

IN THE COURT OF COMMON PLEAS  
MEDINA COUNTY, OHIO

COMMON PLEAS COURT

2022 SEP 15 PM 12:18

STATE OF OHIO, ex rel. )  
ATTORNEY GENERAL )  
DAVE YOST )  
30 E. Broad St., 14<sup>th</sup> Floor )  
Columbus, Ohio 43215 )

Plaintiff,

v.

THRIFTY PROPANE, INC. )  
c/o Patricia Adkins Baker, )  
Registered Agent )  
740 Fair St. )  
Berea, Ohio 44047 )

Defendant. )

CASE NO.

JUDGE

FILED  
DAVID B. WADSWORTH  
MEDINA COUNTY  
CLERK OF COURTS

22CV0749

JOYCE V. KIMBLER, JUDGE

**PLAINTIFF'S COMPLAINT**  
**FOR DECLARATORY JUDGMENT,**  
**INJUNCTIVE RELIEF, RESTITUTION,**  
**AND CIVIL PENALTIES**

**JURISDICTION AND VENUE**

1. Plaintiff, State of Ohio, by and through the Attorney General of Ohio, Dave Yost, having reasonable cause to believe that violations of Ohio's consumer 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. 1345.07.
2. The actions of Defendant, hereinafter described, have occurred in the State of Ohio, Medina County and other counties and, as set forth below, are in violation of the Consumer Sales Practices Act, R.C. 1345.01 *et seq.* ("CSPA") and its Substantive Rules, Ohio Admin. Code 109:4-3-01 *et seq.*
3. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04.

4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3) in that the Defendant conducted activity which gave rise to the claims for relief in Medina County in the State of Ohio.

**DEFENDANT**

5. Defendant Thrifty Propane, Inc. is an Ohio propane supplier, which does business in Medina County and other counties in the State of Ohio.
6. Defendant is a “supplier” as that term is defined in R.C. 1345.01(C), since Defendant, at all relevant times hereto, was engaging in the business of effecting consumer transactions by soliciting and selling propane to consumers in Ohio for purposes that are primarily personal, family, or household, within the meaning specific in R.C. 1345.01(A).

**STATEMENT OF FACTS**

7. Defendant operates a business which solicits for sale and sells liquid petroleum gas, commonly known as propane, and related products and services throughout the State of Ohio, including Medina County.
8. Defendant regularly advertises its propane product throughout Ohio via the internet, at [www.thriftypropane.com](http://www.thriftypropane.com) and through other marketing and advertising channels, including email, text, and other direct solicitations, for the purpose of inducing consumers to purchase their propane and related products and services.
9. Defendant has continued to advertise and sell propane to new consumers, even while it has failed to deliver propane to consumers who have already ordered and paid.
10. For example, Consumer K.L. filed a complaint with the Ohio Attorney General on February 26, 2022. Consumer K.L. wrote “We pre paid for propane from this company and we can not get them to deliver. It was been going on 25 days since we asked for a delivery. Still no

gas. They say they have supply issues, but I get an email or text almost daily from them asking us to buy more. If they can't get propane to deliver to people that have already paid, why are they trying to sell more?"

11. Defendant sells propane tanks to consumers.
12. Consumers have purchased propane tanks and propane from Defendant that Defendant failed to deliver.
13. Defendant has continued to advertise and sell propane tanks to new consumers, even while it has failed to deliver propane tanks to consumers who have already ordered and paid.
14. Defendant has failed to provide refunds to the consumers that have purchased and not received propane tanks.
15. For example, Consumer L.R. ordered a propane tank and 500 gallons of propane from Defendant on April 1, 2021. After over a year of trying to get the tank and propane delivered by Defendant, Consumer L.R. requested a refund from Defendant on May 17, 2022. On June 17, 2022, Consumer L.R. filed a complaint with the Ohio Attorney General in an attempt to get her refund because it had been over the promised 30 days. Consumer L.R. finally received a refund in late August 2022.
16. Defendant requires consumers to pay with check or direct account transfer, and as a result, consumers cannot initiate chargebacks for the failure to deliver by Defendant.
17. Defendant sells propane to consumers via multiple programs – two are “Will-Call” and “Pre-buy.”
18. Defendant’s “Will-Call” consumers typically own their propane tank and pay the price per gallon of propane quoted at the time the order is placed.



19. “Will-Call” consumers do not have a standing contract with Defendant and consumers call to order propane and pay the current market price when they need a propane fill.
20. Defendant’s “Pre-buy” consumers purchase and pay for a fixed amount of propane at a fixed price for future delivery. For example, when propane prices are lower in July, a consumer may purchase and pay for the number of gallons of propane they expect to need for an entire year. The consumer will place orders for delivery of that propane in the fall and winter when the weather gets cold and they need to heat their home.
21. While the percentage has changed over the last few years, Defendant’s website homepage currently instructs consumers to call for propane when their tank is at or above 35% capacity.
22. As of the date of filing, Defendant’s website states that consumers should “allow a delivery time frame of approximately 15 business [sic] days, (weekdays M-F excluding Holidays), weather permitting...” and “Allow a delivery time frame of approximately 15 weekdays M-F excluding Holidays, weather permitting...”
23. Defendant has failed to deliver propane in a timely manner, and specifically in the promised 15 business days.
24. Defendant has failed to timely fill consumers’ propane tanks when requests were made in accordance with its Pre-buy terms and conditions, causing some consumers to run out of fuel.
25. For example, Consumer T.B. complained to the Ohio Attorney General on February 28, 2022, that she ordered propane from Defendant on February 1, 2022, and had still not received it. Consumer T.B. ran out of propane waiting past 15 business days for Defendant to deliver, so Consumer T.B. had to order propane from another company. Consumer T.B. finally received a refund from Defendant at the end of April 2022 – over two months after

requesting the refund and after the 30 business days Defendant tells consumers that a refund will take.

26. Even when consumers request a full delivery, Defendant has short-filled consumers' tanks with less propane requested, requiring consumers to call Defendant for propane frequently, and some consumers are near or still below the 35% mark for placing an order after Defendant has filled the tank.
27. Numerous consumers complained to the Ohio Attorney General's Office that no matter the amount of propane consumers ordered, during winter and spring 2022, Defendant was only delivering 100-150 gallons of propane.
28. For example, on February 28, 2022, Consumer W.S. complained that he was owed 1120 gallons of propane under his pre-buy agreement. When Defendant provided a fill, only 150 gallons were delivered, even though Consumer W.S. requested that his two 1000 gallon tanks be filled. After this delivery, Consumer W.S. tanks were still far below the 35% fill mark that Defendant's contract says consumers should order at.
29. Defendant has failed to timely provide propane to consumers who have entered into Pre-buy contracts with Defendant.
30. For example, Consumer C.R. purchased pre-buy propane from Defendant several years ago. On January 26, 2022, her tank was at approximately 40%, so she placed an order for a fill with Defendant. Consumer C.R. filed a complaint with the Ohio Attorney General on February 28, 2022 because it had been 23 business days and Defendant would not provide the consumer with a delivery date. After filing a complaint with our office, Consumer C.R. finally received propane on the 28<sup>th</sup> business day.



31. As a result of Defendant's actions, some Pre-buy consumers have been unable to afford to purchase propane elsewhere because they have already paid Defendant for the propane Defendant did not deliver.
32. For example, Consumer G.P. complained that he had ordered and paid over \$2400 for a 500 gallon propane tank in January of 2022. When Thrifty had still not delivered a tank by April 2022, Consumer G.P. requested a refund from Defendant. On May 23, 2022, Consumer G.P. filed a complaint with the Ohio Attorney General because he still had not received a refund and he was unable to get in touch with Defendant. Consumer G.P. said, "Please help. Wife and I are disabled vets. 2462 dollars is a lot of money!" Defendant finally refunded Consumer G.P. in early June, two months after the refund was requested and after the 30 business days Defendant tells consumers that a refund will take.
33. As a result of Defendant's actions, some Pre-buy consumers paid money to other propane suppliers to purchase propane at an additional price per gallon, above and beyond what they already paid Defendant for the propane Defendant did not deliver.
34. Defendant has failed to timely provide propane to consumers who have ordered propane from Defendant on a "Will-Call" basis.
35. For example, Consumer L.B. alleged that he placed a new pre-buy order for 1000 gallons of propane from Defendant on February 1, 2022, placed an order for an immediate fill and paid via electronic check (because Defendant does not take credit cards). On the 19<sup>th</sup> business day, Consumer L.B.'s tank was on empty and Thrifty had still not delivered, so he requested and paid for an emergency fill from another company. Consumer L.B. requested a refund from Defendant and was told it would take 30 days. On April 4, 2022, when Consumer L.B. filed a complaint with our office to get his requested refund from Defendant it had been 38

days since he requested a refund. Defendant responded to our office and indicated it started the refund process on April 8, 2022, nearly six weeks after Consumer L.B. requested a refund.

36. Defendant failed to timely respond to telephone calls from consumers who called to order propane.
37. Many consumers who have reached out to Defendant via phone regarding their outstanding purchases are unable to get through to Defendant or do not receive promised calls back.
38. For example, Consumer P.S. ordered and paid for a propane tank and 500 gallons of propane in September, 2021. On June 6, 2022, Consumer P.S. filed a complaint with the Ohio Attorney General because he had not yet received the tank and propane he ordered after waiting nearly nine months. As of September 8, 2022, Consumer P.S. still had not received his tank and propane or a full refund from Defendant.
39. As a result of Defendant's actions, some customers (examples above) have had to contact the Ohio Attorney General and the Better Business Bureau in an effort to get their propane tanks and/or propane delivered and/or to receive refunds.
40. Between January 1, 2020 and August 1, 2022, the Ohio Attorney General received over 400 consumer complaints against 26 separate propane companies. Nearly 200 of those consumer complaints were against the Defendant.
41. In January of 2016, Plaintiff filed a Complaint, case number 16CIV0008, against Defendant in the Medina Court of Common Pleas for actions similar to those alleged in this Complaint.
42. On August 18, 2016, Judge Kimbler signed an Agreed Entry and Final Consent Order, which was submitted and agreed to by Defendant and the Ohio Attorney General in the above-mentioned case. The August 18, 2016 settlement provided in part that:



(1) Defendant was permanently enjoined from committing any unfair, deceptive, or unconscionable acts or practices including, but not limited to, specific violations of the CSPA, R.C. 1345.01 *et seq.* and its Substantive Rules, as noted within the Agreed Entry and Final Consent Order; and

(2) Defendant agreed to implement and maintain business practices designed in a commercially reasonable manner to minimize customer service related concerns, including, but not limited to: failure to provide propane deliveries, repeated missed propane delivery dates, failure to communicate with consumers regarding installation dates or delays, inability by consumers to reach Defendant's customer service representatives, and failure by Defendant's customer service representatives to return customer calls.

43. Defendant's actions, as alleged in this Complaint, are in violation of the August 18, 2016 Agreed Entry and Final Consent Order.

44. On July 3, 2019, Judge Kimbler signed a Supplemental Agreed Entry and Consent Order Resolving the Plaintiff's Allegation of Contempt Against Defendant, for violations of the August 18, 2016 Consent Order, which was submitted and agreed to by Defendant and the Ohio Attorney General in the above-mentioned case. The July 3, 2019 Consent Order provided in part that:

(1) Defendant was permanently enjoined from committing any unfair, deceptive, or unconscionable acts or practices including, but not limited to, specific violations of the CSPA, R.C. 1345.01 *et seq.* and its Substantive Rules, violations of the specific statutes and rules noted in the Conclusion of Law section of the July 3, 2019 Supplemental Agreed Entry and Consent Order Resolving the Plaintiff's Allegation of Contempt Against Defendant.



(2) Defendant had to comply with the following business practices and revise its practices, policies, and procedures accordingly:

A. Clearly and conspicuously state, in writing, all terms and conditions in plain language in order to be easily understood by a consumer. This includes, but is not limited to, the price per gallon and the current cost of any and all fees, charges, penalties, costs, or discounts, that may be lawfully assessed or charged to the consumer.

B. Not use conflicting Pre-buy terms and conditions for Pre-buy consumers or not enforce Pre-buy terms against consumers that have not have been provided directly to the consumer at the time of the Pre-buy purchase.

C. Provide propane gas to Pre-buy and Will Call consumers within 15 business days after receipt of the consumer's order (made via phone call, voice mail or online chat), provided that the consumer is current in his/her payment obligation and has complied with all material terms and conditions.

D. Allow consumers to cancel orders if propane is not provided within 15 business days without incurring any additional fees, penalties, charges, or costs and reimburse the consumer, in full, the amount paid by the consumer for any fuel remaining on the consumer's Pre-buy account and remaining in the tank at the time Defendant picks up the tank at the price paid for by the consumer at the time of purchase. Tank pick-up shall occur within 10 business days of cancellation and any refund shall occur within 30 business days following the cancellation of the contract.

E. Make commercially reasonable efforts to inform consumers that a consumer must call when their propane tank is at no less than 30% capacity to ensure that the tank is filled prior to becoming empty.

F. Not charge consumers any fees for an emergency or out of gas delivery when such situation was the result of Defendant's failure to provide a timely propane delivery.

G. Not advertise or sell a propane tank that it cannot deliver in a timely manner.

H. Communicate with consumers, in writing, regarding propane tank delivery and installation. If a propane tank cannot or will not be delivered within eight weeks of order, or any shorter time period included in the purchase terms, as required by Ohio Admin. Code 109:4-3-09, consumers may, at any time, cancel their contract for the purchase of the propane tank and propane and Defendant shall reimburse the consumer in full, without incurring any additional fees, penalties, charges, or costs.

I. Implement customer service procedures and hire additional staff necessary to ensure that phone lines are staffed in such a way that, except at times of unusual call volume, consumers will reach a live person when calling Defendant's customer service number.

J. Implement customer service procedures and hire additional staff necessary to ensure that voice mail messages left by consumers receive a return call within 24 hours, so long as the voicemail is left Monday through Thursday. If voice mail messages are not returned timely, the consumer may cancel their contract within the following 15 calendar days without incurring any additional fees, penalties, charges,



or costs and be reimbursed in full within 15 calendar days of the cancellation, the amount paid by the consumer for any fuel remaining on the consumer's Pre-buy account.

[The above language summarizes the terms of Paragraph C and its subsections in the Order section of the July 3, 2019 Entry]

45. Defendant's actions, as alleged in this Complaint, are in violation of the July 3, 2019 Supplemental Agreed Entry and Consent Order Resolving the Plaintiff's Allegation of Contempt Against Defendant, including those summarized above.

**PLAINTIFF'S CAUSE OF ACTION:**  
**VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT**

46. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs 1-45 of this Complaint.

47. Defendant committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by engaging in inadequate and unfair customer services.

48. Defendant committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by failing to comply with the August 18, 2016 Agreed Entry and Final Consent Order.

49. Defendant committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by failing to comply with the July 3, 2019 Supplemental Agreed Entry and Consent Order Resolving the Plaintiff's Allegation of Contempt Against Defendant.

50. Defendant committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by limiting consumers' ability to receive propane they have already paid for and are entitled to receive as needed.

51. Defendant committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and the Ohio Admin. Code 109:4-3-09(A), by accepting payments from consumers for propane and propane tanks and failing to deliver the propane and propane tanks contracted and paid for, and failing to return the payments to the consumers.
52. Defendant committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and the Ohio Admin. Code 109:4-3-09(A), by accepting payments from consumers for propane and propane tanks and failing to deliver the propane and propane tanks to consumers in the promised time-frame, causing consumers to be unable to heat their homes.
53. Such acts and practices, as described above in Paragraphs 47-52, have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant 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, R.C. 1345.01 et seq. and its Substantive Rules, Ohio Admin. Code 109:4-3-01 et seq. in the manner set forth in the Complaint;
- B. ISSUE PERMANENT INJUNCTIVE RELIEF, pursuant to R.C. 1345.07, enjoining Defendant Thrifty Propane, Inc., doing business under this name, or any other name(s), its agents, partners, representatives, salespersons, employees, successors and assigns and all persons acting in concert and participation with it, directly or indirectly, through any



corporate device, partnership or association, in connection with any consumer transaction, from:

- (1) Engaging in business as a supplier in any consumer transaction in the State of Ohio until all sums due under all judgments are paid in full, whether those judgments are issued by this Court or any other court against Defendant in favor of consumers who were harmed as a result of the Defendant's CSPA violations and
  - (2) Engaging in the acts or practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 et seq. and its Substantive Rules, Ohio Admin. Code 109:4-3-01 et seq., including, but not limited to, violating the specific statutes and rules alleged to have been violated herein;
- C. Pursuant to R.C. 1345.07(B), APPOINT a receiver to manage Defendant's business practices until this matter is resolved or any other time period determined by this Court to end the ongoing damage to consumers resulting from Defendant's business practices.
- D. ASSESS, FINE and IMPOSE upon Defendant a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein pursuant to R.C. 1345.07(D);
- E. ORDER Defendant liable, pursuant to R.C. 1345.07(B), for reimbursement to all consumers found to have been damaged by Defendant's unfair and deceptive acts and practices, including, but not limited to, making restitution to consumers who paid money to Defendant but never received the goods or services for which they paid;
- F. As a means of ensuring compliance with this Court's Order and with the consumer protection laws of Ohio, ORDER Defendant, its successors or assigns, under these or any other names, to maintain in their possession and control for a period of five years all business records

relating to Defendant's solicitation or effectuation of business in Ohio and to permit the Ohio Attorney General or his representative, upon reasonable twenty-four hour notice, to inspect and/or copy any and all of said records, however stored, and further ORDER that copies of such records be provided at Defendant's expense to the Ohio Attorney General upon request of the Ohio Attorney General or his representatives;

- G. GRANT Plaintiff its costs in bringing this action, as allowed by law and the August 16, 2016 Agreed Entry and Final Consent Order and July 3, 2019 Supplemental Agreed Entry and Consent Order Resolving the Plaintiff's Allegation of Contempt Against Defendant;
- H. ORDER Defendant to pay all court costs associated with this matter;
- I. GRANT such other relief as the court deems to be just, equitable and appropriate.

Respectfully submitted,

DAVE YOST  
Ohio Attorney General

*Teresa Heffernan, by Melissa Wright, per telephone authorization*  
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