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CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

STATE OF OHIO)
)
IN THE MATTER OF:) DOCKET NO. 443571
AMERICAN FREIGHT, INC.)

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("Assurance") is entered into this 13TH day of March, 2013 between American Freight, Inc. ("American Freight"), and the Attorney General of the State of Ohio ("Attorney General"). For purposes of this Assurance, "American Freight" means American Freight, Inc. doing business under its own name, under the names American Freight of Ohio, Inc., American Freight of Southern Ohio, Inc., American Freight Management Company, Inc., or under any other business name, its agents, representatives, salespersons, employees, instructors, independent contractors, successors and assigns, and all persons acting in concert or participation with American Freight, directly or indirectly, through any corporate device, partnership or association within the State of Ohio.

WHEREAS, the Attorney General, having reasonable cause to believe that American Freight has engaged in acts and practices which violate Chapter 1345 of the Revised Code ("Consumer Sales Practices Act") and Chapter 109:4-3 of the Ohio Administrative Code ("Substantive Rules"), has conducted an investigation pursuant to the authority granted him by Section 1345.06 of the Revised Code; and

WHEREAS, the Attorney General may, pursuant to R.C. 1345.06(F), enter into and accept an Assurance of Voluntary Compliance; and

WHEREAS, this Assurance of Voluntary Compliance is an assurance in writing by American Freight of its intent to comply with the provisions of the Consumers Sales Practices Act and the Substantive Rules; and

WHEREAS, American Freight desires to comply with all aspects of the Consumer Sales Practices Act, American Freight hereby voluntarily enters into this Assurance with the Attorney General; and

WHEREAS, by entering into this Assurance, American Freight does not admit liability or guilt to any allegation made by the Attorney General;

NOW THEREFORE, in consideration of the mutual promises and conditions set forth herein, the parties hereto **AGREE** as follows:

- (1) The "Effective Date" shall mean the date indicated on the first page of this Assurance.
- (2) By accepting this written Assurance, the Attorney General agrees to terminate the current investigation of American Freight's business practices and actions occurring on or before the Effective Date of this Assurance.
- (3) By giving this written Assurance, American Freight agrees to comply with all the terms of this Assurance and to conduct its business in compliance with all applicable Ohio laws, including without limitation, the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., and the Substantive Rules, Ohio Administrative Code, Section 109:4-3-01 et seq.

BACKGROUND AND STATEMENT OF FACTS

- (4) American Freight, Inc. is an Ohio corporation with its principal place of business located at 680 Sunbury Road, Delaware, Ohio 43015.
- (5) American Freight solicits individual consumers to enter into consumer transactions, specifically by advertising, offering for sale, and selling home furnishings and mattresses.
- (6) American Freight, as described below, is a "supplier" as that term is defined in R.C. 1345.01(C) as American Freight was, at all times relevant herein, engaged in the business of effecting consumer transactions by soliciting, offering for sale and selling home furnishings and mattresses to individual consumers in the State of Ohio, including Franklin County, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
- (7) American Freight solicits individual consumers to enter into consumer transactions, specifically for the purchase and delivery of home furnishings and mattresses.
- (8) American Freight uses various subcontractors to deliver its home furnishings and mattresses.
- (9) In some instances, American Freight's inventory and stock availability of its home furnishings and mattresses were not sufficient to timely fulfill orders with its customers.
- (10) In some instances, American Freight has told consumers, at the time of their purchase, that the consumers' selected home furnishings and/or mattresses were in stock and would be delivered on a certain date. It was only after American Freight's subcontractors missed the delivery date and the consumers contacted American Freight that the consumers learned that their home furnishings and/or mattresses were actually not in stock onsite.

- (11) In some instances, relying on American Freight's promise through its independent delivery service of "same-day" delivery, consumers have purchased home furnishings and/or mattresses from American Freight, only to find out after the transaction is completed that American Freight could not deliver the goods on the same day.
- (12) In some instances when American Freight's subcontractor failed to deliver the home furnishings and/or mattresses ordered, American Freight did not call the consumers to notify them of the missed delivery date, often due to the fact that American Freight was not notified of the failure of delivery.
- (13) When consumers attempted to contact American Freight or go to the store to pick up their goods, American Freight employees told the consumers that their furniture was not available, but that the consumers could select other furniture in the store.
- (14) In some instances, after the initial failure to deliver at the promised time, American Freight would again promise consumers that their home furnishings and/or mattresses would be delivered at a certain date. Then American Freight's subcontractor would fail to deliver on that date. Often times these delays were caused by the inability of American Freight's vendors to meet their previously agreed upon delivery dates. While American Freight always attempted to resolve these issues to the satisfaction to the customer, often times these delivery dates were out of American Freight's control.
- (15) In some instances, American Freight's subcontractors charged consumers additional fees for the delivery of replacement home furnishings or mattresses, in accordance with the customer's agreement with the subcontractors or the terms of their warranty, even though American Freight's subcontractor had failed to deliver the correct product initially or had

delivered home furnishings and/or mattresses with material defects that had to be returned.

- (16) In some instances, American Freight substituted non-custom made, high volume furniture to another consumer that a previous consumer had already purchased and paid for, but had not yet picked up or had delivered, when the same merchandise was either in stock or was available from inventory at the warehouse
- (17) In some instances, consumers have alleged that American Freight has misrepresented the quality and standard of certain home furnishings and mattresses. American Freight's position is the quality of merchandise on the display floor is always the same as that of merchandise delivered to the customer.
- (18) American Freight has sold consumers home furnishings and mattresses with material defects and that appeared used and/or were in need of repair. American Freight maintains that in most instances this occurred when the items were received boxed or bagged directly from the manufacturer and that these defects were always addressed and resolved to the customer's satisfaction when brought to American Freight's attention.
- (19) American Freight has sold home furnishings and/or mattresses with such goods, when delivered and opened or unpacked, often containing visible scratches, dents, holes, exposed nails or staples, and other physical signs of use or damage. American Freight maintains that these defects were always addressed and resolved to the customer's satisfaction when brought to American Freight's attention.
- (20) In some instances, American Freight has sold and delivered furniture that, when opened or unpacked, had missing pieces or furniture sets that lacked pieces or did not match.

- (21) In some instances, when notified of these defects by the consumers, American Freight has failed to assist consumers in obtaining the necessary repairs to the home furnishings and mattresses in a timely manner, referring those complaints to be processed under the warranty obtained by the customer.
- (22) In some instances, it has taken American Freight several weeks to find and deliver the proper replacement goods.
- (23) In some instances, after the consumer requested and received a replacement for the defective furniture, the replacement received was also defective.
- (24) In some instances, American Freight has accepted down payments from consumers for the purchase of home furnishings and mattresses, failed to deliver the home furnishings and mattresses as paid for, and initially failed to refund the consumer's down payment, but ultimately addressed and resolved the issue.
- (25) In some instances, after American Freight had promised but was unable to deliver the goods ordered or had delivered damaged goods, consumers requested refunds from American Freight, which were made in appropriate circumstances.
- (26) American Freight, in some instances, given the circumstances of the transaction, refused to provide refunds to the consumers, claiming their "All Sales are Final" policy precluded refunds.
- (27) American Freight's "All Sales are Final" policy is noted on the sales invoice, which requires "Customer Initials" at the bottom of the document.
- (28) In some instances, American Freight failed to obtain the customer's initials on the invoice.

- (29) In those instances where American Freight has provided refunds to consumers for failing to deliver the furniture or mattresses ordered or having delivered defective goods, American Freight provided the refund via a corporate check or via store credit – although the consumers often paid for their purchases with cash. In instances where the consumer paid by credit card, all refunds were made by credit to that credit card.
- (30) In some consumer transactions, American Freight has failed to incorporate into the written sales contract certain oral representations made to consumers regarding the home furnishings and/or mattresses they were purchasing.
- (31) American Freight has required consumers to enter into consumer transactions on terms established by American Freight.
- (32) American Freight offers a supplemental warranty plan called “Guardian Fabric Protection” through a third party called “Guardian.”
- (33) The warranty coverage is set forth in a separate document provided to the consumer at the time of the sale.
- (34) In some instances, subsequent to the consumers’ purchase, American Freight has told consumers that they did not have warranty coverage on the home furnishings and/or mattresses purchased because they received a price discount on the purchase. In those instances, American Freight notes on the purchase receipt the phrases “as is – no warranties.”
- (35) In some limited instances, American Freight has failed to respond timely to consumers’ oral and written inquiries; has promised, but failed, to make return phone calls to consumers; and has been unsuccessful when responding to consumers’ concerns and inquiries about their furniture and/or refunds.

- (36) American Freight has a "Layaway Policy" but it does not state that it is for the exact, specific item of goods located on the showroom floor.
- (37) American Freight's "Layaway Policy" states that "American Freight does not represent the merchandise at the sale location once the account is opened but will guarantee the price. American Freight requests a minimum of four weeks (sic) notice after final payment has been made, prior to pick-up or delivery of your merchandise, to ensure your order is in stock."
- (38) American Freight previously accepted "layaway" deposits from consumers in connection with its policy noted above, but did not remove the specific goods from its retail inventory. Instead, the goods in question were inventoried by American Freight on an off-site location and not at the point of sale. American Freight continued to offer the specific goods for sale. As of the effective date of this Assurance, American Freight has instituted a new policy.
- (39) American Freight's "Layaway Policy" provides for refunds only in the event that the subject goods are not available within four weeks after the final payment has been made.
- (40) American Freight's previous "Layaway Policy" did not provide consumers with the right to purchase other goods equal to the amount they've paid toward the layaway or receive a refund.
- (41) American Freight's previous "Layaway Policy" did not provide consumers with notice of their right to cancel the transaction and receive a refund.
- (42) American Freight's "Layaway Policy" does not include line items for other charges added to the layaway price, such as delivery fees and warranty costs. In many instances,

the consumer takes possession of the items directly without the need of delivery charges and in other instances, consumers decline the warranties.

- (43) In some instances, American Freight has accepted deposits from consumers in connection with the purchase of home furnishings and mattresses and has failed to remove the goods from the sales floor to ensure that it has sufficient, off-site inventory to satisfy all consumers who have made deposits or put the items in layaway.

COMPLIANCE PROVISIONS

- (44) In connection with the advertising and sale of all home furnishings and mattresses, American Freight shall comply with the CSPA, R.C. 1345.01 et seq., and the Substantive Rules enacted thereunder.
- (45) In connection with the advertising and sale of all home furnishings and mattresses, American Freight shall refrain from:
- (A) Committing an unfair or deceptive act or practice, in violation of the CSPA, R.C. 1345.02(A);
 - (B) Representing that its home furnishing and mattresses have performance characteristics, accessories, uses or benefits they do not have, in violation of R.C. 1345.02(B)(1);
 - (C) Representing that its home furnishing and mattresses are of particular standard, quality, grade, style, prescription or model, if they are not, in violation of R.C. 1345.02(B)(2);
 - (D) Representing that its home furnishing and mattresses are new, or unused, if they are not, in violation of R.C. 1345.02(B)(3);

- (E) Representing that its home furnishing and mattresses have been supplied in accordance with a previous representation, if they have not, in violation of R.C. 1345.02(B)(5);
- (F) Representing that a specific price advantage exists for its home furnishing and mattresses, if it does not, in violation of R.C. 1345.02(B)(8);
- (G) Representing that its home furnishing and mattresses involve or does not involve a warranty, a disclaimer of warranties or other rights, remedies, or obligations if the representation is false, in violation of R.C. 1345.02(B)(10);
- (H) Committing an unconscionable act or practice, in violation of R.C. 1345.03(A);
- (I) Entering into a contract for the sale of home furnishing and mattresses when American Freight knows at the time of the consumer transaction of the inability of the consumer to receive a substantial benefit from the consumer transaction, in violation of R.C. 1345.03(B)(3);
- (J) Requiring the consumer to enter into a consumer transaction for the sale of home furnishing and/or mattresses on terms American Freight knows are substantially one-sided in favor of American Freight, in violation of R.C. 1345.03(B)(5);
- (K) Knowingly making a misleading statement of opinion regarding its home furnishing and mattresses on which consumers are likely to rely to their detriment, in violation of R.C. 1345.03(B)(6);
- (L) Failing to respond to consumer inquiries and engaging in inadequate and unfair customer service, in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A);

- (M) Representing, directly or indirectly, that its home furnishings and/or mattresses, or that any part thereof, are new or unused when such is not the fact, misrepresenting the extent of previous use thereof, or failing to make clear and conspicuous disclosures, prior to time of offer, to the consumer or prospective consumer that its home furnishings and/or mattresses have been used, in violation of the CSPA, R.C. 1345.02(A), and the New for Used Rule, Ohio Admin. Code 109:4-3-08(A); and
 - (N) Accepting down payments for home furnishings and/or mattresses and then failing to deliver those goods or allowing more than eight (8) weeks to elapse without delivering the goods or making a full refund of the down payments, in violation of the CSPA, R.C. 1345.02(A), and the Failure to Deliver Rule, Ohio Admin. Code 109:4-3-09.
- (46) In connection with the advertisement and sale of all home furnishings and mattresses, American Freight shall modify its policies and procedures to comply with the Deposits Rule, Ohio Admin. Code 109:4-3-07. Specifically, American Freight shall:
- (A) Refrain for a specified period of time from offering for sale to any other person the goods in relation to which the deposit has been made by the consumer if such goods are unique and may only continue to sell or offer to sell goods on which a deposit has been made if American Freight has available sufficient goods to satisfy all consumers who have made deposits, in compliance with Ohio Admin. Code 109:4-3-07(A);

- (B) At the time of the initial deposit, provide to the consumer a dated written receipt stating clearly and conspicuously the time during which any option given is binding, in compliance with Ohio Admin. Code 109:4-3-07(B)(4);
 - (C) At the time of the initial deposit, provide to the consumer a dated written receipt stating clearly and conspicuously whether the deposit is refundable and under what conditions, in compliance Ohio Admin. Code 109:4-3-07(B)(5), provided that no limitation on refunds in a layaway arrangement may be made except as provided by sections 1317.21 to 1317.23 of the Revised Code; and
 - (D) At the time of the initial deposit, provide to the consumer a dated written receipt stating clearly and conspicuously any additional costs such as storage, assembly or delivery charges, in compliance with Ohio Admin. Code 109:4-3-07(B)(6).
- (47) In connection with the advertising and sale of all home furnishings and mattresses, American Freight shall modify its policies and procedures to comply with the Retail Installment Sales Act, R.C. 1317.01 et seq. Specifically, American Freight shall:
- (A) Modify its “Layaway Policy” so that it states the contract is for the purchase and sale of specific goods at a future time, in compliance with R.C. 1317.01(S)(1);
 - (B) Modify its “Layaway Policy” so that American Freight retains possession of but removes the specific goods from its retail inventory and not offer the specific goods for sale to other persons or promises the availability thereof at the agreed time of delivery, in compliance with R.C. 1317.01(S)(1)(a). In those instances where the goods are not located on site for lay-a-way purposes, American Freight will institute a “special order” policy which clearly informs the consumer that the merchandise order is to be shipped from American Freight’s

vendor subject otherwise to the terms and conditions of American Freight's "lay-a-way policy".

- (C) Modify its "Layaway Policy" to comply with R.C. 1317.22(A)(6) by including a guarantee that if the consumer buyer breaches the layaway arrangement, the consumer is entitled to purchase other merchandise or specific goods from American Freight equal in price to the total amount the consumer paid to American Freight as of the date of the breach and that if no merchandise or specific goods are available which the consumer desires to purchase, American Freight shall refund to the consumer the amount paid in deposits, down payments, and part payments according to the terms of the contract, provided that the contract shall not contain any term which permits American Freight to retain more than fifty per cent of the total amount of deposits, down payments, or part payments made by the consumer;
- (D) Modify its "Layaway Policy" to include in its contract any reasonable charges American Freight may add to the layaway price, such as delivery charges, and the conditions under which the charges are assessed to the consumer, in compliance with R.C. 1317.22(A)(7);
- (E) Modify its "Layaway Policy" to include a provision in its contract that if the consumer buyer cancels the contract by giving written notice of the cancellation to American Freight within five days after entering into the layaway arrangement, American Freight shall refund the total amount paid by the consumer in deposits, down payments, and part payments for the merchandise or

specific goods which are the subject of the layaway arrangement, in compliance with R.C. 1317.22(A)(8); and

- (F) Modify its "Layaway Policy" to comply with R.C. 1317.22(A)(9) by including a provision in its contract that the consumer buyer may cancel the contract by giving written notice of cancellation to American Freight at any time. Upon receipt of this notice, American Freight shall consider the layaway arrangement terminated and shall provide a refund to the consumer in accordance with the contract and sections 1317.22 and 1317.23 of the Revised Code.

GENERAL PROVISIONS

- (48) American Freight understands and agrees this Assurance applies to American Freight, Inc., doing business under its own name and to any other business name, its principals, officers, directors, agents, representatives, salespersons, employees, instructors, independent contractors, successors and assigns, jointly and severally.
- (49) This Assurance shall be governed by the laws of the State of Ohio.
- (50) This Assurance does not constitute an approval by the Attorney General of any of American Freight's business practices and American Freight shall not represent directly or indirectly, or in any way whatsoever, that the Attorney General has sanctioned, condoned or approved any part or aspect of American Freight's business practices.
- (51) This Assurance sets forth the entire agreement between the Attorney General and American Freight (the "Parties") and supersedes all prior agreements or understandings, whether written or oral, between the Parties and/or their respective counsel with respect to the subject matter hereof. This Assurance may be amended by written agreement between the Parties, subject to any further requirements under state law.

- (52) The Parties acknowledge that no other promises, representations or agreements of any nature have been made or entered into by the Parties. The Parties further acknowledge that this Assurance constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.
- (53) Irrespective of American Freight's obligations under Paragraph (55) below, American Freight shall continue to negotiate in good faith, and resolve, through the office of the Attorney General, any consumer complaints filed with the Ohio Attorney General's Office, concerning American Freight's conduct occurring prior to or after the Effective Date of this Assurance, which are brought by consumers that are discovered after entering into this Assurance.
- (54) This Assurance is a public record and shall be maintained in the Public Inspection File.

RESTITUTION AND PAYMENT TO THE STATE

- (55) American Freight shall provide refunds to consumers who have complained to the Ohio Attorney General's Office regarding American Freight, prior to the entering of this Compliance Agreement, within the next sixty calendar days following the Effective Date of this Assurance, pursuant to the following terms:
- (A) The Attorney General shall provide to American Freight copies of consumer complaints which are filed with the Attorney General's Office within sixty calendar days after the Effective Date of this Assurance and which complaints arose prior to the Effective Date of this Assurance. Within thirty calendar days following the sixty-day period prescribed above, the Attorney General's Office shall provide to American Freight copies of these consumer complaints, along

with a list of the consumer restitution amounts the Attorney General's Office maintains is owed to each consumer or a request for additional information from American Freight.

(B) American Freight shall provide to the Attorney General's Office any additional information requested under Paragraph (55)(A) within seven business days of the date that the Attorney General's Office makes the initial request to American Freight. The Attorney General's Office will then have seven additional business days to supplement or modify the original list of consumer restitution amounts provided to American Freight pursuant to Paragraph (55)(A). The Parties will then have seven business days from the date American Freight receives the modified restitution list to agree upon the amount of consumer restitution due and owing.

(C) American Freight shall pay to the Attorney General's Office the total amount due to all of the consumers identified pursuant to Paragraphs (55)(A) and (B) above within fourteen business days of the date that the Parties agree upon the amount of consumer restitution due pursuant to Paragraph (55)(B). Should the Parties be unable to reach an agreement on the restitution amount owed for any given consumer complaint, after engaging in a good faith effort to resolve the issue, the Attorney General's Office shall be the final arbiter on any disputed complaint and its decision shall be final and binding upon the Parties. The Attorney General's Office shall then distribute the payments to the individual consumers. Payment by American Freight shall be made by delivering a certified check or money order, payable to the "Ohio Attorney General's Office," to:

**Teresa Goodridge
Financial Assistant
Consumer Protection Section
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215**

- (56) As part of the consideration for the termination of the Attorney General's investigation of American Freight under the CSPA, R.C. 1345.01 et seq., American Freight shall pay Fifty Thousand Dollars (\$50,000.00) to the Office of the Ohio Attorney General to be placed in the Consumer Protection Enforcement Fund of the Ohio Attorney General's Office. Payment shall be due upon execution of this Assurance and shall be made by delivering a certified check or money order, made payable to the "Ohio Attorney General's Office," to:

**Teresa Goodridge
Financial Assistant
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215**

PENALTIES FOR FAILURE TO COMPLY

- (57) The Attorney General may assert any claim that American Freight has violated this Assurance in a separate civil action to enforce this Assurance, or to seek any other relief afforded by law, including attorney fees, investigative costs, and a civil penalty for each violation the Attorney General asserts American Freight has committed. In any such action or proceeding, relevant evidence of conduct that occurred before the Effective Date shall be admissible on any material issue, including alleged willfulness, intent, knowledge, contempt or breach, to the extent permitted by law. By this paragraph, American Freight does not waive any evidentiary objection or any other objection it may have as permitted by law to the admissibility of any such evidence.


- (58) Evidence of a violation of an Assurance of Voluntary Compliance is prima-facie evidence of an act or practice in violation of the CSPA, R.C. 1345.01 et seq., if presented after the violation in an action brought under the CSPA, R.C. 1345.01 et seq.
- (59) This Assurance shall in no way exempt American Freight from any other obligations imposed by law, and nothing contained herein shall relieve American Freight of any legal responsibility for any acts or practices engaged in by American Freight other than those acts specifically resolved by this Assurance.
- (60) Nothing in this Assurance shall in any way preclude any investigative or enforcement action against American Freight under any legal authority granted to the Attorney General:
- (A) With respect to the transactions or occurrences which are the subject of this enforcement action, if the terms of this Assurance are not fully obeyed; or
 - (B) With respect to transactions or occurrences which are not the subject of this action.

WHEREFORE, the parties hereto affix their signatures in recognition and acceptance of the terms contained herein on this 13th day of March 2013.

SIGNATURES

Accepted:


MICHAEL DEWINE
OHIO ATTORNEY GENERAL

BY: 
MELISSA G. WRIGHT (0077843)
Senior Assistant Attorney General
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(614) 466-8169; (866) 528-7423 (facsimile)
melissa.wright@ohioattorneygeneral.gov

3/20/13
Date

Accepted:

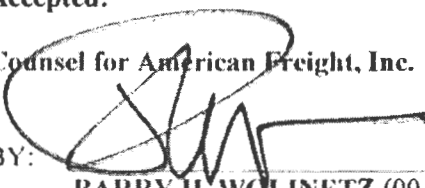
AMERICAN FREIGHT, INC.
(Authorized Representative)

BY: 
STEVE BELFORD
President and Chief Executive Officer
680 Sunbury Road
Delaware, Ohio 43015
(740) 363-2222
(740) 363-8127 (facsimile)

3/13/13
Date

Accepted:

Counsel for American Freight, Inc.

BY: 
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3.15.13
Date