

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

STATE OF OHIO ex rel.	)	
ATTORNEY GENERAL	)	CASE NO.:
DAVE YOST	)	
30 E. Broad Street, 14th Floor	)	JUDGE
Columbus, Ohio 43215	)	
	)	
Plaintiff,	)	
v.	)	<b><u>COMPLAINT AND REQUEST</u></b>
	)	<b><u>FOR DECLATORY JUDGMENT,</u></b>
David D. "Doug" Francis, individually and	)	<b><u>INJUNCTIVE RELIEF,</u></b>
d/b/a D-Way Construction LLC	)	<b><u>CONSUMER DAMAGES, AND</u></b>
18105 Brown School Road	)	<b><u>CIVIL PENALTIES</u></b>
Marysville, Ohio 43040	)	
	)	
and	)	
	)	
D-Way Construction LLC	)	
18105 Brown School Road	)	
Marysville, Ohio 43040	)	
	)	
Defendants.	)	
	)	

---

**JURISDICTION AND VENUE**

1. Plaintiff, State of Ohio, through counsel Attorney General 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 the Attorney General by R.C. 1345.07.
  
2. The actions described below of Defendants D-Way Construction LLC and David D. "Doug" Francis. individually and doing business as D-Way Construction LLC ("Defendants"), have occurred in the State of Ohio, including in Delaware County, and are in violation of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., its

Substantive Rules, Ohio Administrative Code (“O.A.C.”) 109:4-3-01 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)(3), in that Delaware County is where Defendants conducted some of the transactions complained of herein.

### **DEFENDANTS**

5. Defendant David D. “Doug” Francis (“Francis”) is a natural person who resides at 18105 Brown School Road, Marysville, Ohio 43040.
6. Defendant D-Way Construction LLC (“D-Way Construction”) is an Ohio limited liability corporation, with an address listed as 18105 Brown School Road, Marysville, Ohio 43040.
7. Defendant Francis is the owner of Defendant D-Way Construction.
8. Defendant Francis did business using the name D-Way Construction LLC.
9. Defendant Francis directed, supervised, approved, formulated, authorized, ratified, benefited from, and/or otherwise participated in the acts and practices of Defendant D-Way Construction, as described in this Complaint.
10. At all times relevant to this action, Defendants were engaged in the business of soliciting, offering for sale, or selling home improvement goods or services to consumers.
11. Defendants are “suppliers” as that term is defined in R.C. 1345.01(C) of the CSPA because Defendants have engaged in the business of effecting “consumer transactions” either directly or indirectly by soliciting and selling home improvement goods and

services to individuals in Delaware County and other counties in Ohio for purposes that were primarily personal, family, or household, within the meaning of R.C. 1345.01(A).

12. Defendants are “sellers” engaged in “home solicitation sales,” as those terms are defined in R.C. 1345.21(A) and (C) of the HSSA, because Defendants engaged in personal solicitations at the residences of consumers, including solicitations in response to or following invitations by consumers.

### **STATEMENT OF FACTS**

13. Defendants solicited and sold home improvement goods and services at the residences of consumers.
14. Defendants did not have a physical business location where their goods were exhibited or where their services were offered for sale on a continuing basis.
15. Defendants accepted monetary deposits from consumers for the purchase of home improvement goods or services.
16. Defendants entered into home improvement transactions with certain consumers without providing contracts.
17. When Defendants did use contracts in their transactions with consumers, their contracts did not properly notify consumers about the consumers’ right to cancel the contract.
18. Defendants failed to provide consumers with “notice of cancellation” forms describing the consumers’ right to cancel the contracts within three days.
19. After accepting money from consumers for home improvement goods or services, Defendants failed to deliver the home improvement goods or services that were promised to consumers.

20. For some consumers, Defendants began to provide the services but did not complete the work.
21. Consumers who did not receive their goods or services requested refunds from Defendants.
22. Defendants failed to provide requested refunds to consumers for whom they did not fully deliver the promised goods or services.
23. Home improvement repairs or services that were provided or attempted by Defendants were performed in an incomplete, shoddy, substandard, or unworkmanlike manner.

### **FIRST CAUSE OF ACTION: VIOLATIONS OF THE CSPA**

#### **Count I – Failure to Deliver**

24. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Twenty-Three of this Complaint.
25. Defendants engaged in unfair or deceptive acts or practices in violation of R.C. 1345.02(A) of the CSPA and the Failure to Deliver Rule, O.A.C. 109:4-3-09(A), by accepting money from consumers for goods or services, failing to make full delivery of the promised goods or services, and failing to provide full refunds.

#### **Count II – Shoddy Workmanship**

26. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Twenty-Three of this Complaint.
27. Defendants engaged in unfair or deceptive acts or practices in violation of R.C. 1345.02(A) of the CSPA by performing home improvement repairs or services in an incomplete, shoddy, substandard, or unworkmanlike manner.

28. Such acts or practices 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).

**SECOND CAUSE OF ACTION: VIOLATIONS OF THE HSSA**

**Count I – Failure to Provide Proper Notice of Right to Cancel**

29. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Twenty-Three of this Complaint.
30. Defendants violated R.C. 1345.23(B) of the HSSA and R.C. 1345.02(A) of the CSPA by failing to give proper notice to consumers of their right to cancel their contracts within three days and by failing to give consumers a notice of cancellation form.
31. Such acts or practices 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 PERMANENT INJUNCTION, pursuant to R.C. 1345.07(A)(2), enjoining Defendants, doing business under their own names or any other names, their agents, representatives, salespeople, employees, successors, or assigns, and all persons acting in concert or participating with them, directly or indirectly, from engaging in the acts or practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 et seq., its Substantive Rules, O.A.C. 109:4-3-01 et seq., and the HSSA, R.C. 1345.21 et seq., including, but not limited to, violating the specific statutes and rules alleged to have been violated herein.

- B. DECLARE, pursuant to R.C. 1345.07(A)(2), that each act or practice complained of herein violates the CSPA, R.C. 1345.01 et seq., its Substantive Rules, O.A.C. 109:4-3-01 et seq., and the HSSA, R.C. 1345.21 et seq., in the manner set forth in this Complaint.
- C. ORDER Defendants, pursuant to R.C. 1345.07(B), to pay actual damages to all consumers injured by the conduct of Defendants.
- D. ASSESS, FINE, AND, IMPOSE upon Defendants a civil penalty of \$25,000 for each separate and appropriate violation described herein, pursuant to R.C. 1345.07(D).
- E. GRANT Plaintiff its costs in bringing this action including, but not limited to, the costs of collecting on any judgment awarded.
- F. ISSUE AN INJUNCTION prohibiting Defendants from engaging in business as suppliers in any consumer transaction in Ohio until such time as they have satisfied all monetary obligations ordered by this Court or any other Ohio court, in connection with a consumer transaction.
- G. GRANT such other relief as the Court deems to be just, equitable, and appropriate.
- H. ORDER Defendants to pay all court costs.

Respectfully submitted,

DAVE YOST  
Ohio Attorney General

/s/ Tracy Morrison Dickens  
TRACY MORRISON DICKENS (0082898)  
Senior Assistant Attorney General  
Consumer Protection Section  
30 East Broad Street, 14th Floor  
Columbus, Ohio 43215  
614.644.9618  
tracy.dickens@ohioattorneygeneral.gov  
866.449.0989 (fax)  
*Counsel for Plaintiff State of Ohio*