

STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF INGHAM

DANA NESSEL, ATTORNEY GENERAL OF
THE STATE OF MICHIGAN, *ex rel*
The People of the State of Michigan,

Petitioner,

v

██████████

Respondent.

No. 20- -MS

HON.

DEPT OF ATTORNEY GENERAL
APR 21 2020
CORPORATE OVERSIGHT DIVISION

Andrea Moua (P83126)
Darrin Fowler (P53464)
Attorneys for Petitioner
Michigan Department of Attorney General
Corporate Oversight Division
P.O. Box 30736
Lansing, MI 48909
(517) 335-7632

ASSURANCE OF VOLUNTARY COMPLIANCE

Dana Nessel, Attorney General of the State of Michigan, on behalf of the State of Michigan and ██████████ hereby execute and agree to be bound by this Assurance of Voluntary Compliance ("Assurance").

This Assurance concerns the resolution of alleged violations of the Michigan Consumer Protection Act (MCPA), 1976 PA 331, as amended, MCL 445.901 *et seq.*

██████████ agrees not to contest any terms of this Assurance.

The parties agree that the entry into this Assurance by ██████████ is not an admission or agreement with respect to any legal or factual issues dealt with in this Agreement.

THEREFORE, the parties agree as follows:

I. Jurisdiction

1.1 The Department of Attorney General (“the Department”) has jurisdiction over the subject matter of this Assurance pursuant to MCL 445.905 and 445.910.

waives all objections and defenses that it may have as to the jurisdiction of the Department over the matters covered by this Assurance.

II. Parties Bound

2.1 This Assurance binds whether acting through associates, principals, officers, directors, employees, representatives, successors or assigns, or through any other subsidiary, corporation, assumed name or business entity.

is responsible for compliance with the terms of this Assurance, and must ensure that all employees, contractors, subcontractors, agents and representatives comply with the terms of this Assurance.

III. Definitions

3.1 refers to or on eBay, and all employees; agents; representatives; and contractors for

3.2 “Assurance” means this Assurance of Voluntary Compliance.

3.3 “COD” means the Michigan Department of Attorney General, Corporate Oversight Division.

3.4 “Parties” means COD and collectively.

3.5 All other terms shall have the meaning specifically defined in the MCPA.

IV. COD's informal inquiry related to [REDACTED]

4.1 On March 11, 2020, the Attorney General received a consumer complaint from Keith Y. of Dalton, Georgia. In his complaint, Keith stated he purchased two 3M face masks for \$28.50 plus shipping on eBay in a moment of panic due to the news stories about Coronavirus. The masks were sold by an eBay seller [REDACTED] and the return address on the package gave a Hillsdale, Michigan address. These face masks arrived to Keith in a plastic Ziploc bag. Keith wrote in his complaint that he attempted to contact the seller when he learned he paid a high price for the masks, but he was not satisfied by the response. Using the return address in Hillsdale, Michigan and the eBay storefront, the Attorney General was able to identify the seller as [REDACTED]. This complaint implicates the Michigan Consumer Protection Act. In relevant part, section 1 of the Michigan Consumer Protection Act prohibits:

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

(aa) Causing coercion and duress as the result of the time and nature of a sales presentation.

The Attorney General issued a Notice of Intended Action to [REDACTED] on March 18, 2020. [REDACTED] responded to the Attorney General with a phone call on March 19, 2020. Through this conversation, the Attorney General learned that [REDACTED] sold hundreds of masks on eBay for similar prices. [REDACTED] also informed the Attorney General that he made approximately \$6,000 - \$7,000 in profit by purchasing

masks from another eBay seller named [REDACTED] and reselling them to other consumers. This information was confirmed in an email from [REDACTED] on March 20, 2020.

4.2 In entering into the Assurance, the mutual objective of the parties is to resolve, without litigation, COD's potential claims under the MCPA for preliminary and permanent injunctive relief, as well as the potential claims for payment of damages and reimbursement of the Department's costs and expenses related to the informal inquiry. The entry into this Agreement by [REDACTED] is not an admission of liability with respect to the particular claims of any individual consumer [REDACTED]. [REDACTED] is offering this Assurance to avoid the time and expense of litigating this matter.

V. Implementation of Compliance Measures

5.1 To the extent that [REDACTED] may have engaged in any unfair or deceptive business practices in the State of Michigan, including any violations of the MCPA, [REDACTED] shall immediately cease and desist such practices. While [REDACTED] may continue to sell goods on eBay, he gives assurance he will no longer sell N95 face masks, or any other consumer goods associated with protection from the Coronavirus pandemic.

5.2 [REDACTED] understands that by accepting these assurances, the Attorney General and COD are making no representation as to his adequacy in selling products on eBay, or compliance with the MCPA. In other words, if the Attorney General receives consumer complaints or other information in the future suggesting that [REDACTED] has violated, or is violating, the MCPA, [REDACTED]

implementation of these assurances shall not deprive COD from taking any appropriate action described in these laws.

VI. Financial obligations

6.1 [REDACTED] will make payments to the Attorney General's COD in the total amount of \$6,000. These payments will be accomplished through checks made payable to the State of Michigan. The sum of \$6,000 will be retained by the Attorney General to compensate the citizens of Michigan for costs associated with the informal inquiry giving rise to this Assurance. The sum of \$6,000 will be broken down into monthly payments in the amount of \$1,000.00 per month, until this obligation has been satisfied in full. Each \$1,000.00 payment shall be due to the State of Michigan on the first day of the month, with the first payment due on May 1, 2020. The remaining five payments shall be due on the first days of June, July, August, September, and October 2020. Additionally, [REDACTED] will make one payment of \$100 to Keith Y., the consumer referenced in Section 4.1. This payment will be made through a check sent directly to Keith and shall be sent within fourteen days of this Assurance.

6.2 Should any payment anticipated under this agreement not be timely made, an additional \$5 per day shall be added onto the next month's payment due for each calendar day of delinquency. COD will give notice of the delinquency and resultant costs to [REDACTED] by email and first-class mail. [REDACTED] understands the COD reserves the right to commence a lawsuit for collection of the obligations under this agreement should any payment be more than fourteen days late.

6.3 The payments to the State of Michigan anticipated by Section 6.1 shall be sent to the attention of Andrea Moua Assistant Attorney General, Corporate Oversight Division, P.O. Box 30736, Lansing, MI 48909.

VII. Release

7.1 Upon the Effective Date, the COD hereby releases and discharges [REDACTED] and any of [REDACTED] entities, affiliates, subsidiaries, predecessors, successors or assigns, and each and all of his past or present officers, directors, associates, shareholders, controlling persons, representatives, employees, attorneys, counselors, advisors, or agents, from any and all civil or administrative claims, demands, rights, actions, causes of action, and liabilities, of any kind or nature whatsoever, that are related to his sale of N95 face masks prior to the Effective Date. This release does not apply to [REDACTED] sale of any other products, whether through eBay or any other online marketplace. Nothing herein shall be construed as a waiver or release of claims asserted or that may be asserted by individual consumers.

VIII. General Provisions

8.1 This Assurance is binding upon, inures to the benefit of, and applies to the parties and their successors-in-interest. This Assurance does not bind any Division of the Michigan Department of the Attorney General other than COD. Nor does this Assurance bind the Public Service Commission or any other agencies, boards, commissions or offices of the State of Michigan.

8.2 This Assurance does not affect, expand or limit the rights of any private party to pursue any available remedy or remedies pursuant to applicable law, except

that any common law right of set off would still be applicable. Further, this Assurance does not create any private right or cause of action to any third party.

8.3 This Assurance does not constitute an approval by the Attorney General of any of [REDACTED] business practices and [REDACTED] must not make any representation to the contrary.

8.4 No change or modification of this Assurance is valid unless in writing and signed by all parties.

8.5 Within three business days of the Effective Date of this Assurance, COD will file a copy of this Assurance with the Ingham County Circuit Court in the above-captioned matter.


8.6 Unless a temporary restraining order is sought, COD will make reasonable efforts to provide written notice in the event that COD believes [REDACTED] [REDACTED] to be in noncompliance with any provision of this Assurance, setting forth the basis for such belief.

IX. Signatories

9.1 Each undersigned individual represents and warrants that he or she is fully authorized by the party he or she represents to enter into this Assurance and to legally bind such party to the terms and conditions of this Assurance. If this Assurance is signed by a corporate officer or representative, by signing you acknowledge that you have had the opportunity to consult with an attorney acting on behalf of the corporation before executing this document.

X. Effective Date

10.1 The effective date of this Assurance is the date upon which the COD representative signs this Assurance. Electronic signatures, as confirmed through electronic mail messages, shall be deemed sufficient and binding for purposes of this Assurance.

Dated: April 22, 2020 By: 

Andrea Moua (P83126)
Assistant Attorney General
Michigan Dep't of Attorney General
Corporate Oversight Division

Dated: 4/18/2020 B 

48-2020

Date

Pay State of Michigan \$ 6,000.00
to the order of Six Thousand dollars Dollars

Vertical text on the left side of the check.

Photo Safe Deposit Cards on back

BANK OF AMERICA 

Memo

