55 per mask. Serna did not, at that time, inform Happy Healthcare that S&A was a partner in the entity that would be purchasing the masks and would receive a share of that entity's profits. Serna also did not inform Happy Healthcare that TDEM had agreed to pay \$0.98 per mask, which Serna understood at the time to be the price that TDEM had agreed to pay.

22. Happy Healthcare initially informed Serna that it could supply 840,000 masks. In communications shortly thereafter, Happy Healthcare informed Serna that it could supply a total of 1,000,000 masks. Serna proposed that Happy Healthcare receive, as an initial payment for the masks, Happy Healthcare's costs to acquire the masks, which were approximately \$0.33 per mask. Serna further proposed that Happy Healthcare and S&A split equally the difference between the sales price and Happy Healthcare's costs. Happy Healthcare agreed.

23. In discussions on and shortly after March 27, 2020, all partners in the First Partnership Agreement agreed to contribute funds for the purchase of the masks from Happy Healthcare. Serna told the partners that he would be using resources in Mexico to fund his portion and that he would be the "sweat equity partner." Serna spent a substantial amount of time on the venture working to ensure the product reached its final destination.

24. On March 31, 2020, Serna sent \$320,000 from S&A’s bank account to Happy Healthcare, as the previously agreed-upon initial down-payment for the cost of the masks.

25. On approximately April 2, 2020, Happy Healthcare caused 1,000,000 masks to be crossed into the United States at Laredo, Texas, where the masks were retrieved by a shipping company working with Lassen. That shipping company then transported the masks to a TDEM warehouse. TDEM later claimed to have received only 840,000 masks.

**The Settlement Agreement**

26. On April 23, 2020, the parties to the First Partnership Agreement entered into a Settlement and Release Agreement (the “**Settlement Agreement**”).

27. The first paragraph of the Settlement Agreement identified Khalil, TSS, and S&A as the “Release’s” [sic] and “Taylor, Serna, and Khalil General Partnership” as the “Releasor.” The Settlement Agreement attached the First Partnership Agreement as Exhibit A to that agreement.

28. Paragraph 1.1 of the Settlement Agreement stated that “Releasor represents that an accounting has been tendered and hereby included as Exhibit B.” Lassen drafted the “Partnership Accounting” that was attached as Exhibit B to the First Settlement Agreement. That document stated that TDEM had paid \$0.98 per mask for 840,000 masks. The document further stated that “gross profits” of \$205,800 would be distributed to S&A, Khalil, Taylor, and Perry (highlights added):

Masks sold	Price per piece	Sold Price	Initial Investment	Gross payout
840,000*	.55	.98	137,500.00	205,080.00

...

<b>Distribution of Funds</b>		
	Austin Taylor (TSS)	\$205,800
	Arthur Perry. (TSS)	\$205,800
	Enrique Serna (S&A)	\$205,800
	Imad Khalil	\$205,800
	Total	----- \$823,200

29. The Settlement Agreement also included releases from “Releasor” to “Release’s,” provided that each person identified in Exhibit B (S&A, Taylor, Perry, and Khalil) would each receive \$205,800.00, and provided that “Releasor and Releasee’s [sic] agree to dissolve the subject Partnership.” The agreement was signed by Khalil, by Serna on behalf of S&A, and by Taylor and Perry on behalf of TSS.

30. On information and belief, Taylor and Perry were aware that TDEM had paid \$1.25 per mask for the masks delivered in the first and second shipments of masks. Taylor and Perry were also aware that Lassen (among other individuals) had represented to the Serna Parties that TDEM had only agreed to pay \$0.98 per masks in the first and second shipments, including through the Exhibit B to the Settlement Agreement. Taylor and Perry nonetheless signed the Settlement Agreement without informing the Serna Parties that TDEM had agreed to pay \$1.25 per mask and thus knowingly permitted S&A to execute the Settlement Agreement under false pretenses and to be paid less than the amount to which S&A was entitled.

#### **The Mask Venture – Second Shipment**

31. On April 3, 2020, S&A entered into a second General Partnership Agreement (the “**Second Partnership Agreement**”) with TSS and TPI. On information and belief, Taylor and Perry controlled TPI. Lassen drafted the partnership agreement.

32. The Second Partnership Agreement identified the name of the partnership as “Taylor, Perry & Serna Group Partnership” and the purpose of the partnership as



“acquiring/shipping of COVID-19 supplies.” The partnership was to continue for sixty days from the date of the agreement, April 3, 2020.

33. The Second Partnership Agreement further provided that the share of the profits and expenses for the partnership were to be divided as follows: 51% to Taylor; 24.5% to Perry; and 24.5% to S&A. Serna told the partners that he would be using Mexico resources (as stated in the agreement and consistent with the first partnership) and he would be the “sweat equity partner.” Serna again spent a substantial amount of time working to ensure the masks for the second shipment reached their final destination.

34. The parties to this Second Partnership Agreement intended to purchase 1,860,000 masks from Mexico and resell them to TDEM. At the time, Serna believed that TDEM had agreed to pay \$0.98 per mask for the masks purchased through the Second Partnership Agreement. That belief was based on statements to that effect by Lassen and Taylor to Serna and the TDEM purchase order that Lassen had provided.

35. Around the time that the Second Partnership Agreement was executed, Serna spoke with Happy Healthcare regarding a second purchase, this time of 1,860,000 masks for \$0.55 per mask. Serna again proposed that Happy Healthcare and S&A split equally the difference between Happy Healthcare’s costs for acquiring the masks and the revenue generated from the sale of masks.

36. On April 6, 2020, S&A’s bank account received a transfer from OTI in the amount of \$500,000 and from TSS in the amount of \$272,365, which were the contributions from Taylor and Perry, respectively.

37. On April 6, 2020, Serna sent \$632,400 from the S&A bank account to Happy Healthcare. This payment represented the costs for Happy Healthcare to procure and provide the masks in the second shipment at a cost of approximately \$0.32 per mask.

38. On or about April 8, 2020, Happy Healthcare caused 1,860,000 masks to be crossed into the United States at Laredo, Texas, where they were met by a shipping company working with Lassen. That shipping company then transported the masks to a TDEM warehouse. TDEM later claimed to have received 1,809,000 masks in this second shipment.

39. In numerous telephone conversations with Lassen and Taylor between April 2 and April 23, 2020, Lassen and Taylor represented to Serna that they had not yet received payment from TDEM for the first and second shipments. Serna later learned that these representations were false and that TDEM had paid for the first and second shipments within days after TDEM received each of these shipments.

40. On April 24, 2020, Lassen provided Serna a check from OTI in the amount of \$640,140.09, which Lassen represented was S&A's share of the profits from the first and second shipments.

#### **The Mask Venture - Third Shipment**

41. On approximately April 13, 2020, Serna spoke with Taylor and Lassen on the telephone regarding a third, potentially larger purchase of masks from Happy Healthcare. Taylor and Lassen claimed that they had secured a new investor who was willing to provide the capital to purchase the masks. Taylor and Lassen represented that the investor, Richard A. Corbett, was located in Tampa, Florida and had successfully invested in multiple well-known real estate ventures. Taylor and Lassen proposed the purchase of 2,500,000 masks.

42. During these conversations, Taylor stated that TDEM had agreed to pay \$1.25 per mask in this third shipment and all future shipments. Taylor did not disclose to Serna at that time that TDEM had also paid \$1.25 for the first two shipments of masks, not the \$0.98 per mask that had been represented to Serna. Based on these and other representations by Taylor and Lassen, Serna agreed to proceed with the third purchase of masks.

43. Shortly thereafter, Lassen and Taylor informed Serna that a new entity would be formed for this third venture, which was to be known as RAC Taylor Bio Armor, LLC (“**RAC Taylor**”). Lassen and Taylor further informed Serna that ownership of RAC Taylor was to be divided as follows: an entity associated with Richard A. Corbett, 65%; Taylor, 10%; Perry, 10%; S&A, 10%; and 5% set aside for the other participants in the venture. An entity affiliated with Corbett was to provide the funds to purchase the masks.

44. At around the same time, Serna spoke with Happy Healthcare about the purchase of 2,500,000 masks. Happy Healthcare initially stated that it could provide millions of masks and that the costs had increased to approximately \$0.40 per mask.

45. On April 13, 2020, the S&A bank account received a transfer from a bank in Florida in the amount of \$1,375,000.00, which Serna understood to be the funds provided by RAC Taylor to purchase the masks.

46. On April 13, 2020, Serna sent \$975,000 from the S&A bank account to Happy Healthcare, as the payment for Happy Healthcare’s costs for the third shipment of masks.

47. Sometime after April 13, 2020, Happy Healthcare informed Serna that it could only provide 1,000,000 masks, not the 2,500,000 masks initially requested. Those masks entered the United States through Laredo, Texas on approximately April 24, 2020, where they were met by a shipping company working with Lassen. That shipping company delivered the masks to a TDEM warehouse in San Antonio on approximately April 25, 2020.

48. Shortly after the masks were delivered to the TDEM warehouse, Serna received a call from Lassen, who informed Serna that TDEM had rejected a number of the masks because the boxes in which those masks were packed made it appear that the masks had come from China. Serna immediately contacted Happy Healthcare. In multiple subsequent calls and messages, Happy Healthcare informed Serna that the masks had been placed in the wrong boxes by the

manufacturer and confirmed that the masks had been manufactured in Mexico. The masks were then repacked into new boxes and provided to TDEM. TDEM accepted 965,000 of these masks on approximately April 29, 2020.

49. During the communications regarding the repacking of these masks, Serna informed Happy Healthcare that the purchaser of the masks for the first three shipments had not been TDEM directly but a business associated with Lassen and Taylor, who had then provided the masks to TDEM.

50. On April 27, 2020, S&A's bank account received a transfer of \$425,000 from Happy Healthcare, which represented the difference between what Happy Healthcare had originally received from S&A (\$975,000) for the third shipment and the value of 1,000,000 masks at \$0.55 per mask (\$550,000). This amount was returned because Happy Healthcare could not locate a source for the larger quantity of masks.

51. On May 1, 2020, Serna sent \$825,000 from the S&A bank account to RAC Taylor. This amount constituted a refund of the difference between what RAC Taylor had provided (\$1,375,000) and the amount that had been retained by Happy Healthcare (\$550,000).

52. On August 4, 2020, the S&A business account received a transfer from OTI in the amount of \$81,394.38, which Lassen and Taylor represented was S&A's share of the profits from the third shipment of masks.

#### **The Mask Venture – Fourth Shipment**

53. On approximately April 23, 2020, Happy Healthcare informed Serna that it could acquire another 1,000,000 masks. Happy Healthcare also told Serna that it would be willing to front the cost of the masks and subsequently recover all of its costs and profit after TDEM paid for the masks. Serna told Happy Healthcare that he would inquire with Lassen and Taylor as to whether TDEM would purchase those masks. Shortly thereafter, Serna contacted Lassen and

discussed this fourth shipment of masks. Lassen and Serna agreed to coordinate the purchase of these masks and to pay Happy Healthcare \$0.55 per mask after receiving the funds from TDEM. Serna contacted Happy Healthcare, which agreed to provide the masks on those terms.

54. On or about May 1, 2020, Happy Healthcare caused the fourth shipment of masks to be crossed into the United States through Laredo, Texas, where they were picked up by a shipping company working with Lassen. John Sellers supervised and assisted with the testing, packing, and shipment of the masks. The masks were delivered to TDEM on or about May 2, 2020. Shortly after that date, Lassen informed Serna that TDEM had rejected the masks, claiming that TDEM had applied a test that was not appropriate for the type of masks delivered and had wrongfully rejected them as not compliant with the purchase order.

55. On approximately May 11, 2020, Lassen provided Serna with a draft Consignment Agreement between Happy Healthcare and Taylor Bio Armor. The agreement would have transferred ownership of the masks that TDEM had rejected from Happy Healthcare to Taylor Bio Armor, with Taylor Bio Armor agreeing to use “best efforts” to sell the masks and to pay Happy Healthcare \$0.55 per mask.

56. Serna sent the draft Consignment Agreement to Happy Healthcare and followed up with a telephone call. Happy Healthcare rejected the terms of the draft consignment agreement. Lassen instead agreed that the OTI Defendants would take possession of the masks, which were then shipped to an address in Tampa, Florida that Lassen had provided. On information and belief, Happy Healthcare never received any payment associated with this fourth shipment.

#### **The Mask Venture – Fifth Shipment**

57. During the last week of May 2020, a person that Serna had asked to identify potential suppliers of masks informed Serna that he had identified a company that could provide 5,000,000 masks, which were located in Los Angeles, California. After speaking with Taylor and

Lassen and at their insistence, Serna contacted Happy Healthcare and asked whether it could purchase these masks and sell them to Taylor and/or his affiliated entities, who would then provide the masks to TDEM. Serna also proposed that S&A take 35% of the profit and Happy Healthcare take 65% of Happy Healthcare's profits from this fifth shipment of masks. Happy Healthcare agreed, provided that Taylor and/or his affiliated entities pay Happy Healthcare \$0.60 per mask.

58. Shortly thereafter, Serna informed Lassen and Taylor about these masks and that Happy Healthcare would be willing to purchase them. Lassen told Serna to confirm with Happy Healthcare that OTI (or another entity affiliated with Taylor and Lassen) would pay for the masks and that "Texas will take them." Lassen and Taylor also agreed to pay Happy Healthcare \$0.60 per mask. On behalf of Taylor and Lassen, Serna informed Happy Healthcare of Taylor and Lassen's agreement, and Happy Healthcare proceeded with the purchase and shipment of the masks.

59. Lassen, Taylor, and Serna also agreed that S&A and OTI would split equally the difference between the amount that they expected TDEM to pay for the masks (\$6,250,000) and the amount that would be paid to Happy Healthcare (\$3,000,000).

60. Happy Healthcare purchased 5,000,000 masks from the supplier for \$0.42 per mask, for a total of \$2,100,000.00. On or about June 5, 2020, Happy Healthcare transported those masks directly to the TDEM warehouse in San Antonio, Texas. Sellers, on behalf of the OTI Defendants and Third-Party Defendants, assisted with the testing and packaging of the masks and personally escorted the masks into the TDEM warehouse. The masks were then accepted by TDEM.

61. Shortly after delivery of the masks, on behalf of Taylor and Lassen, Serna proposed that Happy Healthcare send its invoice for the fifth shipment of masks directly to Taylor Bio Armor. Happy Healthcare agreed.

62. On June 10, 2020, Serna sent Lassen a letter on S&A letterhead. The letter noted that, “per our partner agreement,” Happy Healthcare had purchased 5,000,000 masks for \$2,100,000 and delivered those masks to TDEM. It further noted that “we agreed to pay them \$.60 Cents per masks or \$3,000,000 for the procurement”:

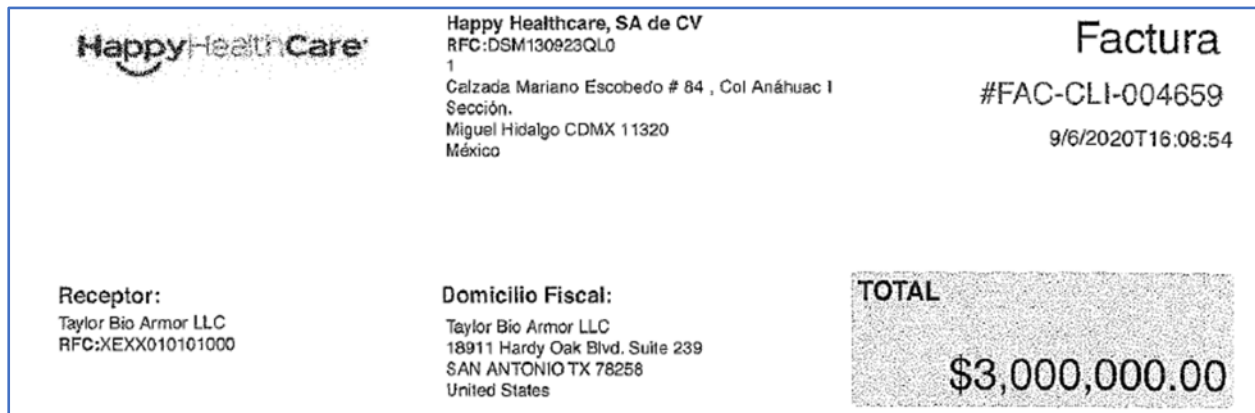
Joseph Lassen, Esq.  
 Taylor Bio Armor LLC  
 401 East Sonterra Blvd, Suite 375  
 San Antonio, Texas 78260

RE: TEXAS – 5,000,000 MASK DELIVERY (JUNE 6 AND 7) – PAYMENT INVOICE TO HAPPY HEALTH, S.A. DE C.V.

Dear Austin/Joe:

As per our partner agreement with Happy Health S.A. de C. V., in which they paid Recon Group \$0.42 Cents Per Mask and they purchased 5,000,000 masks for a total of \$2,100,000 to sell and deliver to the State of Texas (TDEM) under Taylor’s open purchase order 20-003-575EM-056-1; and we agreed to pay them \$.60 Cents per mask or \$3,000,000.00 for the procurement, enclosed please find the invoice for payment through our client’s trust account.

63. The letter also attached an invoice from Happy Healthcare to Taylor Bio Armor LLC for the sale of 5,000,000 masks for \$3,000,000:



Lassen and Taylor agreed to these terms.

64. Shortly thereafter, Lassen told Serna that he would let Serna know when TDEM provided payment for this fifth shipment of masks and that TDEM was now paying thirty days after delivery. After Serna did not hear from Lassen for several days, Serna placed multiple

telephone calls and sent multiple messages to Lassen and Taylor. It appeared to Serna that Lassen and Taylor were avoiding his calls and messages, as they would often not answer or respond to Serna's messages. On the handful of occasions that Serna reached Lassen on the phone, Serna explained that he needed his share of the profits to complete a pending real estate transaction and that Happy Healthcare was also inquiring as to when it would get paid. Serna also reminded Lassen that Lassen and Taylor had agreed that Happy Healthcare would be paid within thirty days after receipt of the June 10 invoice. Lassen repeatedly told Serna that Lassen was still waiting for payment from TDEM.

65. On approximately July 17, 2020, Serna spoke on the telephone with Wade Parks, a former TDEM employee who had been working with OTI as a consultant after he left TDEM. Parks told Serna that TDEM had made a partial payment to OTI on the fifth shipment. Serna asked Parks for documentation of that payment, but Parks claimed that Lassen had the relevant information. Serna immediately called Lassen, who answered his phone. Serna asked Lassen whether TDEM had made a partial payment. Lassen acknowledged the agreement with Happy Healthcare but denied that TDEM had made a partial payment, claiming that OTI had not received any payment and was seeking payment from TDEM through the statutory dispute resolution process because Lassen and Taylor did not want to receive a "partial payment" from TDEM. On July 17, 2020, Lassen sent Serna an email purporting to provide information on that dispute resolution process between OTI and TDEM.

66. Taylor also represented to Serna that no payments had been received for the fifth shipment. For example, on July 18, 2020, Taylor sent Serna a WhatsApp message, which stated in part:



Bro I'm the future plz don't put yourself in spots before you get the money. I've never had a deal that went smooth until I had the money in my hand.

And I'm sorry I haven't been on top of it or in touch as much

In that same message, Taylor told Serna that Taylor would “get it fixed”:

My bad though don't worry we'll get it fixed we always do ok

In response, Serna told Taylor that he would wait for Lassen's response the following week.

67. In the subsequent days, Serna spoke with both Taylor and Lassen on multiple occasions. Both stated that OTI had received no payments from TDEM for the fifth shipment of masks. Serna confronted Lassen and Taylor about Parks' statement that payment had been received and claimed to urgently need his portion of the proceeds. Lassen and Taylor claimed that the dispute resolution process was ongoing, but stated that they would be willing to advance or “spot” Serna \$1,000,000 in anticipation of TDEM providing payment for the fifth shipment so that Serna could complete his pending real estate transaction. At the time, based on his discussions with Wade Parks, Serna suspected that Taylor and Lassen had received partial payment for the fifth shipment, but were lying to Serna that TDEM had not made that payment.

68. Serna agreed to Taylor and Lassen's proposal to provide Serna (through S&A) with \$1,000,000 as an “advance” on the payment expected from TDEM. Suspecting that they had already received payment, Serna wanted to get as much money as possible and believed that this payment constituted some form of “hush money” to encourage Serna not to disclose TDEM's payment to Happy Healthcare. Serna subsequently drafted a promissory note for \$1,000,000, which identified the borrower as S&A and the lender as OTI. The note included an interest rate

of zero percent and stated that the note would be cancelled and deemed paid on the date that OTI received payment from TDEM.

69. The promissory note also spelled out the terms of the OTI/Taylor Bio Armor agreement with Happy Healthcare concerning the fifth shipment, including the following (highlights added):

**Security/Collateral:** Lender and Borrower are partners in procuring and selling 3Ply-Masks to the State of Texas because of the Covid-19 Emergency. On June 5<sup>th</sup> and 6<sup>th</sup> 2020, the partnership delivered 5,000,000 3ply masks to the State of Texas. Lender and Borrower were to split the proceeds from the sale after paying for the cost of goods. The State of Texas is obligated to pay \$1.25 per mask as per purchase order 20-003-575EM-056-1. The total amount due is \$6,250,000.00. The cost of the goods are \$.60USD per mask. The costs have to be paid to partner Happy Health Care, SA de CV who fronted the capital and paid for the masks. Happy Health is owed \$3,000,000. Lender and Borrower are to split the profits from the sale or \$.65cents. Lender

The note was executed on July 28, 2020, with Serna signing on behalf of S&A and Taylor signing on behalf of OTI.

70. On the following day, Serna received an email from Parks that attached documents related to OTI's sales to TDEM. Serna responded to Parks with a question about the partial payment that he had previously disclosed to me: "Where is the partial payment? What is the state's reasoning for paying less? I need more information." Parks replied and copied Lassen, stating that these were questions that would be answered during the dispute resolution process.

71. That same day, Serna received a call from Lassen, who asked Serna to meet him at OTI's bank to transfer the \$1,000,000 pursuant to the promissory note. Serna met Lassen at the bank and Lassen transferred \$1,000,000 from OTI to S&A's bank account.

72. On approximately July 31, 2020, Serna received an email from Mary Williams of Texas A&M University, who was reviewing the dispute between OTI and TDEM. Williams provided Serna with a list of the payments made by TDEM to OTI. This list confirmed that, contrary to Lassen and Taylor's prior repeated representations, TDEM had already paid OTI

\$2,920,375 for the fifth shipment of masks. This list also revealed that TDEM had been paid \$1.25 per mask for the first two shipments, not the \$0.98 that Lassen and Taylor had represented to Serna that TDEM was paying for those shipments.

73. On August 4, 2020, Serna assisted in the drafting of a letter for Lassen and OTI to send to Williams. The letter included the information that Williams had provided to Serna the previous day, including that TDEM had paid \$2,920,375 for the fifth shipment. The letter, among other things, noted the amounts that TDEM had not yet paid on the five orders and asked Williams to work with OTI “to achieve an agreeable resolution.”

74. Serna did not send a copy of the August 4 letter to Happy Healthcare, which had repeatedly inquired as to the status of their payment from OTI. Serna instead told Happy Healthcare that Serna had been in contact with Williams and was pressing for payment through the dispute resolution process.

75. On August 6, 2020, Happy Healthcare sent a demand letter to Lassen. The letter noted that the payment of \$3,000,000 on Happy Healthcare’s invoice was due within thirty days of receipt and that the payment was now twenty-eight days past due. The letter demanded payment by the following day.

76. In the following days, Serna spoke with Lassen on multiple occasions on the telephone. Serna also exchanged messages with Happy Healthcare, who Serna told that Lassen was “on top of” the dispute with Texas.

77. Between August 3 and August 18, 2020, Serna attempted to negotiate and broker an agreement between Happy Healthcare and Lassen, Taylor, and their entities. On August 11, 2020, Lassen sent Serna two emails with drafts of a response to Happy Healthcare’s demand letter. Serna responded on the telephone and provided Lassen with feedback on the content of his proposed response. On August 12, 2020, Lassen sent Serna a final version of the email and asked

that Serna forward it to Happy Healthcare. The email, among other things, offered to execute a promissory note for “the money owed” to Happy Healthcare, with interest:

1. OTI will execute a promissory note for the money owed to you.
2. OTI will pay any interest that you have accrued/paid/have to pay on any advances/lines of credit or loans associated with the 5 million masks that were sent to the State of Texas that you invested \$2,100,000.00

78. Lassen’s email to Happy Healthcare did not mention that TDEM had made a partial payment for the fifth shipment. Serna forwarded the email to Happy Healthcare on the same day.

79. Happy Healthcare rejected Lassen’s offer, but agreed to speak on the telephone with Lassen later that day. On the call, Lassen conceded again that OTI owed Happy Healthcare \$3,000,000, but stated falsely that TDEM had not yet made any payment to OTI for the fifth shipment. Lassen also stated that he would make another offer in an attempt to resolve the dispute. He did so in an email later that day, which included a payment of \$500,000 “as a prepayment for money as a sign of good faith” and execution of a promissory note for the remainder.

80. Happy Healthcare and Lassen subsequently exchanged multiple emails over several days regarding wiring instructions and the terms of a promissory note. On August 19, 2020, Lassen sent an email to Happy Healthcare stating that his father-in-law had died and that he needed to travel to Florida.

81. Also on August 19, 2020, Serna sent a letter to Lassen, Taylor, and Perry demanding access to the books and records of all the partnerships that were previously formed for the mask ventures. Among other things, the letter pointed out the many false and misleading statements made to Serna by Lassen, Taylor, and Perry regarding the prices paid by TDEM, the timing of TDEM’s payments, and other matters. The letter also invited OTI, Lassen and Taylor to attend a mediation with Serna to attempt to resolve the dispute.

82. On August 19, 2020, Happy Healthcare sent Lassen an email stating that if Lassen did not sign the promissory note and wire the funds the following day that Happy Healthcare would commence legal action. Lassen responded, asking for an extension to the following day and asking why Serna was not on the note:

**De:** Joseph Lassen <joseph.lassen@taylor-corp.net>  
**Enviado el:** miércoles, 19 de agosto de 2020 02:33 p. m.  
**Para:** Alfredo Garcia Villarreal <agarcia@intervo.legal>  
**Asunto:** Re: INFORMATION FROM OTI

I would ask if you could kindly extend it to tomorrow at 2:30 pm. I am unable to do anything from here also may I ask why Enrique is not on the note.

Happy Healthcare responded shortly thereafter, agreeing to the one-day extension but stating that it did not understand why Serna had to be on the note:

**From:** Alfredo Garcia Villarreal  
**Sent:** Wednesday, August 19, 2020 2:42 PM  
**To:** Joseph Lassen  
**Cc:** Sergio Elizondo; Fernando Garcia Sada; Enrique Serna; Miguel Angel Rojas  
**Subject:** RE: INFORMATION FROM OTI

Dear Joseph,

I do not understand your question regarding Enrique being on the Note. The deadline is precisely tomorrow at 2:30 as you are requesting.

83. Later that same day, Serna called representatives of Happy Healthcare. Serna told Happy Healthcare that he (Serna) needed to “come clean.” Serna admitted that S&A had been a member of several of the U.S. entities that had purchased masks from Happy Healthcare, that TDEM had been paying \$1.25 per mask in each transaction, and that TDEM had already paid OTI approximately \$3,000,000 for the fifth shipment. Serna also told Happy Healthcare that he had received a payment from OTI, which Serna characterized as some form of “hush money” payment from OTI to S&A.

84. Also on that day, Serna removed \$1,000,000 from the S&A accounts in the form of two cashier’s checks and placed them in a safety deposit box.

85. Happy Healthcare filed its Complaint in this action on September 2, 2020.

86. After filing of that suit, Serna provided \$1,000,000 to Happy Healthcare's counsel in Texas.

87. At all times relevant to this litigation, OTI, TSS, TPI, and Taylor Bio Armor acted through their agents Lassen and/or Taylor.

## VI. CROSSCLAIMS

88. Pursuant to Federal Rules of Civil Procedure 8(a) and 13(g), S&A asserts the following crossclaims against OTI Defendants individually, additionally, alternatively, and/or hypothetically as permitted by law.

### CROSSCLAIM ONE – Fraud in Connection with the Fifth Shipment (S&A against all OTI Defendants)

89. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

90. OTI Defendants repeatedly misrepresented to S&A and Serna (the "Serna Parties") that TDEM had not made any payments to OTI and/or Taylor Bio Armor for the fifth shipment of masks.

91. These misrepresentations were material, including in that they caused the Serna Parties to delay efforts to demand S&A's share of the funds paid by TDEM and delayed payment of funds owed to Happy Healthcare.

92. These misrepresentations were false. As OTI Defendants were well aware, TDEM paid OTI approximately \$3,000,000 for the fifth shipment of masks shortly after they were delivered. OTI Defendants knew that these representations were false or made them recklessly, as a positive assertion and without knowledge of their truth.

93. OTI Defendants made these misrepresentations with the intent that the Serna Parties rely upon them, including by delaying efforts to recover the funds owed to S&A and to Happy Healthcare.

94. The Serna Parties did rely upon the misrepresentations, including by delaying efforts to recover the funds owed to S&A and Happy Healthcare.

95. These misrepresentations caused injury to S&A.

96. As a result, OTI Defendants are jointly and severally liable for all of the damages resulting from the tortious conduct. S&A is also entitled to recover exemplary damages as set forth herein.

**CROSSCLAIM TWO – Breach of Contract**  
**(S&A against all OTI Defendants)**

97. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

98. S&A entered into a binding contract with the OTI Defendants and Taylor regarding the fifth shipment of masks.

99. The agreement between S&A and the OTI Defendants and Taylor required that the Serna Parties facilitate the delivery of 5,000,000 masks by Happy Healthcare to TDEM, which delivery was completed on or about June 6, 2020. The agreement further provided that the OTI Defendants and Taylor pay Happy Healthcare \$3,000,000 for those masks and split any profits (after the payment to Happy Healthcare) equally between S&A and the OTI Defendants.

100. OTI Defendants breached this agreement by failing to pay Happy Healthcare \$3,000,000 for the masks that had been provided and by failing to provide any profits received by OTI Defendants equally with S&A.

101. These breaches are the proximate cause of the S&A's foreseeable direct and consequential damages.

102. Additionally, pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code, S&A is entitled to recover their reasonable and necessary attorneys' fees and costs from the OTI Defendants.

**CROSSCLAIM THREE– Quantum Meruit**  
**(S&A against all OTI Defendants)**

103. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

104. Pleading additionally and in the alternative, S&A provided valuable services or materials to OTI Defendants for OTI Defendants' benefit, namely, by facilitating shipments of protective face masks as described herein. OTI Defendants accepted the masks and had reasonable notice that S&A expected their agreed-upon profits for the masks.

105. S&A is therefore entitled to recover from OTI Defendants the amounts set forth herein.

**CROSSCLAIM FOUR – Restitution/Unjust Enrichment**  
**(S&A against all OTI Defendants)**

106. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

107. Pleading additionally and in the alternative, OTI Defendants obtained a benefit from S&A by accepting and re-selling shipments of protective masks from Happy Healthcare that were facilitated by S&A, as described herein. OTI Defendants obtained this benefit from S&A by fraud, duress, or taking undue advantage of S&A, namely, by: (1) retaining the masks from the fourth shipment of masks without providing S&A or Happy Healthcare with any compensation for those masks; and (2) misrepresenting to the Serna Parties that TDEM had not paid OTI for the fifth shipment of masks, when TDEM had in fact paid approximately \$3,000,000 for the fifth



shipment of masks. It would be unconscionable for OTI Defendants to retain the benefits received from the Serna Parties.

108. S&A is therefore entitled to recover from OTI Defendants the amounts set forth herein.

**CROSSCLAIM FIVE – Aiding and Abetting Breach of Fiduciary Duty**  
**(S&A against Defendants Lassen and OTI)**

109. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

110. As partners in the Second Partnership Agreement, TPI and TSS owed S&A fiduciary duties, including the duties of loyalty, good faith, candor, and fair and honest dealing.

111. TPI and TSS breached these fiduciary duties owed to S&A, including by failing to disclose to S&A that TDEM had paid \$1.25 per mask for the masks delivered in the second shipment.

112. Defendants Lassen and OTI knew of TPI's and TSS's breach of fiduciary duties. By participating in the conduct giving rise to those breaches and concealing the breaches, Defendants Lassen and OTI intended to and did assist or encourage TPI and TSS in their breaches of fiduciary duties.

113. Lassen and OTI's actions as described herein were a substantial factor in causing the breaches of fiduciary duties which resulted in damages to S&A, for which it is entitled to recover damages.

114. As a result, Lassen and OTI are jointly and severally liable for all the damages resulting from the tortious conduct. S&A is also entitled to recover exemplary damages as set forth herein.

**CROSSCLAIM SIX - Conspiracy**  
**(S&A against all OTI Defendants)**

115. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

116. As more fully set forth herein, from approximately March 27, 2020 to the present, OTI Defendants were part of a conspiracy which had as its objects: (1) the wrongful retention of monies due and owing to S&A and to Happy Healthcare; (2) fraud; and (3) unlawful transfer and dissipation of assets due and owing to S&A and to Happy Healthcare.

117. As described herein, OTI Defendants knew of each other's conduct and the conduct of other members of the conspiracy, including those of Taylor. OTI Defendants knowingly, willingly, and enthusiastically participated in the false representations, breaches of fiduciary duty, and other actions taken in furtherance of the conspiracy.

118. OTI Defendants' actions in furtherance of the conspiracy have caused damages to S&A for which OTI Defendants are jointly and severally liable.

**CROSSCLAIM SEVEN: Violations of the Texas Uniform Fraudulent Transfer Act**  
**(S&A against all OTI Defendants)**

119. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

120. S&A brings this claim pursuant to the Texas Uniform Fraudulent Transfer Act, Tex. Bus. & Com. Code § 24.001 et seq. ("**TUFTA**"), as OTI Defendants' transfers of assets from OTI constitute a fraudulent transfer under TUFTA.

121. S&A is a "creditor" within the meaning of TUFTA because it is filing this TUFTA claim based upon a right to payment. Tex. Bus. & Com. Code § 24.002(3). OTI Defendants are "debtors" within the meaning of TUFTA. OTI Defendants are also each a "transferee" within the meaning of TUFTA as, upon information and belief, each received funds or other assets of the

other OTI Defendants as described above. Tex. Bus. & Com. Code § 24.009(b).

122. OTI Defendants falsely represented to the Serna Parties that OTI had received no payments from TDEM for the fifth shipment of masks – while knowing that representation to be false.

123. OTI Defendants were all involved in a “transfer” of funds within the meaning of TUFTA when, among other things, they dissipated assets from OTI to the detriment of S&A. The Defendants made this transfer at a time they were not paying their debts to S&A.

124. Defendants made these transfers with actual intent to hinder, delay and defraud S&A. Alternatively, Defendants made these transfers without receiving equivalent value and at a time when they had already incurred, intended to incur, or reasonably believed they would incur, debts beyond their ability to pay. Upon information and belief, OTI Defendants disbursed the funds paid by TDEM to the OTI Defendants, to Third-Party Defendants, or to other “insiders” who were members of and/or working with the OTI Defendants.

125. Pursuant to Tex. Bus. & Com. Code § 24.008, S&A seeks, among other relief: (a) avoidance of transfers of any funds received by OTI Defendants from TDEM; (b) an attachment against the funds transferred or other property of OTI Defendants; (c) an injunction against further disposition by OTI Defendants; and/or (d) a levy for execution on the transferred assets.

**CROSSCLAIM EIGHT - Conspiracy to Violate the  
Texas Uniform Fraudulent Transfer Act  
(S&A against all OTI Defendants)**

126. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

127. OTI Defendants conspired to defraud S&A through their fraudulent actions as described herein.

128. OTI Defendants had a meeting of the minds regarding their fraudulent scheme,

which is evidenced by their participation in the same.

129. OTI Defendants' agreement to defraud S&A proximately caused injury in the amount owed to S&A and the loss of use of the funds.

130. As a result, OTI Defendants are jointly and severally liable for all of the damages resulting from the tortious conduct.

**CROSSCLAIM NINE - Participating in and Aiding & Abetting Violations of the  
Texas Uniform Fraudulent Transfer Act  
(S&A against all OTI Defendants)**

131. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

132. As set forth above, OTI Defendants engaged in tortious conduct against S&A by participating in a fraudulent scheme.

133. At the time that OTI Defendants engaged in such tortious conduct, the other OTI Defendants had knowledge that the conduct was tortious.

134. Nevertheless, OTI Defendants substantially assisted and encouraged each other in connection with the fraudulent scheme.

135. OTI Defendants' assistance, encouragement, and participation were substantial factors in causing the torts committed against S&A as described in more detail above.

136. As a result, OTI Defendants are jointly and severally liable for all of the damages resulting from the tortious conduct.

**CROSSCLAIM TEN - Imposition of Constructive Trust  
(S&A against all OTI Defendants)**

137. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

138. As alleged above, OTI Defendants have committed actual fraud in concealing and dissipating funds owed to S&A.

139. OTI Defendants have been unjustly enriched by their wrongful acts, including by the collective receipt of approximately \$3 million from TDEM that is owed in part to S&A.

140. S&A seeks the imposition of a constructive trust on OTI Defendants' assets that are traceable in any way to the wrongful retention of funds and the wrongful transfers. S&A also seeks the imposition of a constructive trust on any assets that the OTI Defendants might have conveyed to any other person who had any knowledge of the wrongful transfers.

**CROSSCLAIM ELEVEN – Alter Ego/Piercing the Corporate Veil**  
**(S&A against all OTI Defendants)**

141. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

142. The corporate veils of OTI and Taylor Bio Armor should be pierced to hold Lassen personally liable for the debts owed by OTI and Taylor Bio Armor to S&A because Lassen used the OTI and Taylor Bio Armor as a sham to perpetrate a fraud on S&A, including by falsely stating that OTI had not received payment from TDEM for the masks, which induced S&A to forgo and delay instituting legal action while OTI dissipated assets.

143. This fraud was perpetrated on S&A for, among other reasons, the personal benefit of Lassen. By falsely representing to S&A that TDEM had not paid for the fifth purchase order, Lassen was able to buy time to drain assets and transfer those assets to other third parties or other affiliated entities.

**CROSSCLAIM TWELVE – Contribution/Indemnification**  
**(S&A against all OTI Defendants)**

144. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

145. For the reasons detailed herein, if S&A is liable to Happy Healthcare pursuant to the claims asserted by Happy Healthcare in this action, then S&A is entitled to contribution and

indemnity from each of OTI Defendants, jointly and severally, for the full amount of S&A's liability.

**VII. CLAIMS AGAINST THIRD-PARTY DEFENDANTS**

146. Pursuant to Federal Rules of Civil Procedure 8(a), 14, and 18, S&A asserts the following claims against Third-Party Defendants individually, additionally, alternatively, and/or hypothetically as permitted by law.

**THIRD-PARTY CLAIM ONE – Fraud in Connection with the Fifth Shipment  
(S&A against all Third-Party Defendants)**

147. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

148. Taylor and TPI, acting through Taylor, repeatedly misrepresented to the Serna Parties that TDEM had not made any payments to OTI and/or Taylor Bio Armor for the fifth shipment of masks.

149. These misrepresentations were material, including in that they caused S&A to delay efforts to demand its share of the funds paid by TDEM and delayed payment of funds owed to Happy Healthcare.

150. These misrepresentations were false. As Taylor and TPI were well aware, TDEM paid OTI approximately \$3,000,000 for the fifth shipment of masks shortly after they were delivered. Taylor and TPI knew that these representations were false or made them recklessly, as a positive assertion and without knowledge of their truth.

151. Taylor and TPI made these misrepresentations with the intent that the Serna Parties rely upon them, including by delaying efforts to recover the funds owed to S&A and to Happy Healthcare.

152. The Serna Parties did rely upon the misrepresentations, including by delaying efforts to recover the funds owed to S&A and Happy Healthcare.

153. These misrepresentations caused injury to S&A.

154. As a result, the Taylor and TPI are jointly and severally liable for all of the damages resulting from the tortious conduct. S&A is also entitled to recover exemplary damages as set forth herein.

**THIRD-PARTY CLAIM TWO – Breach of Contract**  
**(S&A against Taylor)**

155. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

156. S&A entered into a binding contract with Taylor and OTI Defendants regarding the fifth shipment of masks.

157. The agreement between S&A and Taylor/OTI Defendants required that S&A facilitate the delivery of 5,000,000 masks by Happy Healthcare to TDEM, which delivery was completed on or about June 6, 2020. The agreement further provided that Taylor and OTI Defendants pay Happy Healthcare \$3,000,000 for those masks and split any profits (after the payment to Happy Healthcare) equally between S&A and Taylor/OTI Defendants.

158. Taylor breached this agreement, among other ways, by failing to pay Happy Healthcare \$3,000,000 for the masks that had been provided and by failing to provide any profits received by Taylor and OTI Defendants equally with S&A.

159. These breaches are the proximate cause of S&A's foreseeable direct and consequential damages.

160. Additionally, pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code, S&A is entitled to recover their reasonable and necessary attorneys' fees and costs from Taylor.

**THIRD-PARTY CLAIM THREE – Quantum Meruit**  
**(S&A against all Third-Party Defendants)**

161. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

162. Pleading additionally and in the alternative, S&A provided valuable services or materials to the Third-Party Defendants for Third-Party Defendants' benefit, namely, by facilitating shipments of protective face masks as described herein. Third-Party Defendants accepted the masks and had reasonable notice that S&A expected its agreed-upon profits for the masks.

163. S&A is therefore entitled to recover from Third-Party Defendants the amounts set forth herein.

**THIRD-PARTY CLAIM FOUR – Restitution/Unjust Enrichment**  
**(S&A against all Third-Party Defendants)**

164. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

165. Pleading additionally and in the alternative, Third-Party Defendants obtained a benefit from S&A by accepting and re-selling shipments of protective masks from Happy Healthcare that were facilitated by S&A, as described herein. Third-Party Defendants obtained this benefit from S&A by fraud, duress, or taking undue advantage of S&A, namely, by: (1) retaining the masks from the fourth shipment of masks without providing S&A or Happy Healthcare with any compensation for those masks; and (2) misrepresenting to S&A that TDEM had not paid OTI for the fifth shipment of masks, when TDEM had in fact paid approximately \$3,000,000 for the fifth shipment of masks. It would be unconscionable for the Third-Party Defendants to retain the benefits received from S&A.



166. S&A is therefore entitled to recover from Third-Party Defendants the amounts set forth herein.

**THIRD-PARTY CLAIM FIVE – Breach of Fiduciary Duty**  
**(S&A against TPI)**

167. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

168. As a partner in the Second Partnership Agreement, TPI owed S&A fiduciary duties, including the duties of loyalty, good faith, candor, and fair and honest dealing.

169. TPI breached those fiduciary duties owed to S&A, including by failing to disclose to S&A that TDEM had paid \$1.25 per mask for the masks delivered in the second shipment.

170. These breaches and others resulted in damages as described herein.

171. In addition, TPI should be forced to disgorge to S&A all compensation and other benefits it received directly or indirectly from Happy Healthcare, OTI Defendants, the other Third-Party Defendants, and TDEM in connection with the mask transactions, including but not limited to the payments received from TDEM. Disgorgement is justified given the egregious breaches described herein and to prevent TPI from being unjustly enriched by its conduct.

172. S&A is also entitled to exemplary damages, as set forth herein.

**THIRD-PARTY CLAIM SIX – Aiding and Abetting Breach of Fiduciary Duty**  
**(S&A against Taylor)**

173. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

174. As partners in the Second Partnership Agreement, TPI and TSS owed S&A fiduciary duties, including the duties of loyalty, good faith, candor, and fair and honest dealing.

175. TPI and TSS breached these fiduciary duties owed to S&A, including by failing to disclose to S&A that TDEM had paid \$1.25 per mask for the masks delivered in the second shipment of masks.

176. Third-Party Defendants knew of TPI's and TSS's breach of fiduciary duties. By participating in the conduct giving rise to those breaches and concealing the breaches, Third-Party Defendants intended to and did assist or encourage TPI and TSS in their breach of fiduciary duty.

177. Third-Party Defendants actions as described herein were a substantial factor in causing the breach of fiduciary duty which resulted in damages to S&A, for which it is entitled to recover damages.

178. As a result, Third-Party Defendants are jointly and severally liable for all the damages resulting from the tortious conduct. S&A is also entitled to recover exemplary damages as set forth herein.

**THIRD-PARTY CLAIM SEVEN – Conspiracy**  
**(S&A against all Third-Party Defendants)**

179. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

180. As more fully set forth herein, from approximately March 27, 2020 to the present, Third-Party Defendants were part of a conspiracy which had as its objects: (1) the wrongful retention of monies due and owing to S&A and to Happy Healthcare; (2) fraud; and (3) unlawful transfer and dissipation of assets due and owing to S&A and to Happy Healthcare.

181. As described herein, Third-Party Defendants knew of each other's conduct and the conduct of other members of the conspiracy, including those of Lassen. Third-Party Defendants knowingly, willingly, and enthusiastically participated in the false representations, breaches of fiduciary duty, and other actions taken in furtherance of the conspiracy.

182. Third-Party Defendants' actions in furtherance of the conspiracy have caused damages to S&A for which the OTI Defendants are jointly and severally liable.

**THIRD-PARTY CLAIM EIGHT: Violations of the  
Texas Uniform Fraudulent Transfer Act  
(S&A against all Third-Party Defendants)**

183. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

184. S&A brings this claim pursuant to the Texas Uniform Fraudulent Transfer Act, Tex. Bus. & Com. Code § 24.001 et seq. ("**TUFTA**"), as Third-Party Defendants' transfers of assets from OTI constitute a fraudulent transfer under TUFTA.

185. S&A is a "creditor" within the meaning of TUFTA because it is filing this TUFTA claim based upon a right to payment. Tex. Bus. & Com. Code § 24.002(3). Third-Party Defendants are "debtors" within the meaning of TUFTA. Third-Party Defendants are also each a "transferee" within the meaning of TUFTA as, upon information and belief, each received funds or other assets of the OTI Defendants or other Third-Party Defendants as described above. Tex. Bus. & Com. Code § 24.009(b).

186. Third-Party Defendants falsely represented to S&A through Serna that OTI had received no payments from TDEM for the fifth shipment of masks – while knowing that representation to be false.

187. Third-Party Defendants were all involved in a "transfer" of funds within the meaning of TUFTA when, among other things, they dissipated assets from OTI to the detriment of S&A. Third-Party Defendants made this transfer at a time they were not paying their debts to S&A.

188. Third-Party Defendants made these transfers with actual intent to hinder, delay and defraud S&A. Alternatively, Third-Party Defendants made these transfers without receiving

equivalent value and at a time when they had already incurred, intended to incur, or reasonably believed they would incur, debts beyond their ability to pay. Upon information and belief, Third-Party Defendants disbursed the funds paid by TDEM to OTI Defendants, to Third-Party Defendants, or to other “insiders” who were members of and/or working with OTI Defendants and/or Third-Party Defendants.

189. Pursuant to Tex. Bus. & Com. Code § 24.008, S&A seeks, among other relief: (a) avoidance of transfers of any funds received by the Third-Party Defendants from TDEM; (b) an attachment against the funds transferred or other property of Third-Party Defendants; (c) an injunction against further disposition by Third-Party Defendants; and/or (d) a levy for execution on the transferred assets.

**THIRD-PARTY CLAIM NINE - Conspiracy to Violate the  
Texas Uniform Fraudulent Transfer Act  
(S&A against all Third-Party Defendants)**

190. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

191. Third-Party Defendants conspired to defraud S&A through their fraudulent actions as described herein.

192. Third-Party Defendants had a meeting of the minds regarding their fraudulent scheme, which is evidenced by their participation in the same.

193. Third-Party Defendants’ agreement to defraud S&A proximately caused injury in the amount owed to S&A and the loss of use of the funds.

194. As a result, Third-Party Defendants are jointly and severally liable for all of the damages resulting from the tortious conduct.

**THIRD-PARTY CLAIM TEN – Participating in and Aiding & Abetting Violations of the Texas Uniform Fraudulent Transfer Act (S&A against all Third-Party Defendants)**

195. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

196. As set forth above, Third-Party Defendants engaged in tortious conduct against S&A by participating in a fraudulent scheme.

197. At the time that Third-Party Defendants engaged in such tortious conduct, the other OTI Defendants had knowledge that the conduct was tortious.

198. Nevertheless, Third-Party Defendants substantially assisted and encouraged each other in connection with the fraudulent scheme.

199. Third-Party Defendants' assistance, encouragement, and participation were substantial factors in causing the torts committed against S&A as described in more detail above.

200. As a result, the Third-Party Defendants are jointly and severally liable for all of the damages resulting from the tortious conduct.

**THIRD-PARTY CLAIM ELEVEN - Imposition of Constructive Trust (S&A against all Third-Party Defendants)**

201. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

202. As alleged above, Third-Party Defendants have committed actual fraud in concealing and dissipating funds owed to S&A.

203. Third-Party Defendants have been unjustly enriched by their wrongful acts, including by the collective receipt of approximately \$3 million from TDEM that is owed in part to S&A and to Happy Healthcare.

204. S&A seeks the imposition of a constructive trust on Third-Party Defendants' assets that are traceable in any way to the wrongful retention of funds and the wrongful transfers. S&A

also seeks the imposition of a constructive trust on any assets that Third-Party Defendants might have conveyed to any other person who had any knowledge of the wrongful transfers.

**THIRD-PARTY CLAIM TWELVE – Alter Ego/Piercing the Corporate Veil**  
**(S&A against all Third-Party Defendants)**

205. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

206. The corporate veil of TPI should be pierced to hold Taylor personally liable for the debts owed by TPI to S&A because Taylor used TPI as a sham to perpetrate a fraud and other torts on S&A, including without limitation by falsely stating that OTI had not received payment from TDEM for the masks, which induced S&A to forgo and delay instituting legal action while OTI dissipated assets.

207. The corporate veil of TSS should be pierced to hold Taylor personally responsible for the debts owed to TSS to S&A because Taylor used TSS as a sham to perpetuate a fraud and other torts on S&A, including without limitation by falsely stating that OTI had not received payment from TDEM for the masks, which induced S&A to forgo and delay instituting legal action while OTI dissipated assets.

208. This fraud was perpetrated on S&A for, among other reasons, the personal benefit of Taylor. By falsely representing to Serna Parties that TDEM had not paid for the fifth purchase order, Taylor was able to buy time to drain assets and transfer those assets to other third parties or other affiliated entities.

**THIRD-PARTY CLAIM THIRTEEN – Contribution/Indemnification**  
**(S&A against all Third-Party Defendants)**

209. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

210. For the reasons detailed herein, if S&A is liable to Happy Healthcare pursuant to the claims asserted by Happy Healthcare in this action, S&A is entitled to contribution and indemnity from each of Third-Party Defendants, jointly and severally, for the full amount of S&A's liability.

### **VIII. DAMAGES**

211. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

212. S&A seeks all actual damages (both general and specific), direct and consequential damages caused by and arising from the OTI Defendants' and Third-Party Defendants' conduct as described herein including, without limitation: (1) all amounts owed under the parties' agreements; (2) pre-judgment and post-judgment interest on all amounts to the maximum permissible under law; (3) damages incurred by S&A for loss of use of the funds; (4) lost profits; and (5) disgorgement of all amounts received by TPI from Happy Healthcare, OTI Defendants, the other Third-Party Defendants, and/or TDEM.

213. As detailed herein, all OTI Defendants and Third-Party Defendants are jointly and severally liable for these damages as joint tortfeasors, because their actions were aided and abetted by each other, and because the damages resulted from a civil conspiracy.

### **IX. EXEMPLARY DAMAGES**

214. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

215. The conduct of OTI Defendants and Third-Party Defendants was aggravated to the level of fraud, malice, or gross negligence, thereby entitling S&A to exemplary damages.

**X. CONDITIONS PRECEDENT**

216. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

217. Pursuant to Federal Rule of Civil Procedure 9(c), all conditions precedent to S&A's claims for relief have been performed or have occurred.

**XI. ATTORNEYS' FEES**

218. Under Federal Rule of Civil Procedure 10(c), S&A incorporates by reference all the allegations set forth above.

219. S&A has incurred reasonable and necessary attorneys' fees as a result of breaches of contract and duties by OTI Defendants and Taylor, and by having to file this cause of action, and seeks recovery of such fees pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code, and any and all other applicable laws.

**XII. JURY DEMAND**

220. Pursuant to Federal Rule of Civil Procedure 38(b), S&A requests a trial by jury on all issues so triable and has tendered the appropriate fee.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, S&A respectfully requests the following remedies individually and, in the alternative, where appropriate:

1. Damages in excess of the minimum jurisdictional limits of this Court;
2. Exemplary damages;
3. Pre-judgment interest and post-judgment interest;
4. Attorneys' fees and expenses to the extent recoverable under law;
5. All appropriate equitable relief in S&A's favor, including without limitation disgorgement and restitution; and



6. All other and further relief in law or equity to which S&A may otherwise be entitled.

Dated: November 6, 2020.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify on November 6, 2020, the foregoing document was electronically filed with the clerk of the Court using the CM/ECF System and a true and correct copy of the document will be served on the following counsel of record via the Court's CM/ECF system:

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