

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

December 14, 2023

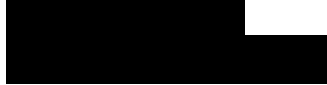
AF LLC

c/o Registered Agent: Benjamin C. Moody



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Re: *ACF Wholesale*; AG No. 2023-0389552-A

Dear Mr. Moody:

This letter gives both AF LLC and Benjamin Chad Moody notice of intended action in accordance with MCL 445.905(2) and provides you an opportunity to immediately cease and desist from engaging in the unlawful business practices described below.

As background, this Office is responsible for enforcement of the Michigan Consumer Protection Act, MCL 445.901 *et seq.* Under this Act, the Attorney General may bring injunctive actions to protect the interests of consumers. The Attorney General can also bring an action for money damages on behalf of affected consumers.

Mr. Moody, we learned through a transcript of a deposition that you gave in a prior lawsuit, that ACF Wholesale is an alias for AF LLC, a Mississippi entity that you created.

A review of the Better Business Bureau website reveals there have been approximately 2,000 consumer complaints against ACF Wholesale in the past three years—more than a thousand of which have come during the past twelve months. Scores of these complaints are from Michigan consumers. These complaints demonstrate a clear, and deeply troubling, pattern. For a protracted period of time, it is evident your business took orders of, and payment for, furniture that was never delivered. No refunds were made. In many instances, consumers sought to cancel the transactions, which resulted in promises for refunds that were never delivered. A copy of the BBB report showing the complaints from Michigan consumers is enclosed for your reference.

In recent weeks we have been reaching out to many of these consumers. We have learned that some have still received neither furniture nor refunds, nor heard

anything from you in quite some time. This situation is unacceptable. We understand from our research that your business was engaged in drop shipping. In other words, you were taking payment for furniture that you were simply ordering from another source to be delivered directly to the consumers. The experiences of these consumers, and documentation of communications you had with them, demonstrate you were continuing to process payments for orders you had no reasonable expectation of fulfilling in the represented timeframe. You also sent messages attributing delays to a supplier, which caused some consumers to wait rather than disputing charges with their credit card companies—only to then miss the time allowed for making such a dispute.

Based on the above, the Attorney General has probable cause to believe you have engaged, or are engaging, in the following unfair trade practices made unlawful by the Act:

(n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.

(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.

(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.

(y) Gross discrepancies between the oral representations of the seller and the written agreement covering the same transaction or failure of the other party to the transaction to provide the promised benefits.
[MCL 445.903(1).]

Mr. Moody, we are well aware that you have engaged in a variety of business ventures over the years, and that you now have ceased operating ACF Wholesale in favor of a new website selling mattresses. Given your history with ACF Wholesale, we are very concerned about you engaging in further transactions with Michigan consumers. It is therefore our intention to file suit to achieve appropriate compensation for affected Michigan consumers, and to enjoin you and your businesses from making sales to Michigan residents.

AF LLC and Benjamin C. Moody

Page 3

December 14, 2023

The Michigan Consumer Protection Act entitles you to a 10-day notice of the pending action so that you might give assurances of voluntary compliance. We are willing to explore an agreement with you in this regard. However, if there is to be any chance of us reaching an agreement in avoidance of a lawsuit, you will first need to provide us with documentation identifying all Michigan consumers still owed refunds, and the amount owed to each. And, because of the pending Holidays, we will refrain from filing suit until at least January 8, 2024, to allow you time to supply that information and for us to have a dialogue. If there is to be any resolution short of litigation, it can only happen through an agreement that will bring compensation to all affected Michigan consumers.

We look forward to your response.

Sincerely,



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DFF/cms
Enclosure