

STATE OF MICHIGAN
IN THE 14TH JUDICIAL CIRCUIT COURT
FOR THE COUNTY OF MUSKEGON

DANA NESSEL, ATTORNEY GENERAL
OF THE STATE OF MICHIGAN,

Petitioner,

No. 20-

-CZ

v

HON.

EM GENERAL LLC,

Respondent.

_____ /

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**ATTORNEY GENERAL'S *EX PARTE* PETITION FOR CIVIL
INVESTIGATIVE SUBPOENAS**

I. Parties, Legal Authority, and Venue

1. The Michigan Department of Attorney General (“Attorney General”) is authorized to file an *ex parte* petition with the Circuit Court requesting issuance of investigative subpoenas pursuant to Section 7 of the Michigan Consumer Protection Act (“MCPA”), which provides in pertinent part:

Upon the *ex parte* application of the attorney general to the circuit court in the county where the defendant is established or conducts business or, if the defendant is not established in this state, in Ingham

county, the circuit court, if it finds probable cause to believe a person has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act, may, after *ex parte* hearing, issue a subpoena compelling a person to appear before the attorney general and answer under oath questions relating to an alleged violation of this act....The subpoena may compel a person to produce the books, records, papers, documents, or things relating to a violation of this act

MCL 445.907(1).

2. Respondent EM GENERAL LLC (“EMG”) is a Michigan limited liability company and is authorized to operate in Michigan.

3. EMG lists an address in Muskegon, Michigan as its Registered Agent’s address in its corporate records filings with the Michigan Department of Licensing and Regulatory Affairs. Such record is attached as Attachment A. (Attachment A).

Thus, this Court is an appropriate venue in which to file this Petition.

II. Factual Background

4. On March 14, 2020, the Attorney General received a complaint from a Michigan resident working as a paramedic, Lee Y., regarding an alleged scam involving the sale of reusable “N95” respirator masks in response to the COVID-19 Outbreak. Lee alleges that on or about March 1, 2020, he purchased three “N95” masks from EMG’s website for a total of approximately \$100 for personal protection given his role as a paramedic and the shortage of personal protective equipment. Lee further alleges that he did not receive the purchased masks. This complaint is attached as Attachment B. (Attachment B).

5. On March 23, 2020 and in response to query by the Attorney General, the Better Business Bureau Serving Western Michigan sent a similar complaint to

Lee's to the Attorney General that it had received from another Michigan resident. In this complaint dated March 6, 2020, Michigan resident Naomi R. alleges that she purchased masks through the EMG website for a total of \$116.21 and that she ultimately did not receive the goods. Naomi also alleges that she was unable to find any shipping information as the website advertised. This complaint is attached as Attachment C. (Attachment C).

6. In addition to Naomi R.'s complaint, the Better Business Bureau Serving Western Michigan sent another complaint of a Michigan resident named, Felecia H, dated March 26, 2020. Felecia alleges that she purchased 2 "N95" respirator masks for \$57.74 on February 28, 2020, has not received the masks or a refund, and reported similar correspondence with EMG as Naomi's. This complaint is attached as Attachment D. (Attachment D).

7. Upon further inquiry from the Attorney General, Naomi provided email correspondence with EMG. Naomi emailed EMG on March 4, 2020 to inquire about additional filters when purchasing the "N95" respirator masks. EMG replied that same day under signature of its purported CEO, "Dennis Rivera." EMG's reply appears to be a standard response addressing a number of issues, but included an answer that EMG was not currently selling filters separately. EMG's email from March 4 also noted that the "N95" respirator mask demand was "HIGH," that there were delays in shipping, and that they were "importing masks from Turkey." Naomi then emailed EMG again on March 4, 2020 to inquire whether her order was confirmed as she had not yet received confirmation. EMG did not reply to this

email. EMG would later send a second email to Naomi on March 18, 2020 stating that they received inventory on March 13, 2020 and began shipping again. EMG stated that it was shipping in the order of purchases were made, that it would provide tracking numbers upon shipping, and that shipping time would be 6-8 days thereafter. The email highlighted that the delay was due “to a nationwide lockdown (COVID-19)” despite the fact that the Attorney General is not aware of a nationwide lockdown since the COVID-19 outbreak began. The email concludes with a warning not to cancel the order as “you may not be able to get a mask due to other companies’ inability to get Inventory.” Finally, this email is signed again by the CEO, but the CEO’s name on this email is “Mike T.”

8. On March 29, 2020, EMG sent an email to Naomi that was substantially similar to its March 18, 2020 email to her, including its apparent second CEO’s signature of “Mike T.” However, in this email, EMG stated that it received inventory on March 19, 2020 and began shipping again on that date rather than the 13th as their previous email indicated. On April 2, 2020, EMG sent another email that is an exact copy of the March 29, 2020 email that it had sent to Naomi. The email correspondence between Naomi and EMG are attached as Attachment E. (Attachment E).

9. The Better Business Bureau Serving Western Michigan also reported to the Attorney General that, as of April 9, 2020, the Better Business Bureau as a whole had received 86 additional complaints about EMG for similar galling gamesmanship, including the lack of receipt of the goods and the email

correspondence, from across the U.S. A sampling of these complaints are attached as Attachment F. (Attachment F).

10. On March 5, 2020, the tabloid TMZ published an article highlighting EMG's predatory behavior, including the alleged facts that a man named Stephen, a North Carolina pastor, purchased two "Coronavirus N95" masks for \$49.98. The article notes that the pastor ultimately did not receive the masks. He had further noticed that EMG's contact information changed following his purchase. His attempts to contact EMG were met with an automated email reply "blaming shipping snags on 'HIGH volume of demand of our mask'". Moreover, the article noted that photos of EMG's executives listed on the website were in fact stock photos readily available on the internet. This article is attached as Attachment G. (Attachment G).

11. On March 17, 2020, American Broadcast Company's local news affiliate in Baltimore, WMAR-2 News Baltimore, published an article highlighting EMG's scams, including the alleged facts that a woman named Angelica Gomez purchased seven "anti-viral" masks for \$175. The article notes that Ms. Gomez did not receive the masks and that her attempts to contact EMG were ignored. Moreover, the article similarly noted that photos of EMG's executives listed on the website were in fact stock photos readily available on the internet. This article is attached as Attachment H. (Attachment H).

12. On March 25, 2020, the Attorney General's investigator, Special Agent Kathryn Teigeler, filed a report indicating that she visited the website and found

that EMG was selling an anti-viral N95 mask for \$24.99. Her report noted that the mask "...is listed as a 'Mask for Anti Pollution, Bacteria and Particles.'" She stated that its description included the following:

Start thinking about your health and our Certified N95 Respiratory Mask will take care of the quality of the air you inhale by filtering up to 95% of harmful airborne particles, bacteria and viruses.

She also included internet searches that provided her with screenshots of the website advertising "N95 Masks for the Corona Virus." These screenshots are attached as Attachment I. (Attachment I). Finally, her report details a summary of a telephone interview she conducted with Respondent's agents and their attorney, Johnathon Hoogestra, on March 25, 2020. Respondent's agents stated that after contact by Google in February suggesting that it disapproved of EMG's advertising and requiring EMG to change its website, Respondent's agents accordingly made changes to the website to modify the advertising. The report is attached as Attachment J. (Attachment J).

13. Under the MCPA, it is unlawful for a person to engage in the following acts:

(a) Causing a probability of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services. (MCL 445.903(1)(a));

(c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not

have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have. (MCL 445.903(1)(c));

(g) Advertising or representing goods or services with intent not to dispose of those goods or services as advertised or represented. (MCL 445.903(1)(g));

(h) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity in immediate conjunction with the advertised goods or services. (MCL 445.903(1)(h));

(q) Representing or implying that the subject of a consumer transaction will be provided promptly, or at a specified time, or within a reasonable time, if the merchant knows or has reason to know it will not be so provided. (MCL 445.903(1)(q));

(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer. (MCL 445.903(1)(s));

(u) Failing, in a consumer transaction that is rescinded, canceled, or otherwise terminated in accordance with the terms of an agreement, advertisement, representation, or provision of law, to promptly restore to the person or persons entitled to it a deposit, down payment, or other payment, or in the case of property traded in but not available, the greater of the agreed value or the fair market value of the property, or to cancel within a

specified time or an otherwise reasonable time an acquired security interest.
(MCL 445.903(1)(u)); and

(z) Charging the consumer a price that is grossly in excess of the price at which similar property or services are sold. (MCL 445.903(1)(z)).

14. Through the investigation conducted by the Attorney General thus far, the Attorney General has probable cause to believe that Respondent violated each of Subsections (a), (c), (g), (h), (q), (s), (u), and (z) of Section 3(1) of the MCPA on multiple separate occasions. Respondent violated these Subsections as follows:

(a) by advertising “N95” respirator masks without approval by the U.S. Food and Drug Administration as such masks are “class II devices” and are regulated by the U.S. Food and Drug Administration pursuant to its promulgated rules under 21 CFR 878.4040;

(c) by advertising “N95” respirator masks specifically to defend consumers from the COVID-19 virus without any such certification that their masks were up to regulations;

(g) by not intending to provide consumers with the “N95” respirator masks that were purchased on their website;

(h) by not intending to maintain sufficient stock of the “N95” respirator masks that were purchased on their website despite the advertising;

(q) by representing that consumers would receive the purchased “N95” respirator masks at certain times when in fact they never intended to provide such masks;

(s) by failing to reveal the material fact they did not intend to provide such masks upon purchase;

(u) by failing to promptly restore the consumers via refund; and

(z) by charging prices for the “N95” respirator masks grossly in excess of the price at which similar masks are sold.

15. Given the swarm of predatory price gouging and other frauds scamming Michigan residents during the course of the COVID-19 Outbreak, it is extremely dangerous to allow the alleged business practices of EMG to continue unabated. There is probable cause to believe that Respondent continually engages in violations of the MCPA. As such, an investigation into the business practices of the Respondent is appropriate.

III. Conclusion and Relief Sought

The Attorney General asks this Court to authorize an investigation under the MCPA. Through this investigation, the Attorney General will issue subpoenas for records from EMG to shed light on its business practices, including its sales records, including any relevant banking, credit card processing, and other financial records, its customer correspondences, its goods supply, shipping, and other relevant contractual arrangements, its internet and other advertising records, any and all corporate and business decisions made, and the extent to which there are affected consumers beyond those complaining to the Attorney General. The Attorney General will also seek the investigative testimony of any EMG agents engaged in its

operations. A proposed order authorizing the issuance of subpoenas for this investigation is included as Attachment K. (Attachment K).

Respectfully submitted,

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