

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

ROY L. PEARSON, JR. :
 :
 Plaintiff, : Civil Action No. 4302-05
 : Judge Judith Bartnoff
 v. : Pretrial Date: March 21, 2007 Time: 10 a.m.
 : Trial Date: Time: a.m.
 : Nonjury
 SOO CHUNG, *et al.* :
 :
 Defendants. :

JOINT PRE-TRIAL STATEMENT¹

A. Certification of Rule 16(c) Meeting:

Counsel for the parties met on January 16, 2007, at 2020 K Street, N.W. from 4:25 p.m. until 5:25 p.m. and thoroughly discussed this case and made a good faith effort to reach agreement on the subjects listed in Super. Ct. Civ. R. 16(c)(1)-(11).

B. Parties and Counsel:

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(202) 269-1191

Roy L. Pearson, Jr., Esquire (plaintiff's counsel)
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Soo Chung, Defendant
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Jin Nam Chung, Defendant
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¹ See *Plaintiff's Motion Addressing Trial-Related Matters* at 5-6 (filed Jan. 22, 2007) (requesting that Pretrial Conference in this case take place on the record and in open court). See also Order of July 28, 2006 (Kravitz, J.) (ordering that the Pretrial Conference in this case take place in open court).

Ki Y Chung, Defendant
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Gainesville, Virginia 20155
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C. Nature of the Case:²

Plaintiff's Version -

This is a consumer case:

- Brought by a statutory “private attorney general” (Roy L. Pearson, Jr.);
- that names three merchants (Soo Chung, Jin Nam Chung and Ki Y Chung) as defendants;
- that alleges, when counted, approximately 14,400 statutory causes of action against each merchant based on an enormously consumer-friendly statute (the D.C. Consumer Protection Procedures Act or “CPPA”) that *explicitly*: (1) authorizes a separate cause of action against each merchant for each violation of certain CPPA prohibitions for each day the defendants persisted in the violations over a more than four year period; (2) authorizes minimum statutory damages of \$1,500 against each merchant for each day each such violation existed over that period; (3) authorizes additional cumulative recoveries against each merchant

² **Plaintiff's Position:** The **Nature of the Case** is intended to be “read[] to a jury as part of *voir dire*.” Thus, it is usually brief and neutral in tone. However, there is no jury in this case, and the judge who will try the case is relatively new to it. Under these circumstances a comprehensive statement of the case (and particularly the labyrinth of legal claims and issues in it – some cumulative, others in the alternative) will assist the court, and the parties, in anticipating and appreciating the issues awaiting resolution – without fear of prejudicing the finder of fact. If the court disagrees that this approach is helpful to it, it can of course cease reading Plaintiff's Version of the **Nature of the Case** on any page of it.

Defendants' Position: Plaintiff's **Nature of the Case** is argumentative and violates Rule 16. See page 12 of this document for defendants' version.

based on tort claims arising from the same facts, and (4) authorizes its own *statutory* version of punitive damages against each merchant;

- that also alleges two intentional torts against each defendant (fraud and conversion);
- that also alleges a negligent tort against each defendant (negligent bailment);
- in which, in addition to *statutory* punitive damages, the plaintiff also seeks *common law* punitive damages against each defendant;
- that redresses deceptive trade practices the defendants persisted in, and profited from, over a six year period of time, during which time their practices directly impacted the plaintiff and over 27,000 consumers in the District of Columbia and Maryland;
- that seeks permanent injunctive relief against each defendant in furtherance of the public interest and the interests of tens of thousands of D.C. and Maryland consumers;
- in which a number of the causes of action are derived from a federal statute (the Federal Trade Commission Act) that has been interpreted in hundreds of administrative and federal court decisions and which dozens of states have used as a model, thereby generating interpretative case law over a 68 year period;
- in which some of the CPPA causes of action were taken directly from the Uniform Deceptive Trade Practices Act or the Uniform Consumer Sale Practices Act, which have been adopted in dozens of states, and have generated case law over a forty year period;
- for which there is virtually no case law construing the CPPA after the D.C. Council enacted amendments, effective October 19, 2000, to ensure that no statute in the United States of America does a more effective job of encouraging the

filing of lawsuits by *pro se* litigants against merchants engaging in deceptive practices -- by awarding generous minimum statutory damages, awarding such damages for each day the merchant persists in its prohibited conduct, mandating *pro se* attorneys fees, and removing any requirement of actual damage from, or reliance on, the challenged practice(s) by the plaintiff. In many respects the October 19, 2000 amendments require courts to rewrite, going forward, the case law on unfair and deceptive practices in the District of Columbia.

As a consequence, although the known facts [limited though they are by the many limitations on discovery in this case] are straightforward and cannot be plausibly disputed, this is not a simple case. Its 50-state as well as federal legal lineage, its six year scope, and its thousands of victims (among them a plaintiff who experienced every violation alleged in this case), make it inherently time-intensive.

The central allegation of the complaint is summarized in its first sentence: “This is a case of defendant-merchants who fraudulently advertise that they guarantee that all customers will be satisfied.” *Complaint* at 1. The remainder of plaintiff’s claims flow from this deceptive advertising/unfair trade practice. Thus, the primary relief the complaint seeks is “judgment for plaintiff against each defendant . . . in the amount of . . . \$1,500 for each violation . . .” Because of their awareness of the number of years they have engaged in deceptive advertising, the defendants’ second, third and fourth defenses in this case are, respectively, the statute of limitations, laches and waiver. *Answer* at 9 (July 27, 2005).

This case spotlights defendants who are highly sophisticated, experienced . . . and whose rapacious business practices continued unabated for more than one year after this lawsuit was filed. They have a combined 34 years of experience in the dry cleaning industry and over 59 combined years of business management experience. Until very recently, the defendants owned cleaners in three different quadrants of the District of Columbia – northwest, northeast and

southeast. Soo Chung and Jin Nam Chung are husband and wife. Ki Y Chung is their adult son. Since the year 2000 one of the cleaners the Chungs have owned and operated is Custom Cleaners, at 3174-1/2 Bladensburg Road, N.E. The plaintiff resides in the neighborhood where Custom Cleaners is located.

The complaint alleges that since the Chungs purchased Custom Cleaners in 2000 they have persisted in displaying prominent signs above, and just inside, the entrance to their cleaners that advertise to all prospective customers that the Chungs unconditionally guarantee: (1) that all customers will be satisfied with all services the defendants offer (and if not, that the customer's personal satisfaction will otherwise be guaranteed) and (2) same day services.

The complaint alleges that at no time did these signs disclose their terms or limitations. And, although unnecessary to prove up most of plaintiff's CPPA claims, the complaint also alleges that the Chungs did not have any intention of performing in accordance with their unconditional advertised guarantees. Instead, the defendants' "SATISFACTION GUARANTEED" and "SAME DAY SERVICE" signs have been used, without the defendants having to say a word: (1) to lure plaintiff and over 26,000 customers into placing their clothing in the custody of the defendants and (2) to persuade plaintiff and those customers to agree to pay high fees for services the defendants' signs guarantee the customer the customer can determine whether the customer is satisfied with, and if dissatisfied, the *customer* can determine an alternative method of guaranteeing the customer's satisfaction.

After using their "SATISFACTION GUARANTEED" and "SAME DAY SERVICE" signs to bait customers into placing their clothing with the defendants, and into obligating the customers to pay a service fee, the defendants then hand each customer a receipt, which appears to have only one side. That side of the receipt, for the first time, reveals a limitation on the "SATISFACTION GUARANTEED" sign the customer has relied on. It states that the defendants are "not responsible for items left over 30 days." The front of the receipt gives no

hint that there are additional limitations, exclusions and disclaimers, and so customers are led to believe that the 30 day time limit is the only after-the-fact limitation on the “SATISFACTION GUARANTEED” sign.

However, unbeknownst to customers, on the reverse side of the receipt, in faint and microscopic print, are a mind numbing list of guarantee-defeating pre-conditions, exclusions and limitations that effectively nullify the promise of “SATISFACTION GUARANTEED” and “SAME DAY SERVICE” on which every customer relied when they placed their clothing in the custody of the defendants and agreed to pay high fees for the defendants’ laundering, dry cleaning or alteration services. This, then, is the second “switch,” in the bait-and-switch.

The “switch” does not end there. For those customers (such as the plaintiff) who subsequently have a complaint about loss of, or damage to their clothing, the defendants *orally* advise the customer for the first time of *even more* pre-conditions, limitations and exclusions – the most stunning of which is that it is the *defendants’* satisfaction with any settlement of a complaint that is guaranteed, and not the *customer’s* satisfaction that is guaranteed.

The complaint alleges that these facts, self-evident from a comparison of defendants’ advertisements with the receipt they provide each customer [or which defendants admitted in discovery], are indisputable. Plaintiff has therefore brought suit under the D.C. Consumer Protection Procedures Act alleging that the defendants’ use of their deceptive advertisements (which also include “SAME DAY SERVICE” and “All Work Done On Premises” guarantees) to deceive, bait in, and pull a switch on, the plaintiff and tens of thousands of customers over the past four years (which the relevant statute of limitations limits liability to) fall into at least five categories of illegal trade practices that the D.C. Consumer Protection Act prohibits; namely:

- The defendants represent that their services have a certification or characteristic that they do not have;
- The defendants represent that their services are of a particular standard or quality, when in fact they are of another;
- The defendants misrepresent a material fact which has a tendency to mislead;
- The defendants fail to state a material fact when that failure tends to mislead; and

- The defendants advertise or offer services without the intent to sell them as advertised or offered.

In addition to being one of the over 26,000 victims of the defendants' deceptive advertisements, the plaintiff alleges additional claims based solely on his personal experience with the defendants.

Specifically, the complaint alleges that on May 3, 2005 plaintiff placed pants that were part of an expensive suit in Custom Cleaners for alterations, in reliance on the defendants' "SATISFACTION GUARANTEED" and "SAME DAY SERVICE" signs. The complaint alleges that the defendants guaranteed that altered suit pants would be ready by May 5, 2005, so that plaintiff could wear the full suit to work on Friday, May 6, 2005. However, the defendants could not find the suit pants on May 5, May 6 or May 7th. On May 7th defendant Soo Chung requested that the defendant bring in the matching suit coat for the missing suit pants to help in locating the suit pants. The plaintiff immediately brought in his matching blue and red pinstripe suit coat and pointed to the "Saks Fifth Avenue" and "Hickey Freeman" labels inside the matching suit coat and told Ms. Chung that it would cost at least \$1,000 if he had to replace the entire suit.

Instead of motivating the defendants to redouble their efforts to find the lost red and blue pinstriped suit pants, this information motivated the defendants to come up with a scheme for claiming the missing suits pants had been found.

The complaint alleges that defendant Soo Chung measured the waist and inseam of a pair of the plaintiff's pants and then altered a pair of gray pants she had in her cleaners so that the gray pants had the same inseam and waist measurements as the missing red and blue pinstriped suit pants. On May 14, when the plaintiff returned (after having heard nothing from the defendants) to inquire about the result of the search for his missing blue and red pinstripe suit pants, defendant Soo Chung claimed the gray pants she had altered were the plaintiff's lost pants. The complaint alleges that Soo Chung made this claim even though, *at her request*, the plaintiff

had brought the matching suit coat for the missing blue and red pinstriped suit pants to Custom Cleaners and the matching blue and red pinstriped suit coat was hanging directly behind Soo Chung as she claimed the substituted cheap gray pants had been left by the plaintiff.

The complaint alleges that, over the following three weeks, Soo Chung and the other defendants refused to continue looking for plaintiff's missing blue and red pinstriped suit pants, or to even discuss compensating him for the cost of purchasing a replacement suit. The complaint alleges the other two defendants ratified Soo Chung's conduct by refusing to discuss the matter with plaintiff even after he wrote and delivered to each of them a three page letter: (1) detailing the entire sequence of events, (2) giving them the necessary information to confirm the need for a full replacement suit and the cost of a replacement suit, and (3) providing them with a copy of the provisions of the D.C. Consumer Protection Procedures Act that entitle a consumer to a permanent injunction, statutory damages, common law damages, punitive damages and an award of reasonable attorneys' fees when a consumer is the victim of illegal trade practices such as those detailed and documented by the plaintiff in his letter to the defendants.

With respect to the substitution/conversion of his suit pants, the complaint alleges that in addition to violating the same five protections in the D.C. Consumer Protection Procedures Act that were violated by their long running deceptive advertising scheme, the defendants violated two additional protections in the D.C. Consumer Protection Procedures Act; namely the prohibitions against:

- passing off goods as those of another; and
- representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

As to all of plaintiff's claims under the D.C. Consumer Protection Procedures Act, the complaint seeks an award of the very unique form of punitive damages authorized by the Act. Under the D.C. Consumer Protection Procedures Act a finder of fact may award punitive damages based solely on: (1) the amount of actual damages awarded to the plaintiff, (2) the

frequency, persistence and degree of intention with which each defendant engaged in prohibited conduct, and (3) the number of consumers who were affected by the defendants' conduct.

Additionally, because the D.C. Consumer Protection Procedures Act authorizes a plaintiff to also sue and recover damages based on any other law (other than the D.C. Consumer Protection Procedures Act) that the defendant-merchants have violated, the complaint alleges the defendants' conduct violated three other laws.

The first such law is the common law of conversion. Because the defendants exercised unauthorized control over plaintiff's suit pants (placing them in the rear of their store after agreeing not to) and failed to return them on the date they guaranteed, plaintiff alleges they have converted his pants to their ownership and must pay him for a replacement suit and his damages.

The second law is the common law of fraud. The plaintiff alleges that he was defrauded and damaged by the defendants because their "SATISFACTION GUARANTEED" and "SAME DAY SERVICE" signs, among other things, led him to believe the defendants guaranteed satisfactory performance of the alterations they promised, in the time they promised, or that they would satisfy any demand the plaintiff made for compensation. Plaintiff also alleges he was defrauded and damaged because the defendants' "SATISFACTION GUARANTEED" and "SAME DAY SERVICE" signs did not disclose that there were subjective and guarantee-defeating pre-conditions, exclusions and limitations that he would have to overcome, to the *defendants'* satisfaction, in order to have his own satisfaction guaranteed.

And the plaintiff's third claim is that the defendants *negligently* failed to live up to the duty they owed plaintiff by virtue of his bailment and: (1) Soo Chung's agreement not to place plaintiff's suit pants in the rear of their store for pressing (which placed the pants in a position to be confused with clothing from other cleaners) and (2) the claim check and oral agreement that obligated the defendants to return plaintiff's suit pants to him by no later than May 5, 2005.

As to his claims for conversion and fraud, the plaintiff seeks a second, possibly alternative, award of punitive damages.³ To obtain an award of punitive damages, this time under the common law, the plaintiff must show, by clear and convincing evidence, that the defendants are liable for the intentional tort of conversion or fraud and that defendants' conversion of his suit pants, or the defendants' ongoing display of the fraudulent signs, was accompanied by a willful disregard for the plaintiff's rights or other circumstances that tended to aggravate the common law tort of conversion or advertising fraud. The plaintiff alleges that the other circumstances that tend to aggravate the defendants' conversion or fraud, include:

- the fact that the defendants knew that: (a) time was of the essence for the plaintiff in obtaining the return of his suit pants or for the purchase of a replacement suit; and (b) plaintiff had insufficient funds with which to purchase another suit;
- the lies the plaintiff was told (first, that the alterations were not complete, and then that the defendants did not know which basket his suit pants were in in the rear of their store), and that the plaintiff had to disprove, before the defendants finally revealed that plaintiff's suit pants were lost;
- the defendants' failure to initiate any communication about the missing suit pants; instead requiring the plaintiff to return to their store again and again to obtain status reports;
- the malice and cold blooded calculation required to concede the loss of plaintiff's blue and red pinstriped suit pants by asking that the matching suit coat be brought in to aide in the search for the missing suit pants, but then subsequently tell the plaintiff to his face that a random gray pair of pants that had been altered to match the measurements of plaintiff's blue and red pinstriped suit pants, were the missing suit pants;
- the six year period of time that the defendants prominently displayed the "SATISFACTION GUARANTEED" and "SAME DAY SERVICE" signs at Custom Cleaners, while in fact offering no such unconditional guarantee or same day service to every customer;

³ The D.C. Consumer Protection Procedures Act authorizes an award of common law punitive damage, *in addition* to an award of statutory punitive damages. D.C. Code § 28-3905(k)(2) ("the remedies or penalties provided by this chapter are cumulative and in addition to other remedies or penalties provided by law"). The two forms of punitive damages have different elements, standards of proof and serve different purposes. *MAC Tools, Inc. v. Griffin*, 879 P.2d 1126, 1131 (Idaho 1994) (statutory punitive damages are "remedial in nature.") Plaintiff is mildly concerned, however, that the entry of judgment for both may run afoul of the Fifth or Eighth Amendments to the U.S. Constitution. Plaintiff therefore seeks an award of both by the finder of fact so that he can then *elect* which award to request entry of judgment on, if not both.

- the total of at least 27,600 customers, including thousands of senior citizens, who have been subjected to the “SATISFACTION GUARANTEED” and “SAME DAY SERVICE” scams;
- the fact that the “SATISFACTION GUARANTEED” and “SAME DAY SERVICE” signs remained even *after* the defendants were served with a four page letter from the plaintiff demanding \$1,150 to replace plaintiff’s suit and advising them, alternatively, of the facts and laws that made their signs unlawful and entitled the plaintiff to at least \$50,000 in statutory damages, common law damages, punitive damages, as well as an award of reasonable attorneys’ fees;
- the fact that the “SATISFACTION GUARANTEED” and “SAME DAY SERVICE” signs remained even *after* the eleven page lawsuit in this case was filed, detailing the facts and laws that make the signs unlawful and potentially entitle the plaintiff to millions of dollars in statutory damages, common law damages, punitive damages, as well as an award of reasonable attorneys’ fees;
- the fact that the “SATISFACTION GUARANTEED” and “SAME DAY SERVICE” signs remained for months *after* a trial judge in this case denied defendants’ motion for summary judgment on plaintiff’s claims and ruled, instead, that the plaintiff could pursue multiple claims for damages because “the legislature intended to authorize the prosecution of a separate claim for each unlawful trade practice committed in violation of the [consumer] statute”;
- the fact that the “SATISFACTION GUARANTEED” and “SAME DAY SERVICE” signs remained for months *after* the trial judge denied defendants’ motion for summary judgment and ruled, instead, that because “genuine disputes concerning the defendants’ state of mind in dealing with the plaintiff *pervade the record*,” plaintiff’s claim for punitive damages “is a question better left for trial”;
- the defendants’ knowledge, from a combined 31 years of dry cleaning experience, that: (a) the vast majority of their customers are ignorant of their consumer rights, and (b) the value of lost or damaged clothing, alone, is in the vast majority of cases too low to provide an incentive for a consumer to even investigate pursuing a lawsuit;
- the six year period the unconditional “SATISFACTION GUARANTEED” and “SAME DAY SERVICE” signs gave the defendants an unfair advantage over neighboring cleaners that do not advertise a sweeping guarantee of customer satisfaction or same-day performance of all services they offer; and
- the fact that the elements of proof for civil fraud and criminal fraud are the same in the District of Columbia; in calculating punitive damages for civil fraud one must consider that the maximum prison term for criminal fraud is 10 years for each such fraud (more than 27,600 fraud victims in this case), plus a fine of up to \$5,000 for each such fraud. If a victim of the fraud is sixty years or older an enhanced penalty of an additional five years may be added for each such victim.

The plaintiff therefore seeks common law punitive damages against each defendant in amounts that reflect consideration of the above aggravating circumstances. An award of common law punitive damages will also help ensure that punitive damages serve their intended deterrent and punitive functions, by preventing each defendant from discharging the entire judgment entered against him or her by filing a bankruptcy petition.

Defendants' Version –

This is a consumer case that names three defendant-merchants (Soo Chung, Jin Nam Chung and Ki Y Chung) who own a dry cleaning store, Custom Cleaners, in Washington, DC. Plaintiff (who is an attorney appearing pro se) alleges that he left a pair of pants (alleged to be part of a suit) with Defendants to be altered. Plaintiff alleges that Defendants misled Plaintiff, in that they lost his pants but tried to return to him a pair of pants that did not belong to him. Defendants believe that, while they initially could not locate Plaintiff's pants, they returned Plaintiff's pants to him altered as he had requested.

Plaintiff also alleges that Defendants maintained signage in their store that was misleading. Claims relating to signage that survived summary judgment relate to a sign that had pre-existed Defendants' owning the store – specifically, a sign stating "Satisfaction Guaranteed." Plaintiff believes that the existence of this sign should enable him to make whatever unreasonable demands he wishes and, if those demands are not satisfied, he may claim Defendants misled him.

In relation to this set of facts, Plaintiff makes the following claims: (1) violation of the DC Consumer Protection Act ("CPPAA"); (2) fraud; (3) conversion; (4) negligence.

D. Claims⁴ and Defenses:

Plaintiff's Version -

⁴ The parties differ on which claims the defendants were placed on notice of by the Amended Complaint filed on July 21, 2005, and by subsequent proceedings in the case. Plaintiff's position on plaintiff's claims is presented first, followed by defendants' position on plaintiff's claims on page 17.

Plaintiff's Claims:

1. On At Least 1,200 Days, And In 19 Different Ways, The Defendants Violated The D.C. Consumer Protection Procedures Act:

(a) On more than 1,200 occasions (i.e., over a 4 year period), and in *three* different ways, the defendants represented (to plaintiff and others) that their services have a certification, benefit or characteristic their services do not have:

- By communicating to prospective customers, through a prominent sign at the entrance to their business for six years: "SATISFACTION GUARANTEED," when the reverse side of the claim ticket they give each customer (and their admitted practice is to) subsequently disclaim any such sweeping and unconditional guarantee of *customer* satisfaction;
- By communicating to prospective customers, through a prominent sign at the entrance to their business for six years: "SAME DAY SERVICE," when their admitted practice is to subsequently disclaim any such sweeping and unconditional guarantee;
- By specifically representing to the plaintiff, on May 3, 2005, a guarantee that his suit pants would be altered and returned to him by May 5, 2006, or that his satisfaction would otherwise be unconditionally guaranteed, when the reverse side of the claim ticket given the plaintiff (and their admitted practice is to) subsequently disclaim any such unconditional guarantee of *customer* satisfaction.

(b) On more than 1,200 occasions, and in *three* different ways, the defendants represented (to plaintiff and others) that their services are of a particular standard or quality, when in fact they are of another:

- By communicating to prospective customers, through a prominent sign at the entrance to their business for six years: "SATISFACTION GUARANTEED," when the reverse side of the claim ticket they give each customer (and their admitted practice is to) subsequently disclaim any such sweeping and unconditional guarantee of *customer* satisfaction;
- By communicating to prospective customers, through a prominent sign at the entrance to their business for six years: "SAME DAY SERVICE," when their admitted practice is to subsequently disclaim any such sweeping and unconditional guarantee;
- By specifically representing to the plaintiff, on May 3, 2005, a guarantee that his suit pants would be altered and returned to

him by May 5, 2006, or that his satisfaction would otherwise be unconditionally guaranteed, when the reverse side of the claim ticket given the plaintiff (and their admitted practice is to) subsequently disclaim any such unconditional guarantee of *customer* satisfaction.

(c) On more than 1,200 occasions, and in *four* different ways, the defendants misrepresented (to plaintiff and others) multiple material facts, each of which has a tendency to mislead:

- By communicating to prospective customers, through a prominent sign at the entrance to their business for six years: “SATISFACTION GUARANTEED,” when the reverse side of the claim ticket they give each customer (and their admitted practice is to) subsequently disclaim any such sweeping and unconditional guarantee of *customer* satisfaction;
- By communicating to prospective customers, through a prominent sign at the entrance to their business for six years: “SAME DAY SERVICE,” when their admitted practice is to subsequently disclaim any such sweeping and unconditional guarantee;
- By specifically representing to the plaintiff, on May 3, 2005, a guarantee that his suit pants would be altered and returned to him by May 5, 2006, or that his satisfaction would otherwise be unconditionally guaranteed, when the reverse side of the claim ticket given the plaintiff (and their admitted practice is to) subsequently disclaim any such sweeping and unconditional guarantee of *customer* satisfaction;
- By: (a) measuring one of the plaintiff’s slacks, (b) using those measurements to alter a pair of gray slacks in their cleaners to match the measurements of plaintiffs’ missing red and blue pinstripe suit pants, (d) printing out a duplicate claim ticket and pinning it to the outside of the plastic covering for the substituted pair of gray slacks, and then (e) representing that the substituted gray slacks were the red and blue pinstripe suit pants left on May 3, 2005 (and/or ratifying that conduct).

(d) On more than 1,200 occasions, and in *four* different ways, the defendants failed to state multiple material facts (to plaintiff and others) and each such omission tended to mislead:

- By displaying a prominent sign at the entrance to their business, for six years, that states “SATISFACTION GUARANTEED,” but fails to disclose the many objective and subjective pre-conditions, limitations and exclusions on that guarantee the defendants admit to, and fails to disclose

defendants' lack of insurance or comparable financial ability to satisfy any demand for satisfaction;

- By displaying a prominent sign at the entrance to their business, for six years, that states to prospective customers: "SAME DAY SERVICE," but fails to disclose the many pre-conditions, limitations and exclusions on that guarantee the defendants admit to;
- By displaying a prominent sign at the entrance to their business, for six years, that volunteers: "All Work Done on Premises," but fails to disclose the material and admitted fact that the work done on the premises includes work from other cleaners;
- By representing to the plaintiff, on May 3, 2005, a guarantee that his suit pants would be altered and returned to him by May 5, 2006, or that his satisfaction would otherwise be guaranteed, but failed to disclose the many objective and subjective pre-conditions, limitations and exclusions the defendants admit they impose on that guarantee.

(e) On more than 1,200 occasions, and in *three* different ways, the defendants have advertised or offered multiple services (to plaintiff and others) without the intent to sell them as advertised or offered:

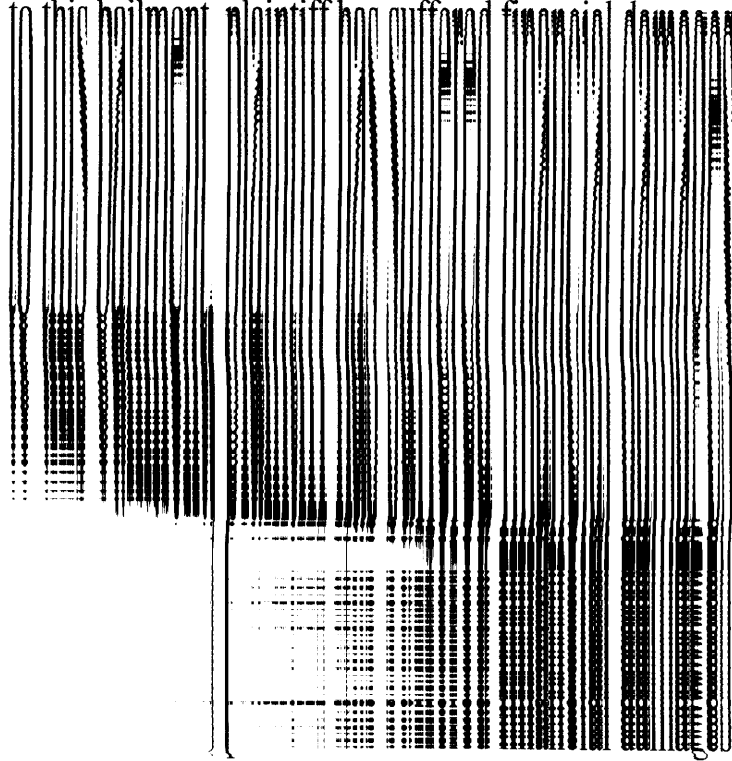
- By displaying a prominent sign at the entrance to their business, for six years, that states "SATISFACTION GUARANTEED," when the defendants admit they had no intention of (or ability to) complying with that sweeping and unconditional guarantee;
- By displaying a prominent sign at the entrance to their business, for six years, that states to prospective customers: "SAME DAY SERVICE," when the defendants admit they had no intention of complying with that sweeping and unconditional guarantee;
- By representing to the plaintiff, on May 3, 2005, a guarantee that his suit pants would be altered and returned to him by May 5, 2006, or that his satisfaction would otherwise be guaranteed, when the defendants admit they had no intention of complying with that unconditional guarantee;

(f) The defendants have passed off goods or services as those of another:

- By passing off the substituted gray slacks belonging to them, or abandoned by another customer, as those of another (the "other" being the plaintiff);

4. Negligence/Bailment/Negligent Misrepresentation

The defendants had a duty: (a) not to place plaintiff's suit pants in the rear of their store for pressing after agreeing not to, (b) to return plaintiff's suit pants to him on the late afternoon of May 5, 2005, and (c) to ensure plaintiff's satisfaction if they failed to. Defendants breached these duties to plaintiff. As a proximate cause of defendants' negligence with respect



5. Statutory Injunction

D.C. Official Code § 28-3905(k)(1)(D) authorizes an injunction against the continuation of the unlawful trade practices in this case. The public interest would be furthered by an affirmative injunction requiring defendants to: (a) remove their "SATISFACTION GUARANTEED" and



"SAME DAY SERVICE" signs, and once removed, to never restore those or similar signs on pain of contempt of court; (b) (if the defendants is not awarded future damages for being unable to use defendants' nearby services) resume providing their services to plaintiff and, if plaintiff notifies them they have not, to provide plaintiff with cash or cashier's check, within 24 business hours, in the amount of \$10,000, to enable plaintiff to litigate or arbitrate defendants' failure to provide their services; and (c) ensure that future claim tickets they provide to customers describe

(g) The defendants represented that the subject of a transaction had been supplied in accordance with a previous representation when it had not:

- By representing, to this day, that they performed the service they represented to the plaintiff on May 3, 2005 he was guaranteed to be satisfied with, when they have not.

2. Common Law Fraud

- The defendants knowingly advertised the material and false statement “SATISFACTION GUARANTEED,” knowing it to be false, with the intent of deceiving the plaintiff into believing the false statement was true. Alternatively, the defendants concealed from plaintiff the material fact that there are a host of limitations, exclusions and pre-conditions that made their unconditional guarantee an illusory one, and that they had no insurance or comparable ability to honor their sweeping guarantee. The facts the defendants withheld from plaintiff are facts that a reasonable person might have considered important in deciding whether to utilize the defendants’ services, and in agreeing to pay the prices charged for those services. When plaintiff left his suit pants with the defendants, and the defendants subsequently refused to honor their unconditional guarantee of *customer* satisfaction, the plaintiff was caused financial, emotional and other damage by each defendant as a proximate result of the defendants’ fraudulent omissions and misrepresentations;
- Defendants knowingly advertised the material, false and unconditional statement “SAME DAY SERVICE” (as to which they claim an unconditional guarantee of customer satisfaction), knowing it to be false, with the intent of deceiving the plaintiff into believing the false statement was true. Alternatively, the defendants concealed from the plaintiff the material fact that there are a host of limitations, exclusions and pre-conditions that made their same-day service guarantee an illusory one. The facts the defendants withheld from the plaintiff are facts that a reasonable person might have considered important in deciding whether to utilize the defendants’ services, and in agreeing to pay the prices charged for those services. When plaintiff left his suit pants with the defendants, and the defendants refused to honor even a two-day guarantee, plaintiff was caused financial, emotional and other damage by each defendant as a result of the defendants’ fraudulent omissions and misrepresentations.

3. Conversion

The defendants ratified Soo Chung’s explicitly unauthorized placement of plaintiff’s suit pants in the rear of their store, which constituted an unlawful exercise of ownership, dominion, and control over the suit pants of the plaintiff, in denial or repudiation of plaintiff’s right to his suit pants.

4. Negligence/Bailment/Negligent Misrepresentation

The defendants had a duty: (a) not to place plaintiff's suit pants in the rear of their store for pressing after agreeing not to, (b) to return plaintiff's suit pants to him on the late afternoon of May 5, 2005, and (c) to ensure plaintiff's satisfaction if they failed to. Defendants breached these duties to plaintiff. As a proximate cause of defendants' negligence with respect to this bailment, plaintiff has suffered financial damages.

5. Statutory Injunction

D.C. Official Code § 28-3905(k)(1)(D) authorizes an injunction against the continuation of the unlawful trade practices in this case. The public interest would be furthered by an affirmative injunction requiring defendants to: (a) remove their "SATISFACTION GUARANTEED" and "SAME DAY SERVICE" signs, and once removed, to never restore those or similar signs on pain of contempt of court; (b) (if the defendants is not awarded future damages for being unable to use defendants' nearby services) resume providing their services to plaintiff and, if plaintiff notifies them they have not, to provide plaintiff with cash or cashier's check, within 24 business hours, in the amount of \$10,000, to enable plaintiff to litigate or arbitrate defendants' failure to provide their services; and (c) ensure that future claim tickets they provide to customers describe at least the color of the garments left with the defendants for laundry, dry cleaning or alteration.

Defendants' Version

Plaintiff and Defendants disagree significantly about what claims were cited in Plaintiff's Amended Complaint and what claims are still ripe. Based on the Amended Complaint, Judge Kravitz's Summary Judgment Order and Judge Kravitz's November 20, 2006 Order Denying Plaintiff's "Motion To Amend and Supplement Complaint," the following claims remain in this case. None of Plaintiff's other claims were asserted in the Amended Complaint and/or were allowed to survive Summary Judgment. Notably, these additional non-actionable claims include (but are not limited to) Plaintiff's claims relating to his emotional distress, relating to alleged duplicative violations for each day Defendants' signage was displayed and to his representation of other individuals as "private attorney general."

(1) Plaintiff alleges in his Amended Complaint violations of the D.C. Consumer Protection Procedures Act ("CPPA") for the following alleged conduct. Plaintiff purports that

each of these seven acts constitutes a separate violation of the CPPA for which Defendants are liable for \$1,500 for each plus treble damages [or \$1,500 for each violation, without treble damages, if it is the greater sum], attorney's fees and punitive damages.

- Defendants' representation that "satisfaction is guaranteed" is a representation of a characteristic their services do not have.
- Defendants' representation that "satisfaction is guaranteed" is a representation that their services are of a particular quality when in fact it is not.
- Defendants' representation that "satisfaction is guaranteed" is a representation of material facts which have a tendency to mislead.
- Defendants' representation that "satisfaction is guaranteed" is an advertisement for services that defendants had not intended to sell as advertised.
- Defendant Soo Chung's alleged conduct in: (a) measuring one of the plaintiff's slacks, (b) refusing to return the claim ticket given her for the missing suit pants, (c) apparently altering another pair of slacks to match the measurements of plaintiff's missing suit pants, (d) pinning the claim ticket she refused to return to the outside of the plastic covering for the substituted pair of slacks, and then (e) representing that the substituted pants were the pants left on May 3, 2005, constituted the representation of a material fact which has a tendency to mislead.
- Defendant Soo Chung's alleged attempt to pass off one pair of suit pants, as another, also violated the prohibition against "passing off goods or services as those of another."
- Defendant Soo Chung's alleged attempt to pass off one pair of pants, as another, also violated the prohibition against "representing that the subject transaction has been supplied in accordance with a previous representation which it has not."

(2) Plaintiff alleges Defendants committed common law fraud by allegedly advertising “Satisfaction Guaranteed” with no intention of providing each advertised service to the satisfaction of the customer, and if not, of otherwise guaranteeing the customer will be satisfied. Plaintiff alleges he is entitled to \$15,000 in actual damages and \$15,000 in punitive damages for the fraud count.

(3) Plaintiff alleges Defendants committed negligence or conversion, in that Defendants allegedly breached their alleged duty to Plaintiff to return Plaintiff’s suit pants to him on the late afternoon of May 5, 2005 and to ensure Plaintiff’s satisfaction if they failed to do so. Plaintiff alleges he is entitled to compensatory damages in the amount of \$1,500 and punitive damages against Defendants Jin Nam and Soo Y in the amount of \$15,000.

Defendant’s Defenses

- Defendants have produced Plaintiff’s pair of pants.
- Defendants did not permanently lose Plaintiff’s pants.
- None of Defendants’ actions in this matter constituted a violation of the CPPA, fraud, negligence, conversion or any other civil or criminal act.
- Plaintiff’s claims available at trial are limited to only those explicitly brought in his Amended Complaint. Any additional claims are not part of this lawsuit, as Judge Kravitz opined in his November 20, 2006 Order Denying Plaintiff’s “Motion to Amend and Supplement Complaint.” Notably, these additional non-actionable claims include (but are not limited to) Plaintiff’s claims relating to his emotion distress, relating to alleged duplicative violations for each day Defendants’ signage was displayed and to his representation of other individuals as “private attorney general”.
- Plaintiff has no ability to establish the amount of his purported over \$65,000,000 in damages.
- The amount demanded in this matter is vastly out of proportion to any injury suffered by Plaintiff.
- Plaintiff’s Amended Complaint does not allege his current damages claim. Plaintiff’s Amended Complaint only alleges the following ripe damages claims:
 - \$1,500 for each of the seven CPPA violations alleged in the Amended Complaint relating to his lost pants and the “satisfaction guaranteed”

- signage plus treble damages [or \$1,500 for each violation, without treble damages, if it is the greater sum], attorney's fees and punitive damages.
 - In the alternative, if Plaintiff is not entitled to recovery for the "satisfaction guaranteed" sign under the CPPA, he demands \$15,000 in actual damages and \$15,000 in punitive damages for his fraud claim.
 - In the alternative, if Plaintiff is not entitled to recovery for the "satisfaction guaranteed" sign under the CPPA, he demands \$1,500 in actual damages and \$15,000 in punitive damages for his negligence/conversion claim.
- Plaintiff himself has only allegedly been damaged once as a result of the allegedly limitless guarantee of satisfaction—specifically when he allegedly did not receive back the suit pants he alleges he dropped off for altering. Therefore, even if there was an actionable guarantee of satisfaction, Plaintiff has only been damaged to the extent of his lost pair of pants as a result of the guarantee of satisfaction.
- Plaintiff's claims are duplicative and unfairly cumulative. Plaintiff should, thereby, be limited to one claim against all three Defendants jointly for the alleged loss of his pants. Further, Plaintiff should be limited to one claim for allegedly being misled by Defendants' signage—and not thousands of duplicative alleged violations.
- This is not a punitive damages case as there was no willful, malicious or grossly negligent behavior.
- A pro se attorney is not entitled to attorneys' fees.
- Plaintiff is not entitled to treble damages.
- If Plaintiff was damaged, his damages are, at most, \$1150 - \$1600, the alleged price of the suit from which the purportedly lost pants came.
- Plaintiff's interpretation of Defendants' "Satisfaction Guaranteed" sign is excruciatingly unreasonable.
- None of Defendants' signage is/was misleading, unreasonable or in violation of the DC Consumer Protection Act.
- Plaintiff will purport that many other customers have had similar problems but (1) no such customers have ever indicated as much to Defendants and (2) even if other customers had experienced similar problems, they're irrelevant to Plaintiff's case.
- If there was a violation of the CPPA, there was only one such violation.
- Plaintiff did not reasonably rely to his detriment upon Defendants' alleged representations.
- Defendant did not breach any duty owed to Plaintiff.

- Defendants' representation that "satisfaction is guaranteed" is not a representation that their services are of a particular quality when in fact it is not.
- Defendants' representation that "satisfaction is guaranteed" is not a representation of material facts which have a tendency to mislead.
- Defendants' advertisement that "satisfaction is guaranteed" is not an advertisement for services that defendants had not intended to sell as advertised.
- Plaintiff fails to state a claim upon which relief can be granted.
- Plaintiff's claims are barred by the statute of limitations.
- Plaintiff's claims are barred by laches.
- Plaintiff's claims are barred by waiver.
- Plaintiff's claims are barred by lack of consideration.
- Plaintiff's claims are barred by his own illegal conduct.

E. Undisputed Issues

None.

E. Disputed Issues

Plaintiff's Version:

1. Whether each defendant is separately liable to the plaintiff in the amount of \$1,500 for each day that each violation of D.C. Code §§ 28-3904(a), (d), (e), (f), (h), (s) and (u) existed at their business between July 7, 2002 and the day of trial?
 - The parties' contentions with respect to this issue are set forth above.
2. Whether, alternatively, each defendant is liable to the plaintiff for his actual damages under the D.C. Consumer Protection Procedures Act?
 - The parties' contentions with respect to this issue are set forth above.
3. Whether each defendant is liable to the plaintiff for statutory punitive damages authorized by the D.C. Consumer Protection Procedures Act?
 - The parties' contentions with respect to this issue are set forth above.
4. Whether plaintiff is entitled to entry of a permanent injunction to halt, and/or prevent the resumption of, the unfair trade practices alleged in this case?
 - The parties' contentions with respect to this issue are set forth above.
5. Whether the defendants are liable to plaintiff for the tort of fraud, and for treble plaintiff's consequential damages?

- The parties' contentions with respect to this issue are set forth above.
6. Whether, alternatively, the defendants are liable to plaintiff for the tort of conversion, and for treble plaintiff's consequential damages?
 - The parties' contentions with respect to this issue are set forth above.
 7. Whether each defendant is liable to plaintiff for common law punitive damages, and in what amount?
 - The parties' contentions with respect to this issue are set forth above.
 8. Whether defendants' liability insurance is a factor that can be considered in determining liability and an amount of common law punitive damages?
 - The parties' contentions with respect to this issue are set forth above.
 9. Whether, alternatively, the defendants are liable to plaintiff for the tort of bailment negligence, and for treble plaintiff's consequential damages?
 - The parties' contentions with respect to this issue are set forth above.
 10. Whether plaintiff is entitled to reasonable attorneys' fees from the defendants, and in what amount?
 - The parties' contentions with respect to this issue are set forth above.
 11. Whether the defendants' conduct caused willful and malicious injury?
 - The parties' contentions with respect to this issue are set forth above.

Defendants' Version [Based on defendants' position on what claims were included in the Amended Complaint and what claims survived summary judgment and the court's orders]:

1. Whether each defendant is liable to the plaintiff in the amounts articulated in Plaintiff's Amended Complaint?
2. Whether each defendant is liable to the plaintiff for his actual damages under the D.C. Consumer Protection Procedures Act?
3. Whether each defendant is liable to the plaintiff for statutory punitive damages under the D.C. Consumer Protection Procedures Act?
4. Whether a permanent injunction should be entered against the defendants for their longstanding violations of the D.C. Consumer Protection Procedures Act?
5. Whether the defendants are liable to plaintiff for the tort of fraud, and damages?
6. Whether the defendants are liable to plaintiff for the tort of conversion, and resulting damages?
7. Whether the defendants are liable to plaintiff for the tort of negligence, and damages?

8. Whether plaintiff is entitled to *pro se* attorneys' fees from the defendants, and in what amount?
9. Whether plaintiff is entitled to treble damages from the defendants?
10. Whether plaintiff is entitled to punitive damages from defendants?

G. Requested Stipulations

Plaintiff:

1. May 3, 2005 was a Tuesday; May 5, 2005 was a Thursday; May 6, 2005 was a Friday.
2. Throughout the period of June 2000 through July 2006, the defendants issued the same receipt (supplied by Royal Western Computer Co.) to customers of Custom Cleaners for laundering, dry cleaning and alteration services.
3. The defendants have never had insurance to cover claims such as those asserted by the plaintiff in this case
4. The defendants do not provide same day service to customers when the customer does not specifically request that service
5. The defendants immigrated to the United States from South Korea in 1992 and became naturalized citizens of the United States some time between January 1, 1992 and December 31, 1998.

H. Relief Sought

Plaintiff's Position:

I. D.C. CONSUMER PROTECTION PROCEDURES ACT

A. STATUTORY MINIMUM DAMAGES OR TREBLE ACTUAL DAMAGES

Statutory Minimum Damages (§ 28-3905(k)(1)(A)) \$1,500 per violation
x 14,400 violations (20 violations;
12 of which existed on 1,200
days from July 2002-June
2006)

\$21,600,000 per defendant
(Soo Chung, Ki Y Chung & Jin Nam Chung) x 3 defendants
\$64,800,000 **\$64,800,000**

- or, treble plaintiff's actual damages -

Actual Damages
Litigation Costs \$ 1,500
Mental suffering, inconvenience and
discomfort from deceit, litigation and
other "emotional damages that are the natural
and proximate result" of the defendants' conduct

(<i>Osbourne v. Capital City Mortgage Corporation</i> , 667 A.2d 1321 (D.C. 1995))	\$500,000	
Value/Loss of Time Expended in Litigation	465,390	
Leasing Automobile for 10 Years	15,000	
Replacement suit	<u>1,450</u>	
	\$983,340	
	<u>x 3</u> (treble damages)	
	\$2,950,020	\$2,950,020

B. STATUTORY PUNITIVE DAMAGES (For 3 defendants)

Based on amount of actual damages awarded, the frequency, persistence, and degree of intention of the trade practice(s) and number of consumers affected

	\$200,000	\$200,000
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C. ATTORNEYS' FEES

May 8, 2005-March 21, 2007 (estimated 1,200 hours @ \$390-\$425/hr.)	\$500,000	
March 21, 2007 to Trial Date (estimated 100 hours @ \$425/hr.)	<u>\$42,500</u>	
	\$542,500	\$542,500

Total (Based on election of D.C.C.P.P.A. Minimum Statutory Damages): \$65,542,500

II. COMMON LAW CLAIMS- D.C. Code § 28-3905(k)(2)
 ("The remedies or penalties provided by this chapter [for DCPPA] are *cumulative and in addition to* other remedies or penalties provided by law.")

A. COMMON LAW COMPENSATORY DAMAGES

Fraud/ Conversion/ Negligent Bailment		\$1,500
Leasing Automobile (or walking 2 miles) Each Weekend for 10 Years		\$15,000
Emotional damages authorized for intentional tort (<i>Osbourne</i> , 667 A.2d at 1328; <i>Parker</i> , 557 A.2d 1319)		\$500,000
		\$516,500
(Treble damages - <i>District Cablevision, Ltd. P'ship v. Bassin</i> , 828 A.2d 714)	<u>x 3</u>	\$1,549,500

B. COMMON LAW PUNITIVE DAMAGES

For 3 defendants (may depend on defendant's income)		\$200,000
		Total Common Law Damages: \$1,749,500

Total D.C.C.P.P.A. & Common Law Money Damages: \$67,292,000

III. STATUTORY INJUNCTION

- (1) Permanent injunction requiring defendants to remove, and not restore, fraudulent//deceptive advertisements stating "SATISFACTION GUARANTEED," "SAME DAY SERVICE" and "ALL WORK DONE ON PREMISES", **and** (if no remedy at law is available to compensate plaintiff for having to now walk 4 miles, round-trip, to another cleaners)
- (2) Mandatory injunction requiring defendants to provide their services to plaintiff and, if plaintiff notifies them they have not, to provide plaintiff with cash or cashier's check, within 24 business hours, in the amount of \$10,000, to enable plaintiff to litigate or arbitrate defendants' failure to comply with mandatory injunction; **and**

- (2) Permanent injunction requiring that defendants' future claim tickets describe at least the color(s) of garments left for laundry, dry cleaning and/or alteration.

Defendants' Position:

The above damages requested by Plaintiff are not alleged in Plaintiff's Amended Complaint and should not be allowed at trial. Furthermore, these damages claims are unreasonably duplicative. The only damages claimed are those included in defendants' version of the "Claims and Defenses" portion of this Pretrial Statement. Furthermore, in Judge Kravitz's November 20, 2006 Order Denying Plaintiff's "Motion to Amend and Supplement Complaint," Judge Kravitz specifically denied Plaintiff the opportunity to make this case about anything except "a one-victim case involving a single pair of lost suit pants." Finally, a \$65,000,000 demand relating to one allegedly lost pair of pants is an egregious abuse of process and a monumental waste of the Court's and the parties' time and resources.

I. Citations

Plaintiff's Citations -

A. The D.C. Council Joined A Nationwide Movement When It Enacted A Consumer Statute That Frees Consumers From Common Law Fraud Evidentiary Requirements And Standards Of Proof

William A. Lovett, *State Deceptive Trade Practice Legislation*, 46 Tulane L. Rev. 724, 725 (1972) (Unfair And Deceptive Acts & Practices [UDAP] statutes, such as the D.C. Consumer Protection Procedures Act, were enacted in response to the reality that "[i]n most consumer controversies the risks and expense of investigation, counsel, and litigation far outweigh the likely recoveries that could reasonably have been anticipated with traditional actions for warranty, misrepresentation, or fraud. Further, the courts would not normally award attorney's fees to successful plaintiffs")

Jay Govern, *Private Actions Under The Deceptive Trade Practices Acts: Reconsidering the FTC Act as Rule Model*, 52 Ohio St. L. J. 437, 449 (1991) ("In deciding private deceptive trade practices suits, state courts have generally looked to standards developed under the FTC Act")

Council of the District of Columbia, Committee on Public Services and Consumer Affairs, Report on Bill 1-253, at 2 (March 24, 1976) (intent of CPPA is to develop an "independent consumer protection agency structured along the lines and authority of a 'mini-FTC'")

7A Uniform Law Annotated, *Uniform Deceptive Trade Practices Act* §§ 2(a)(1), (5), (7) and (9) (1966) (contains provisions that are now in D.C. Code § 28-3904(s), (a), (d) and (h))

7A (Part 1) Uniform Law Annotated 75, *Uniform Consumer Sales Practices Act* § 3(b)(5), (2002) (contains provision that is now in D.C. Code § 28-3904(u))

Bob Cohen, *Right To Private Action Under State Consumer Protection Act—Equitable Relief Available*, 115 A.L.R.5th 709, 711 (2004) (“[State consumer protection acts] were . . . intended to overcome the pleadings problems associated with common law fraud claims by eliminating the requirement of proving certain elements, such as intent to deceive, scienter, and reliance . . . Furthermore, most state consumer protection acts have provisions permitting successful plaintiffs to recover attorney’s fees, *intended to provide an incentive for private attorneys to bring deceptive trade practice actions and thus vindicate the important public policies behind such statutes.*”)

B. Federal And State Law Uniformly Hold Merchants Liable For Deceptively Claiming An Unconditional Guarantee Of Satisfaction

Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) (states “unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful or deceptive acts or practices.” Because the defendants’ practices in this case affect commerce [the definition of commerce in 15 U.S.C. § 44 includes all “commerce . . . in the District of Columbia”], violations of this statutory prohibition are enforceable against the defendants in this case by the Federal Trade Commission)

FTC Guideline on Deceptive Advertising of Guarantees, 16 C.F.R. § 239.3(b) (a FTC guideline is intended to construe 15 U.S. C. § 45(a)(1) by stating the FTC’s interpretation of what types of practices are unfair or deceptive and is a warning to merchants engaging in such practices that the Commissions deems these practices unfair or deceptive) 16 C.F.R. § 239.3(b) provides that an advertisement that mentions a "Satisfaction Guarantee" or a similar representation should disclose, with such *clarity and prominence* as will be noticed and understood by *prospective* purchasers, any material limitations or conditions that apply to the ‘Satisfaction Guarantee’ or similar representation.

§ 20.05, *Standardized Civil Jury Instructions for the District of Columbia* (“The maker of a fraudulent misrepresentation is liable to the persons [he] [she] intends to influence, regardless of whether [he] [she] makes the misrepresentation to them directly or conveys the information through some other . . . means”).

Montgomery Ward Co. v. FTC, 379 F.2d 666 (7th Cir. 1967) (merchant advertised “satisfaction guaranteed,” but contradicted his advertisement by issuing guarantee certificates with each purchase that listed specific limitations on its guarantee. Court concluded it was inherently deceptive to attach specific and limited guarantees to products that are advertised without limitation, and that whether intentional or not it gave the company an unfair advantage over its competitors.

Thus, it is irrelevant to a deceptive advertising claim that the company in fact honored its unconditional guarantee of satisfaction. *The issue is not one of performance, but of advertising.* The Commission met its burden of proof through a comparison of the advertised *unconditional* guarantee with the *limitations* in the guarantee certificates.)

Courtney v. Bassano, 733 A.2d 973 (Me. 1999) (deceptive to advertise guarantee of customer satisfaction while intending to condition the guarantee upon merchant's determination of reasonableness).

Thompson Medical Co., 104 F.T.C. 648 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied* 479 U.S. 1086 (1987) (Materiality is presumed when, as is undisputed here, the fact that has been misrepresented involves a claim of warranty or quality)

Western Radio Corp. v. FTC, 339 F.2d 937, 939 (7th Cir. 1964); *cert denied*, 377 U.S. 923 (1964) (affirmed FTC holding that unconditional advertisement guaranteeing product was deceptive and refusing to consider instructions provided *after* purchase of product that implicitly contradicted unconditional advertising guarantee)

Clinton Watch Co. v. FTC, 291 F.2d 838 (7th cir. 1961), *cert. denied*, 368 U.S. 952 (1962) (affirming FTC cease and desist order prohibiting advertising of a so-called 'lifetime guarantee' without clear disclosure that a charge is made in conjunction therewith. *The slips accompanying the watches stated on their face that the guarantee was 'all- inclusive,' but revealed on the reverse side that there was a service charge.*)

Giarratano v Muffler, 630 N.Y.S.2d 656 (City Ct. 1995) (automobile repair shop's muffler guarantee violated state Deceptive Trade Practices Act by promising lifetime repair of muffler installed by shop and then undermining that promise with requirement that vehicle owner, in order to receive benefit of warranty, consent to shop's performing such other muffler work as shop deemed necessary)

REI Industries, Inc. v State, 477 SW2d 956 (Tex. Civ. App. 1972) (upon evidence that the manufacturer of an automobile engine accessory device claimed in advertising material that the device was guaranteed to reduce air pollution or the purchase price would be refunded, and upon further evidence that the advertising material included in an "obscure place" the condition that the purchase price would be refunded provided that the warranty on the device had been registered within 30 days of original installation and "subject to the provision that manufacturer shall have the option of verifying vehicle condition and test results and procedures," the court held that the evidence was sufficient to support the issuance of a temporary injunction under the Texas Deceptive Trade Practices Act to *restrain the manufacturer from guaranteeing the device on a money back basis unless the conditional nature of the guarantee was conspicuously displayed or mentioned in the advertising material.*)

Fisher v. World-Wide Trophy Outfitters, Ltd. 551 P.2d 1398 (Wash. App. 1976), (court held that advertisements for a big game hunt which were placed in a

magazine of general circulation by a big game hunt outfitter, and which apparently guaranteed hunting success, constituted unfair or deceptive acts or practices within the meaning of the Washington Consumer Protection Act, because the advertisements deceived the plaintiffs, persons who contracted with the outfitter to take them on a big game hunt. The advertisements included the statement, "WHY WASTE YOUR MONEY--GUARANTEED SHOTS," and included a picture of a sheep's head with fully curled long horns. However, during the course of their big game hunt, the plaintiffs shot only a moose, a small caribou, and a lynx. Explaining that a finding of an intent to deceive or defraud is not a prerequisite to the establishment of an unfair or deceptive practice, and pointing out that a tendency or capacity to deceive is sufficient, the court reasoned that the trial court was correct in concluding that the advertisements had the capacity to deceive.)

C. Advertising An Unconditional Guarantee To Prospective Customers, And Later Revealing Pre-Conditions, Limitations And Exclusions To Actual Customers Is Both Deceptive And A Classic Bait-And-Switch

“Even though the true facts are subsequently made known to the buyer, the [bait and switch] law is violated if the first contact . . . is secured by deception.” 16 C.F.R. § 238.2(b)

Rossman v. Fleet Bank Nat'l Ass'n, 280 F.3d 384, 398 (3rd Cir. 2002) (statement that a credit card had "no annual fee" was misleading, and a bait-and-switch, if the bank intended to impose such a fee shortly after issuance of the credit card)

"[C]onsumer" means a person who does *or would* purchase, lease (from), or receive consumer goods or services, including a co-obligor or surety, or a person who does *or would* provide the economic demand for a trade practice; as an adjective, "consumer" describes anything, without exception, which is primarily for personal, household, or family use[.] D.C. Code § 28-3901 (a)(2).

Prior to October 19, 2000, D.C. Code § 28-3905 (k)(1) read, in relevant part, as follows: "Any *consumer* who suffers any damage as a result of the use or employment by any person of a trade practice in violation of a law of the District of Columbia within the jurisdiction of the Department [of Consumer and Regulatory Affairs] may bring an action in the Superior Court of the District of Columbia . . ."

Effective October 19, 2000, D.C. Code § 28-3905 (k)(1) was amended to read, in relevant part, as follows: "A *person*, whether acting for the interests of itself, its members, or the general public, may bring an action under this chapter in the Superior Court of the District of Columbia . . ."

"Person" means an individual, firm, corporation, partnership, cooperative association, or any other organization, legal entity, or group of individuals however organized . . . D.C. Code § 28-3901(a)(1)

D.C. Code § 28-3904 ("It shall be a violation of this chapter, *whether or not any consumer is in fact misled, deceived or damaged thereby*, for any person to: (a)

represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; (b) *represent* that the person has a sponsorship, approval, status, affiliation, certification, or connection that the person does not have; . . . (d) *represent* that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another; (e) *misrepresent* as to a material fact which has a tendency to mislead;(f) fail to state a material fact if such failure tends to mislead;. . .(h) *advertise* or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered . . .”)

D.C. Code § 28-3901(c) (“This chapter shall be construed and applied liberally *to promote its purpose[s]*.”)

D. A Businessperson Is Presumed To Know The Truth When He Or She Makes An Inaccurate Statement About Their Businesses’ Future Performance

Borzillo v. Thompson, 57 A.2d 195 (1948) (Though one may be under no duty to speak as to a matter, if he undertakes to do so, either voluntarily or in response to inquiries, he is bound not only to state truly what he tells, but also not to suppress or conceal any facts within his knowledge which materially qualify those stated)

Bennett v. Kiggins, 377 A.2d 57 (D.C. 1977), *cert. denied*, 434 U.S. 1034, 54 L. Ed. 2d 782, 98 S. Ct. 768 (1978) (When a person positively states that something is to be done or is to occur, when he knows the contrary to be true, the statement will support an action in fraud)

Darnell v. Darnell, 91 U.S. App. D.C. 304, 200 F.2d 747 (1952) (“actionable fraud may exist where the representation of a material fact . . . involves [the defendant’s] own business or property as to which he is bound and must be presumed to know the truth”)

E. To Become A Naturalized U.S. Citizen You Must, First, Demonstrate The Ability To Read, Write And Speak The English Language

8 U.S.C. 1423(a)(1) (“(a) No person except as otherwise provided in this title shall hereafter be naturalized as a citizen of the United States upon his own application who cannot demonstrate-(1) an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language . . .”)

F. The Measure Of Damages For Lost Or Damaged Personal Property Is Not Its Market Value, But Its Value To The Plaintiff

Standardized Civil Jury Instructions for D.C. §15.05, *Loss of Used Household Goods Or Wearing Apparel* (The measure of a defendant’s liability for the loss of used household goods or wearing apparel is not their fair market value, but their actual value to the owner.)

G. Under The D.C.C.P.P.A. A Consumer May Recover A Separate Statutory Award Against Each Individual Merchant For Each Violation Of Each Statutory Unfair Trade Practice

“Merchant” means a person who does *or would* sell, lease (to), or transfer, *either directly or indirectly*, consumer goods *or services*, or a person who does or would *supply* the goods or services which are or would be the subject matter of a trade practice . . . D.C. Code § 28-3901(a)(3)

“A person whether acting for the interests of itself, its members, or the general public, may bring an action under this chapter in the Superior Court of the District of Columbia seeking relief from the use by *any person of a trade practice* . . .and may recover or obtain the following remedies: (A) . . .\$1,500 **per violation** [not per trade practice], . . . payable to the consumer.” D.C. Code § 28-3905(k)(1)(A)

“Trade practice” means any act which does or would create, alter, repair, furnish, make available, provide information about, or, directly or indirectly, *solicit or offer for or effectuate, a sale*, lease or transfer, of consumer goods or services . . . D.C. Code § 28-3901(a)(6)

Banks v. D.C. Dep't of Consumer & Regulatory Affairs, 634 A.2d 433, 436 (D.C. 1993) (affirmed DCRA’s holding that “[Banks’] use of the title ‘administrative advocate’ and rendering of legal advice misrepresented that his services had a sponsorship, approval, certification, characteristic, and were of a particular standard, or quality when it did not in violation of D.C. Code § 28-3904(a), (b) and (d).”)

Byrd v. Jackson, 902 A.2d 778 (D.C. 2006) (affirms *trial court* ruling that a single action may result in multiple violations of, and multiple awards under, the D.C. Consumer Protection Procedures Act)

State of Washington v. Ralph Williams’ North West Chrysler Plymouth, Inc., 553 P.2d 423, 436-37 (Wash. 1976) (statute, virtually identical to the D.C.C.P.P.A., requires that liability for civil penalties be individual, and not joint, and that a penalty be assessed for each violation even if a single sign contains multiple violations)

People v. First Federal Credit Corp. 104 Cal App 4th 721, 128 Cal. Rptr. 2d 542 (2002, 2nd Dist) (affirming trial court ruling of 300 separate violations of unfair competition statute, 400 violations of false advertisement statute, the imposition of civil penalties and issuance of a permanent injunction).

Washkoviak v. Student Loan Marketing Association, 849 A.2d 37 (D.C. 2004). (explaining the difference between a non-disclosure (or concealment), and an affirmative misrepresentation and why claims may be brought under the CPPA for both based on the same underlying facts)

15 U.S.C. § 45(m)(1)(C) (states that for purposes of provisions in FTC Act that provide for civil penalty of not more than \$10,000 for each violation, “*each day* of continuance of such failure shall be treated as a separate violation . . .”)

Burton v. R.J. Reynolds Tobacco Co., 205 F.Supp. 2d 1253, 1265 (D. Kan. 2002) (provision in Kansas Consumer Protection Act that imposes a civil penalty of up to \$10,000 for each *violation*, entitles plaintiff to that amount for *each* pack of cigarettes he purchased)

H. When An Unfair Trade Practice Claim Is Based On A Sign, Each Day The Sign Is Displayed Constitutes A Separate Violation And A Separate Cause Of Action

D.C. Code § 28-3901(c)(D.C. Consumer Protection Procedures Act must be liberally construed to promote its purposes); D.C. Code § 28-3901(b)(1) (“The purposes of this chapter are to: (1) assure that a just mechanism exists to . . . *deter the continuing use* of such practices;”); D.C. Code § 28-3901(k)(1)(A) (imposing minimum statutory damages of \$1,500 against each merchant for *each* violation) (these three provisions were added, simultaneously, effective October 19, 2000); *cf.*, National Consumer Law Center, *Unfair and Deceptive Acts and Practices* § 7.3.2.3 (6th ed. 2004)(“Each day that a person fails to make statutorily-mandated disclosures constitutes a new violation . . .”).

D.C. Code § 28-3904 (“It shall be a *violation* of this chapter, whether or not any consumer is in fact misled, deceived or damaged thereby, for any person to: (a) *represent* that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; (b) *represent* that the person has a sponsorship, approval, status, affiliation, certification, or connection that the person does not have; . . . (d) *represent* that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another; (e) *misrepresent* as to a material fact which has a tendency to mislead;(f) fail to state a material fact if such failure tends to mislead;. . .(h) *advertise* or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered . . .”)

Cf. Restatement of the Law, Second, Torts, § 577 Comment a (2006) (“[E]ach communication of the same defamatory matter by the same defamer, whether to a new person or to the same person, *is a separate and distinct publication, for which a separate cause of action arises.*”)

I. When The D.C.C.P.P.A. Statute Is Pleaded The Defendant Is On Notice Of Any Claim That May Arise Under That Statute

Rowan Heating-Air Conditioning-Sheet Metal, Inc. v. Williams, 580 A.2d 583 (D.C. 1990) (pleading any violation of CPPA is sufficient, under Super.Ct. Civ. R. 8, to put defendant on notice it was subject to all relief provided for by the CPPA)

Lonon v. Bd. of Dir. Of Fairfax Village Condo IV Unit Owners Ass’n, 535 A.2d 1386, 1388-89 (D.C. 1988) (absent “good reason . . . to the contrary,” such as that the defendants were not on notice of the claim against them or that permitting the claim would result in undue delay, a new claim should be allowed even when raised for the first time in a pretrial statement, and not by amended complaint)

Cf. Randolph v. Franklin Inv. Co., App. D.C., 398 A.2d 340 (1979) (there is a virtual presumption, when a court grants leave to amend an answer, that it will also grant leave to file a compulsory counterclaim when the same facts necessary to establish the defense would be sufficient to establish the counterclaim)

J. The D.C.C.P.P.A. Was Amended, Effective October 19, 2000, To Remove Any Requirement Of Proof, By *Clear And Convincing Evidence*, Of: (1) Misrepresentation (Or Proof of Intent To Misrepresent) Or (2) A Right To Punitive Damages,

Osbourne v. Capital City Mortgage Corporation, 727 A.2d 322, 325 (D.C. 1999) (“It is settled that statutes in derogation of common law are to be construed strictly, Indeed, ‘no statute is to be construed as altering the common law, farther than its words import.’ By application of these rules to the CPPA, we reach the conclusion that a claim for intentional misrepresentation under the Act requires the same burden of proof as does a common law claim for such misrepresentation – the clear and convincing standard.”) (citations omitted)

D.C. Law 13-172, § 1402(b), 47 D.C. Reg. 6308 (October 19, 2000 amendments to the D.C. Consumer Protection Procedures Act require that it be liberally construed and that it supplement common law causes of action– thus clearly overruling the holding in *Osbourne v. Capital City Mortgage Corporation, 727 A.2d 322 (D.C. 1999)* that a clear and convincing standard of proof applies for a CPPA misrepresentation claim and dictum that the same standard of proof applies for CPPA punitive damages)

D.C. Official Code § 28-3901(c) (amended to state: “This chapter [CPPA] *shall* be construed and applied *liberally* to promote its purpose.”)

D.C. Code § 28-3905(k)(2)(amended to state: “The **remedies** or **penalties** provided by this chapter are *cumulative and in addition to other remedies or penalties provided by law*. Nothing in this chapter shall prevent any person who is injured by a trade practice in violation of a law of the District of Columbia . . . from exercising any right or seeking any remedy to which the person might be entitled . . .”) (thus none of the claims in the CPPA duplicate common law claims)

National Consumer Law Center, *Unfair and Deceptive Acts and Practices* § 4.2.4.1 (6th ed. 2004) (“Unless a state UDAP statute specifically provides otherwise, intent is not necessary under state UDAP statutes . . . Thus, a state court has concluded that to require proof of intent ‘would effectively emasculate the act and contradict its fundamental purpose,’ which is to avoid common law fraud proof requirements. Innocent misrepresentations are actionable under UDAP statutes.”) (footnote citing twenty six consumer statutes, including that of the District of Columbia, omitted).

Smith v. Brown & Williamson Tobacco Corp., 108 F. Supp. 2d 12, 15 n.3 (D.D.C. 2000) (“a claim for deceptive trade practices under the D.C. Code which relies “on affirmative statements or intentional omissions of material facts ‘is analogous

to [a] fraud by nondisclosure claim’ *except that intent is not an element.*”) (citations omitted)

Bob Cohen, *Right To Private Action Under State Consumer Protection Act—Equitable Relief Available*, 115 A.L.R.5th 709, 711 (2004) (“[State consumer protection acts] were . . . intended to overcome the pleadings problems associated with common law fraud claims by eliminating the requirement of proving certain elements, such as intent to deceive, scienter, and reliance. . .”)

Pennington v. Singleton, 608 S.W.2d 2d 682, 689 (Tex. Sup. J. 1980) (“The ‘laundry list’ of violations in § 17.46(b) includes only four ‘acts or practices’ under which intent or knowledge is expressly required before a violation of the Act will be found: subdivisions (9), (10), (13), and (17). n.4 The legislature obviously was aware of the ‘intent’ question since it did require intent or knowledge under these four subdivisions. Certainly if it meant for intent to be a requirement for all violations it would not have written it into four specific items without requiring it under the other subdivisions of § 17.46(b).”)

Montgomery Ward Co. v. FTC, 379 F.2d 666 (7th Cir. 1967) (merchant advertised “satisfaction guaranteed,” but contradicted his advertisement by issuing guarantee certificates with each purchase that listed specific limitations on its guarantee. Court concluded it was inherently deceptive to attach specific and limited guarantees to products that are advertised without limitation, and that **whether intentional or not** it gave the company an unfair advantage over its competitors)

Chrysler Corp. v. F.T.C., 561 F.2d 357, 182 U.S. App. D.C. 359 (1977) (an advertiser’s good faith does not immunize it from responsibility for its misrepresentations; intent to deceive is not required element for violation of FTC statute prohibiting unfair methods of competition and unfair or deceptive acts or practices in commerce)

K. The D.C.C.P.P.A. Was Amended, Effective October 19, 2000, To Authorize An Individual To Sue In The Interest Of The Public, As A Private Attorney General, And To Recover Statutory Damages

Antitrust, Trade Regulation and Consumer Affairs Section of the D.C. Bar, *Consumer Protection in the District of Columbia Following the Suspension of DCRA Enforcement of the Consumer Protection Procedures Act- Report With Recommendations* at 10 (April 1999) (Report recommending an amendment to the D.C.C.P.P.A., modeled after California Business and Professions Code Sections 17200, *et seq.*, that would remove the requirement that a person show injury as a pre-condition to suit, and instead “allow an[y] entity or individual to bring an action and seek judicial relief when an unlawful trade practice comes to its attention” was submitted to the Consumer Affairs Committee of the D.C. Council)

Council of the District of Columbia, Committee on Consumer and Regulatory Affairs, Report on Bill 13-679, Fiscal Year 2001 Budget Support Act of 2000, at p. 6 (April 26, 2000) (“The CPPA amendments would . . . provide public interest organizations *and individuals* additional abilities to take consumer protection

actions in the public interest to stop fraudulent conduct when an unlawful trade practice comes to their attention. Currently it is not possible to bring a consumer action to stop illegal conduct until *after* a victim suffers injury. The amendatory language would allow, for example, an organization that monitors fraud against the elderly to petition the court to stop a misleading and fraudulent mailing in the public interest *without waiting for a senior citizen to lose his or her life savings*. This will also allow the government to coordinate with the non-profit and private sectors more efficiently, allowing the government to leverage the impact of existing public resources and target its activities in areas where enforcement by private parties will not be sufficient. As a consequence, consumer protection can be increased without any additional, or substantial, cost to the government. . . .”) (italics in original)

Council of the District of Columbia, Committee of the Whole, Report on Bill 13-679, Fiscal Year 2001 Budget Support Act of 2000 at p. 10 (May 19, 2000) (“Section 1402 amends Title 28 of the District of Columbia Code to . . . to allow representative organizations *as well as individuals* to maintain actions to redress unfair trade practices . . .”)

D.C. Law 13-172, § 1402(b), **47 D.C. Reg. 6308** (amendment to D.C. Code § 28-3905(k)(1)(A), effective Oct. 19, 2000, so that section reads: “*A person whether acting for the interests of itself, its members, or the general public*, may bring an action under this chapter in the Superior Court of the District of Columbia seeking relief from the use by any person of a trade practice . . .and may recover or obtain the following remedies: (A) . . . \$1,500 *per violation*, . . . payable to the consumer”) (many other significant amendments as well)

People v. Dollar Rent-A-Car Systems, Inc., 211 Cal. App. 3d 119 (1989, 1st Dist.) (A violation of B & P C §§ 17200, 17500 (the unfair competition and false and misleading statements statutes), does not depend on potential customers reading a misleading contract. Such an interpretation would defeat the purpose behind the statutes, which is to protect against the likelihood of deception to the public, not just actual harm. The court may impose liability and civil penalties without individualized proof of reliance, deception, and injury.)

Hernandez v. Atlantic Finance Co., 105 Cal.App.3d 65, 70, 164 Cal.Rptr. 279, 284 (1980) (“Nor is an action on behalf of the general public, prosecuted by a private attorney general, to be confused with a class action, wherein damage to the representative plaintiff is required. . . .’An action filed by the People seeking injunctive relief and civil penalties is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of injunctive relief is to prevent continued violation of law . . .’ . . .”)

L. For Every Violation Of An Unfair Trade Practice That Is Proven, The Option Of Treble Actual Damages Is Automatically Available

District Cablevision Limited Partnership v. Bassin, 828 A.2d 714 (D.C. 2003) (treble damages are automatic if violation of CPPA is found; punitive damages may also be awarded)

Byrd v. Jackson, 902 A.2d 778 (D.C. 2006) (same)

M. The D.C.C.P.P.A. Has Its Own Requirements For Punitive Damages; Which Are Less Demanding Than Those Under The Common Law

Council of the District of Columbia, Committee on Public Services and Consumer Affairs, Report on Bill 1-253, at 2 (March 24, 1976) (“the standards the courts would use in determining [punitive damages pursuant to § 28-3905(k)(1)(c)] are the amount of actual damages awarded, the frequency, persistency, and degree of intention of the merchant's unlawful trade practice, and the number of consumers adversely affected.”) (Thus, unlike common law punitive damages, the following is not required: (1) proof by **clear and convincing evidence** of evil motive, actual malice, deliberate violence or oppression, intent to injure, or willful disregard for the rights of the plaintiff **or** (2) proof by a **preponderance of the evidence** that the defendants’ conduct was outrageous, grossly fraudulent, or reckless toward the safety of the plaintiff; **or** (3) for purposes of determining an amount of punitive damages, the relative worth of the defendant(s) at the time of trial, the nature of the wrong committed, the cost and duration of the litigation, or attorney’s fees the plaintiff has incurred)

Rowan Heating-Air Conditioning-Sheet Metal, Inc. v. Williams, 580 A.2d 583 (D.C. 1990) (contractor’s continuing failure to admit its mistakes and unwillingness to rectify situation justifies award of punitive damages under CPPA)

Taylor v. First American Title Co., 477 A.2d 227, 230 (D.C. 1984) (three judge panel of the D.C. Court of Appeals is not empowered to overrule a prior decision of another panel of the D.C. Court of Appeals; only an *en banc* court has that power – thus the panel in *District Cablevision Limited Partnership v. Bassin*, 828 A.2d 714, 727 (D.C. 2003) cannot overrule the panel in *Rowan Heating-Air Conditioning-Sheet Metal, Inc. v. Williams*, 580 A.2d 583 (D.C. 1990))

Thomas v. United States, 731 A.2d 415, 420 n.6 (D.C. 1999) (“Where a decision of this court fails to adhere to earlier controlling authority, we are required to follow the earlier decision rather than the later one.”)

N. Under The D.C.C.P.P.A. A Consumer May Elect Whether To Recover Treble His Actual Damages Or \$1,500 For Each Violation

Giordano v. Interdonato, 586 A.2d 714 (D.C. 1991) (“there is nothing objectionable in the notion that when a jury verdict sustains several alternative theories of recovery advanced by a plaintiff, the trial court must [unless plaintiff chooses otherwise] render judgment on the theory which affords the greatest recovery”)

O. “Actual Damages” Under The D.C.C.P.P.A. Includes Recovery For Time Expended Preparing for And In Litigation, Emotional Distress and Other Consequential Damages

St. Paul Fire & Marine Insurance Co. v. Updegrave, 33 Wn.App. 653, 659, 656 P.2d 1130, 1136 (1983) (“The consumer who is forced to defend an action which

is premised upon unfair and deceptive acts will generally sustain damages for purposes of the Consumer Protection Act. These damages include the consumer's inconvenience, financial considerations such as loss of time in helping prepare the case, actual time spent in court, and litigation costs for attorney's fees, filing fees, investigative expenses, and expert witness fees.")

Kish v. Todd Van Note, 692 S.W.2d 463, 466 (Texas 1985) ("actual damages" permitted by the Texas Deceptive Trade Practices Act include all damages factually established to have been caused by the deceptive practice, including related and reasonably necessary expenses)

Bank of New Orleans And Trust Company v. Phillips, 415 So.2d 973, 976 (4th Cir. 1982) ("actual damages" permitted by the Louisiana Unfair and Deceptive Trade include humiliation and mental anguish)

Osbourne v. Capital City Mortgage Corporation, 667 A.2d 1321 (D.C. 1995) (upon proof of intentional misrepresentation, a plaintiff may recover "emotional damages that are the natural and proximate result" of the defendant's conduct.)

Higgins v. Dail, 61 A.2d 38,40 (D.C. 1948) (*actual damages* include recovery for mental suffering, inconvenience and discomfort, and may be recovered for an intentional tort such as an unlawful eviction)

P. In Addition To Damages Under The D.C.C.P.P.A., The Statute Also Entitles A Consumer To Recover Damages Under Any Common Law Or Other Statutory Cause Of Action

D.C. Code § 28-3905(k)(2) ("The remedies or penalties provided by this chapter [for DCPA] are cumulative *and in addition* to other remedies or penalties provided by law.")

Kish v. Note, 692 S.W.2d 463, 467 (Texas 1985) (UDAP statute that authorizes cumulative recovery thereby permits recovery under *both* the Texas Deceptive Trade Practices Act *and* the Texas Consumer Credit Code)

Atwater v. District of Columbia Dep't of Consumer & Reg. Affairs, 566 A.2d 462 (D.C. 1989) (While the CPPA enumerates a number of specific unlawful trade practices, *see* D.C. Code § 28-3904, the enumeration is not exclusive)

Q. D.C.'s Common Law On Fraud Removes, Or Presumes, Key Elements Of Proof In A Consumer versus Entrepreneur Dispute

§ 20.05, *Standardized Civil Jury Instructions for the District of Columbia* ("The maker of a fraudulent misrepresentation is liable to the persons [he] [she] intends to influence, regardless of whether [he] [she] makes the misrepresentation to them directly or conveys the information through some other . . . means").

Hercules & Co., Ltd. v. Shama Restaurant Corp, 613 A.2d 916 (D.C. 1992) (in actions by consumers against entrepreneurs who obtain those consumers' business

or money through fraud, the requirement that reliance be reasonable has been eliminated)

R. To Recover For Common Law Fraud, Plaintiff Need Only Show That He Was Not Satisfied (And Not That Defendants Lost His Pants), And That Defendants Intended That He Rely On Their Bogus Guarantee Of Customer Satisfaction

Remeikis v. Boss & Phelps, Inc., 419 A.2d 986 (D.C. 1980) (in cases alleging a business person's misrepresentation to a consumer through a failure to disclose, proof of only four facts is required: (1) a false representation (or concealment), (2) of material fact, (3) knowingly made, (4) with intent to deceive.

S. In A Fraud Case Evidence Of Other Victims Is Always Admissible

Harris v. M&S Toyota, Inc., 575 So.2d 74, 79 (Ala. 1991) (“[P]revious similar acts . . . are admissible to show fraud, scheme, motive or intent. . . . Moreover, wide latitude is allowed with regard to testimony in fraud cases since often the perpetrator is the sole possessor of the actual knowledge of the fraud.”)

T. Conversion, As An Intentional Tort, Entitles Plaintiff To Damages For Mental Suffering, Inconvenience And Discomfort

Higgins v. Dail, 61 A.2d 38,40 (D.C. 1948) (actual damages, such as for mental suffering, inconvenience and discomfort, may be recovered for an intentional tort such as an unlawful eviction)

Smith v. Whitehead, 436 A.2d 339 (D.C. 1981) (“The elements of conversion are: (1) an unlawful exercise, (2) of ownership, dominion, and control, (3) over the personalty of another, (4) in denial or repudiation of his right to such property”)

Parker v. Stein, 557 A.2d 1319 (D.C. 1989) (in action for conversion plaintiff may recover damages for mental suffering, inconvenience and discomfort)

U. In Addition To Punitive Damages Measured By D.C.C.P.P.A. Standards, A Consumer Is Also Entitled To Recover Common Law Punitive Damages, If The Consumer Satisfies Its Demanding Standards

Jonathan Woodner Co. v. Breeden, 665 A.2d 929 (D.C. 1995), as amended 665 A.2d 1097 (1996), *cert. denied* 519 U.S. 1149 (1997) (Punitive damages, under the common law, are warranted only upon: (1) proof by **clear and convincing evidence** of evil motive, actual malice, deliberate violence or oppression, intent to injure, or willful disregard for the rights of the plaintiff **and** (2) proof by a **preponderance of the evidence** that the defendants' conduct was outrageous, grossly fraudulent, or reckless toward the safety of the plaintiff; **and** (3) for purposes of determining an amount of punitive damages, consideration of the relative worth of the defendant(s) at the time of trial, the nature of the wrong committed, the cost and duration of the litigation, or attorney's fees the plaintiff has incurred can be considered) (this is a much higher standard of proof and a

more demanding evidentiary showing than the factors and standards applied in determining an award of CPPA punitive damages: the “amount of actual damages awarded, the frequency, persistency, and degree of intention of the merchant's unlawful trade practice, and the number of consumers adversely affected.”)

Chatman v. Lawlor, 831 A.2d 395 (D.C. 2003) (affirming punitive damage award because “[w]e cannot overlook the massive scale of the fraud, which was designed to defraud not just one, but 297 persons.”)

Muldrow v. Re-Direct, Inc., 2005 U.S. Dist. LEXIS 41541 (“Malice” includes ‘recklessness, wantonness, oppressiveness, willful disregard of the plaintiff's right, or other circumstances tending to aggravate the injury)

Philip Morris, USA v. Williams, 127 S. Ct. 1057, 1068 (2007) (whether a defendant’s conduct risked, or caused, harm to others may be considered in determining the reprehensibility of defendant’s conduct and consequently the appropriate amount of punitive damages in the case at bar; it is not a penalty for defendants’ earlier conduct but a stiffened penalty for defendants’ latest conduct)

V. The Elements of Proof For Civil Fraud Are The Same As Those For Criminal Fraud And Advertising Fraud, So Those Criminal Penalties Are Relevant To The Calculation of Common Law Punitive Damages

D.C. Code § 22-3221(a) & (c) (“(a) Fraud in the first degree. -- A person commits the offense of fraud in the first degree if that person *engages in a scheme or systematic course of conduct with intent to defraud or to obtain property of another by means of a false or fraudulent pretense, representation, or promise and thereby obtains property of another* or causes another to lose property. . . . (c) False promise as to future performance. -- Fraud may be committed by means of false promise as to future performance which the accused does not intend to perform or knows will not be performed. . . .”)

D.C. Code § 22-3222(a)(1) (“(a) Fraud in the first degree. (1) Any person convicted of fraud in the first degree shall be fined not more than \$5,000 or 3 times the value of the property obtained or lost, whichever is greater, or *imprisoned for not more than 10 years*, or both, if the value of the property obtained or lost is \$250 or more;. . .”)

D.C. Code § 22-3601(a) & (b) (“(a) Any person who commits any offense listed in subsection (b) of this section against an individual who is 60 years of age or older, at the time of the offense, *may be punished by a fine of up to 1 1/2 times the maximum fine otherwise authorized for the offense and may be imprisoned for a term of up to 1 1/2 times the maximum term of imprisonment otherwise authorized for the offense*, or both. (b) The provisions of subsection (a) of this section shall apply to the following offenses: . . . fraud in the first degree, and fraud in the second degree”)

D.C. Code § 22-1511 (“It shall be unlawful in the District of Columbia for any person, . . . either directly or indirectly, to display or exhibit to the public in any manner whatever, . . . any false, untrue, or misleading statement, representation,

or advertisement with intent to sell . . . anything of value . . . ; or use any of the aforesaid methods with the intent or purpose to deceive, mislead, or induce any other person, firm, or corporation for a valuable consideration to employ the services of any person, . . . so advertising such services.”)

D.C. Code § 22-1513 (“Any person, firm, or association violating any of the provisions of § 22-1511 shall upon conviction thereof, be punished by a fine of not more than \$ 500 or by imprisonment of not more than 60 days, or by both fine and imprisonment, in the discretion of the court. A corporation convicted of an offense under the provisions of § 22-1511 shall be fined not more than \$ 500, and its president or such other officials as may be responsible for the conduct and management thereof shall be imprisoned not more than 60 days, in the discretion of the court.”)

W. Court Filings That Contain Admissions Are Admissible As Such, Whether Authored By a Party Or Their Counsel

Harris v. United States, 834 A.2d 106, 115 (D.C. 2003) (“We have adopted the substance of Federal Rule of Evidence 801 (d)(2) on 'admission by party-opponent,' and deem such statements to be admissible into evidence. [citation omitted] Rule 801 (d)(2) applies to out-of-court statements offered against a party that are:(A) the party's own statement in either an individual or representative capacity . . . or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship. . . .”)

Sherman J. Clark, *To Thine Own Self Be True: Enforcing Candor in Pleading Through the Party Admissions Doctrine*, 49 Hastings L.J. 565 (1998) (“Statements made by counsel on behalf of a party in the context of pre-trial pleadings are paradigmatic examples of party admissions in that they are made ‘by a person authorized by the party to make a statement concerning the subject.’ Lawyers engaged in civil litigation are not merely authorized to make statements on behalf of their clients, they are hired specifically to do so.”)

X. The CPPA Authorizes A Statutory Permanent Injunction And Relieves Plaintiff From Common Law Equitable Requirements For A Permanent Injunction

D.C. Code § 28-3905(k)(a)(D) (“A person, whether acting for the interests of itself, its members, or the general public, may bring an action under this chapter in the Superior Court of the District of Columbia seeking relief from the use by any person of a trade practice in violation of a law of the District of Columbia and may recover or obtain the following remedies: . . . (D) an injunction against the use of the unlawful trade practice”)

“[T]he courts have consistently held that at least where a discontinued deceptive trade practice could be resumed, the prior practice may be the subject of a cease and desist order.” *Beneficial Corp. v. F.T.C.*, 542 F.2d 611, 617 (3d Cir.1976), *cert. denied*, 430 U.S. 983, 97 S.Ct. 1679, 52 L.Ed.2d 377 (1977). *Accord Lee v.*

F.T.C., 679 F.2d 905 (D.C.Cir.1980); *F.T.C. v. Gibson Products*, 569 F.2d 900 (5th Cir.1978); *Feil v. F.T.C.*, 285 F.2d 879 (9th Cir.1960). Although some cases involving Federal Trade Commission decisions have stated that there is an outer limit to the Commission's discretion to issue orders with respect to discontinued trade practices, these cases involved practices which had been discontinued long before the Commission's complaint was filed. *See, e.g., Rodale Press, Inc. v. F.T.C.*, 407 F.2d 1252 (D.C. Cir. 1968) (four years).

Maldonado v. Maldonado, 631 A.2d 40, 42 (D.C. 1993) (trial court abused its discretion by not granting motion to extend civil protection order; trial court based its ruling on the fact that the husband would be incarcerated and he would not be released on parole until after the date the extended CPO would expire; appellate court reversed because the Interfamily Offenses Act is a remedial statute and should be liberally construed for the benefit of the class it is intended to protect; thus appellate court concluded that because the husband could theoretically become eligible for a furlough that would release him 30 days before the extended CPO would expire, the trial court abused its discretion) *Id.* at 45 (Schwelb, J., concurring) (Objecting to majority's reliance on speculation, because "[w]e are dealing here with the extension of an injunction.")

Plaintiff does not have to elect between money damages and injunctive relief. D.C. Code § 28-3905(k)(2) was amended, effective October 19, 2000, to provide: "the remedies or penalties provided by this chapter are cumulative. . . ."

D.C. Code § 28-3901(c) ("This chapter [CPPA] *shall* be construed and applied *liberally* to promote its purpose."); D.C. Code § 28-3901(b)(1) ("The purposes of this chapter are to: (1) assure that a just mechanism exists to . . . *deter the continuing use* of such practices;");

Y. A Special Finding That Defendants' Wrongful Acts In This Case Necessarily Cause Injury, Without Just Cause Or Excuse, Is Necessary To Prevent Discharge Of The Money Judgment Of This Court By A Bankruptcy Court

11 U.S.C. § 523(a)(6) (makes debts arising out of "willful and malicious injury by the debtor" nondischargeable in Chapter 7 cases)

Kwaauhau v. Geinger, 523 U.S. 57 (1998) (Debts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6). Debt must arise from an act that was done with the actual intent to cause injury, such as an intentional tort.)

Consumer Bankruptcy Law and Practice § 14.4.3.6, *National Consumer Law Center* (7th ed. 2005) ("Most courts have adopted a definition of willful and malicious injury as one which involves the intentional doing of a wrongful act, which necessarily causes injury without just cause or excuse.")

Graves v. United States, 515 A.2d 1136, 1139 (D.C. 1986) ("Criminal intent has been defined 'as that state of mind which negatives accident, inadvertence or casualty.'" (citation omitted)

Z. A Pro Se Attorney Must Be Awarded Reasonable Attorneys' Fees, At His Market Rate, For All Time On D.C.C.P.P.A.-Related Claims

D.C. Code § 28-3901(a)(1) (“As used in this chapter, the term --(1) ‘person’ means an individual, firm, corporation, partnership, cooperative, association, or any other organization, legal entity, or group of individuals however organized”)

D.C. Code § 28-3905(k)(1) (“A person, whether acting for the interests of itself, its members, or the general public, may bring an action under this chapter in the Superior Court of the District of Columbia seeking relief from the use by any person of a trade practice in violation of a law of the District of Columbia and may recover or obtain the following remedies: (A) treble damages, or \$ 1,500 per violation, whichever is greater, payable to the consumer; (B) reasonable attorney's fees . . .”)

D.C. Code § 28-3901(c) (“This chapter shall be construed and applied liberally *to promote its purpose[s]*.”)

D.C. Code § 28-3901(b)(1) (“The purposes of this chapter are to: (1) assure that a just mechanism exists to remedy all improper trade practices . . . and (3) educate consumers to . . . seek proper redress of grievances.”)

Wexler v. Brothers Entertainment Group, Inc., 457 N.W.2d 218 (Minn. App. 1990) (*pro se* attorney is entitled to costs and attorneys' fees on a consumer protection claim **because he is acting as a private attorney general**)

District Cablevision Limited Partnership v. Bassin, 828 A.2d 714, 727 (D.C. 2003) (analogizing purpose of treble damage and attorney fee award in CPPA to federal statutes that are intended to bring to bear the pressure of “private attorney generals”)

Alexander v. D.C. Rental Housing Commission, 542 A.2d 359 (D.C. 1988) (affirming award of attorneys' fees to *pro se* attorney under Rental Housing statute permitting court or agency to “award reasonable attorney fees to the prevailing party”)

Tenants of 2301 E Street, N.W. v. District of Columbia Rental Housing Commission, 580 A.2d 622, 627 (D.C. 1990) (“**The purposes of the statutory provision for counsel fees are to encourage tenants to enforce their own rights** and attorneys to accept the cases of non-affluent tenants.”)

Greene v. Gibraltar Mortg. Invest. Corp., 529 F. Supp. 186 (D.D.C. 1981) (award of attorneys' fees to plaintiff is mandatory when liability under DC.C.P.P.A. is established)

Laffey Matrix, http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_6.html (After many years of wrangling over the matter of attorney fee hourly rates, the D.C. Circuit in *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354, 371 (D.D.C. 1983), ruled that hourly rates for attorneys practicing civil law in the Washington, DC metropolitan area could be categorized by years in

practice and adjusted yearly for inflation. The U.S. Attorney for the District of Columbia maintains a web page with that information. Attorneys with more than twenty years of experience are entitled to attorney fees at a rate of at least \$425 per hour as of June 1, 2006)

Debra E. Wax, Annotation, *Award Of Attorneys' Fees In Actions Under State Deceptive Trade Practice And Consumer Protection Acts*, 35 A.L.R.4th 12, 16 (1985) (“the fees to be awarded must be reasonable, based upon an objective valuation of the services rendered, without regard to the amount in controversy”)

LaFerney v. Scott Smith Oldsmobile, Inc., 410 So.2d 534, 536 (Fla. 1982) (“If, because of the small sums involved, consumers cannot recover in full their attorney fees, they will quickly determine it is too costly and too great a hassle to file suit, and individual enforcement of this act will fail.”)

Cf. Rotella v. Wood, 528 U.S. 549, (2000) (“Both [civil RICO and the Clayton Act] share a common congressional objective of encouraging civil litigation to supplement Government efforts to deter and penalize the respectively prohibited practices. The object of civil RICO is thus not merely to compensate victims but to turn them into prosecutors, ‘private attorneys general,’ dedicated to eliminating racketeering activity.”)

Defendants’ Citations –

- Only claims included in Plaintiff’s Amended Complaint may be prosecuted at trial. *Adler v. Abramson*, 728 A.2d 86, 91-92 (D.C. 1999).
- The doctrine of “law of the case” provides that when the Court has ruled on an issue with finality in a case, that same issue may not be asserted again to the Court in the same case, even if the renewed motion is brought to a new judge presiding over the same case. *Olafisoye v. United States*, 857 A.2d 1078, 1085 (D.C. 2004). Therefore, Plaintiff may not renew Motions already decided in this case by Judge Kravitz.
- A *pro se* attorney is not entitled to an award of attorneys fees. *Washburn v. Washburn*, 475 A.2d 410, 412-413 (D.C. 1984); *McReady v. Dept. of Consumer and Regulatory Affairs*, 618 A.2d 609, 614-615 (D.C. 1992).
- An award of attorneys fees is discretionary under the CPPA. *Ramos v. Dept. of Consumer and Regulatory Affairs*, 601 A.2d 1069, 1071-1072 (D.C. 1992), citing *District Cablevision Ltd. P’ship v. Bassin*, 828 A.2d 714 (D.C. 2003).
- The award of treble damages is up to the discretion of the Court and is not automatic. *Jackson v. Byrd*, 2004 WL 3249693, 1 (D.C. Super. 2004), citing *District Cablevision Ltd. P’ship v. Bassin*, 828 A.2d 714, 728-729 (D.C. 2003).

J. Pending Motions

Plaintiff's Motion Addressing Trial-Related Matters (filed January 22, 2007)

Plaintiff's Motion For The Immediate Scheduling Of A Trial Date (filed Feb. 6, 2007)

Defendants' Motion In Limine (filed January 22, 2007)

Defendants' Motion for Interpreter (filed January 22, 2007)

K. Witnesses

Plaintiff

- Witness List attached as Exhibit 1 [including the summary of certain witnesses' testimony ordered by Judge Kravitz in his order of October 3, 2006]

Defendants

Jin Nam Chung
14061 Breeders Cup Drive
Gainesville, Virginia 20155

Soo Chung
14061 Breeders Cup Drive
Gainesville, Virginia 20155

Ki Y. Chung
14061 Breeders Cup Drive
Gainesville, Virginia 20155

Robert King
1322 Irving Street, NE
Washington, DC 20017

Saymندی Lloyd
132 Irving Street, NE
Washington, DC 20017

Roy L. Pearson, Jr.
3012 Pineview Court, NE
Washington, DC 20018

L. Exhibit Summary

Plaintiff's Exhibit Summary Forms, attached as Exhibit 2

Defendants' Exhibit Summary Form, attached as Exhibit 3 (if received)

M. Depositions

None.

N. Pleadings and Discovery Responses:

Plaintiff -

Discovery responses are listed as exhibits in Plaintiff's Exhibit Summary forms

Verified Complaint For Violation of D.C. Consumer Protection Procedures Act And Other Claims (June 7, 2005)

Amended Verified Complaint For Violation of D.C. Consumer Protection Procedures Act And Other Claims (July 21, 2005)

Answer (July 27, 2005)

[Defendants'] Opposition To Plaintiff's Statement Of Undisputed Facts In His Renewed Motion For Partial Summary Judgment (filed April 19, 2006)

Plaintiffs' First Requests For Admissions To All Defendants (served on October 17, 2005)

Defendants' Responses To Plaintiff's Second Request For Admissions (March 1, 2005)

Motion To Compel Answers To Interrogatories In Manner That Complies With Intent Of November 22, 2005 Court Order (Nov. 29, 2005)

Plaintiff's Motion To Compel Full Responses To Second Request To Soo Chung For Production Of Documents (Nov. 29, 2005)

Plaintiff's Motion For Protective Order (Dec. 12, 2005)

Renewed Motion To Sanction Defendants For Their Continued Refusal To Comply With Orders Compelling Discovery (March 2, 2006)

Reply To Opposition To Renewed Motion To Sanction Defendants For Their Continued Refusal To Comply With Orders Compelling Discovery (March 14, 2006)

Opposition To Defendants' Motion To Reconsider Court's January 6, 2006 Order Granting Plaintiff's Motion For Protective Order (April 4, 2006)
Order Granting In Part And Denying In Part "Defendants' Motion To Dismiss And/Or For Summary Judgment" (May 16, 2006)

Defendants' Motion In Limine (Aug. 28, 2006)

Defendants -

Verified Complaint For Violation of D.C. Consumer Protection Procedures Act And Other Claims (June 7, 2005)

Amended Verified Complaint For Violation of D.C. Consumer Protection Procedures Act And Other Claims (July 21, 2005)

Answer (July 27, 2005)

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Reply To Opposition To Renewed Motion To Sanction Defendants For Their Continued Refusal To Comply With Orders Compelling Discovery (March 14, 2006)

Opposition To Defendants' Motion To Reconsider Court's January 6, 2006 Order Granting Plaintiff's Motion For Protective Order (April 4, 2006)

Defendants' Statement of Facts for its Motion for Summary Judgment

Plaintiff's Motion for Trial by Jury

Order Denying Plaintiff's Motion for Trial By Jury

Plaintiff's Renewed Motion for Trial by Jury

Order Denying Plaintiff's Renewed Motion for Trial by Jury

Plaintiff's Motion in Limine and to Modify July 28 Order

Order Granting in Part and Denying Part "Plaintiff's Motion in Limine and to Modify July 28 Order"

Opposition to Defendants' Motion in Limine

Order Denying Without Prejudice Defendants' Motion in Limine

Plaintiff's Statement Regarding Defendants' Motion in Limine

Order re: Plaintiff's Statement Regarding Defendants' Motion in Limine

Plaintiff's Motion to Amend and Supplement Complaint

Order Denying Plaintiff's "Motion to Amend and Supplement Complaint"

Plaintiff's Statement Regarding "Order Denying Plaintiff's Motion to Amend and Supplement Complaint"

Any Pleadings and discovery responses offered by Plaintiff.

O. Demonstrative or Physical Evidence:

Plaintiff- Listed in *Plaintiff's Exhibit Summary*, with asterisks

Defendants- Roy Pearson Claim Ticket (Def's Ex.1), Roy Pearson Pants (Def's Ex. 2), Back of Standard Receipt (Def's Ex. 3).

P. Videotapes:

None. Plaintiff's DVD is listed in Plaintiff's Exhibit Summary Form.

Q. Requested Voir Dire Questions:

Not Applicable.

R. List of Standard Jury Instructions Requested:

Not Applicable.

S. Non-Standard Jury Instructions:

Not Applicable.

T. Verdict Form:

Not Applicable.

U. Settlement:

Minimum Demand: (1) A net lump sum of \$400,000 [i.e., plaintiff must net \$400,000 after all taxes plaintiff may be liable for on the settlement payment have

been paid] cash or certified check payment [this net-of-taxes settlement demand increases to \$425,000 on April 1, 2007, and by an additional \$25,000 [after payment of taxes] on the 1st of each month thereafter (until 8 a.m. on the day scheduled for trial, at which point plaintiff will no longer entertain a settlement); and (2) defendants' agreement to move with plaintiff for the immediate entry of a permanent injunction requiring the immediate removal of, and/or barring the return of, unfair and deceptive signs stating "SATISFACTION GUARANTEED," "ALL WORK DONE ON PREMISES" or "SAME DAY SERVICE" at 3174-1/2 Bladensburg Road, N.E.

Maximum Offer: \$10,000

V. Estimated Length of Trial:

It is difficult to estimate the length of the bench trial and related hearing(s) in this case, because they may take place in two, or even three, stages. In an order dated May 16, 2006, Judge Kravitz *sua sponte* ruled that the trial would be bifurcated into: (a) a determination of defendants' **liability** for punitive damages, (b) followed by a recess (if necessary to permit discovery into defendants' finances) and then a trial on whether, and what **amount** of punitive damages⁵, should be awarded:

. . . the best way to proceed is to defer any ruling on the scope of discovery relating to punitive damages until the Court has made a determination at trial whether the plaintiff has proved his entitlement to punitive damages. . . . If such a determination is made at trial, then the Court will consider what, if any, additional discovery the plaintiff is entitled to conduct, and the Court will give the parties an appropriate period of time to conduct that discovery before the trial resumes on the question of whether punitive damages are to be awarded and, if so, in what amount.

Additionally: (1) the D.C. Consumer Protection Procedures Act statute under which the plaintiff is proceeding entitles him to an award of reasonable attorneys' fees and (2) plaintiff is seeking a permanent injunction. Moreover, the parties may seek a special finding on the issue of whether any damages awarded plaintiff compensated for willful and malicious injury by one or more defendants. Thus, some sort of post-trial evidentiary hearing may be necessary for the court to determine these issues.

Trial and hearing time of 3-4 different days over a one month period is therefore probable.

⁵ Discovery into defendants' finances is relevant to computing an amount of *common law punitive damages*, but is not relevant to computing an amount of *statutory punitive damages*. *Rowan Heating-Air Conditioning-Sheet Metal, Inc. v. Williams*, 580 A.2d 583, 586 (D.C. 1990) ("the standards the courts would use in determining [punitive damages pursuant to § 28-3905(k)(1)(c)] are the amount of actual damages awarded, the frequency, persistency, and degree of intention of the merchant's unlawful trade practice, and the number of consumers adversely affected.") Thus, a ruling on the amount of *statutory punitive damages* can be made before the recess for the conduct of discovery on defendants' finances – which is relevant only to computing an amount of *common law* punitive damages.