



OFFICE OF THE DISTRICT ATTORNEY
TWENTIETH JUDICIAL DISTRICT
Michael T. Dougherty, District Attorney

February 17, 2022

Via Certified Mail
And Via Email to info@WildfirePros.com

Professional Forest Management, LLC
c/o Frank Carroll & Van Elsbernd
1294 S. Skyline Ct.
Pueblo, CO 81007

Cease and Desist Notice

This letter serves as Notice that the District Attorney's Office for the Twentieth Judicial District has cause to believe that Professional Forest Management, LLC and its owners, Frank Carroll and Van Elsbernd, have engaged in, or are currently engaging in, unfair or deceptive trade practices as defined in C.R.S. §6-1-105, the Colorado Consumer Protection Act (CCPA).

Specifically, as pertaining to this Notice, C.R.S. §6-1-105 prohibits:

- (1)(h) – Disparaging the goods, services, property, or business of another by false or misleading representation of fact
- (1)(kkk) – Either knowingly or recklessly engaging in any unfair, unconscionable, deceptive, deliberately misleading, false, or fraudulent act or practice

The information currently available to the District Attorney's Office shows that Professional Forest Management, LLC has engaged in unfair and deceptive trade practices, as defined in the above subsections, by advertising in publications in Boulder County, namely the Boulder Daily Camera and the Boulder Weekly, regarding the Marshall Fire that devastated the Boulder County Community, the Town of Superior and City of Louisville.

The advertisements contain information that:

- They (Boulder County and the City of Boulder) Didn't Warn You
- They Didn't Protect You
- The Marshall Fire was started by a 150-year-old coal seam fire, known to the County and City for decades

- Fire inspectors for the City of Boulder and Boulder County knew the coal fire was an imminent and constant threat
- The City of Boulder and Boulder County had a duty to warn, a duty to mitigate, and they did nothing
- Professional Forest Management could assess damages and help file a claim to get compensation
- Local governments that failed must compensate for loss, pain, and suffering
- A call to Professional Forest Management would provide needed help to hold "Boulder City and County" accountable
- The advertisement further included a crude, caricature drawing of a house on fire

The above information appears to the District Attorney's Office to be false, misleading, unfair, unconscionable, deceptive, and fraudulent as prohibited by the Colorado Consumer Protection Act due to the following:

- "The Marshall Fire was started by a 150-year-old coal seam fire, known to the County and City for decades." – The cause(s) of the Marshall Fire has yet to be determined by investigators.
- "Fire inspectors for the City of Boulder and Boulder County knew the coal fire was an imminent and constant threat." – Boulder County does not employ fire inspectors. Fire suppression and inspection in unincorporated Boulder County is handled by various fire districts, which are special districts not operated or controlled by Boulder County. Additionally, there is no indication or evidence that "fire inspectors" or other personnel of Boulder County knew that a coal seam fire existed as an "imminent and constant threat."
- "The City of Boulder and Boulder County had a duty to warn, a duty to mitigate, and they did nothing." – There is no indication or evidence that the City of Boulder or Boulder County had a "duty to warn," "duty to mitigate," or "duty to protect" against a coal seam fire that was not known to be an imminent threat. Further, once the Marshall Fires began, fire personnel worked to mitigate and protect community members from the fire.
- "Local governments that failed must compensate for loss, pain, and suffering." – A claim against the City of Boulder or Boulder County, as Professional Forest Management proposes to assist consumers with, would likely be barred by the Colorado Governmental Immunity Act. See C.R.S. §24-10-101 et seq.

The Marshall Fire was an unimageable tragedy for Boulder County and its community members, especially those whose homes were destroyed or damaged. District Attorney Michael Dougherty and his staff take seriously any threat or danger to Boulder County citizens and we have been active in assisting citizens during and after the Marshall Fire. Our office is actively working with law enforcement and other agencies to determine the cause and origin of the fire.

This role of our office includes making sure that consumers are not misled during this vulnerable time and in recovering from a devastating fire. This includes any attempts to assert that community members could be provided compensation or other

monetary gain by engaging with a company that uses false, misleading, deceptive, or fraudulent advertisements.

Violators of the CCPA are subject to penalties of up to \$20,000 per violation or up to \$50,000 per violation if a consumer victim is sixty years old or older. See C.R.S §6-1-112. Additionally, if necessary, costs and attorney fees shall be awarded to the District Attorney in all actions where he successfully enforces the CCPA. See C.R.S §6-1-113(4).

This notice is a demand by the District Attorney for the Twentieth Judicial District that Professional Forest Management, LLC immediately cease and desist any and all violations of the Colorado Consumer Protection Act, including, but not limited to:

- Engaging in unfair, false, misleading, fraudulent, deceptive, or unconscionable trade practices
- Claiming a cause of the Marshall Fire has been determined before it has, in fact, been determined
- Claiming, without evidence or legal authority, that Boulder County or the City of Boulder knew of an imminent threat to the community and did nothing to protect, warn, or mitigate against such threat
- Claiming, without showing the Colorado Governmental Immunity Act would not bar such litigation, that governmental entities must compensate for loss, pain, and suffering.

Please acknowledge receipt of this notice and your agreement to cease the above described activities by signing the enclosed Acknowledgement and returning the signed original document to my office by February 22, 2022. Your failure to submit the signed acknowledgment of this Cease and Desist Notice may result in further enforcement action by the District Attorney's Office.

This Office will continue to monitor consumer complaints and Boulder County publications to ensure your compliance with this demand. Continued violations of the CCPA may result in legal action, including the filing of a civil lawsuit. Any questions can be directed to Chief Deputy District Attorney Christian Gardner-Wood at 720-564-2826 or via email to cgardner-wood@bouldercounty.org.

This notice is submitted on behalf of the District Attorney and the People of the State of Colorado.

Sincerely,



Christian Gardner-Wood
Chief Deputy District Attorney
Twentieth Judicial District

cc: Corey Basciano, Advertising Coordinator, Boulder Weekly – via email to cbasciano@boulderweekly.com

Jill Stravolemos, VP of Marketing and Advertising, Boulder Daily Camera – via email to stravolemosj@dailycamera.com

David Hughes, Deputy County Attorney, Boulder County – via email to dhughes@bouldercounty.org

Abigail Hinchcliff, First Assistant Attorney General, Consumer Protection Section, Colorado Department of Law – via email to Abigail.Hinchcliff@coag.gov

Acknowledgement

I, Frank Carroll, acknowledge that I have received and reviewed the above Notice to Cease and Desist. I hereby certify that Professional Forest Management, LLC and I agree to Cease and Desist advertisements to consumers unless and until we are in full compliance with all requirements of the Colorado Consumer Protection Act.

Signature

Date

Printed Name

I, Van Elsbernd, acknowledge that I have received and reviewed the above Notice to Cease and Desist. I hereby certify that Professional Forest Management, LLC and I agree to Cease and Desist advertisements to consumers unless and until we are in full compliance with all requirements of the Colorado Consumer Protection Act.

Signature

Date

Printed Name