

Nos. 132430, 132511, consolidated

In the
Supreme Court of Illinois

JEFFREY WILSON,

Plaintiff-Petitioner,

v.

NAPLETON'S GOLDCOAST IMPORTS, INC.,
d/b/a Napleton's Aston Martin of Chicago,

Defendant-Respondent.

Appeal from the
Appellate Court of Illinois, Third District, No. 3-24-0079
There heard on appeal from the Circuit Court of the
Eighteenth Judicial Circuit, DuPage County, Illinois
No. 2018L001245
The Honorable David E. Schwartz, Judge Presiding

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INTRODUCTION

This is a case about damages run amok. Jeffrey Wilson leased a high-end sports car, enjoyed it until he exceeded the 25,000-mile limit on his lease, and decided to trade it in. At trial, Wilson’s expert testified that the diminished value of the car was between \$6,000 and \$40,000. R.1109-11. The trial court agreed with that figure and found that Wilson suffered “little if no actual damage” and was a “relatively undamaged plaintiff.” A.67; C.11628

Despite that, the jury awarded Wilson \$1,163,544 in compensatory and punitive damages on his common law fraud claim (Count I). The trial court attempted to remit that award. But even the reduced damages of \$74,616 in out-of-pocket costs and \$25,000 in “aggravation and inconvenience” (which the trial court also awarded on Count II) and \$400,000 in punitive damages are disproportionately high. *See* A.66-68; C.11627-29. Napleton asks this Court to correct the legal errors committed below and remand this case for a new trial. Napleton also asks the Court to clarify the law and provide clear guidance to Illinois courts to assure that damages awards bear a logical relationship to a plaintiff’s actual injury.

ARGUMENT

I. Retrial Is The Proper Remedy In This Case.

The law with respect to remittitur is well-settled and undisputed. Remittitur is an offer by the trial court to a plaintiff, which must be accepted by the plaintiff to become effective. *See Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill.2d 218, 253-54 (2006). The plaintiff can either accept the

remittitur, or, if the remittitur is not accepted, the trial court must order a new trial. *Id.* at 253-54.¹

Here, the trial court remitted the damages awarded on Count I (common law fraud) without Wilson’s consent. Wilson did not silently acquiesce. Quite the opposite: between October 31, 2023 (when the trial court announced its remittitur) and January 18, 2024 (when the trial court entered final judgment), Wilson objected to the remittitur at every possible opportunity and argued the trial court “erred by reducing the jury’s award.” C.11649; *see also* C.11648-62, 11938-54. Wilson does not dispute this.

Because Wilson did not consent to the remittitur, the trial court should have ordered a new trial. Instead, on January 18, 2024, the trial court entered a final judgment incorporating the remitted damages amounts. The appellate court should have remedied that error by remanding for a new trial. Instead, it vacated the damages award on Count I and remanded to give Wilson a further opportunity to consent to the remittitur. There are numerous problems with the appellate court’s approach, as set forth in Napleton’s Opening Brief. *See* Op. Br. at 20-24. Notably, Wilson’s response does not defend the appellate court’s choice of remedy or address any of Napleton’s arguments on this issue.

Instead, Wilson tries to fashion his own remedy. He contends this Court can (and should) ignore the trial court’s failure to obtain his consent. According

¹ *See Bauer v. Mem’l Hosp.*, 377 Ill. App. 3d 895, 924 (5th Dist. 2007); *Luye v. Schopper*, 348 Ill. App. 3d 767, 779 (1st Dist. 2004); *Peter J. Hartmann Co. v. Capitol Bank & Tr. Co.*, 353 Ill. App. 3d 700, 711 (1st Dist. 2004).

to Wilson, that issue became moot when Napleton filed its notice of appeal. Wilson also contends this Court should review the trial court's remittitur on its merits. Wilson's arguments are unsupported by authority, contrary to established law, and would generate arbitrary and inequitable outcomes.

Wilson's first contention makes no sense. According to Wilson, the very act of appealing the trial court's judgment has the effect of mooting the trial court's error. If Wilson was correct (and he is not), parties aggrieved by an improvidently granted remittitur would be left with *no* appellate remedy for the trial court's error. That is not the law in Illinois, and the authorities cited by Wilson do not stand for that proposition. Neither *Diaz v. Legat Architects, Inc.*, 397 Ill. App. 3d 13, 44-45 (1st Dist. 2009), nor *Haid v. Tingle*, 219 Ill. App. 3d 406, 415 (1991), hold that a defendant's appeal of verdict renders a remittitur moot.

Wilson's second contention is equally meritless. Wilson argues that remanding this case for a new trial somehow operates to deprive him of his right to secure review of the trial court's remittitur. But Napleton has never argued that Wilson's ability to appeal the remittitur is foreclosed, only that this Court need not reach the issues raised by Wilson because a new trial is the proper remedy. Moreover, Wilson is asking this Court to render an advisory opinion. A trial court cannot unilaterally order a remittitur. *See Tri-G, Inc.*, 222 Ill.2d at 253-54. Thus, there is no valid or effective remittitur order in this case to be reviewed. *See* A.116, ¶ 41.

The authorities cited by Wilson are inapposite. As the appellate court noted, *Congregation of the Passion, Holy Cross Province v. Touche, Ross & Co.*, 224 Ill. App. 3d 559, 590 (1st Dist. 1991), *Foster v. Springfield Clinic*, 88 Ill. App. 3d 459, 460 (4th Dist. 1980), and *Haid*, 219 Ill. App. 3d at 415, all arose under circumstances vastly different from this case. See A.114-17, ¶¶ 36-41.² Under the particular circumstances of those cases, the reviewing courts found it was appropriate to exercise their discretionary power to review the merits of the lower courts' remittiturs. Wilson overlooks the specific facts in those cases and instead suggests a blanket rule to the effect that "merits review" is the correct remedy in **every** case involving improper remittitur. As the appellate court noted, those cases do not stand for that proposition, and such review is not proper here. A.114-17, ¶¶ 36-41.

Under the circumstances present in this case, the only sensible remedy is the one proposed by Napleton, *i.e.*, remanding for a new trial because Wilson refused to consent to the remittitur.

First, Napleton's approach is consistent with this Court's prior jurisprudence. When comes to remittitur, the law places obligations on both trial courts and plaintiffs. This Court has previously held that a new trial is mandated if "the plaintiff objects **or does not consent.**" See *Tri-G*, 222 Ill.2d

² See A.116-17, ¶ 41 (In those cases, "the mathematical basis for the remitted amount was clear, restoration of the jury award would have been of no practical effect, or it was certain that the defendant would have declined to initiate an appeal.") (internal citations omitted).

at 353-54 (emphasis added). Put another way, anything other than clear consent to the remittitur is deemed to be rejection. This Court should reaffirm that a plaintiff must either consent to remittitur or face a retrial – regardless of whether the trial court asks for the plaintiff's consent or not.

Second, Napleton's approach is consistent with the undisputed evidentiary record below. Between October 31, 2023 and January 18, 2024, Wilson consistently objected to the remittitur. C.11648-62, 11938-54. That is the opposite of consent. In his response, Wilson tries to blame the trial court for his conduct. Resp. at 31-32. But that argument does not work. While the trial court never squarely asked Wilson for his consent, that does not somehow exonerate Wilson. Ignorance of the law is not an excuse; litigants and counsel are presumed to know the law. *McIntosh v. Walgreens Boots All., Inc.*, 2019 IL 123626, ¶ 39. Moreover, Wilson knew the law on this issue. He continued objecting to the remittitur long after Napleton put him on notice that non-acceptance would lead to a new trial. See SA.21-24, 27-28, SA.49-52; R.1876-79, 1882-83, 1917-20; C.11635-36, 11902-05, 12161-62. Wilson made his choice. He cannot avoid the consequences of that choice by blaming the trial court.

Third, Napleton's proposed remedy is consistent with the well-established rule that parties may not induce, invite, or acquiesce in judicial error, and then take advantage of that error. See *People v. Quezada*, 2024 IL 128805, ¶ 59; *Direct Auto Ins. Co. v. Bahena*, 2019 IL App (1st) 172918, ¶ 36. Here, Wilson knew the trial court was committing error and took advantage of

that fact. In his response, Wilson argues the invited error doctrine does not apply because the trial court's judgment was entered on October 31, 2023, *i.e.*, the same day the trial court announced its remittitur. *See* Wilson Resp. at 30. That is misleading. The trial court entered a non-final judgment on October 31, 2023, but the ***final*** judgment was not entered until January 18, 2024. C.12229. During the 2½ months between those dates, Wilson had ample opportunity to consent to the remittitur. He chose instead to object.

Wilson also tries to point the finger at Napleton, and notes that Napleton also objected to the remittitur. Resp. at 30-31. Respectfully, so what? Napleton is the defendant, and Napleton's consent was not required for an effective remittitur. *See Tri-G, Inc.*, 222 Ill.2d at 253-54. Napleton was well within its rights to object to any award of damages, including an award in the remitted amount.

II. This Court Should Find That Wilson Is Limited To Benefit-Of-The-Bargain Damages Because He Kept The Car.

In Illinois, a plaintiff may either: (1) rescind a fraudulent transaction; or (2) affirm a fraudulent transaction. If the plaintiff elects to rescind (*i.e.*, returns the product at issue), he may recover his out-of-pocket costs. If the plaintiff elects to affirm (*i.e.*, keeps the product at issue), he may recover benefit-of-the-bargain damages (*i.e.*, the difference between the actual value of the product and the value as falsely represented). It is an "either/or" proposition. Allowing a plaintiff to keep the product and receive his money

back amounts to a double recovery.³ Based on that law, the lower courts should have limited Wilson to benefit-of-the-bargain damages on both Counts I and II. They erred in permitting him to pursue and recover out-of-pocket costs.

Importantly, *Wilson does not dispute the law on this issue* or offer any principled argument to change the law on this issue. Nor does he cite a single decision in which an affirming plaintiff was allowed to recover its out-of-pocket costs, or in which a rescinding plaintiff was permitted to recover benefit-of-the-bargain damages.

Instead, Wilson argues that the law on this issue should not apply to him. As the Seventh Circuit famously noted, parties can “can go hunting for relief on appeal with a rifle or a shotgun. The rifle is better.” *Gagan v. Am. Cablevision, Inc.*, 77 F.3d 951, 955 (7th Cir. 1996). Wilson brought his shotgun to this Court. Instead of developing a single principled argument for why he should be allowed to keep the Aston Martin *and* get his money back, Wilson offers a series of arguments in rapid-fire fashion, hoping that perhaps one will capture the Court’s attention. None of them should.

First, Wilson now contends he did not affirm his lease of the Aston Martin. But Wilson took the exact opposite position below:

³ See *Beaton & Assoc., Ltd. v. Joslyn Mfg. & Supply Co.*, 159 Ill. App. 3d 834, 844 (1st Dist. 1987), recognized as superseded on other grounds, *Royal Imperial Grp., Inc. v. Jos. Blumberg & Assoc., Inc.*, 240 Ill. App. 3d 360, 365 (1st Dist. 1992); *Giammanco v. Giammanco*, 253 Ill. App. 3d 750, 758-763 (2d Dist. 1993) (recognizing two measures of damages in fraud actions – “out of pocket” and “benefit of the bargain”); *Verdonck v. Scopes*, 226 Ill. App. 3d 484 (2d Dist. 1992).

THE COURT: Okay. Then let me turn to Mr. McJessey because I think in the pleadings and a response somewhere Mr. McJessey specifically said he agrees Plaintiff has to either rescind or affirm. And in this case Plaintiff is affirming, not rescinding. Correct?

MR. MCJESSEY: Plaintiff sued for actual damages, not rescission. Correct, Your Honor.

R.99. Not surprisingly, the trial court found Wilson had affirmed his lease:

- “I need to figure out where we are going to go with the consequential damages now that we’ve decided that this is an affirmation instead of a rescission.” R.137
- “I don’t necessarily accept the argument that you couldn’t rescind. I am going to accept this as an affirmation of the contract.” R.184

The trial court’s finding that Wilson affirmed the lease was correct.

Wilson never sought to rescind. Instead, he kept the car, stopped all efforts to sell it, and voluntarily made 2½ years of additional payments on the car. R.903, 1146. At lease end, it was Napleton – not Wilson – who paid off the lease. R.905, 1149-51. Wilson cannot now claim he never affirmed the lease.

Second, Wilson argues that rescission was “impossible” because he leased the Aston Martin from PFS instead of buying it outright from Napleton. Resp. at 36-37. The trial court did not accept that excuse. *See* R.184. This Court should not accept it, either. Wilson had an “open ended” lease that allowed him to sell the car at any point during the lease term.⁴ *See* A.38-42; C.12776-80. At trial, Wilson boasted about this aspect of the lease.

⁴ Wilson wanted this arrangement because he typically leased high-end cars, kept them for 2-3 years, and then traded them in for something new. R.881, 1117.

Q. So, you couldn't keep driving the car at that rate after April; right?

A. I could. But I chose not to. That's the great thing about the open-ended lease. It was my prerogative whether I held the car for six months or five years. As long as it maintained its resale value and someone was willing to pay, I could trade it in whenever that was.

R.886. In short, Wilson could sell the car at any point during his lease term – to Napleton or anyone else.

In addition, the transaction that Wilson now claims was “impossible” was not only possible – *it actually happened*. At the end of Wilson's lease, Napleton made the \$60,000 payoff to PFS and reacquired the Aston Martin (thus releasing Wilson from any lease-end obligations). R.905, 1149-50. That same transaction could have occurred – if Wilson so desired – in 2018 rather than 2021.

Third, Wilson tries to argue that his election to keep the Aston Martin was not voluntary; rather it was foisted upon him because it was “impossible” to sell the car. Here again, Wilson's current argument stands at odds with his testimony below, where Wilson candidly admitted that he stopped all efforts to sell the car once he decided to sue Napleton in 2018.

Q. And it was your decision to not continue to try to sell the car because you were pursuing a lawsuit; right?

A. Yes

R.903; *see also* 1146.

In his response, Wilson relies heavily on the testimony of George Chapes, an Arizona dealer who supposedly “shopped the hell out of the Aston

Martin” in 2020. Resp. at 37, citing R.810-11. But Chapes’ testimony did not survive cross-examination. Chapes admitted he contacted only 2-3 people about the car. He was also impeached with prior testimony that he never even inspected the car. R.815-18. His efforts were marginal at best.

Wilson also cites a ***portion*** of the testimony of his expert, Robert Isham. Isham testified that the market for exotic cars (*e.g.*, Aston Martins) is smaller than the market for non-exotic cars (*e.g.*, Hondas, Toyotas, Fords). Isham also testified it is more difficult to sell an exotic car with an accident history. Neither of those points is surprising. But Wilson left out the key part of Isham’s testimony. Isham did ***not*** testify that Wilson’s Aston Martin was unsellable. Rather, he testified that the market price for the Aston Martin was \$95,000-\$100,000 (at lease inception in 2015) and \$54,000 (at lease end in 2020). R.1109-11; A.38-44; C.12776-82. In other words, Wilson could have sold the car if he reduced the price between \$6,000 and \$40,000. R.1109-11; A.67; C.11628.

Finally, Wilson suggests he should be allowed to recover his out-of-pocket costs because he sought those damages when he filed his complaint in 2018. Wilson Resp. at 35-36. But that approach (which was embraced by the appellate court) ignores the reality that Wilson made his election to affirm *before* he filed this lawsuit. By the time he filed his complaint, Wilson had already decided to keep the car and stopped his efforts to sell it. *See* R.903, 1146-47. Thus, his complaint sought damages to which he was not entitled.

Moreover, if accepted by this Court, Wilson’s approach would rewrite the law on this issue. Wilson contends a plaintiff who pleads a right to recover out-of-pocket costs in his complaint should be permitted to recover those damages – regardless of whether he affirms the transaction. That conflicts with Illinois’ well-established body of caselaw, cited above, which holds the correct measure of damages is dictated by a plaintiff’s **conduct** (*i.e.*, affirming or rescinding the transaction) rather than a plaintiff’s **pleading**. Wilson’s approach to this issue would open the door to plaintiffs securing double recoveries through creative pleading.

III. This Court Should Find That “Aggravation And Inconvenience” Damages Are Not Recoverable In Common Law Fraud Or Under The Consumer Fraud Act.

On the issue of “aggravation and inconvenience” damages, the appellate court created new law. Admittedly, “aggravation and inconvenience” damages have been awarded previously, but only a handful of times, in limited amounts, and with virtually no discussion or analysis. This Court should find that such damages are not recoverable in actions under the Consumer Fraud Act, 815 ILCS 505/10a(a), or in common law fraud claims.

A. This Court Should Reiterate That Non-Pecuniary Damages Are Not Recoverable In Common Law Fraud Actions.

In Illinois, “fraudulent misrepresentation has been historically treated as purely an economic tort under which one may only recover damages for pecuniary harm.” *Doe v. Dilling*, 228 Ill.2d 324, 343 (2008); *see also Bonhomme*

v. St. James, 2012 IL 112393, ¶¶ 35-37; *Kim v. State Farm Mut. Auto Ins. Co.*, 2021 IL App (1st) 200135, ¶ 43.

Wilson seeks to distinguish *Doe* and *Kim* because they were not commercial disputes. But nothing in those decisions suggests their holdings are limited to non-commercial cases. On the contrary, those decisions speak broadly about the remedies available to fraud plaintiffs. Moreover, *Doe* and *Kim* are merely examples of a broader holding. Illinois courts have universally found that “the damages necessary to support a cause of action for fraud must be pecuniary in nature.” *Lewis v. Lead Indus. Assoc.*, 2020 IL 124107, ¶ 30; *Cangemi v. Adv. S. Suburban Hosp.*, 364 Ill. App. 3d 446, 469 (1st Dist. 2006).

Wilson does not cite any contrary decisions from this Court. Instead, he points to *Gehrett v. Chrysler Corp.*, 379 Ill. App. 3d 162, 180 (2d Dist. 2008), which he contends crafted an exception that allows fraud plaintiffs to recover aggravation and inconvenience damages. But in relevant part, *Gehrett* states:

Plaintiffs argue that we must add the sum awarded for aggravation and inconvenience, \$15,750, because this sum was awarded as consequential damages for fraud. We disagree. The jury was clearly instructed that it was to consider aggravation and inconvenience in awarding additional damages **for breach of warranty**, which plaintiffs’ counsel acknowledged at oral argument.

Id. at 180 (emphasis added). Thus, *Gehrett* did not create the exception Wilson claims.

B. This Court Should Affirm That Damages For Aggravation And Inconvenience Are Not Recoverable In Consumer Fraud Claims.

There is no evidence that the General Assembly intended for the Consumer Fraud Act, 815 ILCS 501/1 *et seq.*, to allow recovery of damages for non-pecuniary harm that were otherwise unavailable at common law. Notably, Wilson does not rebut this Court's statement in *Martin v. Heinold Commodities, Inc.*, 163 Ill. 2d 33 (1994), "while the intent of the Consumer Fraud Act was to lessen the burden of proof in a claim for certain misrepresentations, there is no suggestion in the Act that damages are to be determined in any manner different than is customary in our State." *Id.* at 68. *Martin* supports the proposition that damages under the Consumer Fraud Act are limited to pecuniary harm.

The Consumer Fraud Act's language also supports that proposition. As originally drafted, Section 10a(a) of the Consumer Fraud Act, 815 ILCS 505/10a(a), allowed plaintiffs to pursue "actual damages or other relief which the court deems proper." As Justice Anderson correctly found below, such language "has always been held to mean actual *economic* damages" and "signals the legislature's focus on measurable pecuniary loss." A.153-54, ¶ 130.

In 1996, the General Assembly doubled down, amending Section 10a(a) to underscore that recovery thereunder is limited to "actual economic

damages.”⁵ Thus, the General Assembly has consistently employed language in the Consumer Fraud Act that permits recovery of only pecuniary damages. That makes sense because the Consumer Fraud Act is intended to apply to consumer transactions, which are, by their nature, pecuniary.

In response, Wilson relies heavily on the phrase “or any other relief” in Section 10a(a). According to Wilson, that phrase shows the General Assembly intended to allow recovery of “non-actual damages” if a plaintiff first establishes “actual damages.” There are two main problems with Wilson’s interpretation.

First, interpreting the phrase “or any other relief” to encompass damages for non-actual or non-economic harm is nonsensical. The legislature would not limit recovery to “actual damages” if, in fact, “non-actual damages” are equally recoverable. *See Chapman v. Chicago Dept. of Fin.*, 2023 IL 128300, ¶ 29; *Solon v. Midwest Med. Records Ass’n, Inc.*, 236 Ill.2d 433, 441-42 (2010).

Second, the statutory language does not support Wilson’s interpretation. Wilson contends the term “actual economic damages” serves a “gatekeeping function.” Resp. at 42-43. Under Wilson’s argument, Section 10a(a) would effectively be transformed to read as follows:

⁵ Napleton’s Opening Brief argued that this Court’s decision in *Allen v. Woodfield*, 208 Ill. 2d 12, 33 (2003), was not intended to invalidate the entirety of the 1996 amendments to Section 10a(a) of the Consumer Fraud Act. Op. Br. at 36-38. Beyond two passing references to *Allen*, Wilson does not address this issue. Thus, Napleton need not revisit this issue in reply.

The court, in its discretion may award actual economic damages, and, if the plaintiff establishes such damages, may also award other relief, including non-economic damages.

The problem, of course, is that the General Assembly did not write Section 10a(a) in that manner. Nothing in Section 10a(a) even remotely supports the “***if*** actual damages; ***then*** non-actual damages” interpretation advanced by Wilson.

Instead, when it drafted Section 10a(a), the General Assembly inserted the connector “or” between the terms “actual economic damages” (or, before 1996, “actual damages”) and “any other relief.” The term “or” shows the General Assembly intended for plaintiffs to get one form of relief or the other, not both. Plaintiffs can ***either*** recover “actual economic damages” ***or*** “any other relief.” They cannot get both. This Court has emphasized that statutes must be enforced “as written by the legislature.” *Haase v. Kankakee Sch. Dist.* 111, 2025 IL 131420, ¶ 45; *see also Concerned Citizens & Prop. Owners v. Illinois Com. Comm’n*, 2026 IL 131026, ¶ 21. This is true even with respect to statutes that are to be liberally construed. *See ABN AMRO Serv. Co. v. Navarette Indus., Inc.*, 383 Ill. App. 3d 138, 144 (1st Dist. 2008). Here, the General

Assembly drafted Section 10a(a) to permit recovery of only actual (*i.e.*, pecuniary) damages. The Court should enforce that provision as written.⁶

Wilson contends the General Assembly's failure to amend Section 10a(a), 815 ILCS 505/10a(a), after the 1992 *Roche* decision demonstrates the legislature's acquiescence to that decision. *See* 235 Ill. App. 3d 70. There is no evidence that anyone in Springfield even noticed *Roche*. And for good reason; *Roche* involved a \$750 award for aggravation and inconvenience. *Id.* at 86. That is hardly the type of decision that causes legislators to stand up and take notice. But in any event, the General Assembly *did* amend Section 10a(a) after *Roche* was decided. In 1996, it amended the statute to make clear that only *economic* damages are recoverable, thereby shutting the door to any non-economic damages.

C. This Court Should Not Permit Recovery Of Damages For “Aggravation And Inconvenience.”

Separate and apart from whether non-pecuniary damages are generally recoverable under the Consumer Fraud Act or in common law fraud actions, this Court should find that the particular species of non-economic damages in this case (“aggravation and inconvenience”) is not recoverable. In its Opening

⁶ As Wilson notes, several panels of the appellate court have embraced the notion that plaintiffs who establish their right to “actual economic damages” may also recover non-economic damages. *See Olson v. Ferrara Candy Co.*, 2025 IL App (1st) 241126, ¶ 67; *Roche v. Fireside Chrysler-Plymouth, Mazda*, 235 Ill. App. 3d 70, 86 (2d Dist. 1992); *Morris v. Harvey Cycle & Camper, Inc.*, 392 Ill. App. 3d 399, 403 (1st Dist. 2009). Those decisions cannot be reconciled with Section 10a(a)'s plain language and should be overruled. *See* 815 ILCS 505/10a(a).

Brief, Napleton pointed out the myriad problems with permitting recovery for “aggravation and inconvenience.” *See Op. Br.* at 38-40.

For starters, “aggravation and inconvenience” has yet to be defined. The two lower courts did not define it. Illinois law does not provide a legal standard for when “aggravation and inconvenience” becomes actionable, if ever, or how it differs, if at all, from “emotional distress.” Nor does Illinois law explain how to measure damages for this concept. These are significant issues with far reaching consequences.

Wilson offers no answers (or even suggestions) on those issues. Instead, he offers only generalizations that “reasonable” damages are recoverable and “mathematical precision” is not required. *See Resp.* at 48-50. None of that provides guidance on what constitutes recoverable “aggravation and inconvenience” or how it may be measured. Wilson suggests his own “aggravation and inconvenience” arose from having a difficult discussion with his wife about the “unmarketability” of their sports car. *Id.* at 49-50. That is hardly an extraordinary circumstance, and there is nothing that distinguishes Wilson from countless other litigants who have difficult discussions with loved ones about their legal issues. Justice Anderson was correct in dissent below: unless this Court closes the door on “aggravation and inconvenience,” such claims will swamp Illinois courts.

IV. If This Court Reaches The Merits Of The Trial Court's Remittitur Of Actual Damages, It Should Find Those Damages Should Be Further Reduced.

As set forth above, this Court need not (and should not) review the merits of an improvidently granted remittitur. However, if this Court is inclined to examine the merits, it should conclude the trial court's remittitur did not go far enough.

In evaluating the merits of the trial court's remittitur of actual damages, the starting point must be the trial court's findings. *See* A.67; C.11627. In announcing the remittitur, the trial court made the following factual findings: (1) Wilson "suffered little if no actual damages;" (2) Wilson "drove the car without issue until he had reached his mileage limit;" (3) Wilson "had full use of a luxury automobile for nearly 3 years;" (4) Wilson's lease payments "were in part made from a children's trust;" (5) Wilson "would have had to make some type of car payments as well as insurance and maintenance costs;" (6) "the actual decreased value of the Aston Martin was somewhere between \$6,000 and \$40,000;" (7) Napleton "eventually took the car back and had had least indicated a willingness to rescind the contract shortly after the lawsuit was filed;" and (8) Wilson's "lease was fully paid off" by Napleton.

Those findings are each reviewed under the "manifest weight of the evidence" standard. *See People ex rel. Peters v. O'Connor*, 311 Ill. App. 3d 753, 758 (3d Dist. 2000). Those findings – which are not seriously challenged by

Wilson⁷ – are sufficient to justify a remittitur of the jury’s actual damages award. Certainly, it was not an abuse of discretion to reduce the jury’s award of actual damages. *See Franz v. Calaco Dev. Corp.*, 352 Ill. App. 3d 1129, 1139 (2d Dist. 2004) (lower court’s remittitur is reviewed for abuse of discretion.).

However, it was an abuse of discretion for the trial court to not go further in reducing the damages awarded. Having made those factual findings, the trial court should have followed them to their logical (and mandatory) legal conclusion. The trial court should have remitted the jury’s damages award to between \$6,000 and \$40,000, *i.e.*, the car’s diminished value. Instead, the trial court erroneously allowed Wilson to recover \$74,616.49 in out-of-pocket expenses (and then erroneously awarded the same amount on Count II). A.68; C.11629.⁸

First, the trial court allowed Wilson to recover out-of-pocket costs when his recovery should have been limited to benefit-of-the-bargain damages. That is addressed above. *See supra*, at 6-11.

Second, the trial court allowed Wilson to recover lease payments he never made in the instance. On direct examination, Wilson did not introduce

⁷ The lone exception is Wilson’s continuing objection to the trial court characterizing the Wilson Toy Box as a “children’s trust.” Regardless of whether it is a children’s trust, the fact remains that a non-party made payments on the Aston Martin. *See* SA.64-67; R.911-14.

⁸ Unlike Wilson, Napleton is not disputing the trial court’s factual findings on this issue. Napleton is challenging the trial court’s application of the law, which is reviewed *de novo*. *See SK Hand Tool Corp. v. Dresser Indus., Inc.*, 284 Ill. App. 3d 417, 427 (1st Dist. 1996).

any documents showing who made the lease payments on the car. On cross-examination, Wilson was confronted with a bank statement showing a lease payment by the non-party Wilson Toy Box. He then admitted he did not know who made the remaining payments (him or the Wilson Toy Box). SA.64-68; R.911-15; CI.6-9.

Third, the trial court allowed Wilson to recover out-of-pocket costs that he would have paid regardless of Napleton's conduct. At trial, Wilson admitted he was going to incur costs such as monthly car payments, insurance, maintenance, and vehicle registration regardless of whether he drove the Aston Martin or some other car. *See* SA.67-77; R.914-920, 928-30, 938. Thus, none of those costs (which were awarded as damages) were proximately caused by any "fraud" by Napleton and should not have been awarded. *See Connick v. Suzuki Motor Co., Ltd.*, 174 Ill.2d 482, 501 (1996); *Leahy Realty Corp. v. Am. Snack Foods Corp.*, 253 Ill. App. 3d 233, 254 (2d Dist. 1993).

V. If This Court Reaches The Merits Of The Remittitur Of Punitive Damages, It Should Further Reduce Or Vacate Them Altogether.

For the reasons set forth above, this Court should not reach the merits of the trial court's remittitur of punitive damages. If it does so, however, it should find the trial court did not go far enough. The evidence in this case did not support any punitive damages award, much less the \$1 million awarded by the jury or the \$400,000 ultimately awarded by the trial court.

As with actual damages, any analysis of the trial court's remittitur of punitive damages must start with the trial court's factual findings.

The court finds that the degree of reprehensibility is relatively minor. The court agrees that some punitive damages are warranted for the reasons set forth in plaintiff's brief. But, based on the testimony, the lack of health and safety issues, the lack of a financially vulnerable plaintiff, the actual damages, the type of fraud alleged and the net worth of the defendant an award of \$1,000,000 is simply too high. In addition to the compensatory and punitive damage award the plaintiff will recover a large fee award on Count II.

C.11629; A.68.

Those findings are sufficient to justify remittitur. Wilson cannot overcome those findings unless he shows they are against the manifest weight of the evidence. *See People ex rel. Peters*, 311 Ill. App. 3d at 758. By contrast, Napleton is not seeking to revisit any of the trial court's findings. Rather, Napleton contends that, if this Court reaches the merits of the trial court's remittitur, it should find that the trial court's findings mandate vacating or steeply reducing the jury's punitive damages award. This is particularly the case because, as this Court has previously acknowledged, courts have an obligation to protect against excessive punitive damages awards. *See Int'l Union of Operating Eng'rs, Loc. 150 v. Lowe Excavating Co.*, 225 Ill.2d 456, 490 (2006).

A. The Punitive Damages Award Does Not Pass Muster Under Illinois Law.

Under Illinois law, courts look to three factors in assessing the propriety of a punitive damages award: (1) the nature and enormity of the wrong; (2) the financial status of the defendant; and (3) the potential liability of the defendant. *Deal v. Byford*, 127 Ill.2d 192 (1989); *Franz*, 352 Ill. App. 3d at 1143;

Koehler v. Packer Grp., Inc., 2016 IL App (1st) 142767 at ¶ 103. All three favor Napleton.

First, the trial court found Wilson was barely injured. A.67; C.11628. He drove the car over 25,000 miles and had “no clue” it had been in an accident. R.890. Wilson’s only potential loss was a diminution in value at lease-end. But that was minimal and does not justify punitive damages. R.1109-11; A.67; C.11628.

Second, Napleton’s financial status does not justify punitive damages. The relevant factor is Napleton’s net worth – not sales or gross revenue. The undisputed evidence showed Napleton’s net worth was \$4.8 million. R.1286-91. A \$400,000 award (*i.e.*, 8.3% of net worth) is unreasonably high.

Third, as set forth in Napleton’s Opening Brief, this case arises out of a single consumer transaction. There are no other plaintiffs who can assert a claim arising from this transaction. *See Hazelwood v. Ill. Central Gulf R.R.*, 114 Ill. App. 3d 703 (4th Dist. 1983); *Deal*, 127 Ill.2d at 192.

B. The Punitive Damages Award Violates Due Process Standards Under The U.S. Constitution.

There are three “guideposts” to assess whether punitive damages violate the Fourteenth Amendment: (1) reprehensibility of the defendant’s misconduct; (2) disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) difference between the punitive damages awarded and the civil penalties authorized in comparable

cases. *Koehler*, 2016 IL (1st) 142767, ¶ 95, citing *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 409 (2003).

Degree of reprehensibility is the most important because it measures “the enormity” of the defendant’s offense. *Doe v. Parillo*, 2021 IL 126577, ¶ 44 (citing *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575 (1996)). As quoted above, the trial court concluded that the degree of reprehensibility in this case was “relatively minor.” SA.68; C.11629. The trial court correctly found this case did not involve health or safety, and Wilson was not a financially vulnerable person. A.67-68; C.11628-29. Importantly, when challenged to cite any evidence that the car was unsafe, Wilson’s attorney was unable to do so. SA.78-79; R.1828-29. The undisputed evidence also showed the structural damage from the October 2014 accident was “very minor;” the frame rails and suspension were undamaged. R.645.

In *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991) the U.S. Supreme Court found a 4:1 ratio was “close to the line.” *Id.* at 23-24. Here, the current ratio is 4:1. However, that ratio becomes more suspect if the actual damages are reduced (as they should be) to between \$6,000 and \$40,000.

The third guidepost calls for a comparison of the punitive damage award to “civil penalties authorized or imposed in comparable cases.” *Koehler*, 2016 IL App (1st) 142767 at ¶ 100. “The purpose of this guidepost is to accord substantial deference to *legislative judgments* concerning appropriate sanctions for the conduct at issue.” *Id.* (emphasis in orig.) (citing *BMW of N.A.*,

Inc., 517 U.S. at 583). As set forth in Napleton's Opening Brief, the Illinois legislature has made clear the appropriate ratio in consumer-oriented transactions is a 2:1 ratio. *See* Napleton Op. Br. at 59. Thus, if it reaches the merits, this Court should further reduce (or vacate altogether) the punitive damages award in this case.

CONCLUSION

WHEREFORE, for the reasons set forth herein, Napleton respectfully asks this Court to vacate the existing judgment, award a new trial on Count I, vacate any award of damages, fees, and costs on Counts I and II, and award such other relief as necessary and proper.

Dated: July 17, 2026

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 5,984 words.

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CERTIFICATE OF SERVICE

I, Timothy D. Elliott, an attorney, certify that on July 17, 2026, I caused to be served a copy of the foregoing via electronic mail to the following:

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