

STATE OF INDIANA                     )     IN THE HAMILTON SUPERIOR COURT  
  ) SS:  
COUNTY OF HAMILTON             )     CASE NO.: 29D02-1602-CT-1262  
  
HOOSIER CONTRACTORS, LLC         )  
  )  
*Plaintiff/Counterclaim Defendant,*     )  
  )  
v.   )  
  )  
SEAN GARDNER,                         )  
  )  
*Defendant/Counterclaim Plaintiff.*     )

**COUNTERCLAIM DEFENDANT’S ANSWER AND DEFENSES**

Comes now Hoosier Contractors LLC, by undersigned counsel, and for its answer and defenses to the Defendant/Counterclaim Plaintiff’s Counterclaims would state as follows:

1.         Hoosier was hired for the express purpose of inspecting Dr. Gardner’s roof to see if there was a need for repairs. Dr. Gardner was told he needed to sign the document attached to the Complaint as Exhibit A in order for Hoosier to do that.

**ANSWER:** Hoosier denies the allegations set forth in paragraph 1.

2.         Hoosier also represented it would “work with” Dr. Gardner on his deductible, including representing to Dr. Gardner that it “would check” on whether or not it could make certain Dr. Gardner could keep his deductible.

**ANSWER:** Hoosier denies the allegations set forth in paragraph 2.

3.         Hoosier did this, upon information and belief, in a scheme to induce Dr. Gardner to be recorded in certain phone conversations, without his consent, so Hoosier could threaten him with litigation if Dr. Gardner did not hire Hoosier to fix his roof.

**ANSWER:** Hoosier denies the allegations set forth in paragraph 3.

4.         The document Hoosier purports to be a contract does not comply with Indiana

Law in at least the following respects:

**ANSWER:** Hoosier denies the allegation, if one was made, in paragraph 4.

- a. It does not contain the name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed.

**ANSWER:** Hoosier denies the allegation made in paragraph a.

- b. It does not provide a reasonably detailed description of the proposed home improvements.

**ANSWER:** Hoosier denies the allegation made in paragraph b.

- c. It does not contain the approximate starting and completion dates of the home improvements or the number of days elapsed from the date when sufficient approval of the insurance carrier terms allowing for adequate repair or restoration is obtained.

**ANSWER:** Hoosier denies the allegation made in paragraph c.

- d. It does not contain a statement of any contingencies that would materially change the approximate completion date.

**ANSWER:** Hoosier denies the allegation made in paragraph d.

- e. It does not contain the home improvement contract price.

**ANSWER:** Hoosier denies the allegation made in paragraph e.

- f. It does not contain signature lines for the home improvement supplier or the supplier's agent.

**ANSWER:** Hoosier denies the allegation made in paragraph f.

- g. It is not in a form that each consumer who is a party to it can reasonably read and

understand.

**ANSWER:** Hoosier denies the allegation made in paragraph g.

- h. It does not contain a description, completion dates, and statement of contingencies to the extent that the damage, loss, or expense is reasonably known by the home improvement supplier.

**ANSWER:** Hoosier denies the allegation made in paragraph h.

- i. It does not contain a statement that the subject real estate will be repaired or restored to the same condition in which the real estate existed before the damage, loss, or expense occurred, or to comparable condition.

**ANSWER:** Hoosier denies the allegation made in paragraph i.

5. Indeed, the purported contract on its face states that it is to determine whether damage even exists on the property, so it cannot satisfy the requirements of Indiana Code section 24-5-11-10.

**ANSWER:** Hoosier denies the allegation made in paragraph 5.

6. These deficiencies are actionable under Indiana Code 24-5-0.5-4, and Dr. Gardner expressly reserves his right, during the course of discovery, to amend this complaint and seek to be a representative of a class for these violations of Indiana Law.

**ANSWER:** Hoosier denies the allegations made in paragraph 6.

7. Because the contract is executed and Hoosier seeks to enforce it in Court, the deceptive act is incurable under Indiana Code section 24-5-0.5-5.

**ANSWER:** Hoosier denies the allegation made in paragraph 7.

8. Hoosier's attempt to use this invalid and illegal document and enforce it in Court also constitutes an abuse of process.

**ANSWER:** Hoosier denies the allegation made in paragraph 8.

**DEFENSES**

1. Plaintiff's claim should be barred because it fails to state a claim.
2. Plaintiff's claim should be barred because the claim is not yet ripe.
3. Plaintiff's claim should be barred by the doctrine of unclean hands.
4. Plaintiff's claim should be barred by the doctrine of estoppel.
5. Plaintiff's claim should be barred because no notice to cure was ever provided prior to the Plaintiff's breach of the contract.
6. Plaintiff's claim should be barred as he attempted to induce Defendant into a scheme to commit fraud.
7. Plaintiff's claim should be barred as he attempted to induce Defendant to into violating Ind. Code §24-5-11-10.5.

WHEREFORE, the Defendant, Hoosier Contractors, LLC, prays this Court deny the Plaintiff's request for damages, and for all other relief that is just and proper in the premises.

Respectfully submitted,

/s/ David E. Miller

David E. Miller (SBN: 31855-32)

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**CERTIFICATE OF SERVICE**

I certify that I have served a copy of the foregoing, via first class U.S. mail, postage prepaid, to each of the parties listed below on August 26, 2016, by depositing a copy of the same in the U.S. Mail addressed as follows:

Jefferson & Brewer LLC  
Attn: Paul J. Jefferson  
300 N. Meridian St., Ste. 220  
Indianapolis IN 46204

/s/ David E. Miller

**David E. Miller**