

No. 132430

Nos. 132430, 132511 Consolidated

IN THE
SUPREME COURT OF ILLINOIS

JEFFREY WILSON, Plaintiff-Appellant, v. NAPLETON'S GOLDCOAST IMPORTS, INC. d/b/a Napleton's Aston Martin of Chicago, Defendant-Appellee.	Petition for Leave to Appeal from the Illinois Appellate Court, Third Judicial Circuit, Case No. 3-24-0079 There on Appeal from the Eighteenth Circuit Court of DuPage County, Case No. 18 L 1245 The Honorable David E. Schwartz, Judge Presiding
---	---

**PLAINTIFF-APPELLANT JEFFREY WILSON'S COMBINED
REPLY IN SUPPORT OF HIS OPENING BRIEF AND
RESPONSE TO CROSS-APPELLANT NAPLETON
GOLDCOAST IMPORTS, INC.'S OPENING BRIEF**

Kevin P. McJessy
Joseph J. Borders
McJessy Ching & Thompson, LLC
3759 N. Ravenswood Ave., Suite 231
Chicago, IL 60613
(773) 880-1260
mcjessy@MCandT.com
borders@MCandT.com

*Counsel for Plaintiff-Appellant
Jeffrey Wilson*

ORAL ARGUMENT REQUESTED

**E-FILED
6/12/2026 2:30 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK**

TABLE OF CONTENTS WITH POINTS AND AUTHORITIES

I. Appellant Jeffrey Wilson’s Argument In Reply In Support Of His Opening Brief.....	1
A. The Merits Of The Trial Court’s Improper Remittitur Of The Jury’s Damages Awards Are Properly Before This Court	1
<i>Diaz v. Legat Architects, Inc.</i> , 397 Ill. App. 3d 13 (1st Dist. 2009)	1
<i>Haid v. v. Tingle</i> , 219 Ill. App. 3d 406 (1st Dist. 1991)	1, 2
Illinois Supreme Court Rule 303(b)(3) (eff. Jul. 1, 2017)	1
<i>People v. Haag</i> , 80 Ill. App. 3d 135 (2nd Dist. 1979).....	1
<i>People v. Fassler</i> , 153 Ill. 2d 49 (1992)	1, 2
<i>Foster v. Springfield Clinic</i> , 88 Ill. App. 3d 459 (4th Dist. 1980).....	1, 2
<i>Congregation of the Passion, Holy Cross Province v. Touche Ross & Co.</i> , 224 Ill. App. 3d 559 (1st Dist. 1991) <i>aff’d</i> 159 Ill. 2nd 137 (1994).....	1, 2
B. The Trial Court Abused Its Discretion By Granting Napleton’s Motion For Remittitur Of The Jury’s Punitive Damages Award	2
(1) The Evidence In The Record Supports The Jury’s Punitive Damages Award; Napleton Did Not Make A “Mistake”—It Committed Fraud	2
Illinois Rule of Evidence 404(b) (eff. Jan. 1, 2011).....	4
<i>People v. McDonald</i> , 62 Ill. 2d 448 (1975).....	4
<i>Hatchett v. W2X, Inc.</i> , 2013 IL App (1st) 121758.....	4
<i>Thompson v. Petit</i> , 294 Ill. App. 3d 1029 (1st Dist. 1998).....	4
<i>Best v. Best</i> , 223 Ill. 2d 342 (2006)	5
(2) The Trial Court Did Not Find That The Jury’s Punitive Damages Award Was The Result Of Passion, Partiality Or Corruption; Rather It Remitted The Award Because The Trial Court Thought That \$1,000,00 Was “Simply Too High”	5
<i>Mook v. Johnson</i> , 2018 IL App (3d) 170229	5

<i>Northern Trust Co. v. County of Cook</i> , 135 Ill. App. 3d 329 (1st Dist. 1985)	5
<i>Richardson v. Chapman</i> , 175 Ill. 2d 98 (1997)	5
<i>Snelson v. Kamm</i> , 204 Ill. 2d 1 (2003)	6
<i>Hulke v. Int’l Manf. Co.</i> , 14 Ill. App. 2d 5 (2nd Dist. 1957)	6
(3) The Trial Court Improperly Remitted The Jury’s Punitive Damages Award Based On Evidence That Was Not In The Record And On Evidence Deemed Inadmissible	6
<i>Mook v. Johnson</i> , 2018 IL App (3d) 170229	6, 9
<i>Lebron v. Gottlieb Mem. Hosp.</i> , 237 Ill. 2d 217 (2010)	7
<i>Hebrew Univ. of Jerusalem v. Zivin (In re Estate of Zivin)</i> , 2015 IL App (1st) 150606	7
<i>Pierce v. Chester Johnson Elec. Co.</i> , 117 Ill. App. 3d 867 (1st Dist. 1983)	7
Illinois Supreme Court Rule 408 (eff. Jan. 1, 2011)	9
Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 1967)	9
(4) The Trial Court Improperly Remitted The Jury’s Punitive Damages Award Based Upon A Conclusion Refuted By The Record—That Napleton’s Fraud Purportedly Did Not Involve A “Safety Issue.”	10
<i>Doe v. Parilla</i> , 2021 IL 126577	10
<i>Gehrett v. Chrysler Corp.</i> , 379 Ill. App. 3d 162 (2nd Dist. 2008)	10
(5) The Trial Court Improperly Remitted The Jury’s Punitive Damages Award Based On Irrelevant Factors, Including Its Award Of Attorney Fees Under The Consumer Fraud Act	11
<i>Int’l Union of Operating Engineers, Local 150 v. Lowe Excavating Co.</i> , 225 Ill. 2d 456 (2006)	11
<i>Blount v. Stroud</i> , 395 Ill. App. 3d 8 (1st Dist. 2009)	11

<i>Kirkpatrick v. Strosberg</i> , 385 Ill. App. 3d 119 (2nd Dist. 2008)	11
<i>F&M Bank v. Williamson (In re Est. of Stegall)</i> , 2026 IL App (4th) 250638-U	11
(6) The Jury’s Punitive Damages Award Passes Muster Under Illinois Common Law	12
<i>Deal v. Byford</i> , 127 Ill. 2d 192 (1989)	12, 13
<i>Hazelwood v. Ill. Central Gulf R.R.</i> , 114 Ill. App. 3d 703 (4th Dist. 1983)	13
<i>Chamberlain v. Civil Service Comm’n</i> , 2014 IL App (2d) 12151	13
<i>People v. Whitfield</i> , 228 Ill. 2d 1166 (2007)	13
<i>Blount v. Stroud</i> , 395 Ill. App. 3d 8 (1st Dist. 2009)	13
<i>Motsch v. Pine Roofing Co.</i> , 178 Ill. App. 3d 169 (1st Dist. 1989)	14
<i>National Bank v. Doss</i> , 141 Ill. App. 3d 1065 (4th Dist. 1986)	14
(7) The Jury’s Punitive Damages Award Satisfies The Due Process Standards Under The U.S. Constitution	15
<i>Blount v. Stroud</i> , 395 Ill. App. 3d 8 (1st Dist. 2009)	15
<i>BMW of N. Am., Inc. v. Gore</i> , 517 U.S. 559 (1996)	15
<i>People v. Whitfield</i> , 228 Ill. 2d 1166 (2007)	15
(a) Napleton’s Conduct Was Reprehensible	16
<i>Blount v. Stroud</i> , 395 Ill. App. 3d 8 (1st Dist. 2009)	16, 18
<i>Baumrucker v. Express Cab Dispatch, Inc.</i> , 2017 IL App (1st) 161278	17
<i>Carter v. Mueller</i> , 120 Ill. App. 3d 314 (1st Dist. 1983)	17
<i>Wilson v. Napleton’s Goldcoast Imps., Inc.</i> , 2025 IL App (3d) 240079	18
<i>State Farm Mutual Automobile Insurance Co. v. Campbell</i> , 538 U.S. 408 (2003)	18

(b) The Ratio Of Actual Damages To Punitive Damages In The Jury's Awards Is Appropriate	18
<i>Int'l Union of Operating Engineers, Local 150 v. Lowe Excavating Co.</i> , 225 Ill. 2d 456 (2006).....	18
<i>Gehrett v. Chrysler Corp.</i> , 379 Ill. App. 3d 162 (2nd Dist. 2008)	18, 19
<i>Bates v. William Chevrolet/GEO, Inc.</i> , 337 Ill. App. 3d 151 (1st Dist. 2003).....	18, 19
<i>Ciampi v. Ogden Chrysler Plymouth</i> , 262 Ill. App. 3d 94 (2nd Dist. 1994)	18, 19
(c) There Are No Relevant Statutory Penalties	19
<i>Gehrett v. Chrysler Corp.</i> , 379 Ill. App. 3d 162 (2nd Dist. 2008)	19
<i>Bates v. William Chevrolet/GEO, Inc.</i> , 337 Ill. App. 3d (1st Dist. 2003).....	19
<i>Ciampi v. Ogden Chrysler Plymouth</i> , 262 Ill. App. 3d 94 (2nd Dist. 1994).....	19
815 ILCS §614/45.....	19
815 ILCS §610/10.....	19
815 ILCS §505/2W	19
<i>Koehler v. Packer Group, Inc.</i> , 2016 IL App (1st) 142767	19, 20
C. The Trial Court Abused Its Discretion By Granting Napleton's Motion For Remittitur Of The Jury's Out-Of-Pocket Damages Award.....	20
<i>Khan v. Deutsche Bank AG</i> , 2012 IL 112219	20
<i>Coe v. Proskauer Rose, LLP</i> , 314 Ga. 519 (2022).....	20
<i>MidAmerica Bank, FSB v. Charter One Bank, FSB</i> , 232 Ill. 2d 560 (2009).....	21

<i>Vieweg v. Friedman</i> , 173 Ill. App. 3d 471 (2nd Dist. 1988)	21, 22
<i>Ciampi v. Ogden Chrysler Plymouth</i> , 262 Ill. App. 3d 94 (2nd Dist. 1994) is year correct.....	22
<i>Berkei v. Delnor Hosp.</i> , 207 Ill. App. 3d 255 (2nd Dist. 1990).....	22
<i>Lebron v. Gottlieb Mem. Hosp.</i> , 237 Ill. 2d 217 (2010)	23
D. The Trial Court Erred By Reducing Wilson’s Attorney Fees Hours By A Flat Percentage	23
<i>Casey v. Rides Unlimited Chi., Inc.</i> , 2022 IL App (3d) 210404.....	23, 25
<i>Hensley v. Eckerhart</i> , 461 U.S. 424 (1983)	23
<i>In re Marriage of Kane</i> , 2016 IL App (2d) 15074.....	24
<i>Pillai v. St. George Warehouse of IL, Inc.</i> , 2022 IL App (2d) 200089-U	24
<i>Clayton v. Planet Travel Holdings, Inc.</i> , 2013 IL App (4th) 120717	24
<i>Moreno v. City of Sacramento</i> , 534 F.3d 1006 (9th Cir. 2008)	24
<i>Wendy & William Spatz Charitable Found. v. 2263 N. Lincoln Corp.</i> , 2013 IL App (1st) 122076	25
<i>Advocate Health & Hosps. Corp. v. Heber</i> , 355 Ill. App. 3d 1076 (2nd Dist. 2005)	25
<i>Dubey v. Public Storage, Inc.</i> , 395 Ill. App. 3d 342 (1st Dist. 2009).....	26
<i>Ardt v. State</i> , 292 Ill. App. 3d 1059 (5th Dist. 1997).....	26
<i>Berlak v. Villa Scalabrini Home for the Aged</i> , 284 Ill. App. 3d 231 (1st Dist. 1996).....	26
<i>Orme v. Northern Trust Co.</i> , 25 Ill. 2d 151 (1962).....	26
E. Napleton’s Challenges To The Trial Court’s Award Of Attorney’s Fees Not Raised In Its Appeal To This Court Are Waived And Are Otherwise Invalid	27
<i>Olson v. Etheridge</i> , 177 Ill. 2d 396 (1997)	27

(1) Wilson’s Contingency Fee Agreement With Counsel Is Not Relevant	27
<i>Clayton v. Planet Travel Holdings, Inc.</i> , 2013 IL App (4th) 120717	27
<i>Casey v. Rides Unlimited Chi., Inc.</i> , 2022 IL App (3d) 210404	28
<i>Demitro v. GMAC</i> , 388 Ill. App. 3d 15 (1st Dist. 2009)	28
(2) If This Court Considers The \$375 Lodestar Rate It Should Find That It Was Too Low	28
<i>Johnson v. GDF, Inc.</i> , 668 F.3d 927 (7th Cir. 2012)	28
<i>Cruz v. Northwestern Chrysler Plymouth Sales, Inc.</i> , 179 Ill. 2d 271 (1977)	28
<i>Turner v. Can Am Imports, Inc.</i> , No. 2018MR001552 (DuPage County, Nov. 19, 2007)	28
<i>Morris v. Dream Team Auto, LLC</i> , No. 2020 CH 148 (Rock Island County, Aug. 27, 2021)	29
<i>Powers v. Klean Motorsports, LLC</i> , No. 2021 CH 02129 (Cook County, Mar. 1, 2022)	29
<i>Casey v. Rides Unlimited Chi., Inc.</i> , No. 20 CH 645 (Will County, Jan. 10, 2023)	29
<i>Casey v. Rides Unlimited Chicago, Inc.</i> , 2022 IL App (3d) 210404	29
II. Cross-Appellee Jeffrey Wilson’s Argument In Response To Cross-Appellant Napleton Goldcoast Imports, Inc.’s Opening Brief	30
A. There Is No Factual Or Legal Basis To Remand This Case For A New Trial On Damages	30
<i>People v. Quezada</i> , 2024 IL 128805	30
<i>Direct Auto Ins. Co. v. Bahena</i> , 2019 IL App (1st) 172918	30
<i>Wilson v. Napleton’s Goldcoast Imps., Inc.</i> , 2025 IL App (3d) 240079	30
<i>Diaz v. Legat Architects, Inc.</i> , 397 Ill. App. 3d 13 (1st Dist. 2009)	32
<i>People v. Haag</i> , 80 Ill. App. 3d 135 (2nd Dist. 1979)	32

<i>People v. Fassler</i> , 153 Ill. 2d 49 (1992)	32
B. By Filing Its Appeal First, Napleton Rendered The Issue Of The Trial Court’s Failure to Follow Proper Procedure In Entering The Remitted Judgment Moot.....	32
Illinois Supreme Court Rule 366 Committee Comments Paragraph (b) (rev. Jul. 1, 1971)	33
Illinois Supreme Court Rule 318(a) (eff. Feb. 1, 1944).....	33
<i>Heastie v. Roberts</i> , 226 Ill. 2d 515 (2007).....	33
<i>Wilson v. Napleton’s Goldcoast Imps., Inc.</i> , 2025 IL App (3d) 240079	33, 34
<i>Commissioners of Lincoln Park v. Schmidt</i> , 379 Ill. 130 (1942).....	33
<i>Mook v. Johnson</i> , 2018 IL App (3d) 170229	34
<i>Congregation of the Passion, Holy Cross Province v. Touche Ross & Co.</i> , 224 Ill. App. 3d 559 (1st Dist. 1991)	34
<i>Foster v. Springfield Clinic</i> , 88 Ill. App. 3d 459 (4th Dist. 1980).....	34
<i>Bart v. Union Oil Co.</i> , 185 Ill. App. 3d 64 (3rd Dist. 1989).....	34
<i>Haid v. v. Tingle</i> , 219 Ill. App. 3d 406 (1st Dist. 1991)	34, 35
<i>Baker v. Spaulding Women’s Apparel, Inc.</i> , 83 Ill. App. 2d 455 (1st Dist. 1967)	35
<i>Augustine v. Kaufman</i> , 338 Ill. App. 591 (1st Dist. 1949).....	35
C. Wilson Has Always Sought Out-Of-Pocket Damages.....	35
(1) Napleton’s Offer Of Proof Established That Napleton Never Offered To Rescind Wilson’s Lease With Premier; And, Evidence Of Settlement Was Barred	36
(2) Rescission Was Never An Option For Wilson	36
<i>Kimbro Equities I v. Metro. Fed. S&L Ass’n</i> , 1996 U.S. App LEXIS 22266 (6th Cir. Aug. 9, 1996)	36

<i>YPI 180 N. LaSalle Owner, LLC v. 180 N. LaSalle II, LLC</i> , 403 Ill. App. 3d 1 (1st Dist. 2010).....	36
<i>United City of Yorkville v. Vill. Of Sugar Grove</i> , 376 Ill. App. 3d 9 (2nd Dist. 2007).....	36
<i>Steinberg v. Sherman</i> , 2008 U.S. Dist. LEXIS 37367 (S.D.N.Y. May 8, 2008)	37
(3) Wilson Did Not Elect To Keeping The Car; He Could Not Unload It.....	37
<i>Freeberg v. Ohio Nat’l Ins. Co.</i> , 2012 IL App (1st) 110938.....	38, 39
<i>Golden v. McDermott, Will & Emory</i> , 299 Ill. App. 3d 982 (1st Dist. 1998)	39
4. Wilson Consistently Sought Out-Of-Pocket Damages	41
<i>Indep. Trust Corp. v. Hurwick</i> , 351 Ill. App. 3d 941 (1st Dist. 2004)	41
<i>Wilson v. Napleton’s Goldcoast Imps., Inc.</i> , 2025 IL App (3d) 240079	42
C. Illinois Law Allows For The Recovery Of Damages For Aggravation And Inconvenience	42
(1) The Plain Language And Remedial Nature Of The CFA Allow For The Award Of Damages For Aggravation And Inconvenience.....	42
(a) Plain Language Of The CFA.....	42
<i>Allen v. Woodfield Chevrolet, Inc.</i> , 208 Ill. 2d 12 (2003)	43
815 ILCS §505/10a(a).....	42, 43
<i>Olson v. Ferrera Candy Co.</i> , 2025 IL App (1st) 241126	43
<i>Dieffenbach v. Barnes & Noble, Inc.</i> , 887 F.3d 826 (7th Cir. 2018)	43
<i>Ainsworth v. Jidd Enterprises, LLC</i> , 2024 IL App (1st) 230938-U	43

<i>Kozak v. Retirement Bd. Of Firemen's Annuity & Ben. Fund</i> , 95 Ill. 2d 211 (1983)	43
<i>Doe v. Dilling</i> , 228 Ill. 2d 324 (2008).....	43, 44
<i>Kim v. State Farm Mut. Auto. Ins. Co.</i> , 2021 IL App (1st) 200135.....	44
(b) Avoidance Of Construction That Renders Statutory Language Redundant, Meaningless, Or Superfluous	44
815 ILCS §505/10a(c)	45
<i>People v. Baskerville</i> , 2012 IL 111056	45
<i>People v. Jones</i> , 223 Ill. 2d 569 (2006).....	45
815 ILCS §505/10(a).....	45
735 ILCS §5/2-701	45
(c) The Legislature Did Not Amend The CFA After <i>Roche</i>.....	45
<i>Roche v. Fireside Chrysler-Plymouth, Mazda</i> , 235 Ill. App. 3d 70 (2nd Dist. 1992).....	45, 46
<i>Morris v. William L. Dawson Nursing Ctr.</i> , 187 Ill. 2d 494 (1999)	46
<i>Allen v. Woodfield Chevrolet, Inc.</i> , 208 Ill. 2d 12 (2003)	46
<i>Morris v. Harvey Cycle & Camper, Inc.</i> , 392 Ill. App. 3d 399 (1st Dist. 2009)	46
<i>Wilson v. Napleton's Goldcoast Imps., Inc.</i> , 2025 IL App (3d) 240079	47
<i>People v. Smith</i> , 2013 IL App (2d) 121164.....	47
<i>Lake County Grading Co., LLC v. Vill. of Antioch</i> , 2014 IL 115805	47
(d) The Award Of Damages For Aggravation And Inconvenience Is Consistent With The Remedial Nature Of The CFA	47
<i>Kirkpatrick v. Strosberg</i> , 385 Ill. App. 3d 119 (2nd Dist. 2008)	47

815 ILCS §505/11(a).....	47
<i>Warren v. LeMay</i> , 142 Ill. App. 3d 550 (5th Dist. 1986)	47
(2) Damages For Aggravation And Inconvenience Are Recoverable In An Action For Common Law Fraud.....	47
<i>Gehrett v. Chrysler Corp.</i> , 379 Ill. App. 3d 162 (2nd Dist. 2008)	47, 48
(3) The Jury And The Court Can Assess The Reasonableness Of Damages For Aggravation And Inconvenience	48
<i>McGrady v. Chrysler Motors Corp.</i> , 46 Ill. App. 3d 136 (4th Dist. 1977).....	48, 49
<i>Gehrett v. Chrysler Corp.</i> , 379 Ill. App. 3d 162 (2nd Dist. 2008)	48, 49
<i>Vieweg v. Friedman</i> , 173 Ill. App. 3d 471 (2nd Dist. 1988).....	49
<i>Marxmiller v. Champaign-Urbana Mass Transit Dist.</i> , 2017 IL App (4th) 160741	49
<i>Avery v. GRI Fox Run, LLC</i> , 2020 IL App (2d) 198382	49
III. CONCLUSION	50

**APPELLANT JEFFREY WILSON’S COMBINED REPLY IN SUPPORT
OF HIS OPENING BRIEF AND RESPONSE TO CROSS-APPELLANT
NAPLETON GOLDCOAST IMPORTS, INC.’S OPENING BRIEF**

**I. APPELLANT JEFFREY WILSON’S ARGUMENT IN REPLY IN
SUPPORT OF HIS OPENING BRIEF**

**A. The Merits Of The Trial Court’s Improper Remittitur Of The Jury’s
Damages Awards Are Properly Before This Court.**

As pointed out in Wilson’s opening brief at Section II(B) (pages 25-29) and as set forth in greater detail in Sections II(A) and II(B) below, when Napleton initiated the appeal of the trial court’s final remitted Judgment, the issue of whether Wilson should be required to accept or reject the trial court’s improper remittitur became moot. *Diaz v. Legat Architects, Inc.*, 397 Ill. App. 3d 13, 44-45 (1st Dist. 2009) (once a defendant files an appeal, a plaintiff is entitled to file a cross appeal challenging the trial court’s remittitur); *Haid v. Tingle*, 219 Ill. App. 3d 406, 411 (1st Dist. 1991) (same); *see also* Ill. Sup. Ct. R. 303(b)(3) (eff. July 1, 2017) (“If a timely notice of appeal is filed and served by a party, any other party...may join in the appeal...or cross-appeal by filing a notice of appeal, indicating which type of appeal is being taken.”). Napleton’s response brief did not address this issue and therefore Napleton waived any argument in rebuttal. *People v. Haag*, 80 Ill. App. 3d 135, 137 (2nd Dist. 1979) (an issue raised on appeal by the appellant and not responded to by the appellee is conceded and deemed waived), *cited with approval in People v. Fassler*, 153 Ill. 2d 49, 62 (1992).

The appellate court erred by not addressing the merits of the bases for the trial court’s improper remittitur, which the appellate court acknowledged had occurred in *Foster v. Springfield Clinic, Congregation of the Passion, Holy Cross Province v. Touche Ross & Co.*, and *Haid*. The issues raised by Wilson with respect to the remitted Jury verdict and

the reduced damages awarded by the trial court for Wilson's Consumer Fraud Act claim ("CFA") were properly before the appellate court because Napleton initiated the appeal. *Foster v. Springfield Clinic*, 88 Ill. App. 3d 459, 467 (4th Dist. 1980); *Congregation of the Passion, Holy Cross Province v. Touche Ross & Co.*, 224 Ill. App. 3d 559, 588-89 (1st Dist. 1991) *aff'd* 159 Ill. 2d 137 (1994); *Haid*, 219 Ill. App. 3d at 417. Respectfully, those issues are now squarely before this Court and should be decided.

B. The Trial Court Abused Its Discretion By Granting Napleton's Motion For Remittitur Of The Jury's Punitive Damages Award.

(1) The Evidence In The Record Supports The Jury's Punitive Damages Award; Napleton Did Not Make A "Mistake" – It Committed Fraud.

Napleton's main argument against the Jury's \$1,000,000 punitive damage award is its narrative that Napleton did nothing wrong – it just made a mistake:

"There is strong evidence that Napleton's conduct with respect to Wilson was the result of mistake rather than intent (as evidenced by Napleton's purchase of the same vehicle for \$140,000)." (Napleton Br. at 58)

"They [general manager Perry Galecki and salesman Norbert Sobotko] did not know about the October 2014 accident or the repairs." (Napleton Br. at 6)

"Galecki saw no reason to doubt the CarFax report especially after he personally examined the Aston Martin and saw no signs of repair." (Napleton Br. at 6)

"There is no evidence that they [Galecki and Sobotko] knew about the Aston Martin's accident history in 2015." (Napleton Br. at 50)

"Galecki fully inspected the car and had no idea [it had been in an accident]." (Napleton Br. at 51)

"Galecki relied on the same CarFax report as Wilson." (Napleton Br. at 51)

"Wilson makes much of the fact that Galecki had access to the dealership's [electronic] CDK system which contained data on the car's repair history. WB at 11. But Wilson omits Galecki's testimony that he never consulted

CDK because he saws no evidence that would put him on notice that the CarFax report might be inaccurate. R. 999, 1241-42.” (Napleton Br. at 51.)

This last excerpt from Napleton’s brief merits additional discussion; it misstates Galecki’s testimony. This testimony does not reference the CDK system, only that Galecki did not look at Napleton’s files for the car’s service records or ask his “service manager or one of my service advisors to pull them up” because he saw no issue with the car. That misses the point. Galecki testified that he was unsure whether the repair records for the car were stored electronically on the CDK system in 2015 and that Napleton’s paper service records for the car may somehow not have been available to him. R.963-964. Galecki testified that he would have had to “go ask either my service manager or one of my service advisors to pull them up; or if I have to go and they’re closed, I would have to go to a filing cabinet, find the VIN number or the milage – or the year of the vehicle I was looking for.” R.1244.

Napleton’s attorney made the same representation in his opening statement:

“The evidence is going to show that, while there were service records regarding the service that had been done on this car and the fact that it had been set [sic] to Westmont, those were on paper back in 2015 and they were in a filing cabinet in the service compartment. We’re used to right now being able to pull up everything on a computer and get access to everything. That’s not the way they operated back then, and that’s what the evidence is going to show.”

R.533. But that’s not what the evidence showed. When confronted with conflicting testimony by Napleton’s Service Manager Filippo Principato, Galecki recanted his testimony and admitted that he was in fact able to access Napleton’s repair records on his office computer. R.963-965. For this and other reasons, the Jury found Galecki’s testimony was not credible and the trial court agreed:

“The jury clearly found that the defense witnesses were not credible, and the court will not disturb that finding.”

A.067; C.11628.

Further belying Napleton’s “mistake” defense, the Jury heard evidence that while this lawsuit was pending, Napleton reacquired the Aston Martin, hired True360 to whitewash the most recent CarFax report, and then resold the car to Miller – again misrepresenting the car’s true accident history. R.1215-1216; R.1222; R.1227-1228; R.1253-1254. This was not lost on the trial court:

“This was a fraud claim; the jury was entitled to hear the subsequent transaction to assess the nature of the Wilson transaction. It is incredible that, even while this lawsuit was pending with the SAME car, Napleton again would not fully disclose the accident.”

A.067; C.11628 (emphasis in original). Accordingly, the trial court found that “even under the heightened burden of clear and convincing [evidence]”, the record was “more than sufficient” to support a finding of fraud. A.067; C.11628. Napleton’s misrepresentations to Wilson were not a mistake. Nonetheless, Napleton devotes pages 50-52 of its brief trying to relitigate that they were. Napleton had its opportunity to present its “mistake” argument to the Jury and the trial court, and it failed spectacularly.

Although Napleton does not appeal the admission of evidence related to the Miller transaction, Napleton suggests its own conduct is somehow made less egregious because Wilson relied upon evidence related to the Miller transaction in his case in chief. (Napleton Br. at 11 n.4, 49) Such evidence was relevant to show Napleton’s intent and lack of accident or mistake when it sold the car to Wilson. *See* Ill. R. of Evid. 404(b) (eff. Jan. 1, 2011) (evidence of other wrongful acts “may also be admissible for other purposes, such as proof of ... intent, ... knowledge, ... or absence of mistake or accident.”); *People v. McDonald*, 62 Ill. 2d 448, 455 (1975); *Hatchett v. W2X, Inc.*, 2013 IL App (1st) 121758, ¶¶21, 22; *Thompson v. Petit*, 294 Ill. App. 3d 1029, 1033, 1038 (1st Dist. 1998) (holding

that evidence that defendant threatened a driver with a gun in traffic altercation was admissible in plaintiff's lawsuit against defendant six years later after defendant shot plaintiff during a traffic altercation because the evidence was relevant to defendant's intent). Respectfully, this Court should not entertain Napleton's effort to relitigate in this Court findings of fact made by the Jury rejecting Napleton's "mistake" narrative. *See Best v. Best*, 223 Ill. 2d 342, 350-51 (2006) ("A reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn.").

(2) The Trial Court Did Not Find That The Jury's Punitive Damages Award Was The Result Of Passion, Partiality Or Corruption; Rather It Remitted The Award Because The Trial Court Thought That \$1,000,000 Was "Simply Too High."

Under Illinois law, the amount of punitive damages to be awarded is a jury question and should not be disturbed "unless it is so excessive that it must have been the result of passion, partiality, or corruption." *Mook v. Johnson*, 2018 IL App (3d) 170229, ¶27. In its review of the Jury's award, the trial court is not "free to reweigh the evidence and reduce a jury award merely because it may have arrived at a different verdict." *Id.*

Napleton does not provide this Court with any basis whatsoever for it to conclude that the Jury's \$1,000,000 punitive damages award was the product of passion, prejudice or corruption. It cannot. The fact that the Jury awarded Wilson significantly less than the amounts of punitive damages and aggravation/inconvenience damages that he requested demonstrates that the Jury's Verdict was not the result of passion or prejudice. *Northern Trust Co. v. County of Cook*, 135 Ill. App. 3d 329, 335 (1st Dist. 1985) (no passion or prejudice where the plaintiff "was awarded considerably less than his counsel requested of the jury in closing arguments."); *Richardson v. Chapman*, 175 Ill. 2d 98, 124 (1997)

(finding that there was no indication that the jury's award was the product of passion or prejudice because the jury awarded a sum that was \$1.265 million less than the higher of the testimonial estimates presented at trial).

The trial court did not reduce the Jury's \$1,000,000 punitive damages award because it perceived any passion, partiality or corruption on the part of the Jury, but rather because it concluded that the Jury's award was "simply too high." A.067; C.11628. This was reversible error. As stated by this Court, "the question of excessiveness is not to be determined by what we as judges think the damages should have been; the court has no right to substitute its judgment for that of the jury." *Snelson v. Kamm*, 204 Ill. 2d 1, 37 (2003) *citing Hulke v. Int'l Manf. Co.*, 14 Ill. App. 2d 5, 49 (2nd Dist. 1957).

(3) The Trial Court Improperly Remitted The Jury's Punitive Damages Award Based On Evidence That Was Not In The Record And On Evidence Deemed Inadmissible.

Mook v. Johnson, discussed at length in Wilson's opening brief, is directly on point. Napleton does not even attempt to distinguish it. Because it can't. As in *Mook*, the trial court here wrongfully substituted its judgment for the Jury's in determining that the \$1,000,000 punitive damage award was "simply too high." A.068; C.11629. As also occurred in *Mook*, the trial court erred when it remitted the Jury's punitive damages award based, in part, on facts not contained in the record because they were deemed inadmissible. *See Mook*, 2018 IL App (3d) 170229 at ¶32 (the trial court clearly erred when it remitted jury's punitive damages award based, in part, on evidence deemed inadmissible.)

The trial court justified its remittitur of the Jury's punitive damages award because, *inter alia*, the "[lease] payments were in part made from a children's trust" and Napleton "had at least indicated a willingness to rescind the contract shortly after the lawsuit was

filed.” A.067; C.11628. The former is untrue and the latter was refuted by Napleton’s offer of proof and, more importantly, involved settlement communications that the trial court ruled were inadmissible. R.470-474.

There was no “children’s trust.” The evidence presented to the Jury established that a single lease payment was made by an entity named the “Wilson Toy Box,” a trust that Wilson was both a trustee and beneficiary of, and from which Wilson and his wife paid their family’s personal expenses. R.911-914; R.951. While Napleton concedes in a footnote that the Wilson Toy Box was not a “children’s trust,” it nonetheless repeatedly misstates the record by asserting that all of the lease payments were made from it. (Napleton Br. at 9 n.3, 45, and 47) The record does not support its assertions. R.909-914.

Moreover, a lack of standing – the only way the payment from Wilson’s trust could be relevant – is an affirmative defense that Napleton forfeited by not timely raising it in the trial court. *Lebron v. Gottlieb Mem. Hosp.*, 237 Ill. 2d 217, 252-53 (2010). Further, even if Napleton had not forfeited the lack of standing defense (it has), Wilson nonetheless has standing to bring this action both as a beneficiary of the trust and as one of its trustees, which Napleton does not dispute. *Hebrew Univ. of Jerusalem v. Zivin (In re Estate of Zivin)*, 2015 IL App (1st) 150606, ¶16 (a beneficiary may maintain a proceeding relating to the trust or its property against a third party); *Pierce v. Chester Johnson Elec. Co.*, 117 Ill. App. 3d 867, 868 (1st Dist. 1983) (trustees possess a specific statutory power to sue on behalf of a trust).

There was also never an offer of rescission. Once again, Napleton misstates the record, telling this Court:

“Napleton made an offer of proof. R.1462-1492. Napleton called two attorneys, David Scott and John Pcolinski, who testified they told Wilson’s

counsel that Napleton was willing to rescind Wilson's lease deal and take the car back in 2018 and 2019. *Id.*"

* * *

"He [Wilson] could have returned the car to Napleton (which is precisely why Napleton tried to introduce evidence regarding its offers to rescind in 2018 and 2019)."

(Napleton Br. at 12, 31) However, the record establishes that rescission was never possible.

Wilson's lease was with a third party so Napleton could not rescind it. Napleton's offer of proof established that Napleton had made no such offer and eschewed any responsibility to Wilson when Wilson's counsel initially contacted Napleton to discuss a resolution of the matter. Napleton's deputy general counsel David Scott's testimony confirmed this:

A. "I recall [Wilson's counsel] Mr. McJessey relaying to me some of the circumstances of Mr. Wilson's claim. He mentioned that he was calling, you know, in follow up to a letter he had previously sent, and possibly even two letters, the first of which I don't believe I had seen at that time. He explained Mr. Wilson's situation and asked me what we were going to do about it."

Q. "What did you say in response?"

A. "I told him initially that, from a legal perspective, because I was the deputy general counsel and not a customer service rep, from a legal perspective, I didn't think that his client had a claim, because his client wasn't even our customer. We hadn't sold the vehicle to a Mr. Wilson. I couldn't even find him in my system."

"Because we had sold the vehicle to Premiere Financial Services, and they were our customer, I told Mr. McJessey that I didn't think that Mr. Wilson had a legal claim."

R.1466-1467. Napleton's trial counsel, John Pcolinski, on cross-examination also admitted that rescission was never an option:

Q. "Let me stop you there. So that is not an actual rescission. You were going to pay him those amounts if he bought out this contract with Premier, correct?"

A. "It's an effective rescission."

* * *

Q. “You are aware that it wasn’t actually a rescission of the contract with Premier financial, correct?”

A. “I guess if that’s the legal nicety you would like to draw up, that is fine.”

R.1481-1482. Napleton also misstates Wilson’s testimony, representing to this Court:

“Napleton also called Wilson, who testified he did not try to rescind the transaction with Napleton after he discovered the car’s accident history. R.1482-83”

(Napleton Br. at 12) Wilson only testified that he “personally” did not contact anyone at Napleton, but rather hired counsel to do so. R.1482-1484. When pressed by Napleton’s counsel on any purported rescission offer, Wilson’s answer was unequivocal:

Q. “Did you come to learn that Mr. Scott had advised Mr. McJessey, if he wanted to return the car, Napleton’s might be willing to entertain that?”

A. “I heard the opposite.”

R.1484. In sum, Napleton never acknowledged responsibility or made an offer of rescission.

Furthermore, the trial court found that any discussions between Wilson’s counsel and Napleton’s lawyers were inadmissible settlement communications pursuant to Illinois Rule of Evidence 408. *See* Ill. Sup. Ct. R. 408 (eff. Jan. 1, 2011); R.1492-1493. Napleton has not appealed that ruling to this Court and therefore waives any argument that the trial court properly considered its purported “rescission” offers. *See* Sup. Ct. R. 341(h)(7) (eff. Jan. 1, 1967). Accordingly, the trial court’s remittitur of the Jury’s punitive damages award based upon inadmissible evidence constitutes reversible error. *Mook*, 2018 IL App (3d) 170229 at ¶32.

(4) The Trial Court Improperly Remitted The Jury’s Punitive Damages Award Based Upon A Conclusion Refuted By The Record – That Napleton’s Fraud Purportedly Did Not Involve A “Safety Issue.”

In a trial court’s review of a jury’s punitive damages award, the “harm or potential harm” suffered by the plaintiff is an appropriate consideration. *Doe v. Parilla*, 2021 IL 126577, ¶43. Here, the trial court disregarded Wilson’s un rebutted evidence that the repairs to the car included airbag replacement, seatbelt repairs and structural repairs. A.021-023; C.12313-12315; A.090; C.12745; R.645. The only evidence of whether the structural repairs to the Aston Martin, airbag replacement and other repairs to the car’s passive restraint safety features posed a potential danger in the event of a subsequent accident came from Napleton’s own retained expert witness, Robert Isham.¹ He testified: “If you have to replace an airbag, that’s a very critical thing” and “[i]f you have to replace suspension, it’s a very critical thing.” R.1085. This evidence was un rebutted. *Cf. Gehrett v. Chrysler Corp.*, 379 Ill. App. 3d 162, 183 (2nd Dist. 2008) (dealership exhibited disregard for plaintiff’s safety by misrepresenting that a vehicle had safety features it did not have).

¹ Although not material to the issues before this Court, Napleton repeatedly represents to this Court that Isham was Wilson’s expert. (Napleton Br. at 2, 6, 26, 31, 51) Although it is true Wilson called Isham to testify at trial, it is not true that Isham was Wilson’s expert. Isham was Napleton’s Illinois Supreme Court Rule 213(f)(3) witness. R.1065 (“Q. And, sir, who originally engaged you for this lawsuit? A. John Pcolinski, or his firm, but I was talking to him.”); C.2877 (“Defendant previously disclosed Robert Isham of Collision Safety Specialists and produced his Report as its retained Expert.”).

(5) The Trial Court Improperly Remitted The Jury’s Punitive Damages Award Based On Irrelevant Factors, Including Its Award Of Attorney Fees Under The Consumer Fraud Act.

The trial court also erred in remitting the Jury’s punitive damages award based on irrelevant factors, including the fact that Wilson would “recover a large fee award” on his CFA claim. A.067; C.11628. Illinois courts utilize the amount of attorney fees awarded as a factor that weighs in plaintiff’s favor when considering a defendant’s challenge that a punitive damages award was disproportionate to actual damages and therefore violated constitutional due process. *Int’l Union of Operating Engineers, Local 150 v. Lowe Excavating Co.*, 225 Ill. 2d 456, 490 (2006) (“*Lowe*”); *Blount v. Stroud*, 395 Ill. App. 3d 8, 21 (1st Dist. 2009); *Kirkpatrick v. Strosberg*, 385 Ill. App. 3d 119, 136 (2nd Dist. 2008). Here, the trial court erroneously utilized the amount of Wilson’s attorney fees as a factor favoring Napleton.

Napleton’s contention that Wilson misconstrues *Lowe* is wrong. (Napleton Br. at 55) *Lowe* stands for the proposition that a court may “take into account the amount of the attorney fees expended in a case when assessing a punitive damages award.” *Lowe*, 225 Ill. 2d at 490. The statement was made in the context of this Court’s discussion of the “considerations that should be made in determining an appropriate compensatory to punitive damages ratio.” *Id.* at 489. This is not only Wilson’s interpretation of *Lowe* but that of the First District, Second District, and most recently, the Fourth District. *See Blount*, 395 Ill. App. 3d at 21; *Kirkpatrick*, 385 Ill. App. 3d at 136; *F&M Bank v. Williamson (In re Est. of Stegall)*, 2026 IL App (4th) 250638-U, ¶275. Napleton makes no attempt to distinguish *Blount* or *Kirkpatrick*. It merely states in conclusory fashion, that the First

District and Second District were “mistaken.” (Napleton Br. at 56 n.21) They were not. The trial court’s remittitur of the Jury’s punitive damages award because Wilson would “recover a large fee award” is completely at odds with this Court’s holding in *Lowe* and therefore constitutes reversible error.

The trial court also justified its remittitur on the irrelevant fact that “Napleton’s eventually took the car back” and “fully paid off [the lease].” A.067; C.11628. But this was not done to benefit Wilson, it was done for Napleton’s own benefit. At the conclusion of his lease Wilson could either pay Premier the \$60,692.51 final balloon payment or surrender the Aston Martin and pay Premier any difference between the payoff amount and what Premier was able to sell the car for at auction. C.12409; R.1150-1151. Wilson advised Napleton that he intended to surrender the vehicle, at which point Napleton chose to make the \$60,692.51 balloon payment, take possession of the car, and then sell it to Bart Miller (again misrepresenting the car’s accident history) for \$73,500, reaping a 21% profit. R.984; R.1204. Napleton knew Wilson was suing for his out-of-pocket damages and even issued discovery on that basis, *see* Section II(C)(4) *infra*, so Napleton knew that Wilson would seek to recover any shortfall from Napleton. Napleton’s profitable reacquisition of the car should not have factored into the trial court’s remittitur of the Jury’s punitive damages award because Napleton reacquired the car for its own benefit.

(6) The Jury’s Punitive Damages Award Passes Muster Under Illinois Common Law.

Napleton claims that any award of punitive damages in this case cannot be justified under Illinois common law. (Napleton Br. at 52) Napleton is wrong. Punitive damages are intended to “punish the wrongdoer and to deter that party, and others, from committing similar acts in the future.” *Deal v. Byford*, 127 Ill. 2d 192, 203 (1989). In reviewing a

jury's award of punitive damages, relevant circumstances for the court to consider include (1) the nature and enormity of the wrong; (2) the financial status of the defendant; and (3) the potential liability of the defendant to other plaintiffs arising out of the same event. *Id.* at 204 citing *Hazelwood v. Ill. Central Gulf R.R.*, 114 Ill. App. 3d 703 (4th Dist. 1983). Here, as in *Deal*, the third factor does not apply. The other factors support the Jury's \$1,000,000 award.

Napleton contends that Wilson waived any argument regarding the *Deal* factors pursuant to Supreme Court Rule 341(h)(7) because he did not address *Deal* specifically in his opening brief. (Napleton Br. at 52) This is not true because Supreme Court Rule 341(j) permits appellants to reply to arguments presented in the brief of the appellee. *Chamberlain v. Civil Service Comm'n*, 2014 IL App (2d) 12151, ¶31, citing *People v. Whitfield*, 228 Ill. 2d 1166, 1173 (2007). As stated by this Court, "[i]t would be unfair for us to require an appellant, when writing his or her opening brief, to anticipate every argument that may be raised by an appellee." *Whitfield*, 228 Ill. 2d at 1173. Moreover, Napleton's reprehensible, recidivist conduct is a focal point of Wilson's opening brief and the supposed poverty of Napleton, whose annual gross sales in the year preceding the trial topped \$88 million, was not listed as a factor the trial court considered in its remittitur. R.1291; CI.11; A.067-068; C.11628-11629.

"Although the purpose of punitive damages is to punish and deter wrongful conduct, juries have been charged with their determination because they depend so closely upon the jury's fact finding." *Blount*, 395 Ill. App. 3d at 21. "Juries have the unique ability to 'articulate community values' and evaluate 'the reprehensibility of a defendant's conduct for purposes of awarding punitive damages.'" *Id.* at 23. Here, the Jury found

Napleton's conduct reprehensible enough and the need for deterrence sufficient to warrant a \$1,000,000 punitive damage award. Napleton's patently absurd "mistake" defense – which it has the temerity to repeat to this Court – was soundly rejected by both the Jury and the trial court. Neither the Jury nor the trial court believed Galecki's incredulous testimony that he would not bother to check his own dealership's service records (which he first claimed he did not have ready access to) before paying \$140,000 for a used car. R.963-964; R.973-980; R.999; R.1251-1252. Napleton's "mistake" defense was further undermined by evidence of the Miller transaction where Galecki admitted that Napleton provided Miller with the modified CarFax and the True360 report indicating that the damage was only minor or cosmetic and allowed the salesperson to tell Miller the same thing. R.1215-1216; R.1222; R.1227-1228. After much equivocation, Galecki eventually admitted that he knew the information Napleton gave to Miller was not true. R.1253-1254. This evidence also underscores the egregiousness of Napleton's recidivist conduct.

Napleton's financial status supported the Jury's \$1,000,000 punitive award. *Motsch v. Pine Roofing Co.*, 178 Ill. App. 3d 169, 172 (1st Dist. 1989) (punitive damages award 37% of net worth); *National Bank v. Doss*, 141 Ill. App. 3d 1065, 1074 (4th Dist. 1986) (punitive damages award of 71% of defendant's net worth). The Jury heard the testimony of Napleton's Chief Financial Officer Ken Stevens who testified that in 2022, Napleton had gross sales of \$88.7 million and for the first quarter of 2023 Napleton had gross sales of \$18.6 million. R.1291; CI.11; CI.15. Napleton's financial statements were admitted into evidence and showed that at the end of 2022, Napleton had \$20.1 million in assets and on March 31, 2023 it had \$19.4 million in assets. R.1291; CI.11; CI.15. Stevens testified that in 2018, the dealership had expanded by acquiring a Maserati franchise.

R.1290. Stevens testified that the dealership had a net worth of at least \$4,796.213.00.

R.1279. From these facts, the Jury could reasonably conclude that \$1,000,000 was an appropriate punitive damages award, and Napleton presented no evidence at trial that it could not pay a punitive damage award of \$1,000,000.²

(7) The Jury's Punitive Damages Award Satisfies The Due Process Standards Under The U.S. Constitution.

The Jury's \$1,000,000 punitive damage award comports with due process. To determine whether a punitive damage award comports with due process, the court must consider (1) the degree of reprehensibility of the conduct, (2) the disparity between the harm or potential harm and the amount of punitive damages awarded—*i.e.*, the ratio of actual damages to punitive damages, and (3) the difference between punitive damages and the statutory civil penalty authorized if such penalty exists. *Blount*, 395 Ill. App. 3d at 24 citing *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575 (1996).

Once again Napleton asserts waiver pursuant to Supreme Court Rule 341(h)(7), arguing that Wilson did not address the first and third factors in its opening brief. (Napleton Br. at 56) Once again, Napleton is wrong. *See Whitfield*, 228 Ill. 2d at 1173. Moreover, as previously stated, Napleton's reprehensible, recidivist conduct is a focal point of Wilson's opening brief. As to the third factor, there is no indication in the trial court's remittitur that it considered any supposed difference between punitive damages and the statutory civil penalty. A.067-068; C.11628-11629. Further there was no reason for the

² The Jury did not hear evidence that Napleton is part of a larger enterprise that may divert profits through payments to Napleton Automotive Group, a parent entity with revenues in excess of \$1.4 billion in 2016 because the trial court granted Napleton's Motion in *Limine* No. 5 barring Wilson from inquiring into that fact. R.141-142; C.3361-3362; C.3708; C.3802.

trial court to consider this third factor as Illinois does not have a statute imposing civil penalties for the type of fraud that occurred here.

(a) Napleton's Conduct Was Reprehensible.

A non-exhaustive list of factors to determine reprehensibility includes the following (although not all factors need be present): whether the harm caused was physical as opposed to economic, whether the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others, whether the target of the conduct had financial vulnerability, whether the conduct involved repeated actions or was an isolated incident; and, whether the harm was the result of intentional malice, trickery, or deceit, or mere accident. *Blount*, 395 Ill. App. 3d at 24-25. All of the factors support the conclusion that Napleton's conduct was reprehensible.

Napleton's conduct evidenced an indifference and reckless disregard of Wilson's safety and anyone else who might ride in the Aston Martin because Napleton sold Wilson a high-performance sports car—one in which his wife and children would ride—without telling him that the Aston Martin had suffered structural damage and had been substantially disassembled and reassembled including the replacement of safety components like the air bag module and seatbelts. A.021-023; C.12313-12315; A.024; C.12745; C.12747; R.636-638; R.645; R.708-709.

As respects Wilson's financial status, Wilson was not Jones, who could afford to purchase new Aston Martins and a Rolls Royce Wraith on a whim. R.545-574; R. 564. In fact, the evidence showed that once Wilson stopped driving the Aston Martin, he switched to driving his twenty-year-old Ford Mustang. R.922-924; R.1148-1149. Wilson is not

poor but the evidence established that the \$1,911.79 monthly lease payment for the Aston Martin was a significant monthly expense that he and his family clearly felt.

The next factor is satisfied because the evidence established that this was not an isolated incident by Napleton but rather a way of doing business as was established by the evidence of the Miller transaction and the testimony of Felix Chern, the individual who prepared the “minor cosmetic damage” True 360 report that whitewashed the first updated Carfax report. R.1003-1017. Chern testified that Napleton was a regular customer. R.1006. And, Galecki testified Napleton gave the True360 Report to Miller when Galecki knew the car had not suffered minor cosmetic damage. R.982-984; R.999-1001. Napleton’s assertion that its fraudulent conduct towards Wilson was an isolated incident is not accurate. (Napleton Br. at 57-58)

Napleton’s complaint that evidence of the Miller transaction somehow clouded the Jury’s award of punitive damages is misplaced. (Napleton Br. at 49-50) Such recidivist conduct is relevant for the purpose of assessing the reprehensibility of Napleton’s conduct and informing the Jury on its decision to award punitive damages. *Baumrucker v. Express Cab Dispatch, Inc.*, 2017 IL App (1st) 161278 ¶¶78, 80 (for the purpose of examining the reprehensibility of the defendants’ conduct, the court looked to whether defendant changed its conduct or engaged in similar conduct after the events giving rise to plaintiff’s claim); *Carter v. Mueller*, 120 Ill. App. 3d 314, 321, 324 (1st Dist. 1983) (“We do note, however, that evidence of similar transactions and practices is admissible to establish defendants’ *modus operandi* and intent, and is also relevant to a determination of punitive damages.”). Moreover, not only did Napleton twice misrepresent the accident history of the “SAME car” to two different buyers, *see* A.067; C.11628, but as the appellate court noted, there

was also evidence that Napleton had failed to disclose the true accident history of another car to another customer in the same year as the Wilson transaction but that evidence was excluded:

“[W]e parenthetically observe that the trial court did exclude deposition and photographic evidence of an unrelated third transaction in which Napleton failed to provide an accurate accident report to a customer purchasing a different car, even though that transaction occurred in the same year as the instant transaction and undisclosed repairs were also coordinated by Napleton at the same repair shop.”

Wilson v. Napleton’s Goldcoast Imports, Inc., 2025 IL App (3d) 240079, ¶29.

Finally, the “harm inflicted was the result of intentional malice, trickery, or deceit,” not a “mere accident.” *Blount*, 395 Ill. App. 3d at 25 citing *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 417 (2003). Again, Napleton’s “mistake” argument, (Napleton Br. at 58), has been thoroughly debunked.

(b) The Ratio Of Actual Damages To Punitive Damages In The Jury’s Awards Is Appropriate.

As this Court has stated, “[i]n our estimation, the best way to determine whether a given ratio is appropriate is to compare it to punitive damages awards in other, similar cases. *Lowe*, 225 Ill. 2d at 487. Here, the Jury’s \$1,000,000 punitive damages award results in a punitive damages to actual damages ratio well below ratios Illinois court have found acceptable in other fraud cases against car dealerships. *See Gehrett*, 379 Ill. App. 3d at 183 (7:1 ratio); *Bates v. William Chevrolet/GEO*, 337 Ill. App. 3d 151, 170 (1st Dist. 2003) (7:1 ratio); *Ciampi v. Ogden Chrysler Plymouth*, 262 Ill. App. 3d 94, 113 (2nd Dist. 1994) (affirming jury’s award of \$5,000 compensatory damages and \$100,000 in punitive damages (20:1 ratio) against car dealership for common law fraud by falsely representing to plaintiff that she was buying a new car).

Factoring in the amount of attorney fees incurred by Wilson in this vigorously-defended fraud case results in a punitive damages multiplier of roughly 1.6 ($\$1,000,000/(\$163,442 + \$452,311) = 1.62$). Even if this Court were to accept the trial court's reduction in Wilson's attorney fees (respectfully, it should not), the punitive damages multiplier would be roughly 2.9 ($\$1,000,000/(\$163,442 + \$185,362) = 2.87$). Completely disregarding Wilson's attorney fees altogether (which, respectfully, this Court should not) still only results in a punitive damages multiplier of roughly 6.1 ($\$1,000,000/\$163,442 = 6.12$). In sum, regardless of the method this Court uses to determine the multiplier in this case, the Jury's \$1,000,000 punitive damages award satisfies due process and is less than the multiplier approved by Illinois courts in fraud cases brought against car dealerships. *Gehrett*, 379 Ill. App. 3d at 183 (multiplier of seven); *Bates*, 337 Ill. App. 3d at 170 (same); *Ciampi*, 262 Ill. App. 3d at 113 (multiplier of 20).

(c) There Are No Relevant Statutory Penalties.

The final factor is not relevant here because the Jury's Verdict was for common law fraud, so there is no statutory limitation that applies. The common law (and CFA) car fraud cases against dealerships have allowed punitive damages of up to and exceeding a 7:1 ratio, demonstrating no such limitation exists even for Wilson's CFA count. *Gehrett*, *supra* (multiplier of seven); *Bates*, *supra* (same); *Ciampi*, *supra* (multiplier of 20). Napleton's misplaced reliance on any statute it could find that includes a damage multiplier—for example, the Dating Referral Services Act (815 ILCS §615/45), the Illinois Dance Studio Act (815 ILCS §610/10) and the statute prohibiting misrepresentation of radon reduction services, Section 2W of the Illinois Consumer Fraud Act (815 ILCS §505/2W)—underscores that no statute applies here. (Napleton Br. at 40) Like the *Koehler*

court, this Court should decline to impose a limitation based upon statutes not applicable here. *See, e.g., Koehler v. Packer Group, Inc.*, 2016 IL App (1st) 142767 ¶100 (“Where the legislature has not spoken, there is nothing to consider.”).

C. The Trial Court Abused Its Discretion By Granting Napleton’s Motion For Remittitur Of The Jury’s Out-Of-Pocket Damages Award.

Regardless of whether Napleton waived the argument that Wilson was not entitled to any out-of-pocket actual damages by proposing an alternative jury instruction on out-of-pocket damages, the fact remains that the Jury’s Verdict of \$163,442 in actual damages was nonetheless consistent with Napleton’s proposed jury instruction and the one given by the trial court. Here, the trial court improperly remitted Wilson’s out-of-pocket damages based upon a flawed legal conclusion, *i.e.*, the trial court’s belief that Wilson suffered no damages until he discovered Napleton’s fraud in May 2018. R.200. The Jury awarded Wilson his out-of-pocket damages, including all \$114,707.67 expended in monthly lease payments. A.063; C.5553. The trial court reduced that amount to \$55,442.04, the “[l]ease payments made after the accident was discovered.” A.067; C.11628; R.199-200.

The law of Illinois and seemingly every other U.S. jurisdiction is that a plaintiff suffers damages at the time of the fraud; the plaintiff does not start accruing damages only after the plaintiff discovers the fraud. This is a point of law seemingly so self-evident that no case makes this point directly. However, cases applying the discovery rule make the point indirectly. *See Khan v. Deutsche Bank AG*, 2012 IL 112219 ¶41 (“The discovery rule can delay the commencement of the limitations period where an injury has already occurred but has not been discovered.”) (internal citations omitted; emphasis added.); *Coe v. Proskauer Rose, LLP*, 314 Ga. 519, 526 n.16, 528 (2022) (allowing plaintiffs to recover

damages for amounts paid in reliance upon defendants' fraud years prior to the plaintiffs discovering defendants' fraud).

The trial court justified the reduction of Wilson's out-of-pocket damages because "[Wilson] had full use of a luxury automobile for nearly 3 years." A.067; C.11628. But a claim for a setoff must be asserted as a counterclaim and Napleton's failure to assert it resulted in its forfeiture. *MidAmerica Bank, FSB v. Charter One Bank, FSB*, 232 Ill. 2d 560, 575 (2009); *Vieweg v. Friedman*, 173 Ill. App. 3d 471 (2nd Dist. 1988). And, Napleton expressly conceded it did not assert setoff. Napleton told the trial court at the pretrial conference, "What it boils down to is we are not asking for a setoff. We never did ask for a setoff." R.191.

Vieweg is directly on point. In *Vieweg* a car buyer sought revocation of the sale of an automobile under the Magnuson-Moss Warranty Act. Following a bench trial, the court entered judgment for the plaintiff and applied a setoff based upon plaintiff's use of the vehicle for 11 or 12 months. The appellate court affirmed judgment for the plaintiff but reversed the setoff against plaintiff's damages because the dealership never asserted a setoff counterclaim or affirmative defense. The court held "a setoff must be raised by a defendant in his pleadings, because to allow otherwise would deprive a plaintiff of his right to notice and opportunity to defend against such a claim." *Id.* at 474.

Napleton does not, because it cannot, distinguish *Vieweg*. So it declares it an "outlier" that "has been rejected by subsequent panels in the Second District." (Napleton Br. at 47) Neither statement is true. The holding in *Vieweg* quoted above was expressly adopted by the Illinois Supreme Court. *See MidAmerica Bank*, 232 Ill. 2d at 574-75, *citing*

Vieweg, 173 Ill. App. 3d at 474. Further, the two cases that Napleton cites as supposedly rejecting *Vieweg* did nothing of the kind.

The court in *Ciampi* did not “reject” *Vieweg* but rather found it did not apply because the defendant introduced evidence that the plaintiff had driven “the car for two years without making any payments” not for purposes of asserting a setoff, but as proof that the plaintiff did not suffer any damages. *Ciampi*, 262 Ill. App. 3d at 111-112 (emphasis added). Here, it is undisputed that Wilson made all of his lease payments.

Nor did the court in *Berkei v. Delnor Hosp.*, 207 Ill. App. 3d 255 (2nd Dist. 1990) “reject” *Vieweg*. In fact, it specifically stated that “the holding in *Vieweg* accurately states the law.” *Id.* at 264. However, it found *Vieweg* inapplicable because the type of setoff at issue in *Vieweg* (and at issue here) to be different than the type of setoff before it:

“In one sense, a setoff is defined as a cross-claim for which an action might be maintained by a defendant against a plaintiff, or as a counterdemand which a defendant holds against a plaintiff arising out of a transaction extrinsic to the plaintiff's cause of action. This type of setoff would be of the same nature as the setoff referred to in section 2 -- 608(a) of the Code and in the principle stated in *Vieweg*.”

“The setoff at issue here, however, is not a separate claim or counterclaim, but a more limited notion tied to the concept of satisfaction of judgments. It is fundamental that a plaintiff may not recover more than once for the same injury, and the Illinois Supreme Court has *sua sponte* ordered that a plaintiff's award be reduced by any amounts received from other tort-feasors for the same injury.”

Id. at 265-66 (citations omitted). Here, the setoff at issue does not involve a plaintiff recovering damages from multiple tort-feasors for the same injury or other double recovery, but rather “a counterdemand which a defendant holds against a plaintiff arising out of a transaction extrinsic to the plaintiff's cause of action,” *see id.* at 264, the type of setoff at issue in *Vieweg*.

Further, even if Napleton did not waive setoff (it did), Napleton would have this Court shift the burden to Wilson, the defrauded plaintiff, to prove not only his out-of-pocket costs but also what amounts he would have incurred had he not been defrauded. Not surprisingly, Napleton provides no authority for its outrageous position.

Finally, Napleton asserts that Wilson suffered no out-of-pocket damages because “Wilson did not make [the] lease payments.” Again, this misstates the record and was another issue waived by Napleton. *See* Section I(B)(3), *supra*. The evidence presented at trial established that a lease payment was made by an entity named the “Wilson Toy Box,” a trust that Wilson was both a trustee and beneficiary of, and from which Wilson and his wife paid some of the family’s personal expenses. R.911-914; R.951. Moreover, the issue of whether Wilson or his trust made payments is one of standing, an affirmative defense that was never asserted by Napleton and therefore waived. *Lebron v. Gottlieb Mem. Hosp.*, 237 Ill. 2d 217, 252-53 (2010).

D. The Trial Court Erred By Reducing Wilson’s Attorney Fees Hours By A Flat Percentage.

In Illinois, it is an abuse of discretion for a court to arbitrarily reduce a plaintiff’s attorney fees award based upon a flat percentage. *Casey v. Rides Unlimited Chi., Inc.*, 2022 IL App (3d) 210404, ¶12, *citing Hensley v. Eckerhart*, 461 U.S. 424 (1983). Here, the trial court’s flat 50% reductions to five categories of attorney time constituted an abuse of discretion; the trial court failed to identify a single offending time entry and its explanation for its reduction suggests that the trial court did not review the time entries. *Id.*

After trial, Wilson filed his detailed fee petition with 1,453 time entries broken down into 20 categories of work for which he sought to recover a fee award. C.5723-5728;

C.5737-5843. Wilson also identified the time entries not related to his CFA claim for which he did not seek recovery. C.10568-10569. Although Napleton objected to only 15 specific time entries, the trial court *sua sponte* denied Wilson recovery for all 214 time entries in nine categories of work as described in Wilson's petition and summarily lopped off 50% of an additional 590 time entries related to five other categories of work as described in Wilson's petition. C.8459; A.066-067; C.5712-5728. The trial court did not identify any specific objectionable time entry in its decision or indicate that it had even reviewed any of the time entries; instead, the trial court appears to have relied solely upon Wilson's description of the different categories of time entries. A.066-067; C.11627-11628.

Citing *In re Marriage of Kane*, 2016 IL App (2d) 15074, ¶31 and *Pillai v. St. George Warehouse of IL, Inc.*, 2022 IL App (2d) 200089-U, ¶86, Napleton contends that Illinois law does not require a defendant to provide the trial court with specific reasons to reduce a plaintiff's attorney fees request. (Napleton Br. at 64) But those cases hold only that the trial court is not tasked with performing a line-by-line review. *Id.* Rather it is the job of the defendant's attorneys to provide "specificity . . . to aid the trial court in its efforts to determine a reasonable fee award." *In re Marriage of Kane*, 2016 IL App (2d) 15074, ¶31; *see also*, *Clayton v. Planet Travel Holdings, Inc.*, 2013 IL App (4th) 120717, ¶29 ("The trial court allowed defendants requested time to file written arguments related to the reasonableness of fees in order to challenge the fees and specific line items; however, defendants failed to raise any objections in their written arguments."); *Moreno v. City of Sacramento*, 534 F.3d 1006, 1116 (9th Cir. 2008) ("If opposing counsel cannot come up

with specific reasons for reducing the fee request that the district court finds persuasive, it should normally grant the award in full...”).

The five categories of time entries described in Wilson’s petition that the trial court reduced by a flat 50% were:

- (1) fact discovery, production of documents, reviewing documents produced by Napleton, and discovery motions (151 time entries);
- (2) depositions of Napleton’s employees and former employees related to the facts in this case, including Principato, Sobotko, Galecki (52 time entries);
- (3) discovery of Napleton's resale of the Aston Martin and briefing a successful motion for leave to seek punitive damages under both common law fraud and the Consumer Fraud Act (197 time entries);
- (4) final pretrial conferences (172 time entries); and
- (5) trial preparation and conducting the trial (18 time entries).

C.5723-5728; C.5737-5843; A.066-067; C.5712-5728. The fact that each of the 590 time entries was reduced by the exact same percentage strongly suggests that the trial court did not consider the actual time entries. *See Casey*, 2022 IL App (3d) 210404, ¶29 (A trial court may not arbitrarily reduce an attorney fees award; any reduction requires a clear and concise explanation.); *Wendy & William Spatz Charitable Found. v. 2263 N. Lincoln Corp.*, 2013 IL App (1st) 122076, ¶42 (same); *Advocate Health & Hosps. Corp. v. Heber*, 355 Ill App 3d 1076, 1079 (2nd Dist. 2005) (same).

The trial court explained that it was reducing Wilson’s fees on the basis that:

“[T]he court granted summary judgment on Count II [Wilson’s CFA claim]. A large portion of the work done after March 30, 2021, was solely related to the fraud count. There were also many hours spent on diminution in value, a theory that was ultimately abandoned at trial.”

A.066; C.11627. However, on March 30, 2021, the trial court had only granted Wilson partial summary judgement on Count II, finding that Wilson had proven Napleton’s

liability; it reserved ruling on the issue of damages under the CFA until it heard evidence at trial. C.1355; R.27; R.30. Accordingly, the work done after March 30, 2021 preparing for trial was necessary. Further, the trial court's statement that there were also many hours spent on legal theory ultimately abandoned at trial does not apply to any of the categories of fees the trial court reduced by 50%. It is apparent that the trial court simply divided Wilson's attorney fees evenly between Wilson's common law fraud claim (Count I) and his CFA claim (Count II). This constituted reversible error.

Where a prevailing party is entitled to an award of fees on some claims but not others but the work cannot be segregated between covered and uncovered claims because the claims are inextricably intertwined, the prevailing party is entitled to an award of fees for both the covered and uncovered claims. *See Dubey v. Public Storage, Inc.*, 395 Ill. App. 3d 342, 361 (1st Dist. 2009) ("However, plaintiffs may also recover fees incurred for work on non-Act claims when the Act claim is so inextricably intertwined with the non-Act claims that it cannot be distinguished."); *Ardt v. State*, 292 Ill. App. 3d 1059, 1067 (5th Dist. 1997) ("The issues involved in this lengthy litigation were complex and so inextricably intertwined, we believe, that the time plaintiff's attorney spent on each issue cannot and should not be distinguished for the purpose of determining the reasonable amount of fees due to plaintiff ***."); *Berlak v. Villa Scalabrini Home for the Aged*, 284 Ill. App. 3d 231, 238-239 (1st Dist. 1996) (where claims involve a "common core of facts" attorney fees should be awarded on both the claims covered by the attorneys' fee provision and the uncovered claims). *See also Orme v. Northern Trust Co.*, 25 Ill. 2d 151, 167 (1962) ("In our judgment the issues were interrelated and defy separation in computing fees. In fact, the master's denial of fees for services relating to the million dollar State Street

property was tantamount to a substantial reduction of plaintiff's fees***The litigation here was costly, not because plaintiff's counsel spent a disproportionate amount of time on any question of law [] but because of the multiplicity of the interrelated issues, for which plaintiff certainly cannot be blamed.”) Similarly, here the facts related to Wilson’s common law fraud claim and CFA claim and the facts related to the damages for the two claims are very similar and therefore are intertwined.

E. Napleton’s Challenges To The Trial Court’s Award Of Attorney Fees Not Raised In Its Appeal To This Court Are Waived And Are Otherwise Invalid.

Napleton’s appeal to this Court did not include any challenge to the trial court’s award of attorney fees under the CFA. (Napleton Br. at 17-40) Accordingly, this Court should not consider the arguments raised for the first time in its response brief that: (1) Wilson is somehow not entitled to a fee award because he did not produce the contingency fee agreement in this case (Napleton Br. at 60-61); or (2) the trial court erred by setting a lodestar rate of \$375 per hour (Napleton Br. at 62-23). *See Olson v. Etheridge*, 177 Ill. 2d 396, 398 (1997) (If a party does not challenge a ruling on appeal, the waiver doctrine applies and the court accepts that holding as correct.)

(1) Wilson’s Contingency Fee Agreement With Counsel Is Not Relevant.

Napleton argues that Wilson did not produce the contingency fee engagement agreement with counsel, but Napleton cites no authority that this is fatal to Wilson’s fee petition claim and controlling authority holds that it is not. In *Clayton v. Planet Travel Holdings, Inc.*, 2013 IL App (4th) 120717, ¶¶47-49 the court held that plaintiff’s failure to produce its engagement agreement as an attorney-client communication did not preclude plaintiff from recovering its attorney fees award under the CFA. Moreover, because a

lodestar rate applies—*i.e.*, the hours reasonably expended multiplied by a reasonable market hourly rate—the contingency fee engagement agreement is not relevant. *Casey*, 2022 IL App (3rd) 210404, ¶¶9, 10, 25-27; *Demitro v. GMAC*, 388 Ill. App. 3d 15, 23 (1st Dist. 2009).

(2) If This Court Considers The \$375 Lodestar Rate It Should Find That It Was Too Low.

Citing *Johnson v. GDF, Inc.*, 668 F.3d 927, 933 (7th Cir. 2012), Napleton argues that Wilson’s attorneys’ rates billed in federal ERISA fringe benefit contribution collection cases should serve as the measure of their hourly rate. (Napleton Br. at 62) *Johnson* held no such thing. Although *Johnson* stated that the attorney’s actual hourly rate for “similar work” should be considered, where the attorney did not provide evidence of an hourly fee for similar work—for example, because the attorney’s fee was based upon a contingency fee—then the trial court could consider “evidence of rates similarly experienced attorneys in the community charge paying clients for similar work” *Id.*

Napleton next contends, without any legal support whatsoever, that “there is no such thing as [a] general market rate for consumer fraud claims. (Napleton Br. at 62) Courts throughout the region where this case was tried disagree. In Illinois, the appropriate lodestar rate for a prevailing attorney in a CFA action is “the customary fees charged for such services.” *Cruz v. Northwestern Chrysler Plymouth Sales*, 179 Ill. 2d 271, 280 (1997). Each of the trial courts below determined that \$475 per hour was the “customary rate” for prevailing counsel in a CFA lawsuit:

- *Turner v. Can Am Imports, Inc.*, No. 2018MR001552 (DuPage County, Nov. 19, 2007) (“The Court finds counsel’s hourly rate of \$475 customary and reasonable.”) C.6140.

- *Morris v. Dream Team Auto, LLC*, No. 2020 CH 148 (Rock Island County, Aug. 27, 2021 (“The Court finds counsel’s hourly rate of \$475.00 customary and reasonable . . .”) C.6144.
- *Powers v Klean Motorsports, LLC*, No. 2021 CH 02129 (Cook County, Mar. 1, 2022) (“[T]he Court find[s] that the hourly rate of \$475.00 of Plaintiff’s counsel is customary and reasonable . . .”) C.6146.
- *Casey v. Rides Unlimited Chicago, Inc.*, No. 20 CH 645 (Will County, Jan. 10, 2023) (“[T]he Court finds that the hourly rate of \$475 for Plaintiff’s counsel is customary and reasonable based on the record before the Court . . .”) C.6148.

The Third District agreed, finding in *Casey*, 2022 IL App (3d) 210404 that an hourly rate of \$475 was an appropriate market rate based upon a “2015-2016 United States Consumer Law attorney fee survey report” and a declaration from “Peter Luben, a consumer protection attorney who charges \$495 per hour in individual contingency car fraud cases.” *Casey*, 2022 IL App (3d) 210404, ¶27. Accordingly, the trial court in *Casey* set a lodestar rate of \$475, not because that was the rate typically charged by the particular plaintiff’s counsel, but because it was the prevailing market rate for CFA claims in the area. *Id.*

Here, along with copies of the orders referenced above, Wilson attached to his fee petition the same survey referenced in *Casey* (updated for the 2017-2018 period) and an affidavit from Amy Grogan, an attorney in the DuPage County area with 28 years of experience—similar to Wilson’s counsel—testifying that she charged up to \$450 per hour over the past two years and that her rates are consistent with the rates charged by litigation attorneys who practice in DuPage County. C.11027-11624; C.11020-11021. Accordingly, should this Court review the trial court’s setting of a lodestar rate of \$375 for an abuse of discretion, it should find that it was too low and remand with instruction to set the rate at the “customary” rate of \$475 for CFA cases.

II. CROSS-APPELLEE JEFFREY WILSON’S ARGUMENT IN RESPONSE TO CROSS-APPELLANT NAPLETON GOLDCOAST IMPORTS, INC.’S OPENING BRIEF

A. There Is No Factual Or Legal Basis To Remand This Case For A New Trial On Damages.

Napleton begins its argument with a false premise, namely that Wilson was allegedly “complicit in the trial court’s error.” (Napleton Br. at 17) Nothing could be further from the truth. As Napleton points out, “[t]he jury rendered its verdict on August 14, 2023. *** The trial court announced its remittitur on October 31, 2023 and entered judgment on Count I (in the remitted amount) that same day.” (Napleton Br. at 17) The trial court’s error, remitting the Jury’s awards of actual and punitive damages without first providing Wilson with the opportunity to accept or reject the remitter, happened without notice. A.66-68; C.11627-11629. To state the obvious, Wilson could not have been “complicit” in an action that he only learned of after the fact.³

What occurred next is that Napleton, not Wilson, challenged the remittitur when, on November 3, 2023, it filed Defendant’s Motion For Post Judgment Relief And Motion To Reconsider. C.11630-11641. In its motion, Napleton argued, *inter alia*, that the trial court should reconsider both its remitted award of \$99,000 in actual damages to Wilson, C.11633-11635, and its remitted award of \$400,000 in punitive damages to Wilson. C.11636-11638. Napleton devoted one paragraph of its twelve page brief to the argument

³ The “invited error” cases cited by Napleton are not remotely similar to what occurred here; they address situations where a party agrees with the action taken by the trial court and then later complains. *People v. Quezada*, 2024 IL 128805, ¶59 (failing to object to admission of evidence and then subsequently trying to appeal admission of that evidence); *Direct Auto Ins. Co. v. Bahena*, 2019 IL App (1st) 172918, ¶34 (defendant asked the court to enter default against it as a sanction rather than produce witnesses and then subsequently tried to appeal the sanction order).

that the trial court should enter an order that Wilson file a consent to the court's remitted judgment with the clerk of court, and absent such filing order a new trial. C.11635-11636. Napleton did not provide any legal support for this request. *Id.* Napleton still cannot. Napleton asks that this Court order a new trial on remand based upon the trial court's error by granting its remittitur without Wilson's consent but, as the appellate court observed, "Napleton cites no case taking this approach, and our research has disclosed none." *Wilson*, 2025 IL App (3d) 240079, ¶44.

On November 14, 2023, the trial court ordered Wilson to file his posttrial motion by November 29, 2023. C.11647. On November 29, 2023, Wilson did as ordered and filed his posttrial motion preserving all issues for appeal. C.11648-11664.

Wilson never accepted or rejected the remittitur because the trial court never asked him to. Napleton knew the trial court had not required Wilson to accept or reject the remittitur because Napleton filed a motion three days after the trial court entered the Judgment asking the trial court to order Wilson to accept or reject it. C.11635. The trial court denied this motion. C.12229. Here too, Napleton concedes that Wilson never rejected the remittitur by arguing to this Court that Wilson's conduct was "tantamount to rejection" (Napleton Br. at 18), which is another way of saying that Wilson never actually rejected the trial court's remittitur.

If there was any conduct "tantamount to a rejection" it was by Napleton. Wilson only filed a posttrial motion asking for reconsideration of the trial court's final judgment to preserve issues for appeal, after Napleton had done so one month earlier. C.11630-11641; C.11647-11664. More importantly, after the trial court rejected both parties' posttrial motions, Napleton could simply have waited for Wilson to appeal the trial court's

remitted judgment. If he failed to appeal the judgment, that would not be “tantamount” to an acceptance, it would be an actual acceptance because the trial court’s order would become final. By filing its appeal first, Napleton rendered the issue of the trial court’s failure to follow proper procedure in entering a remitted judgment moot. *Diaz v. Legat Architects, Inc.*, 397 Ill. App. 3d 13, 44-45 (1st Dist. 2009) (once a defendant files an appeal, a plaintiff is entitled to file a cross appeal challenging the trial court’s remittitur). *See also* Section I(A), *supra*. This issue was raised in Section II(B) of Wilson’s opening brief at pages 25-28 and Napleton did not respond. Napleton therefore waived any argument that it is entitled to a new trial on damages. *People v. Haag*, 80 Ill. App. 3d 135, 137 (2nd Dist. 1979) (an issue raised in an appellant’s brief not responded to by the appellee is conceded and deemed waived), *cited with approval in People v. Fassler*, 153 Ill. 2d 49, 62 (1992).

In sum, there is no basis – factually or legally – for this Court to remand this action for a new trial.

B. By Filing Its Appeal First, Napleton Rendered The Issue Of The Trial Court’s Failure To Follow Proper Procedure In Entering The Remitted Judgment Moot.

Once Napleton initiated its appeal, the merits of the trial court’s decision were squarely before the appellate court because Wilson was free to challenge the remittitur on cross appeal. This promotes an efficient use of the appellate court’s resources as contemplated by Illinois Supreme Court Rule 366, as opposed to creating a situation of piecemeal appeals. The Committee Notes to Rule 366 expressly state the importance of avoiding piecemeal appeals and disposing of all questions presented on appeal as presented by the record:

“*** Once the appeal is allowed, the whole case is before the reviewing court, and efficient judicial administration is advanced by disposing of all questions presented by the record. ***”

See Ill. Sup. Ct. R. 366 Committee Comments Paragraph (b) (rev. July 1, 1971). The appellate court’s and now this Court’s consideration of the merits of the remittitur is also supported by Illinois Supreme Court Rule 318 which provides that once this Court grants a petition for leave to appeal, the non-petitioning party can raise additional issues as part of its response. *See* Ill. Sup. Ct. Rule 318(a) (eff. Feb. 1, 1994); *Heastie v. Roberts*, 226 Ill. 2d 515, 546 (2007) (“Although plaintiff did not file a separate petition for leave to appeal, none was required. Plaintiff is entitled to raise the additional issue under Rule 318(a) ***”). The concern is judicial economy and fairness and the appellate court’s decision here promotes neither.

Addressing the merits of the trial court’s decision would also avoid creating an unfair situation for a plaintiff like Wilson where upon remand Napleton has no reason to appeal because all of the errors it complained of have already been addressed.⁴ The appellate court’s rulings, and this Court’s affirmance or reversal, on various issues such as the election of remedies doctrine or whether aggravation and inconvenience damages are recoverable under the CFA become law of the case. *Commissioners of Lincoln Park v. Schmidt*, 379 Ill. 130, 132 (1942). Conversely, contrary to Napleton’s assertion, Wilson

⁴ As pointed out in Wilson’s opening brief, the appellate court rejected Napleton’s arguments regarding: (1) the admission of Bart Miller’s testimony, *Wilson*, 2025 IL App (3d) 240079, ¶29; (2) whether the election-of-remedies doctrine precluded an award of out-of-pocket damages, *id.* at ¶62; (3) whether damages for aggravation and inconvenience are recoverable under the CFA, *id.* at ¶78; (4) whether the actual damages awarded were against the manifest weight of the evidence, *id.* at ¶79; and (5) multiple arguments made by Napleton challenging the trial court’s award of attorney fees and costs under the CFA. *Id.* at ¶¶94-113.

does not have “absolute certainty” or a “sneak peak” as to how the appellate court will rule on his issues. (Napleton Br. at 24) None of the arguments made by Wilson were addressed by the appellate court, only Napleton’s arguments were ruled upon.

The appellate court erred by failing to address whether the trial court abused its discretion by granting Napleton’s motion for remittitur based upon facts not supported by the record and, in some instances, refuted by the record. *Cf. Mook v. Johnson*, 2018 IL App (3d) 170229, ¶¶29, 32 (holding that trial court abused its discretion by granting a remittitur for reasons not supported by the record and evidence excluded at trial). Each of the cases relied on by Napleton and cited by the appellate court stand for the proposition that where the trial court has entered a remittitur—either with or without a plaintiff’s consent—and the defendant initiates an appeal, the merits of the trial court’s remittitur can be raised by cross appeal and should be decided by the appellate court. Those decisions support Wilson’s position here. *Wilson*, 2025 IL App (3d) 240079, ¶¶35, 36, 42.

For example, in *Congregation of the Passion, Holy Cross Province v. Touche*, *Foster v. Springfield Clinic*, and *Bart v. Union Oil Co.*, the defendant initiated the appeal after the trial court granted a remittitur and the plaintiff filed a cross appeal. *Congregation of the Passion, Holy Cross Province v. Touche*, 224 Ill. App. 3d 559, 590 (1st Dist. 1991) *aff’d* 159 Ill. 2d (1994); *Foster v. Springfield Clinic*, 88 Ill. App. 3d 459, 460 (4th Dist. 1980); *Bart v. Union Oil Co.*, 185 Ill. App. 3d 64, 67 (3rd Dist. 1989). In all three cases, the appellate court considered the merits of the trial court’s remittitur, although in *Bart* the appellate court ordered a new trial for reasons unrelated to the remittitur. *Congregation of the Passion, Holy Cross Province*, 224 Ill. App. 3d at 572, 589; *Foster*, 88 Ill. App. 3d at 466; *Bart*, 185 Ill. App. 3d at 69.

In *Haid*, the trial court granted a remittitur but did not allow the plaintiff to accept or reject the remittitur. *Haid*, 219 Ill. App. 3d at 410. The plaintiff initiated the appeal challenging the trial court’s award of remittitur and concomitant failure to allow the plaintiff to accept or reject it, and the defendant filed a cross appeal but did not raise any issue related to the remittitur. *Id.* at 416. Because the plaintiff initiated the appeal, the appellate court declined to address the merits of the trial court’s remittitur explaining as follows:

“In this case, it was plaintiff who initiated the appeal from the order of remittitur. Defendants thereafter filed a cross-appeal, but the only issue independently raised by them is whether plaintiff’s appeal should be dismissed. The remainder of the arguments in their brief are merely responses to the arguments made by plaintiff in support of his appeal from the order of remittitur. Defendants’ cross-appeal does not constitute the bringing of an appeal by the opposing party from the judgment as contemplated by section 68.1(7) or *Rule 366*.”

Id. at 416. The *Haid* court explained that it did not address the merits of the trial court’s remittitur only because the plaintiff initiated the appeal and defendant did not raise the issue in its cross appeal. By clear implication, if the defendant had initiated the appeal (as occurred here) the issue would have been squarely before the appellate court.⁵

C. Wilson Has Always Sought Out-Of-Pocket Damages.

Napleton next argues that Wilson is limited to his benefit of the bargain damages because a fraud plaintiff may either: rescind a fraudulent transaction by “return[ing] the product at issue” and recover out-of-pocket damages or affirm a fraudulent transaction by

⁵ The last two cases cited by the appellate court and Napleton, *Baker v. Spaulding Women's Apparel, Inc.* and *Augustine v. Kaufman*, do not apply because both involve appeals initiated by the plaintiff and both decisions lack any analysis. *Baker v. Spaulding Women's Apparel, Inc.*, 83 Ill. App. 2d 455, 456 (1st Dist. 1967); *Augustine v. Kaufman*, 338 Ill. App. 591, 592 (1st Dist. 1949).

electing to keep the product at issue and recover benefit-of-the-bargain damages, and Napleton contends that Wilson elected to keep the car. Again, Napleton's argument is built upon facts not supported by the record. First, Wilson did not elect to keep the car; and Napleton took no responsibility because Wilson was not its customer. Second, Wilson could not elect to rescind his agreement with Premier because Premier did nothing wrong. Third, Wilson could not unload the car.

(1) Napleton's Offer Of Proof Established That Napleton Never Offered To Rescind Wilson's Lease With Premier; And, Evidence Of Settlement Was Barred.

Napleton's argument that Wilson had an opportunity to get out of his lease with Premier because Napleton offered to rescind the lease or repurchase the car was refuted by Napleton's offer of proof. *See* Section I(B)(3), *supra*. Moreover, the trial court excluded any such evidence as inadmissible under Illinois Supreme Court Rule 408. *Id.*

(2) Rescission Was Never An Option For Wilson.

Wilson could not bring a claim against Napleton for rescission because Napleton induced Wilson to enter into the open-ended lease with Premier. There was no evidence that Premier ever engaged in any fraud and, therefore, Wilson had no basis to bring a claim against Premier to rescind his lease. "Rescission, by definition, is a purely contractual remedy.... As a result, only parties to the contract are subject to the remedy of rescission." *Kimbrow Equities I v. Metro. Fed. S&L Ass'n*, 1996 U.S. App. LEXIS 22266 *5 (6th Cir. Aug. 9, 1996); *see also YPI 180 N. LaSalle Owner, LLC v. 180 N. LaSalle II, LLC*, 403 Ill. App. 3d 1, 5 (1st Dist. 2010) ("Rescission is an equitable remedy that seeks to restore the contracting parties to their precontract positions.") (emphasis added); *United City of Yorkville v. Vill. of Sugar Grove*, 376 Ill. App. 3d 9, 22 (2nd Dist. 2007) ("Where a contract

is rescinded, the rights of the parties under the contract are vitiated or invalidated.”); *Steinberg v. Sherman*, 2008 U.S. Dist. LEXIS 37367, *20 (S.D.N.Y. May 8, 2008) (“A claim for rescission cannot be maintained against a person who was not a party to the contract. This is true even where that individual joined in the false representations that induced the contract.”)

The impossibility of Napleton’s rescission argument is further apparent because the parties could not be returned to their precontracting positions. To do so, Napleton would have to rescind its contract with Premier and return the purchase price to Premier. Premier, in turn, would have to agree to rescind its lease with Wilson and return all lease payments to Wilson – including all of its interest and profits on the transaction. Wilson would then surrender the vehicle to Premier who would then surrender the vehicle to Napleton who would then have to return to Wilson the Mercedes that he had traded in three years before discovering Napleton’s fraud. R.1120; R.1132-1134. Napleton’s offer of proof failed to produce evidence any of this was possible. Consequently, because Napleton’s fraud was to induce Wilson to acquire the car through a third-party lease, the unique nature of the transaction did not give Wilson the option to sue for rescission.

(3) Wilson Did Not Elect To Keep The Car; He Could Not Unload It.

Wilson did not “elect” to keep the car or “affirm” his lease as Napleton falsely and repeatedly asserts. (*See, e.g.*, Napleton Br. at 10, 27, 29, 30, 31) Instead, Wilson tried to get rid of the car but could not. Wilson tried to trade the car in at a California dealership but when that dealership discovered the accident the salesperson told Wilson “we’re not going to touch it” and thereafter refused to enter into any trade agreement with him. R.1141. Wilson then reached out to Matt Franze, a local Arizona dealer. R.1147. Wilson

also reached out through Franze to George Chapas, an exotic car broker who works with dealers in Arizona, California, Nevada, Texas, and South Dakota, to see if he could find anyone willing to take the car. R.808-811; R.818; C.12406. Chapas informed Franze, “Matt, I shopped the hell out of that Aston Martin. I got a handful of no thank you’s. No one is interested at any price. Sorry!!!” C.12406. Chapas could not find anyone interested in taking the car “at any price.” R.810-811; R.818.

These results were consistent with the testimony of both Chapas and Napleton’s expert, Isham, who both testified that exotic cars and Aston Martin in particular are incredibly difficult to sell after they have been damaged in an accident. R.810-813; R.818; R.1075-1076; R.1243; C.12406. Chapas testified, “*** Aston Martins are a very low volume vehicle. *** there's very few in the market so they're not as well-known as your other exotics. *** So one with an accident when they're already a little tough to get a buyer for is almost an automatic no-go.” R.812. Isham described people in the market for exotic cars like the Aston Martin as “*** fastidious, picky, whatever you want to say it—discriminating is a good word—about I don't want to touch a car that's been in an accident. I don't care if God repaired it. That attitude.” R.1076. Wilson did not choose to keep the car as Napleton misstates. Wilson was unable to unload it despite his efforts to do so.

Napleton’s argument that Wilson affirmed the transaction by driving the car “regularly”, by putting “25,000 miles on it”, by keeping “it for five years (including after discovering the fraud)”, and by refusing “Napleton’s offers to rescind” is just wrong. (Napleton Br. at 26-27) Wilson did not in any way “affirm[] [the] transaction” after his discovery of Napleton’s fraud. A defrauded party affirms the contract if, after discovering the fraud, he continues to accept a benefit under it. *Freeberg v. Ohio Nat’l Ins. Co.*, 2012

IL App (1st) 110938, ¶29; *see also Golden v. McDermott, Will & Emory*, 299 Ill. App. 3d 982, 993 (1st Dist. 1998). The record established the opposite. Wilson drove the car regularly before discovering Napleton's fraud and stopped driving the car after he discovered the fraud. R.1143-1146. Wilson learned of Napleton's fraud in 2018 when he attempted to trade the car towards another. R.810-813; R.818; R.970-971; R.1075-1076; R.1144-1145; R.1148. Even then, he continued to try and dispose of the car through Franze and Chapes only to find that no one would take the car "at any price." R.808-811; R.818; C.12406. Wilson stopped driving the car and confronted Napleton regarding its fraudulent misrepresentations. R.1145-1146; R.1466. There was no "offer to rescind." Napleton disavowed any responsibility because it "hadn't sold the vehicle to a Mr. Wilson" and could not find him in Napleton's "system." *See* Section I(B)(3). Wilson derived no benefit, and instead suffered only aggravation and inconvenience, from having the car sit collecting dust in his garage for nearly 2½ years while paying Premier \$1,911.79 per month to satisfy the remaining 29 lease payments under the five-year lease. R.1149-1150.

Napleton argues that Wilson could either buy the car at the end of his lease for \$60,000 or return the car and pay a \$1.50/mile excess mileage penalty. (Napleton Br. at 1, 7, 26) What Napleton ignores is that Wilson was deprived of the key benefit of the open-ended lease Napleton sold to him. It was supposed to give Wilson the option to trade in the car on another car at any time during his lease. That was the advantage of the open-ended lease and the reason Sobatko had recommended it to Wilson. The open ended feature of the Premier lease was a key inducement to Wilson, who intended to use the car as his everyday vehicle until he reached the lease's mileage limit, at which time he could terminate the lease by trading the car in toward another vehicle. (Napleton Br. at 7); R.786-

789; R.1134-1136. In its footnote 12, Napleton alludes to this option but fails to address the evidence at trial that despite his efforts Wilson was unable to trade the accident-stigmatized Aston Martin in on another vehicle. Napleton also ignores that had Wilson terminated early under the terms of the lease he was liable for additional costs which included the difference between the “Lease Balance” and the realized value of the Aston Martin, which after the discovery of the previously undisclosed accident damage was even greater than Wilson could have anticipated. A.41 (¶19); C.12779 (¶19). The Hobson’s Choice facing Wilson was either to continue paying on the car during the lease term including racking up mileage penalties or to stop paying and be sued by Premier for breach of his lease to which Napleton’s fraud offered Wilson no defense. That is no choice at all.

Wilson did not affirm his transaction with Napleton or decide to keep the car, he merely fulfilled his contractual obligation to Premier, an innocent third party because he had no other choice. Wilson’s first opportunity to dispose of the car after his trade-in efforts failed came at the end of the lease term when he had the choice either to purchase the car for \$60,000 or to allow Premier to sell the car at auction and then pay Premier any shortfall as required by the lease. C.12409; R.1150-1151. Given that the car was not worth the payoff price, Wilson chose not to keep the car and instead to allow Premier to sell the car at auction. R.1109; R.1150-1151. Had Wilson been liable for any shortfall in the sale price, he would have included that amount as part of his damages in this lawsuit. Knowing that, Napleton purchased the car from Premier for \$60,000. Napleton made that decision not to benefit Wilson but instead to limit its own potential liability in this lawsuit.

At the conclusion of its case, Napleton told the Jury that Wilson “got want he wanted” when he leased the Aston Martin. R.1612; R.1661-1662. What Wilson wanted

was a pristine Aston Martin on an open-ended lease so he could drive it regularly and trade it in at the mileage cap. What he got was an unmarketable Aston Martin with a severe damage history that no one would take on trade leaving him stuck with a car and an open-ended lease feature he could not use. Napleton's election of remedies argument is based on its false premise that Wilson chose to keep the car. (Napleton Br. at 29) The evidence established otherwise; Wilson did not choose to keep the car, he had no choice.

(4) Wilson Consistently Sought Out-Of-Pocket Damages.

Wilson has consistently sought his out-of-pocket damages from Napleton from the beginning of this lawsuit. Each of Wilson's complaints sought out-of-pocket damages. C.81 (¶44); C.607-608 (¶91); C.3707-3708 (¶91); C.5573 (¶91). Napleton understood Wilson was seeking his out-of-pocket damages because it issued discovery to Wilson expressly asking him to produce documents "relating to the out of pocket damages you incurred as alleged in paragraph 44" of the original complaint. C.1233 (¶4). Napleton knew Wilson's position and never changed its position based on Wilson's conduct.

There was no double recovery or possibility of double recovery, and the Jury awarded Wilson his out-of-pocket damages consistent with the trial court's jury instruction. C.5519. Napleton was not misled into believing that Wilson was only seeking benefit of the bargain damages because the nature of the transaction—a lease from innocent third party Premier—precluded any such relief. *Indep. Trust Corp. v. Hurwick*, 351 Ill. App. 3d 941, 954 (1st Dist. 2004) (election of remedies doctrine does not apply "where no threat of double recovery exists, the defendant is not misled and has not changed his position in reliance on the plaintiff's conduct, and there is nothing about the action that would serve to bar the [judgment] by reason of *res judicata*.").

Finally, Napleton argues that its election-of-remedies argument is based upon an election that occurred before the filing of the lawsuit because Wilson had elected to keep the car. (Napleton Br. at 29) As discussed above, this argument is refuted by the record in this case, and Napleton cites no evidence or legal authority to support this conclusion. Finally, the appellate court similarly found no support for Napleton’s election-of-remedies argument in the record or based upon any legal authority. *Wilson*, 2025 IL App (3d) 240079, ¶¶62-63. For these reasons, Napleton’s election-of-remedies argument lacks any support.

C. Illinois Law Allows For The Recovery Of Damages For Aggravation And Inconvenience.

Napleton argues that aggravation and convenience damages are not recoverable under either common law fraud or the CFA and that the appellate court created new law by affirming the award of damages. Contrary to Napleton’s assertion, the appellate court did not create new law because, as Napleton itself acknowledges, prior Illinois appellate court decisions have affirmed the award of damages for aggravation and inconvenience damages for both common law fraud and violation of the CFA.

(1) The Plain Language And Remedial Nature Of The CFA Allow For The Award Of Damages For Aggravation And Inconvenience.

(a) Plain Language Of The CFA.

The language of the CFA itself supports the trial court’s award of aggravation and inconvenience damages. The CFA limits actions to parties who have suffered “actual damage.” However, once a party has shown actual damages, the CFA allows the trial court in its discretion to award economic damages “or any other relief which the court deems proper.” *See* 815 ILCS §505/10a(a) (emphasis added).

Section 10a(a) of the CFA provides as follows:

“(a) Any person who suffers actual damage as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual economic damages or any other relief which the court deems proper; ***⁶”

See 815 ILCS §505/10a(a). The first sentence provides the gate keeping function of the statute requiring that a plaintiff suffer actual damages in order to bring a CFA claim. Once a plaintiff has stated a claim and established actual damages, damages such as inconvenience and aggravation are compensable under the CFA. *Olson v. Ferrara Candy Co.*, 2025 IL App (1st) 241126, ¶67 (observing that if a plaintiff has suffered an economic loss then damages for inconvenience and aggravation are compensable under the CFA), *citing Dieffenbach v. Barnes & Noble, Inc.*, 887 F.3d 826, 830 (7th Cir. 2018); *Ainsworth v. Jidd Enterprises, LLC*, 2024 IL App (1st) 230938-U, ¶28.

The statute means just what it says, namely, that the trial court is authorized to award such other relief which the court deems proper in addition to actual economic damages. Where the language of a statute is plain and certain, it must be given effect by the courts without reading into the statute “words which are not within the plain intention of the legislature as determined from the statute itself.” *Kozak v. Retirement Bd. of Firemen's Annuity & Ben. Fund*, 95 Ill. 2d 211, 216 (1983).

Napleton’s reliance on *Doe v. Dilling* is misplaced because that case addressed whether a lie of a personal nature was actionable in fraud or negligent misrepresentation

⁶ The additional CFA language specific to claims against new or used car dealers was struck down by the Illinois Supreme Court in 2003. *Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12, 34 (2003) (“For the foregoing reasons, we affirm the judgment of the appellate court invalidating Public Acts 87-1140 and 89-1144 [favoring vehicle dealerships over all other retailers] as violative of the special legislation clause of our state constitution.”).

and the court concluded neither. The plaintiff in *Doe* sued her fiancé's parents who lied to her that their son suffered from curable medical conditions when in fact he suffered from AIDS. This Court declined to extend claims for fraudulent misrepresentation and negligent misrepresentation to a wholly non-commercial context where the false statements were purely of a personal nature. *Doe v. Dilling*, 228 Ill. 2d 324, 343 (2008). However, the fraud in this case arises out of a commercial transaction where Wilson suffered economic damages and, therefore, *Doe* does not apply.

Similarly, Napleton's reliance on *Kim v. State Farm Mut. Auto. Ins. Co.* is misplaced because the plaintiff in that case could not show that she had been deceived, could not show that she took any act in reliance upon her mistaken belief that she had insurance coverage different than what she believed, and could not satisfy the consumer nexus test which requires that plaintiff suffered damages from conduct directed to the market or implicates consumer protection concerns. *Kim v. State Farm Mut. Auto. Ins. Co.*, 2021 IL App (1st) 200135, ¶¶40-42, 44. The court also observed that the plaintiff alleged no damages and, therefore, the plaintiff could not get past the CFA's gatekeeping provision that a plaintiff under the CFA must suffer "actual damage" as a result of the violation of the act. *Id.* at ¶43.

(b) Avoidance Of Construction That Renders Statutory Language Redundant, Meaningless, Or Superfluous.

The second sentence of Section 10a(a) does not limit a plaintiff to purely economic damages. The second sentence provides separately for an award of "actual economic damages" and "any other relief which the court deems proper." *Id.* The phrase "any other relief which the court deems proper" must be damages that are in addition to economic damages otherwise the phrase "any other relief which the court deems proper" would be

redundant and superfluous, which as a matter of statutory construction must be avoided. *See* 815 ILCS §505/10a(c); *People v. Baskerville*, 2012 IL 111056, ¶25 (“This interpretation is also consistent with our obligation to avoid a construction which renders a part of the statute superfluous or redundant, and instead presume that each part of the statute has meaning.”); *People v. Jones*, 223 Ill. 2d 569, 594 (2006) (“our rule that we construe statutes as a whole is intended to avoid just such a situation as the defendant brings to our attention, where one possible construction would render another statutory provision meaningless or superfluous.”).

Napleton concedes this flaw in its argument and attempts to address it by explaining without any citation to supporting legal authority that “other relief” is limited to forms of relief other than money damages such as injunctive relief or declaratory judgment. (Napleton Br. at 35) CFA Section 10a(c) expressly authorizes a court to award injunctive relief and declaratory judgment actions are authorized by the Illinois declaratory judgment statute. *See* 815 ILCS §505/10a(a); 735 ILCS §5/2-701. Napleton does not explain why Section 10a(c) would not govern injunctive relief, and Napleton does not explain what a declaratory judgment action would look like under the CFA or why the Declaratory Judgment Act would not control. In sum, Napleton offers no plausible explanation for the kind of damages that this language would address, if not compensation for damages such as aggravation and inconvenience.

(c) The Legislature Did Not Amend The CFA After *Roche*.

Even more compelling, after the appellate court’s decision in *Roche v. Fireside Chrysler-Plymouth, Mazda*, 235 Ill. App. 3d 70, 86 (2nd Dist. 1992) allowing recovery of aggravation and inconvenience damages under the CFA was decided, the legislature

amended the CFA and did not change the CFA to exclude aggravation and inconvenience damages. It is presumed when the legislature amends a statute it is aware of court decisions interpreting that statute. *Morris v. William L. Dawson Nursing Ctr.*, 187 Ill. 2d 494, 499 (1999). Where the legislature does not modify the statutory language construed by the court, it is presumed that the statutory construction remains in effect. *Id.*

Roche was decided in 1992. There the plaintiff successfully sued a car dealer for violation of the CFA after the dealership refused to provide plaintiff with financing for the sale of a new car as it previously agreed to do. The trial court found the dealer violated the CFA and awarded the plaintiff \$750 for aggravation and inconvenience. *Id.* The appellate court affirmed. *Id.* The legislature amended the CFA in 1996 but did nothing to change the decision in *Roche*. Accordingly, this Court should presume that the appellate court properly construed the CFA to allow for the recovery of aggravation and inconvenience damages.

Although Napleton argues that *Roche* was decided four years before the CFA was amended in 1996 and acknowledges that this Court struck down the amendments in 1996 to the extent that the amendments provided a specific benefit to car dealers, Napleton fails to cite any change to the CFA that would change the result of *Roche*. *Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12, 33 (2003) (“the 1993 and 1996 amendments to section 10a of the Act violate Illinois' constitutional prohibition against special legislation.”). In 2009, well after the unconstitutional amendment to the CFA, *Morris v. Harvey Cycle & Camper, Inc.*, 392 Ill. App. 3d 399, 403 (1st Dist. 2009), expressly reaffirmed *Roche*’s award of aggravation and inconvenience damages. Still, the legislature has not amended the CFA to exclude aggravation and inconvenience damages.

As pointed out by the appellate court, “when a statute has been judicially construed and the construction has not prompted an amendment, we may presume that the legislature has acquiesced in the court's determination of the legislative intent.” *Wilson*, 2025 IL App (3d) 240079, ¶69, citing, *People v. Smith*, 2013 IL App (2d) 121164, ¶17; *Lake County Grading Co., LLC v. Vill. of Antioch*, 2014 IL 115805, ¶27. Here, the Court should presume that the appellate court in *Roche*, *Harvey Cycle & Camper* and now *Wilson* properly construed the CFA as allowing for an award of damages for aggravation and inconvenience.

(d) The Award Of Damages For Aggravation And Inconvenience Is Consistent With The Remedial Nature Of The CFA.

The award of damages for aggravation and inconvenience is consistent with the remedial nature of the CFA. The CFA is a consumer-based remedial statute “intended to give broad protection to consumers...against fraud, unfair methods of competition, and other unfair and deceptive business practices.” *Kirkpatrick v. Strosberg*, 385 Ill. App. 3d 119, 132 (2nd Dist. 2008). Accordingly, the terms of the CFA are intended to be liberally construed to effect its purpose. *Id.*; see also 815 ILCS §505/11(a). This extends to the damages provisions of the CFA. *Warren v. LeMay*, 142 Ill. App. 3d. 550, 583 (5th Dist. 1986). For this reason, too, this Court should find that damages for aggravation and inconvenience are recoverable under the CFA.

(2) Damages For Aggravation And Inconvenience Are Recoverable In An Action For Common Law Fraud.

Damages for aggravation and inconvenience are also recoverable in an action for common law fraud. In *Gehrett v. Chrysler Corp.*, 379 Ill. App. 3d 162, 166 (2nd Dist. 2008), plaintiffs sued the defendant dealership for fraud and breach of warranty after the

dealer sold the plaintiffs a Jeep by misrepresenting to plaintiffs that the vehicle had a Quadra-Trac feature that the dealership's internal records showed it did not have. The jury found in favor of the plaintiffs and awarded damages for the downpayment and lease payments of \$8,527.97 and damages for aggravation and inconvenience in the amount of \$15,750. *Id.* at 167, 177. In the lower court, Napleton argued that *Gehrett* did not apply because it was decided on the warranty count, but the *Gehrett* court expressly concluded that the jury's verdict was based upon the common law fraud count. The dealership in *Gehrett* made the same argument made by Napleton but the appellate court rejected it observing that the damages for aggravation and inconvenience were properly awarded for plaintiffs' fraud claim. Based upon the verdict forms given to the jury, the court explained that "the fact that the jury returned Verdict Form A indicates that it found in plaintiffs' favor on the common-law fraud count." *Id.* at 177. The court further reasoned that because the jury also returned a verdict for punitive damages—only available for common law fraud and not breach of warranty—the jury found in favor of plaintiffs on the common law fraud count. *Id.* Hence, the court affirmed the award of aggravation and inconvenience damages to the plaintiffs based upon their common law fraud count.

(3) The Jury And The Court Can Assess The Reasonableness Of Damages For Aggravation And Inconvenience.

Napleton argues that damages for aggravation and inconvenience are not recoverable because there is no means to calculate the damages with certainty. (Napleton Br. at 39) However, even though aggravation and inconvenience damages are not subject to mathematical calculation, that does not mean the Jury and trial court cannot award such damages. For example, in *McGrady v. Chrysler Motors Corp.*, the court explained "the trier of fact, the jury, can assess damages for inconvenience, aggravation and loss of use,

notwithstanding the want of mathematical specifics so long as such assessment is reasonable and not punitive.” *McGrady v. Chrysler Motors Corp.*, 46 Ill. App. 3d 136, 140 (4th Dist. 1977); *cf. Gehrett v. Chrysler Corp.*, 379 Ill. App. 3d 162, 170 (2nd Dist. 2008) (awarding plaintiff \$15,750 damages for aggravation and inconvenience on CFA claim for misrepresenting car had a safety feature it did not have); *Vieweg v. Friedman*, 173 Ill. App. 3d 471, 473 (2nd Dist. 1988) (awarding plaintiff \$1,000 damages for aggravation and inconvenience on her Magnuson-Moss Warranty Act claim for selling plaintiff a vehicle with a cracked engine). The law often allows for the award of damages where the means of assessment lack precise mathematical calculation but that does not render such damages unrecoverable. *See, e.g., Marxmiller v. Champaign-Urbana Mass Transit Dist.*, 2017 IL App (4th) 160741, ¶40 (jury charged with awarding plaintiff damages for past and future emotional distress and pain and suffering in negligence action); *Avery v. GRI Fox Run, LLC*, 2020 IL App (2d) 190382, ¶¶53, 64 (“Generally, the measure of damages for a temporary nuisance is the personal inconvenience, annoyance, and discomfort suffered on account of the nuisance.”).

Both the Jury and trial court agreed that \$25,000 was reasonable compensation for such aggravation and inconvenience. Napleton did not argue that the damages were excessive, and Napleton cites no case where there has been an excessive award of damages for aggravation and inconvenience. The Jury’s and the trial court’s concomitant \$25,000 award was entirely reasonable given the aggravation and inconvenience Wilson was put to. This was not some insignificant purchase Wilson made just idly. The car was a major purchase for Wilson “by a significant amount” and accordingly was one which he and his wife agreed to together. R.1115-1116; R.1121; R.1143-1145. When Wilson learned of the

accident, he had to explain this to his wife that they owned a car that was unmarketable, still had two and half years of payments at \$1,911.79/month to pay on the car plus a final balloon payment of \$60,000, and the car had reached the mileage cap on the lease. A.038-044; C.12776-12782; R.1134; R.1143-1144. Although Napleton induced Wilson to enter into the open ended lease with Premier because it would allow Wilson to trade the Aston Martin for a new car when he approached the mileage cap, Wilson could not take advantage of that feature because no one would take the car on trade. R.787-789; R.810-811; R.818; R.1144-1145; R.1148; C.12406. Napleton took the view it had no responsibility to Wilson because as far as Napleton was concerned, Wilson was not its customer. R.1466-1467. Wilson had to pay \$1,911.79 a month for a car that sat in his garage collecting dust. R.1136; R.1147-1150. Wilson had the uncertainty of not knowing whether there would be any relief in the end. These facts support the Jury's and the trial court's award.

III. CONCLUSION

At the conclusion of this matter, this Court should deny Napleton's request to vacate the existing judgment and order a new trial on Count I and deny Napleton's request to vacate the award of damages, fees, and costs on Counts I and II and, instead award such relief as set forth in the Request on Remand in Section II(G) of Wilson's opening brief and such other relief as this Court finds just and proper.

JEFFREY WILSON,

By: /s/ Kevin P. McJessy

Kevin P. McJessy
Joseph J. Borders
McJessy Ching & Thompson, LLC
3759 N. Ravenswood Ave., Ste. 231
Chicago, IL 60613

SUPREME COURT RULE 341(c) CERTIFICATE OF COMPLIANCE

I hereby 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 50 pages.

Respectfully submitted,

/s/ Kevin P. McJessy
McJessy Ching & Thompson, LLC

NOTICE OF FILING and PROOF OF SERVICE

I, Kevin P. McJessy, an attorney, certify that I caused the foregoing **Appellant Jeffrey Wilson's Combined Reply In Support Of His Opening Brief And Response To Cross-Appellant Napleton Goldcoast Imports, Inc.'s Opening Brief** to be electronically filed with the Clerk of the Illinois Supreme Court via Odyssey E-File and caused the same to be served upon

John J. Pcolinski, Jr.
Guerard, Kalina & Butkus
310 S. County Farm Rd.
Ste. H
Wheaton, IL 60187
john@johnpcolinskilaw.com

Timothy D. Elliott
James W. Scales
Rathje Woodward LLC
300 E. Roosevelt Rd., Ste. 300
Wheaton, IL 60187
telliott@rathjewoodward.com
jscales@rathjewoodward.com

via Electronic Delivery pursuant to Odyssey E-File and via Email on June 12, 2026.

Within five (5) days of acceptance by the Court, the undersigned states that thirteen (13) paper copies of **Appellant Jeffrey Wilson's Combined Reply In Support Of His Opening Brief And Response To Cross-Appellant Napleton Goldcoast Imports, Inc.'s Opening Brief** bearing the Court's file-stamp will be sent to the above Court.

/s/ Kevin P. McJessy