

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,

No. 24- 32 -CP

Plaintiff,

v

HON.

AF LLC, a Mississippi limited liability  
company, d/b/a ACF Wholesale, and  
BENJAMIN CHAD MOODY,

WANDA M. STOKES

Defendants.

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*There is no other pending or resolved civil action arising out of the  
same transaction or occurrence as alleged in the complaint.*

**ATTORNEY GENERAL'S CLASS ACTION COMPLAINT**

Plaintiff, Dana Nessel, Attorney General of the State of Michigan, *ex rel* the  
People of the State of Michigan, through Assistant Attorney General Darrin F.  
Fowler, state the following for her complaint:

## PARTIES, LEGAL AUTHORITY, AND VENUE

1. Plaintiff Dana Nessel is the Attorney General of the State of Michigan, and this State's chief law enforcement officer. The Attorney General is authorized under the Michigan Consumer Protection Act (MCPA) to bring actions for damages on behalf of the People of this State. MCL 445.910. She may also bring actions under the MCPA for civil fines for persistent and knowing violations of this law as well as for injunctive relief to protect consumers from future misconduct. MCL 445.905. Through exercise of *parens* power in an MCPA action, the Attorney General may also bring other claims on behalf of the People, such as for the tort of conversion, when a State-wide interest can be demonstrated.

2. Defendant AF LLC is a limited liability company formed under the laws of the State of Mississippi. Defendant AF LLC has transacted business using the alias ACF Wholesale. Defendant AF LLC shall be referred to as ACF Wholesale in this Complaint.

3. Defendant Benjamin Chad Moody (Moody) is a resident of the State of Mississippi. Defendant Moody created ACF Wholesale. Upon information and belief, Defendant Moody has used ACF Wholesale as an alter ego and/or instrumentality through which he has derived personal financial benefit.

4. Because Defendants are located in Mississippi, this Court has jurisdiction over, and is the appropriate venue for, this suit pursuant to MCL 445.905.

## FACTUAL ALLEGATIONS

5. Defendants solicited furniture orders through a website for ACF Wholesale that was active from at least sometime in 2020 through early 2023. The online nature of Defendants' solicitation allowed them to receive orders from throughout the country and Michigan.

6. Defendants operated ACF Wholesale as a drop shipping business. They accepted orders and payment for furniture that they did not physically possess as part of any inventory. Instead, to the extent Defendants actually caused the delivery of furniture, it was accomplished by Defendants subsequently placing an order with a manufacturer, wholesaler, or other third party and having the furniture delivered directly from the third party to the consumer ordering it. To the extent furniture was actually delivered, Defendants also used third parties to accomplish these deliveries.

7. ACF Wholesale was a small business endeavoring to make itself appear larger through its online presence and through correspondence with its customers that referred to a "sales Department," "Refund Department," and "upper management." Upon information and belief, Defendant Moody was the person primarily responsible for ACF Wholesale's sales and refund activities, and for the management of its operations.

8. In November 2023, the Attorney General obtained from the Better Business Bureau (BBB) dozens of consumer complaints submitted by Michigan residents against ACF Wholesale. The complaints ranged in submission dates from June 5, 2020 through July 31, 2023. Although such information does not appear on

its public-facing website, the BBB shared with the Attorney General the identities of the complainants both to assist her law enforcement efforts and to facilitate a shared goal of helping consumers. A copy of the report shared by the BBB with the Attorney General (redacted to protect the personal identifying information of the consumers) is included as **Exhibit A** to this Complaint.

9. Anyone reviewing the BBB's public-facing website in December 2023 would have seen there had been approximately 2,000 consumer complaints against ACF Wholesale in the past three years—more than a thousand of which had been made during the past twelve months. This includes the complaints from the Michigan consumers referred to in the previous paragraph. These complaints demonstrate a clear pattern. For a protracted period of time, Defendants took orders of, and payment for, furniture that was never delivered. A variety of excuses for non-delivery were sent to the consumers, including statements blaming COVID-19 issues for delays, that the ordered furniture was on backorder or had been discontinued, or that the consumer was outside the delivery area. In many instances, consumers sought to cancel the transactions, which resulted in promises for refunds that were never delivered. These patterns experienced by consumers on a national level affected consumers throughout Michigan, as can be observed in the BBB report. (Ex. A.)

10. The Attorney General has a state-wide interest in the economic welfare of Michigan's consumers. Consumers throughout Michigan were affected by Defendants' patterned misconduct. The BBB report shows consumers in Michigan



towns and cities ranging alphabetically from Alpena to Zeeland were affected. (Ex. A.) And the geographical spread of these complaints touches both peninsulas and includes complaints from consumers in locations including Monroe, Kalamazoo, Grand Rapids, Flint, DeWitt, Rochester, Detroit, St. Clair Shores, Millington, Beaverton, Holland, Sault Sainte Marie, Quinnesec, and Goetzville.

11. Upon information and belief, ACF Wholesale accepted payments from some Michigan consumers without having the process in place to actually deliver it at the prices paid. The BBB report includes a complaint from a consumer in Franklin, Michigan who placed an order in July 2021. Franklin is located in Oakland County—just 21 miles from Detroit. Responding to the consumer’s BBB complaint about the purchase she had made more than two months earlier, and which was more than a month late from the promised delivery date, ACF Wholesale stated:

*“After further researching your order we have found that you are considered a “remote” area for our shipping company. Therefore, we have cancelled your order and issued a full refund. Please allow 2-3 business days for processing.”* [(See Ex. A, p 7.)]

Yet, in October 2021, ACF Wholesale proceeded to take an order from a consumer in Dearborn Heights, who lived approximately 14 miles from the Franklin resident. Even though ACF Wholesale again explained this area was too remote for its delivery service, the Dearborn Heights resident was still battling for her refund more than six months after paying for the furniture that was never delivered. (Ex. A, pp 22-24.) And even after this second experience, ACF Wholesale continued to receive payments from—but not deliver furniture to—residents in what it

presumably regarded as equally remote locations such as Detroit, Westland, Taylor, Rochester, and Troy.

12. On December 14, 2023, the Attorney General sent Defendants a Notice of Intended Action (Notice) as anticipated by MCL 445.905. In that Notice, the Attorney General stated, “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.” The Notice included an unredacted copy of the BBB report.

13. ACF Wholesale sent undersigned counsel an email on January 8, 2024, and the parties exchanged emails on January 12, 2024. Defendants did not supply the Attorney General with a list, or even a single name of a Michigander still owed a refund. Instead, ACF Wholesale asked the Attorney General to supply it with such a list.

14. Since receiving the BBB report, the Attorney General has been reaching out to many of those consumers to determine the extent to which they received refunds—whether through chargebacks on the credit card used for the transaction or from ACF Wholesale directly. Examples of some of the consumers who did not receive refunds or chargebacks follow below. The Attorney General is aware of additional consumers among the BBB complainants who are also owed refunds. Upon information and belief, it is likely that there are other Michiganders

who are still owed refunds from ACF Wholesale but who simply did not file a complaint with the BBB.

**Tracy** [REDACTED]

15. Tracy [REDACTED] (Tracy) resides in Suttons Bay, Michigan. Tracy filed a complaint with the BBB on July 31, 2023. (Ex. A, p 88.)

16. On May 4, 2022, Tracy ordered an Ashley Furniture ottoman from ACF Wholesale's website for \$286.61. That day, ACF Wholesale sent Tracy an email confirming her order.

17. A day later, on May 5, 2022, ACF Wholesale sent Tracy an email telling her that the ottoman was backordered, and shipment would be delayed. The email stated Tracy would receive her ottoman in about twelve weeks.

18. On September 27, 2022, ACF Wholesale sent Tracy an email stating the "manufacturing warehouse" had extended the delay on her order until "at least December." Through this email, ACF Wholesale was casting blame upon Ashley Furniture for the delay. Upon information and belief, responsibility for the failure to provide Tracy with either the ordered furniture or a refund, rests with Defendants.

19. As of the date upon which this Complaint has been filed, Tracy still has not received the ottoman she ordered. Nor has ACF Wholesale refunded her the \$286.61 she paid for that furniture. As a result of Defendants' misconduct, Tracy has suffered actual damages in the amount of \$286.61.

Lydia [REDACTED]

20. Lydia [REDACTED] (Lydia) is a resident of Norton Shores, Michigan. Lydia filed a complaint with the BBB on May 10, 2021. (Ex. A, p 83.)

21. On November 27, 2022, Lydia ordered and paid \$624.25 for an Ashley Furniture chair and ottoman set at ACF Wholesale's website. After her purchase, ACF Wholesale sent Lydia a confirmation email verifying her purchase and telling her that due to COVID-19 some manufacturers were low on inventory and some carriers were experiencing delays in deliveries. Further, ACF Wholesale said that larger items could take 2-6 weeks to ship. ACF Wholesale also told Lydia she could cancel her order just by responding to the email and that refunds took 2-7 days for processing.

22. On November 30, 2022, ACF Wholesale messaged Lydia stating that the manufacturing warehouse had discontinued the chair and ottoman set she ordered. The message further stated that the order would be cancelled, and she would be issued a refund which could take 10-14 business days.

23. By January 1, 2023, Lydia still had not received a refund. That day, she emailed ACF Wholesale stating the charge on her card had not been removed and that she had not been refunded.

24. On January 10, 2023, Lydia messaged ACF Wholesale on its website again asking to cancel the order and for issuance of a refund. The next day, ACF Wholesale responded stating that it was currently processing her cancellation request with the manufacturer and that a refund will take up to seven to fourteen business days plus an additional 2-5 days to settle with the bank.

25. On January 12, 2023, ACF Wholesale sent Lydia a message purportedly from its refund department stating that her information had been received and she would get a confirmation once her refund was mailed out.

26. By February 26, 2023, ACF Wholesale still had not refunded Lydia. That day, Lydia messaged ACF Wholesale to inform them she still had not received any reimbursement. ACF did not respond until February 28, 2023. ACF's response stated its refund department was looking into the issue and would settle the matter efficiently.

27. Lydia tried to contact ACF Wholesale again but was unable to establish contact or get a response.

28. Upon information and belief, because of ACF Wholesale's assurances that she would be refunded, Lydia missed the deadline of 150 days to invoke the fraud protection procedures available through the credit card she used to make the purchase.

29. As of the date upon which this Complaint has been filed, Lydia still has not received the chair and ottoman set she ordered. Nor has ACF Wholesale refunded her the \$624.25 she paid for that furniture. As a result of Defendants' misconduct, Lydia has suffered actual damages in the amount of \$624.25.

**Crystal [REDACTED]**

30. Crystal [REDACTED] (Crystal) resides in Midland, Michigan. Crystal filed a complaint with the BBB on June 6, 2023. (Ex. A, p 86.)

31. On February 14, 2023, Crystal placed an order for a three-piece furniture set from ACF Wholesale for \$1,153.44. ACF sent Crystal a confirmation email stating that because of COVID-19 manufactures are seeing low inventory levels and some carriers are experiencing longer delivery times. The email also stated that larger items can take 2-6 weeks to ship. Within the confirmation email, ACF told Crystal she could cancel her order by simply responding to this email or the email provided. The email went on to state that ACF will process refunds when they receive a refund request.

32. By late March 2023, ACF Wholesale had not sent Crystal the furniture set she ordered. On March 25, 2023, Crystal responded to the confirmation order asking when she could expect the furniture set to arrive.

33. On March 28, 2023, ACF Wholesale sent Crystal an email saying her set had been placed on back order and its delivery was extended by the manufacturing warehouse. The email stated the delivery would be extended until at least June. ACF expressed frustration with Ashley Furniture for pushing orders back but said they could not do anything about it.

34. Crystal cancelled her order and requested that ACF Wholesale give her a refund through an email sent on March 31, 2023. ACF Wholesale replied to Crystal through an email the same day and stated they were processing her cancellation with the manufacturer. ACF stated that once they receive confirmation from the manufacturer that the order was cancelled, ACF would issue a full refund to her credit card. Further, ACF explained that the refund would take

about 7-14 business days and an additional 2-5 days to settle the refund with her bank.

35. Crystal waited around three weeks and did not receive a refund. She emailed ACF Wholesale on April 22, 2023, asking when she could expect to receive the refund. ACF Wholesale did not respond to this email. Crystal made subsequent attempts to reach ACF Wholesale, but without success.

36. As of the date upon which this Complaint has been filed, Crystal still has not received the furniture set she ordered. Nor has ACF Wholesale refunded her the \$1,153.44 she paid for that furniture. As a result of Defendants' misconduct, Crystal has suffered actual damages in the amount of \$1,153.44.

### **CONCERNS ABOUT FUTURE MISCONDUCT**

37. As of the filing date of this Complaint, ACF Wholesale's website is down, and it does not appear to be soliciting business from Michigan consumers. Upon information and belief, however, there is no legal barrier to it resuming such activities.

38. Defendant Moody has created multiple businesses over the years, most of which have been created under the laws of the State of Mississippi. Among these businesses is Kupid Sleep LLC, which was created in February 2022. In November 2023, when the Attorney General began examining Defendant Moody's businesses, Kupid Sleep LLC was soliciting business from Michigan consumers through a website.

39. As of the filing date of this Complaint, the Kupid Sleep LLC website is down. Upon information and belief, Defendant Moody is responsible for taking that website down, but there is no legal barrier to him restoring that website and again soliciting business from Michigan consumers.

40. The ability of Defendant Moody to seek business from Michigan consumers through ACF Wholesale, Kupid Sleep LLC, or any other current or future business he may create, own or manage is a harm that should be enjoined pursuant to MCL 445.905.

## **CAUSES OF ACTION**

### **COUNT I – MCPA**

41. The Attorney General incorporates all of the above allegations as though more fully set forth here.

42. By selling furniture to Michigan residents, Defendants were engaged in trade or commerce under the MCPA. Defendants have engaged, or are engaging, in the following unfair trade practices made unlawful by the MCPA:

(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).]

43. Defendants are liable to Tracy, Lydia, Crystal, and all similarly situated Michigan consumers for their actual damages in accordance with MCL 445.910(1). The class of consumers to which these claims relate consists of all Michigan consumers who have placed and paid for orders with ACF Wholesale for goods that were not delivered, and who did not receive a refund—whether through credit card chargeback, a payment from Defendants, or from any other source.

44. Defendants misconduct in violating the MCPA was, and continues to be, persistent and knowing. The imposition of civil fines is appropriate.

45. An injunction against current and future violations of the MCPA is necessary to protect Michigan consumers.

## **COUNT II – STATUTORY CONVERSION**

46. The Attorney General incorporates the above allegations as though more fully set forth here.

47. By failing to return money to consumers who canceled their furniture orders, Defendants converted the consumer's property to their own use. Defendants misconduct constitutes statutory conversion under MCL 600.2919a.

48. Defendants are liable to Tracy, Lydia, Crystal, and all similarly situated Michigan consumers for as much as three times their actual damages in

accordance with MCL 600.2919a. The class of consumers to which these claims relate consists of all Michigan consumers who have placed and paid for orders with ACF Wholesale for goods that were not delivered, and who did not receive a refund—whether through credit card chargeback, a payment from Defendants, or from any other source.

### **CONCLUSION AND RELIEF REQUESTED**

Accordingly, the Attorney General respectfully requests that this Honorable Court grant the following relief:

- A. Enter an order finding Defendants jointly and severally liable and awarding money damages to Tracy, Lydia, Crystal and all similarly situated Michigan consumers in accord with MCL 445.910 and MCL 600.2919a.
- B. Enter preliminary and permanent injunctions enjoining ACF Wholesale from engaging in further transactions with Michigan consumers.
- C. Enter preliminary and permanent injunctions enjoining Moody, and any entity he creates, owns or manages, from engaging in transactions with Michigan consumers.
- D. Impose civil fines upon Defendants for their persistent and knowing violations of the MCPA.
- E. Award the Attorney General her costs and attorney fees associated with advancing this suit.

F. Grant such other relief as may be just and proper.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Darrin F. Fowler", is written over a horizontal line.

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