

**IN THE COMMON PLEAS COURT  
CUYAHOGA COUNTY, OHIO**

**CUYAHOGA COUNTY BOARD OF  
HEALTH**

5550 Venture Dr.  
Parma, OH 44130

Plaintiff,

v.

**SECONDS CITY, LTD.** d.b.a  
Seconds City Consignment Home  
Furnishings  
6530 Pearl Road  
Parma Heights, Ohio 44130

Also Serve Registered Agent:  
BDB Agent Co.  
3800 Embassy Parkway  
Suite 300  
Akron, Ohio 44333

Defendant.

CASE NO.

JUDGE

**COMPLAINT FOR INJUNCTIVE RELIEF**  
**COMPELLING COMPLIANCE WITH**  
**EMERGENCY PUBLIC HEALTH**  
**ORDERS**

Prosecuting Attorney Michael C. O'Malley, at the written request of the Cuyahoga County Board of Health, brings this action on behalf of the Cuyahoga County Board of Health/State of Ohio ("Plaintiff") against Defendant to enforce the Stay at Home Order and Mass Gatherings Orders issued lawfully by the Ohio Director of Health, Dr. Amy Acton.

**I. GENERAL ALLEGATIONS**

1. Plaintiff is the Cuyahoga County Board of Health which is duly created, organized and acting general district board of health pursuant R.C. 3709.01.

2. Plaintiff has jurisdiction as a general district board of health throughout all of Cuyahoga County, excluding the City of Cleveland, which has its own separate health department.

3. Plaintiff is authorized to bring this action pursuant to its authority granted pursuant to Chapters 3701, Chapter 3707, and Section 3701.57 of the Ohio Revised Code.

4. Defendant is a Limited Liability Company organized under the laws of the State of Ohio with its principal place of business in this State.

5. The Director of Health, Dr. Amy Acton (hereinafter, Director Acton) is authorized by Ohio Revised Code (ORC) Section 3701.13 to “make special or standing orders or rules for... preventing the spread of contagious or infectious diseases.” At all times mentioned herein, Director Acton issued orders pursuant to the authority granted to her by ORC 3701.13.

6. On or about March 12, 2020, Director Acton issued an order prohibiting Mass Gatherings of 100 or more persons. Exhibit A.

7. Director Acton issued an amended Mass Gatherings order on March 17, 2020 to limit mass gatherings of people to no more than 50 persons. Exhibit B.

8. On March 15, 2020 Ohio limited the sale of food and beverage sales throughout the state to carry out only. Exhibit C.

9. On or about March 23, 2020, Director Acton issued an order referred to as the “Stay At Home Order” which, among other statements, required all persons to stay at home unless they were employed in or operating an “essential business” as defined in the order. Exhibit D.

10. ORC 3701.56 authorizes the Plaintiff, as a general health district, to enforce the orders issued by Director Acton and states as follows:

Boards of health of a general or city health district, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and other officers and employees of the state or any county, city, or township, shall enforce quarantine and isolation orders, and the rules the department of health adopts.

11. Pursuant to ORC 3701.57, Plaintiff, as a general health district, is authorized to seek injunctive relief as follows:

The director of health, the board of health of a general or city health district, or any person charged with enforcing the rules of the department of health as provided in section 3701.56 of the Revised Code may petition the court of common pleas for injunctive or other appropriate relief requiring any person violating a rule adopted by or any order issued by the director of health under this chapter to comply with such rule or order. The court of common pleas of the county in which the offense is alleged to be occurring may grant such injunctive or other appropriate relief as the equities of the case require.

12. Defendant operates a second-hand furniture store known as Seconds City Consignment Home Furnishings located at the address shown on the face of this Complaint. Defendant primarily offers used furniture and other home furnishings for sale to the general public.

13. Defendant's business is not "essential" as defined by Exhibit D, Director Acton's "Stay at Home Order." As a result, Defendant must close to the public pursuant to Exhibit D.

14. Upon the issuance of the Director's Orders identified herein, Plaintiff established a phone call center. Plaintiff received several complaints regarding Defendant's businesses and locations that said business operations were operating in violation of the Director's Orders identified herein, and specifically, the Stay At Home Order.

15. Plaintiff's employee and registered sanitarian visited Defendant's retail store location on March 31, 2020 and determined that said business was open to the public.

16. During the week of March 30, 2020, officers from the City of Parma Heights Police Department observed Defendant's business open to the public and issued a misdemeanor citation for violating R.C. 3701.352 (Violating Orders of the Department of Health). Upon information and belief, officers also advised Defendant's employees and managers that they must close to the public in compliance with the Director's orders as set forth above.

17. As late as Monday, April 6, 2020, Defendant remains open for business to the public.

18. After being ordered to comply with the Stay At Home Order by closing the businesses to the general public and sending non-essential staff home, Defendant refused to comply and continue to refuse to comply thereby giving rise to this action for enforcement.

## **II. PLAINTIFF'S CLAIMS AGAINST DEFENDANT**

### **A. COUNT ONE - VIOLATION OF REVISED CODE 3701.13**

19. Based on the foregoing allegations, Defendant is in violation of the Director's Orders issued lawfully pursuant to R.C. 3701.13.

20. Plaintiff has notified and ordered Defendant to cease and desist remaining open for business and to close each business location.

21. Defendant's violation of R.C. 3701.13 is and has been purposeful, willful and intentional.

22. Under R.C. 3707.57, this Court is authorized to grant Plaintiff an injunction against Defendant for violation of R.C. 3701.13.

### **B. COUNT TWO – COMMON LAW NUISANCE**

23. The actions described in the Paragraphs above have caused an unreasonable interference with the health, welfare, and safety of the public and constitute a common law public nuisance for which the Board is entitled to injunctive relief prohibiting the creation and continuance of said nuisance.

**WHEREFORE**, pursuant to the provisions of Ohio Revised Code, Administrative Code Sections and Director's Orders identified hereinabove, Plaintiff requests the following relief:

1. Order Defendant to:
  - a. Immediately cease all business operations at the locations identified;
  - b. Comply with the Director's Stay At Home Order; and

2. Preliminarily and permanently enjoin Defendant from violating R. C. 3701.13;
3. Declare that the business engaged in by Defendant is not an essential business as defined in the Director's Orders
4. Alternatively, declare that the actions of Defendant, individually and/or collectively constitute a general nuisance and/or public nuisance;
5. Retain jurisdiction of this case until all Orders issued by this Court are complied with in all respects;
6. Order that Defendant pay any and all fines and costs incurred in bringing this action; and
7. Grant such other relief as may be necessary and appropriate in law and equity.

Respectfully submitted,

MICHAEL C. O'MALLEY, Prosecuting  
Attorney of Cuyahoga County, Ohio

s//Michael J. Stewart

Michael J. Stewart (0082257)  
Assistant Prosecuting Attorneys  
The Justice Center, Courts Tower  
1200 Ontario Street, 8<sup>th</sup> Floor  
Cleveland, Ohio 44113  
Tel: (216) 443-7218  
Fax: (216) 443-7602  
[mjstewart@prosecutor.cuyahogacounty.us](mailto:mjstewart@prosecutor.cuyahogacounty.us)

THOMAS P. O'DONNELL, (002462)  
Administrative Counsel  
Cuyahoga County District Board of Health  
5550 Venture Drive  
Parma, Ohio 44130  
(216) 201-2001 Ext. 1109  
[todonnell@ccbh.net](mailto:todonnell@ccbh.net)