

IN THE COURT OF COMMON PLEAS  
JACKSON COUNTY, OHIO

STATE OF OHIO, *ex rel.*  
MICHAEL DEWINE  
ATTORNEY GENERAL OF OHIO  
30 East Broad Street, 14th Floor  
Columbus, Ohio 43215

Plaintiff,

v.

JOHNNY POE  
DBA Johnny Poe Construction  
DBA JP Construction  
710 N. Pennsylvania Ave., Apt 14N  
Wellston, OH 45692-1260

Defendant.

CASE NO. 14 CIV 0002

JUDGE REGAN

**FILED**  
COMMON PLEAS COURT  
JACKSON, OH

JAN 13 2014

SETH I. MICHAEL, CLERK

AMENDED  
COMPLAINT AND REQUEST FOR  
DECLARATORY JUDGMENT,  
INJUNCTIVE RELIEF, CONSUMER  
RESTITUTION, AND CIVIL  
PENALTIES

JURISDICTION AND VENUE

1. Plaintiff, Ohio Attorney General Michael DeWine, having reason to believe that Defendant has violated the consumer protection laws of Ohio, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., and the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21 et seq.
2. This Court has personal jurisdiction over the Defendant, pursuant to R.C. 2307.382, because this cause of action arises from the Defendant's business transactions with residents of Ohio.
3. This Court has subject matter jurisdiction over this action, pursuant to R.C. 1345.04, because the claims in this Complaint arise from consumer transactions subject to R.C. 1345.01 et seq.

4. Venue is proper with this Court, pursuant to Ohio Civ. R. 3(B)(1), because the Defendant resides in Jackson County, Ohio.

### **DEFENDANT**

5. Defendant, Johnny Poe, is a resident of Ohio who lives at 710 N. Pennsylvania Ave., Apt 14N, Wellston, OH 45692-1260.
6. Poe is a “supplier” under R.C. 1345.01(C) because he solicited, offered for sale, and sold home improvement services to individuals in Ohio, and therefore engaged in the business of effecting and soliciting “consumer transactions” as that term is defined by R.C. 1345.01(A).
7. Poe is a “seller” under R.C. 1345.21(C) because he personally solicited and sold his home improvement services to buyers at their residences, and therefore engaged in “home solicitation sales” as that term is defined by R.C. 1345.21(A).

### **STATEMENT OF FACTS**

8. Poe solicited and sold home improvement services to Ohio consumers at their residences, sometimes under the fictitious business name “Johnny Poe Construction” and sometimes under the fictitious business name “JP Construction.” Poe did not maintain any fixed place of business.
9. Consumers, believing that Poe would completely and competently provide the home improvement services as he represented them, contracted with Poe to provide those services.
10. Poe did not evidence these sales by a written agreement or offer to purchase that meets the particular requirements of R.C. 1345.23(A). Having produced no written agreement or offer to purchase that meets the particular requirements of R.C. 1345.23(A), Poe did

not leave with the consumers a copy of that written agreement containing the notice of the consumer's right to cancel within three days and did not provide to consumers a completed Notice of Cancellation form that meets the requirements of R.C. 1345.23(B)(2) and (B)(3).

11. Poe demanded and accepted installation payments for his home improvement services in advance of those services.
12. Poe allowed at least eight weeks to elapse without competently and completely fulfilling his contractual obligations to consumers, or, alternately, offering or providing those consumers a full refund.
13. Much of the work Poe did "complete" was so shoddy, substandard, and unworkmanlike that it required subsequent repairs and additional services.
14. Poe failed, on numerous occasions, to timely respond to consumers' efforts to contact him, whether it was by email, phone, or through the Ohio Attorney General's office.
15. When Poe did respond to consumers, he promised them that he would make good on his contractual obligations by some specified date, and then failed to show up on that date and complete the work as promised, thereby stalling and further evading his contractual obligations. In one instance, Poe told a consumer that he would complete his work within six months. Throughout the six months, Poe promised the consumer that he would begin work "soon" and, at one point, that he would complete the work in another week and a half. After six months, and despite many efforts to contact Poe, Poe ultimately failed to competently complete the work for that consumer that he was contractually obligated to provide.

16. As a result of Poe's shoddy, substandard, and unworkmanlike home improvement repairs and services, his failure to timely respond to consumers' concerns, and his stringing-along of consumers when they raised concerns, consumers have gone for months with partially completed work, holes in their walls, and unsafe living conditions.
17. Poe failed to offer consumers a full refund within two weeks of advising the consumer of the duration of an extended delay.
18. Poe failed to offer to cover consumers' cost of hiring a different contractor to finish or repair Poe's work.
19. Poe's failure to deliver leaves consumers with no other option but to hire other contractors, at significant cost, to fix his work and competently complete the services that he was contractually obligated to provide.

### **PLAINTIFF'S FIRST CAUSE OF ACTION**

#### **VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT**

#### **COUNT I**

#### **FAILURE TO DELIVER GOODS OR SERVICES, OR PROVIDE REFUNDS**

20. Plaintiff incorporates by reference the allegations set forth in paragraphs Eight through Nineteen of this Complaint.
21. Poe committed unfair and deceptive acts and practices in violation of R.C. 1345.02(A) and O.A.C. 109:4-3-09(A)(2) by failing to fully deliver those services ordered by consumers, failing to fully refund consumers, failing to advise consumers of the duration of an extended delay and offering to send each consumer a refund within two weeks if the consumer requested it, and failing to furnish similar services of equal or greater value, within eight weeks of accepting payment for those services.

22. These acts and practices have been determined by Ohio courts to violate the CSPA, R.C. 1345.02 et seq. Such acts and practices have also been declared deceptive by administrative rule adopted by the Attorney General pursuant to R.C. 1345.05(B)(2). Poe committed these acts after the administrative rule and court decisions were made available for public inspection in accordance with R.C. 1345.05(A)(3).

## **COUNT II**

### **UNFAIR AND DECEPTIVE ACTS AND PRACTICES**

23. Plaintiff incorporates by reference the allegations set forth in paragraphs Eight through Nineteen of this Complaint.
24. Poe committed unfair and deceptive acts and practices in violation of R.C. 1345.02(A) by performing shoddy, substandard, and unworkmanlike services in connection with a consumer transaction, and then failing to correct that work.
25. Poe committed unfair and deceptive acts and practices in violation of R.C. 1345.02(A) by repeatedly stalling and evading his contractual obligations.
26. Poe engaged in unfair and deceptive acts and practices in violation of R.C. 1345.02(A) by failing to timely respond to consumers' repeated phone calls, emails, and attempts to communicate through the Ohio Attorney General's Office.
27. Poe engaged in unfair and deceptive acts and practices in violation of R.C. 1345.02(A) by failing to register or report, as required by R.C. 1329.01(D), the use of all fictitious business names, including "Johnny Poe Construction" and "JP Construction," with the Ohio Secretary of State prior to doing business in Ohio under those fictitious names.

28. These acts and practices have been determined by Ohio courts to violate R.C. 1345.02, and Poe committed these acts after these Court decisions were made available for public inspection in accordance with R.C. 1345.05(A)(3).

**PLAINTIFF'S SECOND CAUSE OF ACTION**

**VIOLATIONS OF THE HOME SOLICITATION SALES ACT**

**COUNT I**

**FAILURE TO PROVIDE NOTICE OF RIGHT TO CANCEL**

29. Plaintiff incorporates by reference the allegations set forth in paragraphs Eight through Nineteen of this Complaint.
30. Poe engaged in unfair and deceptive acts and practices in violation of R.C. 1345.23(B) by failing to provide consumers with a notice of the consumer's right to cancel within three days of purchase that met the particular requirements of R.C. 1345.23(B)(1).
31. Poe engaged in unfair and deceptive acts and practices in violation of R.C. 1345.23(B) by failing to attach to the contract a "Notice of Cancellation" form that met the particular requirements of R.C. 1345.23(B)(2).
32. Poe engaged in unfair and deceptive acts and practices in violation of R.C. 1345.23(B) by failing to complete both copies of a "Notice of Cancellation" form that met the particular requirements of R.C. 1345.23(B)(3).
33. Pursuant to R.C. 1345.28, these violations constitute deceptive acts and practices in connection with a consumer transaction, in violation of R.C. 1345.02
34. These acts and practices have been determined by Ohio courts to violate the CSPA, R.C. 1345.02 et seq. Such acts and practices have also been declared deceptive by administrative rule adopted by the Attorney General pursuant to R.C. 1345.05(B)(2). Poe

committed these acts after the administrative rule and court decisions were made available for public inspection pursuant to R.C. 1345.05(A)(3).

**REQUEST FOR RELIEF**

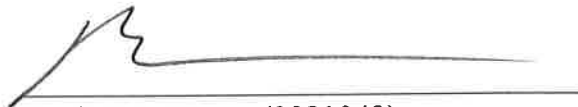
Plaintiff, the State of Ohio, requests this Court:

- A. **ISSUE A DECLARATORY JUDGMENT**, pursuant to R.C. 1345.07(A)(1), declaring that the acts or practices described in paragraphs Twenty through Twenty-Eight violate the CSPA, and that the acts or practices described in paragraphs Twenty-Nine through Thirty-Four violate the HSSA, and therefore the CSPA.
- B. **ISSUE PERMANENT INJUNCTIVE RELIEF**, pursuant to R.C. 1345.07, enjoining Defendant Johnny Poe under that name, "Johnny Poe Construction," "JP Construction," or any others, and all persons acting on behalf of Poe, directly or indirectly, through any corporate or private device, partnership or association, jointly and severally, from engaging in the acts and practices described in this Complaint, and from further violating the HSSA and the CSPA.
- C. **ISSUE PERMANENT INJUNCTIVE RELIEF** enjoining Defendant Johnny Poe from acting as a supplier and from soliciting or engaging in any consumer transactions in the State of Ohio as a supplier until the final ordered resolution of this matter is satisfied in its entirety.
- D. **HOLD POE LIABLE** to all consumer-buyers found to have been damaged by his violations of the HSSA and the CSPA, and **ORDER POE** to reimburse those consumer-buyers for their damages.

- E. Pursuant to R.C. 1345.07(D), **ASSESS**, **FINE**, and **IMPOSE** upon Defendant Johnny Poe a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each act or practice previously declared by a Court or Rule to be unfair or deceptive.
- F. **ORDER POE**, as a means of ensuring compliance with this Court's Order and with the consumer protection laws of Ohio, to maintain in his possession and control for a period of five (5) years, and in a manner designed to secure the privacy of all consumers' personal information, all business records relating to Mr. Poe's solicitation and sale of home improvement services in Ohio.
- G. **ORDER POE** to reimburse the Ohio Attorney General for all costs incurred in bringing this action.
- H. **ORDER POE** to pay all Court costs associated with this action.
- I. **GRANT** any other relief the Court deems just, equitable, and appropriate.

Respectfully submitted,

MICHAEL DEWINE  
Attorney General



Bradly M. Turner (0091043)  
Assistant Attorney General  
Consumer Protection Section  
Office of the Ohio Attorney General  
30 East Broad Street, 14th Floor  
Columbus, Ohio 43215-3428  
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bradly.turner@ohioattorneygeneral.gov  
*Counsel for Plaintiff*



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| 710 N. Pennsylvania Ave., Apt 14N | ) |                      |
| Wellston, OH 45692-1260           | ) |                      |
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| Defendant.                        | ) |                      |

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COMMON PLEAS COURT  
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**JAN 13 2014**

**SETH I. MICHAEL, CLERK**

**PRAECIPE FOR SERVICE**

To the Clerk of Courts:

Please issue **Service of Process** to Defendant **JOHNNY POE** via **CERTIFIED MAIL** to:

**710 N. Pennsylvania Ave., Apt 14N**  
**Wellston, OH 45692-1260**

Respectfully submitted,

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Attorney General



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