

**IN THE COURT OF COMMON PLEAS  
DELAWARE COUNTY, OHIO**

STATE OF OHIO ex rel.	)	
ATTORNEY GENERAL	)	
DAVE YOST	)	Case No:
30 E. Broad St., 14 <sup>th</sup> Floor	)	
Columbus, Ohio 43215	)	
	)	Judge:
Plaintiff,	)	
v.	)	
	)	
BRIAN WATKINS,	)	COMPLAINT AND REQUEST FOR
Individually, and	)	DECLARATORY JUDGMENT,
d/b/a DIG IT DEEP and	)	INJUNCTIVE RELIEF, CIVIL
d/b/a TOUGH NICKEL EXCAVATING, LLC	)	PENALTIES, AND OTHER
650 Church View Court	)	APPROPRIATE RELIEF
Delaware, Ohio 43015,	)	
	)	
and	)	
	)	
IRON HORSE EXCAVATING, LLC,	)	
650 Church View Court	)	
Delaware, Ohio 43015,	)	
	)	
and	)	
	)	
BLACK RIVER FARMS &	)	
CONTRACTING, LLC	)	
650 Church View Court	)	
Delaware, Ohio 43015	)	

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**JURISDICTION AND VENUE**

1. Plaintiff, State of Ohio, by and through its counsel, the Attorney General of Ohio, Dave Yost, having reasonable cause to believe that violations of Ohio's consumer protection

laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by R.C. 1345.01 *et seq.*

2. The actions of Defendants, Brian Watkins, individually and d/b/a Dig it Deep and Tough Nickel Excavating LLC, together with Iron Horse Excavating, LLC ("Iron Horse"), and Black River Farms & Contracting, LLC ("Black River") (collectively, "Defendants"), hereinafter described, have occurred in Delaware County and other counties in the State of Ohio and, as set forth herein, are in violation of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01, *et seq.* and the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21 *et seq.*
3. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(C)(1), (2), and (3).

#### **DEFENDANTS**

5. Defendant Brian Watkins is a natural person residing at 650 Church View Court, Delaware, Ohio 43015.
6. Defendant Brian Watkins has done business under the trade names "Dig it Deep" and "Tough Nickel Excavating, LLC", but neither name has been registered with, or reported to, the Ohio Secretary of State.
7. Defendant Iron Horse is a domestic limited liability company registered by Defendant Brian Watkins with the Ohio Secretary of State on or about April 11, 2019.
8. Defendant Black River is a domestic limited liability company registered by Defendant Brian Watkins with the Ohio Secretary of State on or about August 14, 2019.

9. Defendants are “suppliers,” as that term is defined in R.C. 1345.01(C), as they engaged in the business of effecting “consumer transactions” by soliciting consumers either directly or indirectly for home improvement goods and services for a fee, within the meaning of R.C. 1345.01(A).
10. Defendant Brian Watkins at all times pertinent hereto controlled and directed the business activities and sales conduct of Defendants Iron Horse and Black River, causing, personally participating in, or ratifying the acts and practices of the same, including the conduct giving rise to the violations described herein.

### **STATEMENT OF FACTS**

11. Defendants solicited consumers for home improvement goods and services, generally for pond installations and residential excavation services, within multiple counties in Ohio, including Delaware County.
12. Defendants do not have a retail business establishment having a fixed permanent location where goods are exhibited or services are offered for sale on a continuing basis.
13. Defendants accepted monetary deposits from consumers for the purchase of home improvement goods and services but failed to deliver those goods and services and also refused to refund the consumers’ deposits.
14. At the time of the transactions, Defendants failed to notify consumers of their rights to cancel the transactions, or to provide consumers with notice of cancellation forms describing the consumers’ rights to cancel the transactions.

**PLAINTIFF'S FIRST CAUSE OF ACTION:**  
**VIOLATIONS OF THE CSPA**  
**COUNT I- FAILURE TO DELIVER**

15. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1 through 14 of this Complaint.
16. Defendants committed unfair or deceptive acts or practices in violation of the Failure to Deliver Rule, O.A.C. 109:4-3-09(A) and the CSPA, R.C. 1345.02(A), by accepting money from consumers for goods and services and then permitting more than eight weeks to elapse without delivering the goods and services ordered, making a full refund, advising the consumers of the duration of an extended delay and offering to send a refund within two weeks if so requested, or furnishing similar goods or services of equal or greater value as a good faith substitute.

**COUNT II – FAILURE TO REGISTER**  
**WITH OHIO SECRETARY OF STATE**

17. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1 through 16 of this Complaint.
18. Defendant Watkins committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1329.01 by operating under the trade names “Dig it Deep” and “Tough Nickel Excavating, LLC” while failing to register or report either with the Ohio Secretary of State.
19. The acts or practices described above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* Defendant Watkins committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

**PLAINTIFF'S SECOND CAUSE OF ACTION:**  
**VIOLATION OF THE HSSA**  
**COUNT 1: FAILURE TO PROVIDE PROPER NOTICE**  
**OF THREE DAY RIGHT OF RESCISSION**

20. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1 through 19 of this Complaint.
21. Defendants violated the HSSA, R.C. 1345.23 and R.C. 1345.02(A), by failing to give proper notice to consumers of their right to cancel their transactions by a specific date.
22. The acts or practices described above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. ISSUE A DECLARATORY JUDGMENT that each act or practice complained of herein violates the CSPA, its Substantive Rules, and the HSSA, in the manner set forth in the Complaint.
- B. ISSUE A PERMANENT INJUNCTION enjoining the Defendants, their agents, employees, successors or assigns, and all persons acting in concert and participation with them, directly or indirectly, through any corporate device, partnership, or other association, under these or any other names, from engaging in the acts and practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 *et seq.*, its Substantive Rules, and the HSSA, R.C. 1345.21 *et seq.*
- C. ORDER Defendants, pursuant to R.C. 1345.07(B), to pay damages to all consumers injured by the conduct of the Defendants as set forth in this Complaint.

- D. ASSESS, FINE and IMPOSE upon Defendants a civil penalty of up to \$25,000.00 for each separate and appropriate violation of the CSPA described herein pursuant to R.C. 1345.07(D).
- E. GRANT Plaintiff its costs incurred in bringing this action, including but not limited to, the cost of collecting on any judgment awarded.
- F. ORDER Defendants to pay all court costs associated with this matter.
- G. GRANT such other relief as the court deems to be just, equitable, and appropriate.

Respectfully submitted,

DAVE YOST  
Attorney General

/s/ W. Travis Garrison  
W. Travis Garrison (0076757)  
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