

2. Defendant Dixie Fence South, LLC is a domestic Limited Liability Company registered with the Ohio Secretary of State on January 10, 2020.
3. Defendant Fraley, at all times relevant to this action, controlled and directed the business activities and sales conduct of Dixie Fence South, LLC, causing, personally participating in, or ratifying the acts and practices of the same, including the conduct giving rise to the violations described herein.
4. Defendants engaged in the business of offering and selling home improvement goods and services, including fence installation and repair, at the residences of buyers.
5. Defendants do not have a retail business establishment having a fixed permanent location where the goods were exhibited or the services were offered for sale on a continuing basis.
6. Defendants solicited and sold home improvement goods and services, including fence installation and repair, to consumers, and failed to deliver some of those goods and services within eight weeks.
7. Defendants accepted monetary deposits from consumers for the purchase of home improvement goods and services, including fence installation and repairs, and failed to deliver those goods and provide the services.
8. In some cases, Defendants have refused to refund consumers' deposits or payments despite consumers' requests for refunds.
9. In some cases, after receiving payment, Defendants began work, but then failed to complete the work.
10. In some cases, Defendants provided shoddy and substandard home repair services to consumers and then failed to correct such services.

11. Defendants represented to consumers that they would provide the ordered goods and services within an estimated time and then failed to provide such goods and services in the time promised.
12. Defendants did not provide consumers with refunds of deposits paid when Defendants did not perform the contracted work.
13. During their solicitation and sale of home improvement goods and services, including fencing installation and repair, Defendants failed to provide consumers with notice of their right to cancel their transactions within three business days.

CONCLUSIONS OF LAW

14. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
15. This Court has personal jurisdiction over Defendants pursuant to R.C. 2307.382 because this cause of action arises from Defendants' business transactions, and contracts to supply goods and services, with residents of Ohio.
16. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(C)(1), (3), and (6), in that Defendants reside in Montgomery County, this is the county where they conducted activity giving rise to the claims for relief, and the county in which all or part of the claims for relief arose.
17. Defendants are each a "supplier," 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, for purposes that were primarily for personal, family or household use, as those terms are defined in R.C. 1345.01(A), (C), and (D).

18. Defendants engaged in “home solicitation sales” as “sellers,” as they made personal solicitations and sales of home improvement goods and services at the residences of “buyers,” within the meaning of R.C. 1345.21(A), (C), and (D).
19. 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 eight weeks to elapse without making shipment or delivery of 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.
20. Defendants committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by performing shoddy and substandard work and then failing to correct such work.
21. Defendants violated the HSSA, R.C. 1345.23, and the CSPA, R.C. 1345.02(A), by failing to include appropriate cancellation language in the contracts entered into with consumers, or giving consumers a separate, appropriately worded “notice of cancellation” required by R.C. 1345.23(B)(2) or otherwise informing consumers of how and when to give notice of cancellation as required by R.C. 1345.23(B)(3).
22. The acts or practices in Paragraphs 19-21 have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* The Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

ORDER

- A. The Court hereby DECLARES that the acts and practices described above violate the CSPA, R.C. 1345.01 *et seq.*, and 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 the Complaint.
- B. Defendants, under their names, or by any other names, as well as their agents, employees, sales persons, successors or assigns, and all persons acting in concert and participation with them, directly or indirectly, are PERMANENTLY ENJOINED from further violating the CSPA, R.C. 1345.01 *et seq.*, and its Substantive Rules, O.A.C. 109-4-3-01 *et seq.*, and the HSSA, R.C. 1345.21 *et seq.*
- C. Defendants are jointly and severally liable for, and ORDERED to pay to the Ohio Attorney General's Office, \$124,537.00 as restitution for consumer damages to the Consumers identified in Exhibit A. Payment shall be made in accordance with Paragraph F below.
- D. Defendants are jointly and severally liable for, and ORDERED to pay, a civil penalty to the Ohio Attorney General's Office in the total amount of \$50,000.00. Of that amount, \$40,000.00 shall be suspended, so long as Defendants are in full compliance with all the provisions of this Consent Judgment. Payment of the remaining \$10,000.00 shall be made in accordance with Paragraph F.
- E. If, within eighteen months of the execution of this Consent Judgment, Defendants pay the outstanding restitution balance of \$124,537.00 in full, the remaining \$10,000.00 of the civil penalty shall also be suspended.
- F. Payments for the amounts due in Paragraphs C and D, totaling \$134,537.00 shall be made to the Attorney General's Office according to the following payment schedule: Defendants shall make an initial payment of \$1,000.00 upon execution of this Consent Judgment.

Defendants shall pay \$1,500.00 every month for 12 months, starting February 1, 2024. Defendants shall then pay \$2,000 every month for 12 months, starting February 1, 2025. Defendants shall then pay \$2,500 every month, starting February 1, 2026 until the remaining balance is paid in full. This Paragraph is effective until and unless Defendants pay the restitution in full within eighteen months in accordance with Paragraph E.

- G. Unless otherwise directed by Plaintiff, all payments due pursuant to this Consent Judgment shall be made to the Ohio Attorney General's Office via certified check or money order, made payable to the "Ohio Attorney General's Office" and delivered to:

**Financial Specialist
Consumer Protection Section
Office of the Ohio Attorney General
30 East Broad Street, 14th Floor
Columbus, Ohio 43215**

- H. It is further ORDERED that if Defendants are not in full compliance with the Consent Judgment or fail to make any payment due in accordance with the payment schedule set forth in Paragraph F above, all remaining payments, including the balance of the full civil penalty amount of \$50,000.00, shall immediately become due and payable.
- I. It is further ORDERED that the acceptance of any payment by the Plaintiff subsequent to the time it is due or the failure of the Plaintiff to insist on strict performance of any order contained within this Consent Judgment, including, but not limited to, the acceleration in Paragraph H above of the civil payment amount, shall not be construed as a waiver of any of the obligations created by this Consent Judgment.
- J. Failure to pay any amounts under this Consent Judgment when due may result in any balance being referred to the Ohio Attorney General's Collection Enforcement Section for collection. Should this occur, the Collections Enforcement Section will assess additional

collection costs and interest on the unpaid balance pursuant to Ohio law, including, but not limited to R.C. 131.02, 109.08, and 109.081.

- K. It is further ORDERED that Defendant Daryl Robert Fraley shall no longer operate Dixie Fence South, LLC and shall formally dissolve the company by filing a Certificate of Dissolution of Limited Liability Company with the Ohio Secretary of State within 14 days of execution of this Consent Judgment.
- L. It is further ORDERED that in the event the Ohio Attorney General must initiate legal action or incur any costs to compel Defendants to abide by this Consent Judgment, the Defendants shall be liable to the Ohio Attorney General, should he prevail, for all related enforcement costs, including, but not limited to, a reasonable sum for attorneys' fees, investigative costs, and interest and collection costs as permitted by statute.
- M. It is hereby ORDERED that this Consent Judgment does not resolve or preclude any investigation or enforcement action against Defendants for occurrences which are not the subject matter of this Consent Judgment, or which may transpire after the filing of this Consent Judgment, under any authority granted to the Ohio Attorney General. This Consent Judgment resolves only the issues relating to the allegations brought forth in the civil complaint filed by the Plaintiff in this matter.
- N. Defendants shall not represent, directly or indirectly or in any way whatsoever, that the Court or the Plaintiff has sanctioned, condoned, or approved any part or aspect of the Defendants' business operations.
- O. Defendants shall be prohibited from engaging in consumer transactions as a supplier in the State of Ohio if they are not in compliance with all the applicable provisions of this Consent Judgment, including, but not limited to, those with monetary payment obligations.

P. Defendants shall pay all court costs associated with this matter.

Q. This Court shall retain jurisdiction to enforce compliance with this Consent Judgment.

IT IS SO ORDERED.

DATE

JUDGE E. GERALD PARKER, JR.

APPROVED AND AGREED TO BY:

DAVE YOST
Ohio Attorney General

Brandon C. Duck (0076725)
Assistant Attorney General
Office of the Ohio Attorney General
Consumer Protection Section
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215
Phone: (614) 466-1031
Brandon.Duck@ohioAGO.gov

Date



Daryl Robert Fraley

12-1-23
Date


Daryl Robert Fraley
Dixie Fence South, LLC

12-1-23
Date

COUNSEL FOR DEFENDANTS



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Phone: (937) 223-9133
Fax: (937) 223-7540

12-1-23
Date

APPROVED AND AGREED TO BY:

DAVE YOST
Ohio Attorney General



12.4.23

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Date

Daryl Robert Fraley

Date

Daryl Robert Fraley
Dixie Fence South, LLC

Date

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Date

ADDENDUM A

Consumer Damages

Last Name	First Name	County	Damages
Alanbaugh	Ann	Shelby	\$4,905.00
Blomquist	Rio	Montgomery	\$8,975.00
Branscomb	Andrea	Montgomery	\$500.00
Brooks	Scott	Montgomery	\$500.00
Calloway	Charles	Montgomery	\$3,750.00
Casey	Liam	Miami	\$5,000.00
Crone	Jerry	Montgomery	\$15,905.00
Davis	James	Montgomery	\$1,000.00
Duff	Eddie	Greene	\$7,410.00
Emrick	Kala	Montgomery	\$500.00
Fowler	Thomas	Montgomery	\$2,520.00
Harrison	Matthew	Miami	\$3,100.00
Lynch	Charlotte	Montgomery	\$10,800.00
Manley	Sharon	Greene	\$4,500.00
McDonald	Maggie	Warren	\$5,250.00
Mitchell	Carl	Montgomery	\$3,000.00
Montavon	Alex	Greene	\$4,920.00
Nordness	Janice	Montgomery	\$10,500.00
Palmer	Ayonna	Montgomery	\$2,400.00
Patzek	Melissa	Warren	\$1,000.00
Potter	Brian	Montgomery	\$2,500.00
Rickey	Greg	Montgomery	\$4,100.00
Riles	Michael	Montgomery	\$1,900.00
Vandiver	Jo	Montgomery	\$1,950.00
Willoughby	Jennifer	Montgomery	\$1,152.00
Wyss	David	Montgomery	\$5,000.00
Zeunen	Benjiman	Clark	\$11,500.00
		TOTAL	\$124,537.00



General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Case Number:

2023 CV 00863

Case Title:

STATE OF OHIO EX REL. ATTORNEY GENERAL DAVE
YOST vs DARYL ROBERT FRALEY

Type:

Consent Judgment Entry

So Ordered,