

Nos. 132430, 132511, consolidated

In the
Supreme Court of Illinois

JEFFREY WILSON,

Plaintiff-Appellant / Cross-Appellee,

v.

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

Defendant-Appellee / Cross-Appellant.

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

**COMBINED OPENING BRIEF, RESPONSE AND
SUPPLEMENTARY APPENDIX OF APPELLEE/CROSS-APPELLANT
NAPLETON'S GOLDCOAST IMPORTS INC.**

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TABLE OF POINTS AND AUTHORITIES

NAPLETON GOLDCOAST IMPORTS, INC.’S BRIEF IN SUPPORT OF ITS APPEAL.....	1
NATURE OF THE CASE	1
Consumer Fraud Act, 815 ILCS 505/1, <i>et seq.</i>	4
STATEMENT OF JURISDICTION	4
Illinois Supreme Court Rule 315	4
Illinois Supreme Court Rule 301	4
Illinois Supreme Court Rule 303	4
QUESTIONS PRESENTED	4
STATEMENTS OF FACTS.....	5
Napleton Sells A New 2014 Aston Martin To Carlton Jones.....	5
Carlton Jones Sells The Aston Martin To Napleton for \$140,000.....	5
Napleton Re-Sells The Aston Martin	6
In 2018, CarFax Updates Its Information To Disclose The October 2014 Accident	8
The Pre-Trial Proceedings In The Trial Court	8
The Case Proceeds To Trial.....	10
Illinois Rule of Evidence 408.....	12
The Post-Trial Proceedings.....	13
Wilson Does Not Accept The Remittitur	14
The Proceedings In The Appellate Court.....	15
Illinois Rule of Evidence 408.....	16
Consumer Fraud Act, 815 ILCS 505/10a(a)	16

<i>Allen v. Woodfield Chevrolet, Inc.</i> , 208 Ill. 2d 12 (2003)	16
ARGUMENT	17
I. This Court Should Find That Remand For Retrial Is The Proper Remedy In This Case	17
A. This Court Should Find That Wilson Rejected The Remittitur	18
<i>Tri-G, Inc. v. Burke, Bosselman & Weaver</i> , 222 Ill. 2d 218 (2006)	18, 19
<i>Roach v. Union Pacific R.R.</i> , 2014 IL App (1st) 132015.....	18
<i>Jacobs v. Yellow Cab Affiliation, Inc.</i> , 2017 IL App (1st) 151107.....	18
<i>Bauer v. Mem'l Hosp.</i> , 377 Ill. App. 3d 895 (5th Dist. 2007)	19
<i>Luye v. Schopper</i> , 348 Ill. App. 3d 767 (1st Dist. 2004).....	19
<i>Peter J. Hartmann Co. v. Capitol Bank & Trust Co.</i> , 353 Ill. App. 3d 700 (1st Dist. 2004).....	19
<i>McIntosh v. Walgreens Boots All., Inc.</i> , 2019 IL 123626.....	21
<i>People v. Perkins</i> , 229 Ill. 2d 34 (2007)	21
<i>People v. Holman</i> , 164 Ill. 2d 356 (1995)	21
<i>People v. Quezada</i> , 2024 IL 128805.....	21
<i>Direct Auto Ins. Co. v. Bahena</i> , 2019 IL App (1st) 172918.....	21

B. The Appellate Court Selected The Wrong Remedy	21
<i>Augustine v. Kaufman</i> , 338 Ill. App. 591 (1st Dist. 1949).....	22
<i>Baker v. Spaulding Women’s Apparel, Inc.</i> 83 Ill. App. 2d 455 (1st Dist. 1967).....	22
<i>Bart v. Union Oil Co. of California</i> , 185 Ill. App. 3d 64 (3d Dist. 1989).....	22
<i>Tri-G, Inc. v. Burke, Bosselman & Weaver</i> , 222 Ill. 2d 218 (2006)	22, 23
<i>Bauer v. Mem’l Hosp.</i> , 377 Ill. App. 3d 895 (5th Dist. 2007)	22
<i>Luye v. Schopper</i> , 348 Ill. App. 3d 767 (1st Dist. 2004).....	22
<i>Peter J. Hartmann Co. v. Capitol Bank & Trust Co.</i> , 353 Ill. App. 3d 700 (1st Dist. 2004).....	22
<i>People v. Quezada</i> , 2024 IL 128805.....	23
<i>Direct Auto Ins. Co. v. Bahena</i> , 2019 IL App (1st) 172918.....	23
<i>Haid v. Tingle</i> , 219 Ill. App. 3d 406 (1st Dist. 1991).....	23
<i>Foster v. Springfield Clinic</i> , 88 Ill. App. 3d 459 (4th Dist. 1980)	23
<i>Congregation of the Passion, Holy Cross Province</i> <i>Province v. Touche, Ross & Co.</i> , 224 Ill. App. 3d 559 (1st Dist. 1991).....	23
II. This Court Should Reaffirm That Wilson Is Limited To Benefit-Of-The-Bargain Damages Because He Kept The Car	25
<i>Beaton & Assoc., Ltd. v. Joslyn Mfg. & Supply Co.</i> , 159 Ill. App. 3d 834 (1st Dist. 1987)	25

<i>Royal Imperial Group, Inc. v. Jos. Blumberg & Assoc., Inc.</i> , 240 Ill. App. 3d 360 (1st Dist. 1992)	25
<i>Giammanco v. Giammanco</i> , 253 Ill. App. 3d 750 (2d Dist. 1993)	25
<i>Roboserve, Inc. v. Kato Kagaku Co., Ltd.</i> , 78 F.3d 266 (7th Cir. 1996)	25
<i>Verdonck v. Scopes</i> , 226 Ill. App. 3d 484 (2d Dist. 1992)	25
<i>Kel-Keef Enter., Inc. v. Quality Components Corp.</i> , 316 Ill. App. 3d 998 (1st Dist. 2000)	29, 30
<i>Indep. Tr. Corp. v. Hurwick</i> , 351 Ill. App. 3d 941 (1st Dist. 2004)	29
<i>Clarkson v. Wright</i> , 108 Ill. 2d 129 (1985)	31
<i>Kelly v. Chicago Park Dist.</i> , 409 Ill. 91 (1951)	31
<i>Pioneer Bank & Tr. Co. v. Seiko Sporting Goods, U.S.A Co.</i> , 184 Ill. App. 3d 783 (1st Dist. 1989)	31
III. This Court Should Reverse The Appellate Court’s Finding That “Aggravation And Inconvenience” Damages Are Recoverable	32
<i>Vieweg v. Friedman</i> , 173 Ill. App. 3d 471 (2d Dist. 1988)	32
<i>Gehrett v. Chrysler Corp.</i> , 379 Ill. App. 3d 162 (2d Dist. 2008)	32, 33
<i>Roche v. Fireside Chrysler-Plymouth, Mazda, Inc.</i> , 235 Ill. App. 3d 70 (2d Dist. 1992)	32, 33
<i>Davis v. City of Chicago</i> , 2020 IL App (1st) 182551-U	33
<i>Schandelmeier-Bartels v. Chicago Park Dist.</i> , 634 F.3d 372 (7th Cir. 2011)	33

A. This Court Should Find The Consumer Fraud Act Does Not Permit Recovery Of Non-Economic Damages	34
<i>Doe v. Dilling,</i> 228 Ill. 2d 324 (2008)	34
<i>Bonhomme v. St. James,</i> 2012 IL 112393.....	34
<i>Kim v. State Farm Mut. Auto Ins. Co.,</i> 2021 IL App (1st) 200135.....	34
<i>Martin v. Heinold Commodities, Inc.,</i> 163 Ill. 2d 33 (1994)	34, 38
Consumer Fraud Act, 815 ILCS 505/10a	35, 38
<i>Chapman v. Chicago Dept. of Finance,</i> 2023 IL 128300.....	35
<i>Solon v. Midwest Medical Records Ass'n,</i> 236 Ill. 2d 433 (2010)	35
<i>Allen v. Woodfield Chevrolet Inc.,</i> 208 Ill. 2d 12 (2003)	36, 37
<i>Allen v. Woodfield Chevrolet Inc.,</i> 332 Ill. App. 3d 605 (1st Dist. 2002).....	36
<i>Crittenden v. Cook Cnty. Comm'n of Hum. Rts.,</i> 2013 IL 114876.....	37
<i>Price v. Philip Morris, Inc.,</i> 219 Ill. 2d 182 (2005)	37
<i>Krautsack v. Anderson,</i> 223 Ill. 2d 541 (2006)	37
<i>Avery v. State Farm Mut. Auto Ins. Co.,</i> 216 Ill. 2d 100 (2005)	37
<i>Morris v. Harvey Cycle and Camper, Inc.,</i> 392 Ill. App. 3d 399 (1st Dist. 2009).....	37
<i>Moorman Mfg. Co. v. Nat'l Tank Co.,</i> 91 Ill. 2d 69 (1982)	37

<i>In re Illinois Bell Switching Station Litig.</i> , 161 Ill. 2d 233 (1994)	38
<i>Snover v. McGraw</i> , 172 Ill. 2d 438 (1996)	38
<i>Redarowicz v. Ohlendorf</i> , 92 Ill. 2d 171 (1982)	38
B. This Court Should Not Permit Recovery Of Damages For “Aggravation And Inconvenience”	38
<i>Lewis v. Lead Industries Ass’n</i> , 2020 IL 124107.....	39
<i>McGrady v. Chrysler Motors Corp.</i> , 46 Ill. App. 3d 136 (4th Dist. 1977)	39
CONCLUSION	40
NAPLETON GOLDCOAST IMPORTS, INC.’S RESPONSE TO WILSON’S CROSS-APPEAL	41
NATURE OF THE CASE, STATEMENT OF JURISDICTION, AND STATEMENT OF FACTS ON CROSS-APPEAL.....	41
STATEMENTS OF THE ISSUES ON CROSS-APPEAL.....	41
ARGUMENT ON CROSS-APPEAL	42
I. This Court Need Not – And Should Not - Reach The Merits Of The Trial Court’s Remittitur Of Out-Of-Pocket Damages	42
<i>Franz v. Calaco Dev. Corp.</i> , 352 Ill. App. 3d 1129 (2d Dist. 2004)	42
A. This Trial Court Should Have Remitted Wilson’s Damages To \$0 Because Wilson Was Not Entitled To Recover Out-Of-Pocket Pocket Costs Or Aggravation And Inconvenience Damages	42

<i>Bank of New York Mellon v. Rogers</i> , 2016 IL App (2d) 150712.....	43
<i>Haudrich v. Howmedica, Inc.</i> , 169 Ill. 2d 525 (1996)	43
<i>People v. Kelley</i> , 105 Ill. App. 2d 481 (4th Dist. 1969)	43
<i>People v. Watts</i> , 81 Ill. App. 2d 283 (3d Dist. 1967).....	43
<i>Deal v. Byford</i> , 127 Ill. 2d 192 (1989)	43
B. Napleton Did Not Proximately Cause Wilson’s Out-Of-Pocket Costs.....	44
<i>Leahy Realty Corp. v. Am. Snack Foods Corp.</i> , 253 Ill. App. 3d 233 (2d Dist. 1993).....	44, 46
<i>Connick v. Suzuki Motor Co., Ltd.</i> , 174 Ill.2d 482 (1996)	44, 46
<i>Roboserve, Inc. v. Kato Kagaku Co., Ltd.</i> , 78 F.3d 266 (7th Cir. 1996).....	44
<i>People ex rel Peters v. O’Connor</i> , 311 Ill. App. 3d 753 (3d Dist. 2000).....	45
<i>SK Hand Tool Corp. v. Dresser Indus., Inc.</i> , 284 Ill. App. 3d 417 (1st Dist. 1996).....	45
<i>Clark v. Cannon Steel Erection Co.</i> , 359 Ill. App. 3d 739 (1st Dist. 2005).....	46
<i>Vieweg v. Friedman</i> , 173 Ill. App. 3d 471 (2d Dist. 1988).....	46, 47
<i>Ciampi v. Ogden Chrysler Plymouth</i> , 262 Ill. App. 3d 94 (2d Dist. 1994).....	47
<i>Barkei v. Delnor Hosp.</i> , 207 Ill. App. 3d 255 (2d Dist. 1990).....	47
<i>MidAmerica Bank, FSB v. Charter One Bank, FSB</i> , 232 Ill. 2d 560 (2009)	47

<i>Nadhir v. Salomon</i> , 2011 IL App (1st) 110851.....	47
II. This Court Need Not – And Should Not - Reach The Merits Of The Trial Court’s Remittitur Of Punitive Damages.....	48
A. The Trial Court Erred In Submitting Punitive Damages To The Jury.....	48
<i>Franz v. Calaco Dev. Corp.</i> , 352 Ill. App. 3d 1129 (2d Dist. 2004).....	48, 49
<i>Tully v. McLean</i> , 409 Ill. App. 3d 659 (1st Dist. 2011).....	48
<i>Mook v. Johnson</i> , 2018 IL App (3d) 170229.....	48
<i>Koehler v. Packer Group, Inc.</i> , 2016 IL App (1st) 142767.....	48
<i>Home Sav. & Loan Assoc. of Joliet v. Schneider</i> , 108 Ill. 2d 277 (1985)	49
<i>Roboserve, Inc. v. Kato Kagaku Co., Ltd.</i> , 78 F.3d 266 (7th Cir. 1996).....	49
<i>Eurolast, Ltd. v. Oak Switch Sys., Inc.</i> , 10 F.3d 1266 (7th Cir. 1993).....	49
<i>Loitz v. Remington Arms Co., Inc.</i> , 138 Ill. 2d 404 (1990)	49
<i>State Farm Mut. Auto. Ins. Co. v. Campbell</i> , 538 U.S. 408 (2003)	50
<i>Philip Morris USA v. Williams</i> , 549 U.S. 346 (2007)	50
<i>Duignan v. Lincoln Towers Ins. Agency, Inc.</i> , 282 Ill. App. 3d 262 (1st Dist. 1996).....	50
B. The Punitive Damages Award Does Not Pass Muster Under Illinois Common Law	52

<i>Deal v. Byford</i> , 127 Ill. 2d 192 (1989)	52, 53
<i>Franz v. Calaco Dev. Corp.</i> , 352 Ill. App. 3d 1129 (2d Dist. 2004).....	52
<i>Koehler v. Packer Group, Inc.</i> , 2016 IL App (1st) 142767.....	52, 54
Illinois Supreme Court Rule 341(h)(7)	52
<i>Proctor v. Davis</i> , 291 Ill. App. 3d 265 (1st Dist. 1997).....	53
<i>Holland v. Schwan's Home Serv., Inc.</i> , 2013 IL App (5th) 110560	53
<i>Howard v. Zack Co.</i> , 264 Ill. App. 3d 1012 (1st Dist. 1994).....	53
<i>Blount v. Stroud</i> , 395 Ill. App. 3d 8 (1st Dist. 2009).....	53, 56
<i>Hazelwood v. Ill. Central Gulf R.R.</i> , 114 Ill. App. 3d 703 (4th Dist. 1983)	53
<i>Mook v. Johnson</i> , 2018 IL App (3d) 170229.....	54
<i>International Union of Operating Eng'r</i> , <i>Local 150 v. Lowe Excavating Co.</i> , 225 Ill. 2d 456 (2006)	54, 55, 56
<i>Kirkpatrick v. Strosberg</i> , 385 Ill. App. 3d 119 (2d Dist. 2008).....	56
C. The Punitive Damages Award Violates Due Process Standards Under The U.S. Constitution	56
<i>Koehler v. Packer Group, Inc.</i> , 2016 IL (1st) 142767	56
<i>State Farm Mut. Auto. Ins. Co. v. Campbell</i> , 538 U.S. 408 (2003)	56
Illinois Supreme Court Rule 341(h)(7)	56

1. Napleton’s Conduct Was Not Reprehensible	56
<i>Doe v. Parillo,</i> 2021 IL 126577	56
<i>BMW of N. Am., Inc. v. Gore,</i> 517 U.S. 559 (1996).....	56
<i>Koehler v. Packer Group, Inc.,</i> 2016 IL (1st) 142767	57
<i>State Farm Mut. Auto. Ins. Co. v. Campbell,</i> 538 U.S. 408 (2003).....	57
<i>People ex rel. Peters v. O’Connor,</i> 311 Ill. App. 3d 753 (3d Dist. 2000)	57
<i>Tully v. McLean,</i> 409 Ill. App. 3d 659 (1st Dist. 2011)	57
2. There Is Disparity Between The Actual And Punitive Damages.....	58
<i>Pacific Mut. Life Ins. Co. v. Haslip,</i> 499 U.S. 1 (1991).....	58
<i>Doe v. Parillo,</i> 2021 IL 126577	58
<i>Cahnman v. Timber Ct. LLC,</i> 2021 IL App (1st) 200338	58
3. Relevant Civil Penalties Do Not Support Imposition Of Punitive Damages.....	59
<i>Koehler v. Packer Group, Inc.,</i> 2016 IL (1st) 142767	59
<i>BMW of N. Am., Inc. v. Gore,</i> 517 U.S. 559 (1996).....	59
Motor Vehicle Franchise Act, 815 ILCS 710/13	59
Illinois Anti-Trust Act, 740 ILCS 10/7.....	59

Illinois Odometer Act, 625 ILCS 5/3-112.1	59
Illinois Dating Referral Services Act, 815 ILCS 615/45	59
Illinois Dance Studio Act, 815 ILCS 610/10	59
Illinois Consumer Fraud Act, 815 ILCS 505/2W	59
Illinois Physical Fitness Services Act, 815 ILCS 645/11	59
Illinois Pay Per Call Services Consumer Protection Act, 815 ILCS 520/15	59
III. The Trial Court Erred In Allowing Recovery Of Attorneys' Fees.....	60
Consumer Fraud Act, 815 ILCS 505/10a(c).....	60
<i>Spencer v. DiCola</i> , 2014 IL App. (1st) 121585.....	60
A. Wilson Did Not Present The Evidence Required To Support His Fee Petition.....	60
Illinois Rule of Evidence 803(6).....	60
<i>Aliano v. Sears, Roebuck & Co.</i> , 2015 IL App (1st) 143367.....	60
<i>In re Marriage of DeLarco</i> , 313 Ill. App. 3d 107 (2d Dist. 2000).....	60
<i>Kaiser v. MEPS Am. Prop., Inc.</i> , 164 Ill. App. 3d 978 (1st Dist. 1987).....	60
Illinois Supreme Court Rule 300.....	60
<i>Young v. Alden Gardens of Waterford, LLC</i> , 2015 IL App (1st) 131887.....	61

B. The Trial Court Erred In Setting A \$375 Per Hour Rate	62
<i>Young v. Alden Gardens of Waterford, LLC,</i> 2015 IL App (1st) 131887.....	62
<i>Casey v. Rides Unlimited Chicago, Inc.,</i> 2022 IL App (3d) 210404.....	62, 63
<i>Johnson v. GDF, Inc.,</i> 668 F.3d 927 (7th Cir. 2012)	62
<i>Lambert v. S.W. Credit Sys., Inc.,</i> No. 17-C-5228, 2019 WL 13276113, (N.D. Ill. Jan. 28, 2019).....	63
<i>Farooq v. Portfolio Recovery, LLC,</i> No. 15-C-6106, 2016 WL 2909650 (N.D. Ill. May 19, 2016)	63
<i>Stockman v. Global Credit & Collection Corp.,</i> No. 14-C-6862, 2015 WL 4999851, (N.D. Ill. Aug. 21, 2015)	63
C. Wilson’s Requested Fees Are Not Reasonable	64
<i>Krautsack v. Anderson,</i> 223 Ill. 2d 541 (2006)	64
<i>In re Marriage of Kane,</i> 2016 IL App (2d) 150774.....	64
<i>Pillai v. St. George Warehouse of IL, Inc.,</i> 2022 IL App (2d) 200089-U	64
CONCLUSION	66
CERTIFICATE OF COMPLIANCE	67
CERTIFICATE OF SERVICE	68

NAPLETON'S GOLDCOAST IMPORTS, INC.'S
BRIEF IN SUPPORT OF ITS APPEAL

NATURE OF THE CASE

The proceedings below resulted in a runaway damages award untethered to any actual injury suffered by Plaintiff. This case provides an opportunity for the Court to remedy that injustice, clarify the types of damages that are (and are not) recoverable in fraud actions, and reaffirm the proper role of trial courts in ensuring damage awards bear a rational relationship to a plaintiff's injury.

In November 2015, Jeffrey Wilson leased a used 2014 Aston Martin sports car from Napleton. The lease was based on a \$135,177 sale price, with a five-year term and 25,000-mile limit. A.38-44; C.12776-82; R.878.¹ When the lease ended in November 2020, Wilson had the option to either pay \$60,000 to buy the car, or return it and pay \$1.50 for every mile the car was driven over 25,000 miles. Wilson enjoyed driving his luxury sports car so much he exceeded the mileage limit less than halfway into the lease. By April 2018, he had driven 25,000 miles; the equivalent of driving across the United States *nine times*.

Wilson had no intention of buying the car at lease-end. Thus, he had to stop driving it. If he kept going, he would have to pay \$1.50 for every additional mile he drove. A.38; C.12776. That would get very expensive, very quickly.

¹ Citations to Wilson's Rule 342 Appendix are "A.____." Citations to Wilson's Opening Brief are "WB ____." Citations to the attached Supplemental Appendix are "SA. ____." Citations to the common law record are "C.____." Citations to reports of proceedings are "R.____." Citations to the impounded record are "CI. ____." Citations to the supplemental common law record are "Sup.C. ____."

Thus, Wilson began looking for a new car. R.881-82, 885-89, 897-99, 1146. In May 2018, Wilson tried to trade in the Aston Martin for a Mercedes. R.1139-40. When he did so, he received a CarFax report that showed the Aston Martin had been in an accident in 2014. That accident was not disclosed to Wilson when he leased the car in 2015 and he had “no clue” it had been repaired. R.890, 1139-42. After learning about the 2014 accident, Wilson sued Napleton for fraud. Wilson did not, however, return the car. Instead, he kept it.

Wilson’s damages were minimal. As the trial court noted, “he drove this beautiful car, made the payments, and he got that benefit.” R.1914. In other words, Wilson had the full use and enjoyment of the vehicle. Indeed, the only harm Wilson suffered was that he overpaid for the car. At trial, Wilson’s expert quantified this harm. He testified that the car was overvalued by as much as \$40,000 when Wilson leased it in 2015, and by lease-end, the car’s resale value was \$6,000 less than the \$60,000 payoff amount. R.1109-11. Thus, the harm to Wilson was somewhere between \$6,000 and \$40,000. R.1109-11; C.12776-82.

Despite that, a jury awarded Wilson over \$1.16 million; \$138,544 to reimburse Wilson for his out-of-pocket costs, \$25,000 for “aggravation and inconvenience,” and \$1 million in punitive damages. A.63; C.5553. The trial court rightly characterized those damages as “shocking” and reduced the jury’s verdict via remittitur to \$99,000 in actual damages and \$400,000 in punitive damage. A.67-68; C.11628-29. Even those remitted amounts, however, bear no relationship to any harm suffered by Wilson. Moreover, the “shocking”

damages award did not occur in a vacuum. It was fostered by judicial error which contributed substantially to the grossly unfair result below. Three aspects of this case, in particular, merit scrutiny and reversal from this Court.

First, the trial court remitted the jury's damages award on Count I. A.67-68; C.11628-29. However, despite numerous requests by Napleton, the trial court did not seek (nor did Wilson provide) consent for that remittitur. *Id.* The appellate court found that was error but did not remand for a new trial. A.122 ¶ 52. Instead, the appellate court vacated the damages award on Count I and remanded to give Wilson another opportunity to accept the remittitur. *Id.* That was not the correct remedy. This Court should reverse, find that Wilson's conduct showed his rejection of the remittitur, and hold that remand for retrial is the appropriate remedy.

Second, this Court should affirm the longstanding rule that a plaintiff who claims it was fraudulently induced into purchasing a product **and** elects to keep the product is limited to recovery of benefit-of-the-bargain damages (*i.e.*, the difference between the purchase price and the actual value of the product). The courts below deviated from that rule and allowed Wilson to both: (1) keep the Aston Martin; and (2) recover his out-of-pocket costs. If the lower courts' decisions are allowed to stand, it will open the door for future plaintiffs to similarly reap a double benefit. This Court should reaffirm the current rule, reverse the lower courts, and strike the damages awarded on Count II.

Third, this Court should find that Illinois does not permit recovery of damages for “aggravation and inconvenience.” The appellate court (which was divided 2-1 on this issue) broke new legal ground by finding the Consumer Fraud Act, 815 ILCS 505/1 *et seq.*, permits recovery of such damages. A.129-35, ¶¶ 68-79. In a lengthy dissent, Justice Anderson contended the majority’s reasoning rested “on an unsteady analytical foundation” and characterized such damages as “vague and incalculable.” A.148, ¶ 119. He was correct. This Court should reverse and adopt Justice Anderson’s position in dissent.

STATEMENT OF JURISDICTION

This Court has jurisdiction under Supreme Court Rule 315 because it granted both Wilson’s and Napleton’s petitions for leave to appeal on January 28, 2026. The appellate court below had jurisdiction under Supreme Court Rules 301 and 303 because both parties were appealing from a final judgment of the trial court. On October 31, 2023, the trial court entered judgment after a jury trial. A.66-68; C.11627-29. On January 18, 2024, the trial court disposed of all post-judgment motions and entered a final judgment (dated January 22, 2024) that mirrored its October 31, 2023 judgment except to correct a math error. A.69; C.12229. Napleton filed a notice of appeal on February 1, 2024 and Wilson filed a notice of cross-appeal on February 9, 2024. SA.4-6; C.12813-15; A.93-98; Sup C. 4-9.

QUESTIONS PRESENTED

1. Whether the trial court erred in not ordering a new trial on Count I after Wilson refused to accept the trial court’s remittitur.

2. Whether the trial court erred in allowing Wilson (who kept his Aston Martin for five years and drove it over 25,000 miles) to recover his out-of-pocket costs instead of limiting him to damages for the diminished value of the car.

3. Whether the trial court erred in awarding Wilson damages for “aggravation and inconvenience.”

STATEMENT OF FACTS

Napleton Sells A New 2014 Aston Martin To Carlton Jones

In November 2013, Napleton sold a new 2014 Aston Martin Rapide sports car to Carlton Jones for \$199,000. R.566; SA.7; C.12550. In October 2014, Jones got into an accident and damaged the front end of the car. R.550-52. The car was towed to the Napleton dealership. It sat there for several days before being sent to Westmont Body Werks (“WBW”) for repairs. R.1334-35.

The structural damage to the car was “very minor” and the frame rails and suspension were not damaged. R.645. However, the exterior body panels and components on the front of the car were damaged by the impact and were replaced with new parts. The repairs were performed at WBW’s facility, although the car was periodically taken back to Napleton for diagnostic testing and minor adjustments. R.645-646. The repairs (which cost over \$60,000) were so expertly performed that it was very difficult to tell the car had been repaired. *See* SA.18; C.12575; R.661, 890, 996-99, 1099-1102, 1346, 1358. Jones got the car back in June 2015 and began driving it again.

Carlton Jones Sells The Aston Martin To Napleton For \$140,000

On August 22, 2015, Jones visited the Napleton dealership. While there, he saw a 2015 Aston Martin Rapide and decided to buy it. R.571-72. Jones bought the 2015 Rapide for \$215,000 and traded in his 2014 Rapide to Napleton for \$140,000. SA.8; C.12549; R.572-73. That transaction was handled by two Napleton employees: general manager Perry Galecki and salesman Norbert Sobotko. Both were new at their jobs, having started at Napleton in summer 2015. They were not at Napleton when Jones bought the 2014 Rapide, after he crashed it, or when the car underwent repairs. R.760, 766-68, 995-98. They did not know about the October 2014 accident or the repairs. R.760, 995.

When Jones traded in the 2014 Rapide on August 22, 2015, Galecki ran a CarFax report (dated August 22, 2015) to see if the car had an accident history. A.33-37; C.12768-72; R.996-98. The CarFax report came back clean; it did not list the October 2014 accident. *Id.* Galecki saw no reason to doubt the CarFax report especially after he personally examined the Aston Martin and saw no signs of damage or repair. R.996-99. Based on the clean CarFax report, the condition of the car, and its then-low mileage (4,790 miles), Galecki approved Napleton paying \$140,000 to buy the car from Jones, which included Napleton paying off the \$130,000 balance on Jones' car loan from Chase. SA.9; C.12549; R.572, 996, 1239-42.

Napleton Re-Sells The Aston Martin

Napleton listed the 2014 Rapide for sale at \$135,177. Wilson, an Arizona resident, saw an online ad and reviewed the August 22, 2015 CarFax report

(which was linked to Napleton's ad). R.1118-20. Wilson called and spoke with Sobotko. During that discussion, Wilson asked about the car's accident history, and Sobotko (who relied on the CarFax report) told him the car had not been in an accident. R.1125-30. Wilson thought the Aston Martin was "cool." R.1117.

Wilson's practice was to lease high-end cars, keep them for 2-3 years, and then trade them in for something new. R.1117. Thus, he wanted to lease the car rather than buy it outright. *Id.* A sale/lease was arranged. On November 27, 2015, Napleton sold the Aston Martin to PFS (a Connecticut-based financing company) for \$135,177. PFS then entered into a five-year lease with Wilson, which called for Wilson to make 60 monthly payments of \$1,911. A.38-44; C.12776-82; R.1132. Under the lease, Wilson could drive the car 25,000 miles before incurring a \$1.50 per mile penalty. *Id.* At lease-end, Wilson could either buy the car for \$60,000 or surrender it to PFS and pay any excess mileage penalty. *Id.* As part of the transaction, Wilson traded in his Mercedes to Napleton (which paid off Wilson's loan on that car). A.38; C.12776; R.1132. Wilson had an "open-ended" lease, which meant he was not required to keep the car for 60 months. He could terminate the lease and trade in the car at any point during the lease term. R.787-89, 888, 1134-35.

In December 2015, Wilson began driving the car. And he drove it a lot. By April 2018, he had exceeded the 25,000 lease mileage limit. R.1139. In other words, he was already at the five-year mileage limit after just 28 months. *Id.* To avoid mileage penalties, Wilson stopped driving the car on a regular basis

and began looking for a new car. R.881-82, 885-889, 897-9, 1146. Wilson did not stop driving the car altogether. Between April 2018 and February 2019, he put another 1,400 miles on the car. *See* SA.15; C.12444.

In 2018, CarFax Updates Its Information To Disclose The October 2014 Accident

On April 20, 2018, CarFax updated its information on the Aston Martin to include Jones' October 2014 accident.² SA.12; C.12441. The following month, Wilson contacted a dealer in California and asked about trading in the Aston Martin for another Mercedes. R.1139-40. The dealer ran a CarFax report. Unlike the August 22, 2015 CarFax report, the May 2018 CarFax report showed the October 2014 accident. A.45-47; C.12390-92; R.1139-42. Wilson was surprised to learn about the accident. Despite driving the car over 25,000 miles and spending 28 months behind the wheel, he had "no clue" the car had been in accident. R.890.

² There is no evidence in the record to explain why CarFax took 3½ years to list the accident. In his Opening Brief, Wilson claims the 2014 accident was not "reported to" CarFax until 2018. WB at 14-15. That misleadingly suggests that Napleton hid the accident from CarFax until 2018. There is not a shred of evidence to support that assertion (and Wilson cites none). The testimony at trial established that: (1) the accident and repairs were recorded in Napleton's CDK system in 2014 and 2015 (a fact Wilson emphasizes elsewhere in his brief); and (2) CarFax's practice was to download data electronically from the CDK system. R.681-88, 743. That suggests CarFax had the CDK data regarding the accident in 2014 but did not include the information in its report until early 2018. Both Napleton (which paid \$140,000 for the car) and Wilson (who leased the car based on a \$135,177 valuation) were harmed by that delay.

The Pre-Trial Proceedings In The Trial Court

Wilson sued Napleton in October 2018. He ultimately alleged two claims against Napleton: Count I (common law fraud) and Count II (violation of the Consumer Fraud Act). Notably, Wilson did not return or surrender the Aston Martin when he discovered its accident history. R.1149-51. Instead, he kept the car for another 2½ years (*i.e.*, until the end of the lease). That means Wilson voluntarily made 2½ years of additional lease payments. He also paid 2½ years of additional insurance premiums, registration fees, maintenance costs, etc.³ On several occasions in 2018 and 2019, Napleton offered to take the car back. R.1462-92. Wilson declined those offers. R.1149-51. When the lease ended in late 2020, Wilson did not return the car or pay \$60,000 to keep it. Instead, Napleton stepped in, made the \$60,000 payoff to PFS, and re-acquired the car in early 2021. R.905, 1149-51.

In 2021, Wilson obtained partial summary judgment (on liability) on Count II. C 5553. In January 2022, Wilson asked the trial court for leave to seek punitive damages. C.2339-53. The trial court found there was an insufficient basis for punitive damages and denied Wilson's motion. C.2843. In February 2023, Wilson renewed his motion. This time, he argued that punitive damages were justified due to Napleton's conduct in a different transaction with an unrelated customer named Bart Miller. C.3008-3146.

³ Actually, Wilson did not make the lease payments. He caused a trust called "The Wilson Toy Box" to make those payments. SA.63-67; R.911-915.

In 2021, Napleton re-sold the Aston Martin to Bart Miller. C.3008-3146. When Miller bought the Aston Martin, Napleton gave him a CarFax report that disclosed the October 2014 accident and stated the car had been towed from the scene. SA.9-17; C.12438-46. Miller reviewed the CarFax report and his wife initialed each page. R.1205, 1225-27. Despite that, Wilson contended Miller had been duped because Napleton also gave him a “True360 Report” stating the car had only “minor cosmetic repairs.” A.51-54; C.12417-20. Wilson claimed that was misleading because the repairs to the Aston Martin were neither “minor” nor “cosmetic.” C.3008-12. Miller himself, even after being apprised of this, did not seem bothered by the True360 Report or the car’s accident history. In fact, he testified that he thought the car was worth more at the time of his deposition than what he paid for it. R.1227. He never complained or brought any type of action against Napleton. Nevertheless, based on the Miller transaction in 2021, the trial court reversed its earlier ruling and allowed Wilson to seek punitive damages in connection with his 2015 lease. C.3693; R.33-68.

The Case Proceeds To Trial

Trial commenced in August 2023. It was tried to a jury on Count I and before the bench for damages on Count II. Prior to trial, Napleton asked the trial court to limit Wilson to recovery of benefit-of-the-bargain damages (*i.e.*, between \$6,000 and \$40,000) because he had elected to keep the car. C.4644-67. The trial court agreed that Wilson had affirmed his lease. R.184. However,

over Napleton’s objections, the trial court allowed Wilson to seek recovery of his out-of-pocket costs. R.197-202, 467-71.

Trial began on August 7, 2023. R.230. Wilson’s case-in-chief consumed 3½ days.⁴ At trial, Wilson testified that he had incurred \$138,544.62 in “out-of-pocket costs” on the car. R.1154. He testified he made 60 monthly lease payments of \$1,911.79 each (for a total of \$114,708). R.1136-37. He also paid \$3,742 in closing costs; \$9,500 in insurance premiums; \$4,000 for maintenance and \$6,700 for license and registration. R.879, 1136-39, 1154-57.

On cross-examination, Wilson admitted he would have incurred expenses such as monthly car payments, maintenance, insurance, and registration costs regardless of whether he kept his Mercedes, leased the Aston Martin, or leased a different car. SA.67-77; R.914-20, 928-30, 938. Wilson was also confronted with a bank statement showing the monthly lease payment was made by an entity called the “Wilson Toy Box” – not by Wilson. SA.64-68; R.911-15; CI.6-9. Wilson admitted the Wilson Toy Box is a trust he established to house a VRBO property. *Id.* Wilson conceded the Wilson Toy Box was “separate and distinct” from his personal finances. SA.66; R.913. Wilson

⁴ Much of Wilson’s case-in-chief related to the Miller transaction rather than the Wilson transaction. Two of Wilson’s witnesses (Chern and Miller) testified exclusively about the circumstances surrounding Miller’s 2021 purchase. R.1003-1021, 1191-1232. Miller’s 2021 purchase also featured prominently in Wilson’s opening statement, closing argument, and examinations of numerous witnesses. *See* R.958-60, 903-23, 903-23; 1191-232, 1253-54. The terms “True360,” “Miller” and “minor cosmetic damage” appear 62 times, 96 times, and 20 times, respectively, in the trial transcript. C.8129-8130. In short, the Miller transaction became a main event rather than a sideshow.

admitted he did not know whether the Wilson Toy Box had “made the vast majority of the payments on the lease.” SA.64-67; R.911-14.

Although Wilson abandoned his claim for benefit-of-the-bargain damages, he nevertheless presented an expert, Robert Isham, to opine on those damages. Isham testified that, due to its accident history, the Aston Martin’s actual value in November 2015 was \$95,000-\$100,000 (\$35,000-\$40,000 less than the \$135,177 sale price). R.1105-08. Isham also testified the car was worth \$54,000 in late 2020 rather than the \$60,000 buyback price in Wilson’s lease (a difference of \$6,000). R.1109-11; A.38-44; C.12776-82.

Napleton made an offer of proof. R.1462-1492. Napleton called two Napleton 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.* 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. After the offer of proof, the trial court found the evidence presented was inadmissible under Rule of Evidence 408. R.1492-93.

At the jury instruction conference, Wilson tendered jury instructions that allowed the jury to award out-of-pocket damages, punitive damages, and “aggravation and inconvenience” damages. C.5472-5501. Napleton objected to those instructions. C.5522-48. The trial court overruled Napleton’s objections and subsequently instructed the jury on those issues. R.1506-11, 1536-44.

Napleton, in turn, proposed an instruction on mitigation of damage. R.1534-1574. The trial court declined to give that instruction. *Id.* The jury returned a verdict in favor of Wilson on Count I and awarded him over \$1.16 million in damages: (1) \$138,544.62 for his out-of-pocket costs; (2) \$25,000 for “aggravation and inconvenience;” and (3) \$1,000,000 in punitive damages.⁵ A.63; C.5553.

The Post-Trial Proceedings

The trial court did *not* immediately enter judgment on Count I. Instead, it entertained post-trial motions on Counts I and II. Napleton filed a motion seeking judgment *n.o.v.*, a new trial, or remittitur with respect to Count I. C.6576-8130. Wilson filed a fee petition and a motion to recover his costs as the prevailing plaintiff on Count II. C.5617-6575. Those motions were fully briefed. C.8134-11624.

On October 31, 2023, the trial court ruled on those motions. A.66-68; C.11627-29. The trial court denied Napleton’s motions for judgment *n.o.v.* and a new trial. *Id.* However, the trial court found the damages awarded by the jury on Count I were excessive:

The amount of damages awarded was, frankly, shocking and must be reduced. As argued by the defense, the plaintiff in this case suffered little if no actual damages. He drove the car without issue until he had reached his mileage limit. He had full use of a luxury automobile for nearly 3 years. The payments were in part made from a children’s [sic] trust. He would have had to make some type of car payments as well as insurance and maintenance costs. Although plaintiff chose to abandon the difference in value

⁵ As the dissent noted below, the jury’s damages award exceeded the entire production budget for Dr. No, the first James Bond film. A.148, ¶ 117.

damages, the actual decreased value of the Aston Martin was somewhere between \$6,000 and \$40,000.

A.67; C.11628. The trial court characterized the damages awarded by the jury as a “massive windfall to a relatively undamaged plaintiff.” *Id.*

On the basis of those findings, the trial court remitted the damages on Count I. *Id.* It did not remit the damages to the \$6,000-\$40,000 range discussed above. Instead, the trial court simply excluded lease payments from the time Wilson was driving the car (December 2015 through May 2018). That reduced the out-of-pocket damages from \$138,544.62 to \$74,616.49. A.66-67; C.11628-29. The trial court also remitted the punitive damages award from \$1,000,000 to \$400,000. A.67-68; C.11628-29. The trial court sustained the \$25,000 award for “aggravation and inconvenience.” *Id.* The trial court did not seek or obtain Wilson’s consent for that remittitur.

On Count II, the trial court awarded actual damages that mirrored the remitted amounts on Count I (\$74,616 in out-of-pocket costs and \$25,000 for aggravation and inconvenience). The trial court also awarded Wilson \$5,040 in costs and \$185,411 in fees. A.67; C.11628. The trial court entered judgment on Counts I and II on October 31, 2023. A.68; C.11629.

Wilson Does Not Accept The Remittitur

Thereafter, the parties filed post-judgment motions. Throughout the proceedings on those motions, Napleton reminded the trial court and Wilson (both in open court and in writing) that if Wilson did not consent to the remittitur, the case must be set for a new trial. This happened repeatedly

between October 31, 2023 and January 18, 2024. *See* SA.22, 28-29, 49-51; R.1877, 1883-84, 1917-1919; C.11635-36, 11902-05, 12161-62.

Despite Napleton's repeated reminders, the trial court never directly asked Wilson to accept or reject the remittitur. *See* SA.51-52; R.1919-20. Wilson never consented to the remittitur. Instead, he did the opposite. He filed several post-judgment briefs attacking the remittitur as "error" and contrary to law. C.11648-11778; R.1901-30. Napleton argued that Wilson's refusal to consent to the remittitur, coupled with his claims that the remittitur was error, constituted a rejection. SA.50-53; R.1918-21. Thus, Napleton asked for a new trial. *Id.*

On January 18, 2024, the trial court denied the parties' post-judgment motions except to modify the October 31, 2023 judgment to correct a mathematical error. A.69; C.12229. Napleton filed a notice of appeal on February 1, 2024. SA.4-6; C.12810-15. Wilson filed a cross-notice shortly thereafter. A.93-98; Sup. C. 4-9.

The Proceedings In The Appellate Court

The appellate court issued its opinion on September 25, 2025. A.99-160. Several aspects of its ruling are relevant for purposes of this appeal.

First, the appellate court found the trial court erred in handling the remittitur but did not remand for a new trial on Count I. A.120-21, ¶ 50. Instead, after surveying several conflicting appellate court decisions on this issue, *see* A.114-19, ¶¶ 35-45, the appellate court vacated the trial court's

damages awards on Count I and remanded to give Wilson a renewed opportunity to accept or reject the remittitur. A.120-21, ¶ 50.

Second, the appellate court sustained the trial court’s award of out-of-pocket damages on Count II. The appellate court found Wilson was entitled to recover out-of-pocket damages because he pled those damages in his complaint. A.125-26, ¶¶ 60-62. The appellate court found that Wilson’s decision to pursue recovery of out-of-pocket costs was not an improper election of remedies and that Napleton’s rescission offers were properly excluded from evidence under Rule 408. *Id.*

Third, the panel majority (Justices Brennan and Hettel) affirmed the trial court’s \$25,000 damages award for “aggravation and inconvenience” on Count II.⁶ A.129-35, ¶¶ 68-79. The majority found that Section 10a(a) of the Consumer Fraud Act, 815 ILCS 505/10a(a), permits recovery of non-economic damages and that a 1996 amendment to the Act limiting recovery to “actual economic damages” was invalidated by this Court in *Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12 (2003). A.131-32.

Justice Anderson wrote a 12-page dissent, in which he expressed uncertainty regarding the scope of *Allen* and noted the “imprudence” of allowing damages for “aggravation and inconvenience.”

Including “aggravation and inconvenience” as compensable damages erodes the statute’s focus, blurs the boundary between

⁶ The appellate court did not address the availability of such damages under Count I (common law fraud) because it vacated the damages awarded under Count I.

legal wrongs and ordinary consumer dissatisfaction, and opens the courthouse doors to every minor grievance masquerading as a legal harm. Such an expansion not only burdens courts with trivial claims but also invites speculative damage claims, since aggravation and inconvenience are inherently subjective, unquantifiable, and elastic. Even when interpreting a law commonly referred to as the “Consumer Fraud Act,” Illinois courts are not akin to a customer service counter at the mall.

A.157-58, ¶¶ 137, 139.

Fourth, the appellate court was uncertain whether the trial court had awarded punitive damages on Count II and remanded to allow the trial court to provide clarification on that issue. A.135-36, ¶¶ 81-85.

ARGUMENT

I. This Court Should Find That Remand For Retrial Is The Proper Remedy In This Case.

Wilson, Napleton, and the appellate court all agree that the trial court erred in handling its remittitur. Indeed, most of Wilson’s Opening Brief is devoted to this issue. *See* WB at 23-48. But Wilson’s Brief omits a critical point: Wilson was not a helpless bystander on this issue. If anything, he was complicit in the trial court’s error. Thus, he should not be permitted to benefit from that error.

The jury rendered its verdict on August 14, 2023. A.63; C.5553. The trial court announced its remittitur on October 31, 2023 and entered judgment on Count I (in the remitted amount) that same day. A.66-68; C.11627-29. But that was not the end of the story. Both parties then filed post-judgment motions, which were not resolved until January 18, 2024. A.69; C.12229; SA.33-62; R.1901-30. During the 2½ months between October 31, 2023 and January 18,

2024, Napleton repeatedly reminded both the trial court and Wilson that Wilson must either consent to the remittitur or a new trial must be ordered. Napleton made this point – both in open court and in written submissions – on numerous occasions. *See* SA.22, 28-29, 49-51; R.1877, 1883-84, 1917-1919; C.11635-36, 11902-05, 12161-62.

As a result, Wilson knew he must either consent to the remittitur or face a re-trial. And he also knew the trial court was committing error by not directly asking him to accept or reject the remittitur. But rather than speak up, Wilson chose to let the trial court err. No doubt Wilson did so in the hope he might ultimately benefit from that error by asking a higher court, *i.e.*, this Court, to invalidate the remittitur and reinstate the jury’s original damages award.

A. This Court Should Find That Wilson Rejected The Remittitur.

Wilson’s conduct was tantamount to rejection. Thus, the trial court should have ordered a new trial. *See Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 253-54 (2006). A trial court’s refusal to order a new trial is reviewed *de novo*. *See Roach v. Union Pacific R.R.*, 2014 IL App (1st) 132015, ¶ 68; *Jacobs v. Yellow Cab Affiliation, Inc.*, 2017 IL App (1st) 151107, ¶131. This Court should correct that error and order a new trial.

A trial court cannot unilaterally order a remittitur. Rather, remittitur is, in effect, an offer by the trial court to a plaintiff. As this Court noted in *Tri-G, Inc.*:

[Remittitur] is a judicial determination of recoverable damages and should not be construed as an agreement between the parties

or a concession by the plaintiff that the damages were excessive. Although a trial court may refuse to enter judgment on a verdict unless a portion of the verdict is remitted, the court does not have the authority to reduce the damages by entry of a remittitur ***if the plaintiff objects or does not consent***. The trial court must afford the plaintiff the choice of agreeing or refusing to the entry of a remittitur, with the proviso that the plaintiff's refusal to agree to the entry of a remittitur will result in the ordering of a new trial. The only alternative to a remittitur in a case where the verdict exceeds the damages properly proven, or where the verdict can be accounted on the sole basis that the jury acted from some improper motive, such as passion or prejudice, is for the trial judge to order a new trial.

Id. at 253-54 (emphasis added).

Critically, under *Tri-G*, a new trial is required if “the plaintiff objects ***or does not consent***.” *See id.* (emphasis added).⁷ Thus, a plaintiff cannot duck the issue through silence, prevarication, or ambiguity. Anything other than clear acceptance is deemed to be rejection. *Qui tacet consentiret* (“silence gives consent”) does not apply in this instance.

Wilson did not consent. Nor did he remain silent. Instead, he objected to the remittitur at every possible opportunity. His post-judgment motion was a clear and ringing objection to the remittitur.⁸ C.11648-62. It did not stop there.

⁷ *See also Bauer v. Mem'l Hosp.*, 377 Ill. App. 3d 895, 924 (5th Dist. 2007); *Luye v. Schopper*, 348 Ill. App. 3d 767, 779 (1st Dist. 2004); *Peter J. Hartmann Co. v. Capitol Bank & Trust Co.*, 353 Ill. App. 3d 700, 711 (1st Dist. 2004).

⁸ *See* C.11649 (“The Court Erred By Reducing The Jury’s Award Based On The Doctrine Of Remittitur.”); C.11650 (“This Court erred by using remittitur to reduce the award of damages for the lease and insurance payments.”); C.11653 (“The Court erred by using the doctrine of remittitur as a substitute for a claim of setoff that Napleton never filed.”); C.11655-56 (“[T]here is no evidence in the record to support the Court’s conclusion ...”).

Wilson doubled down in his response to Napleton's post-judgment motion. C.11938-54.

- “Accordingly, it is error for the Court to substitute its own judgment for that of the Jury, to reweigh the evidence, and to reduce the Jury’s punitive damages award ...” C.11947.
- “The Court’s reduction of the punitive damages award thwarts the intended effect of the Jury’s verdict.” C.11948.
- “The Court’s reduction of the punitive damages effectively ensures that the Jury’s award will not have the deterrent effect that Illinois law says it is supposed to have.” *Id.*

Such statements conclusively establish Wilson’s rejection of the trial court’s remittitur.

The appellate court came to a different conclusion by choosing to focus on the trial court’s conduct rather than Wilson’s conduct. The appellate court found Wilson had no obligation to accept or reject the remittitur because the trial court never squarely presented Wilson with those options. A.118, ¶ 45. That reasoning does not withstand scrutiny.

For starters, that ignores the reality of what happened. This is not an instance in which Wilson was pressed for time, or was forced to react to an unclear, conditional, or ambiguous ruling. On October 31, 2023, the trial court clearly and unambiguously announced its remittitur and entered a written order which reflected the same. A.66-68; C.11627-29; R.1855-73. That was followed by 2½ months of extensive briefing. If Wilson wanted to consent, he had ample opportunity to do so. Instead, he repeatedly objected to the remittitur.

Additionally, Wilson cannot be heard to complain that the trial court failed to properly “mirandize” him regarding his rights and obligations on this issue. As this Court has emphasized time and again, litigants and counsel are presumed to know the law. *See McIntosh v. Walgreens Boots All., Inc.*, 2019 IL 123626, ¶ 39; *People v. Perkins*, 229 Ill. 2d 34, 51 (2007) (“Counsel is presumed to know the law”); *People v. Holman*, 164 Ill. 2d 356, 369 (1995). Moreover, Wilson did not need the trial court to tell him his options. Wilson knew the law on this issue because Napleton repeatedly reminded him of it. Yet, Wilson was still objecting to the remittitur long after Napleton put him on notice that non-acceptance would lead to a new trial. *See* SA.21-24, 27-28, SA.49-52; R.1876-79, 1882-83, 1917-20; C.11635-36, 11902-05, 12161-62.

In sum, Wilson made his choice: he rejected the remittitur. He cannot avoid the consequences of that decision by pointing to the trial court’s error in failing to squarely ask for his consent. That would violate the well-established rule that parties may not induce, invite, or acquiesce in judicial error, and then take advantage of that error. *See People v. Quezada*, 2024 IL 128805, ¶ 59; *Direct Auto Ins. Co. v. Bahena*, 2019 IL App (1st) 172918, ¶ 36 (“Under the invited-error doctrine, a party cannot acquiesce to the manner in which the trial court proceeds and later claim on appeal that the trial court’s actions constituted error.”).

B. The Appellate Court Selected The Wrong Remedy.

The appellate court found the proper remedy in this case was to remand and give Wilson another opportunity to accept or reject the remittitur on Count

I. See A.117-18, 120-21, ¶¶ 42-43, 50. That was error. This Court should reverse and remand for a new trial.

First, the appellate court’s decision is not well-grounded in precedent. The prior decisions on which the appellate court relied do not contain meaningful discussion or analysis of this issue. *Augustine v. Kaufman*, 338 Ill. App. 591, 593 (1st Dist. 1949), is four paragraphs long and involved a \$500 dispute. *Baker v. Spaulding Women’s Apparel, Inc.*, 83 Ill. App. 2d 455 (1st Dist. 1967), is even shorter. It consists of two paragraphs and involved a \$5,000 dispute. And *Bart v. Union Oil Co. of California*, 185 Ill. App. 3d 64 (3d Dist. 1989), addressed this remedy only in *dicta*.

Second, the remedy proposed by Napleton makes sense and is firmly rooted in this Court’s prior decisions. When comes to remittitur, the law places obligations on both trial courts and plaintiffs. As this Court has previously held, a new trial is mandated if “the plaintiff objects **or does not consent.**” See *Tri-G*, 222 Ill. 2d at 353-54 (emphasis added).⁹ Consistent with those decisions, this Court should make it clear that, when faced with a remittitur, a plaintiff cannot stay silent. Rather, the plaintiff must either affirmatively consent to the remittitur or face a retrial – regardless of whether the trial court directly asks for the plaintiff’s consent or not. Here, the Court should recognize Wilson’s

⁹ See also *Bauer*, 377 Ill. App. 3d at 924; *Luye*, 348 Ill. App. 3d at 779; *Peter J. Hartmann Co.*, 353 Ill. App. 3d at 711.

two-months-long refusal to consent to the remittitur (coupled with his written objections to the remittitur) for what it was: a rejection.

Third, Napleton’s proposed remedy is also consistent with the well-established rule that parties may not induce, invite, or acquiesce in judicial error, and then take advantage of that error. *See Quezada*, 2024 IL 128805, ¶ 59; *Direct Auto Ins. Co.*, 2019 IL App (1st) 172918, ¶ 36. In this situation, “invited error” applies. Wilson knew the trial court was committing error by not seeking his consent and took self-serving advantage of that fact. He should not be allowed to benefit from that course of action.

Fourth, the appellate court correctly rejected the option of reviewing the merits of the remittitur and then either reversing or conditionally affirming (with the condition being Wilson’s ultimate consent to the remittitur). *See* A.114-17, ¶¶ 35-41. For starters, as the appellate court noted, the prior decisions applying that remedy arose under different factual circumstances. *See id.*¹⁰ In addition, trial courts lack the power to unilaterally remit damages. *See also Tri-G, Inc.*, 222 Ill. 2d at 253-54. Thus, in the absence of Wilson’s consent, there was no valid or effective remittitur order to review. *See* A.116, ¶ 41. In addition, the appellate court was correctly concerned that reviewing the remittitur on its merits would influence Wilson’s decision

¹⁰ Citing *Haid v. Tingle*, 219 Ill. App. 3d 406, 410 (1st Dist. 1991); *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).

whether to consent to the remittitur on remand. *See* A.117, ¶ 41 (“it is in no way certain how the parties might have responded below had the correct procedural steps been taken.”). When confronted with that decision, Wilson should not have the advantage of absolute certainty what the results will be on appeal.

Finally, the remedy selected by the appellate court creates unjust results. Indeed, the appellate court’s concern that “it is in no way certain how the parties might have responded below had the correct procedural steps been taken” applies with equal force to the remedy it selected. *See* A.117, ¶ 41. Remanding the case to allow Wilson an another opportunity to accept or reject the remittitur places him in a much better position than he occupied prior to the appeal. The appellate court has now ruled on many of the disputed issues that existed when the trial court originally entered judgment. Thus, Wilson has received a “sneak peak” into how the higher courts are likely to view the damages issues on Count I. Actually, it’s much more than a sneak peak, because in addressing the Count II damages, the appellate court ruled (and this Court will presumably also rule) on many of the same issues that are raised with respect to Count I. That means Wilson is armed with something no party making a remittitur decision has ever had: near-absolute assurance of how reviewing courts will rule. Thus, there was (and remains) only one proper result: a retrial.

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

Under longstanding Illinois law, a fraud plaintiff may either: (1) rescind a fraudulent transaction; or (2) affirm a fraudulent transaction. If the plaintiff elects to rescind (*i.e.*, returns the product at issue), the plaintiff may recover her out-of-pocket costs. If the plaintiff elects to affirm (*i.e.*, keeps the product at issue), she may recover benefit-of-the-bargain damages (*i.e.*, the difference between the actual value of the product and the value as falsely represented). It is an “either/or” proposition. If the plaintiff keeps the product, the plaintiff is limited to benefit-of-the-bargain damages (also called diminution damages). If the plaintiff returns the product, the plaintiff may recover out-of-pocket costs. It must be one, or the other. Allowing a plaintiff to keep the product and receive her money back amounts to a double recovery. The law on this issue has been well-settled for decades.¹¹

The implications of that rule in this case are obvious. Wilson did not return the Aston Martin in 2018. Instead, he affirmed his lease and kept the car for another 2½ years. Thus, he should have been limited to benefit-of-the-bargain damages. That makes sense because this is not a case where the

¹¹ See *Beaton & Assoc., Ltd. v. Joslyn Mfg. & Supply Co.*, 159 Ill. App. 3d 834, 844 (1st Dist. 1987), recognized as superseded on other grounds, *Royal Imperial Group, Inc. v. Jos. Blumberg & Assoc., Inc.*, 240 Ill. App. 3d 360, 365 (1st Dist. 1992); *Giammanco v. Giammanco*, 253 Ill. App. 3d 750, 758-763 (2d Dist. 1993) (recognizing two measures of damages in fraud actions – “out of pocket” and “benefit of the bargain”); *Roboserve, Inc. v. Kato Kagaku Co., Ltd.*, 78 F.3d 266 (7th Cir. 1996) (citing *Beaton*); *Verdonck v. Scopes*, 226 Ill. App. 3d 484 (2d Dist. 1992).

plaintiff purchased a non-functioning, non-existent, or unusable product. Wilson drove the car over 25,000 miles and his decision to stop driving the car had nothing to do with any “fraud” by Napleton. Rather, Wilson simply reached the lease’s 25,000-mile limit. Unless he wanted to pay \$1.50 per mile (and he understandably did not), he had to stop driving the car. He received the mileage he bargained for. His only possible injury was the diminished value of the vehicle. He overpaid on the 2015 lease, and the car would have captured a reduced price if he had traded it in.

But that is not what happened below. In the trial court, Wilson eschewed benefit-of-the-bargain damages and instead pursued recovery of his out-of-pocket costs. A.67; C.11628; R.470-71. Wilson made that choice for an obvious reason. His own expert (Robert Isham) testified that the diminished value of the Aston Martin was between \$6,000 and \$40,000. R.1105-11. Wilson was not content with that amount and wanted more.

Prior to trial, Napleton moved *in limine* to bar Wilson from presenting evidence of out-of-pocket damages. C.4644-67. At the pre-trial conference, Wilson’s counsel admitted Wilson had affirmed the transaction.

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

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

R.99; *see id.* at 156. Even without that admission, however, the evidence showed Wilson’s affirmance of the transaction. He drove the Aston Martin

regularly, put over 25,000 miles on it, kept it for five years (including 2½ years after discovering “the fraud”) and refused Napleton’s offers to rescind. *See* R.887-88, 918-920, 928, 929, 938. Thus, the trial court correctly found that Wilson affirmed his lease of the Aston Martin. C.11628; R.99, 137, 184.

But the trial court did not follow that finding to its logical conclusion; it did not limit Wilson to benefit-of-the-bargain damages. Instead, the trial court tried to fashion a compromise. It allowed Wilson to recover out-of-pocket costs but did not allow him to recover any pre-May 2018 lease payments. A.67-68; C.11628-29. There was (and remains) no legal foundation for that approach. Rather, it was simply an attempt at compromise, with no legal basis.

On appeal, the appellate court tried to construct a legal framework to support that compromise. The problem, however, is that the legal framework it constructed for this case undermines the foundation of the law on this issue. The appellate court noted that Wilson had alleged his right to recover out-of-pocket damages in his complaint. A.125-26, ¶¶ 61-62. In light of that, the appellate court found that Wilson’s remedies were not limited by his decision to keep the car in 2018. The appellate court found that Wilson had properly elected his remedy because he sought only one measure of damages (out-of-pocket costs) at trial. A.125-26, ¶¶ 61-62. The appellate court’s reasoning on this issue stands at odds with long-standing precedent and creates conflict on a well-settled issue. This Court should reverse the appellate court on this issue.

First, the appellate court fundamentally rewrote the law on this issue. Under the appellate court's approach, it does not matter whether a plaintiff affirms a transaction or seeks to rescind it. Rather, what matters is the type of damages a plaintiff seeks in her complaint. Thus, a plaintiff who pleads a right to recover out-of-pocket costs in her complaint may recover such damages – regardless of whether she affirms the transaction.

The appellate court's ruling stands in direct conflict with the well-established body of caselaw cited above, *see supra* at 25, n.11, which holds that the correct measure of damages is dictated by a plaintiff's conduct (*i.e.*, affirming or rescinding the transaction) rather than a plaintiff's pleading. Those decisions are better-reasoned and more firmly grounded. The possibility of double recovery is severely curtailed (if not eliminated) by tailoring the measure of damages to the plaintiff's factual circumstances.

By contrast, the appellate court's approach opens the door wide to double recovery by allowing plaintiffs to recover either measure of damages based solely on what they seek in their complaint. A plaintiff who has rescinded a transaction should not be able to recover benefit-of-the-bargain damages. And a plaintiff who affirms a transaction (presumably because the plaintiff believes the product has value) should not be able to recover out-of-pocket costs. Either might give the plaintiff a windfall. But under the appellate court's approach, those scenarios are possible because a plaintiff's remedy is conditioned in the first instance by the request set forth in its complaint.

Third, the appellate court’s application of the election of remedies doctrine is flawed. Not every “election” made by a litigant (or, in this case, a potential litigant) is the same. Some elections occur prior to the filing of a lawsuit, such as when a plaintiff takes a course of action that narrows the remedies the plaintiff may seek in litigation. Other elections occur during litigation, such as when a plaintiff has two viable damages theories and must, either before or at trial, elect one over the other. The appellate court relied heavily on decisions discussing the latter. *See* A.125-26 (citing *Kel-Keef Enter., Inc. v. Quality Components Corp.*, 316 Ill. App. 3d 998 (1st Dist. 2000), and *Indep. Tr. Corp. v. Hurwick*, 351 Ill. App. 3d 941, 954 (1st Dist. 2004)).

However, this case involves the former. By the time Wilson filed his complaint in the fall of 2018, he had already decided to keep the car. R.1149-51. Thus, Wilson did not have two viable money damages theories when he filed his complaint. He had one – and only one – viable damages theory: benefit-of-the-bargain damages. Once Wilson decided in 2018 to keep the Aston Martin, he was limited to recovering benefit-of-the-bargain damages. There was no “election” for his attorneys to make at trial. Wilson had already made the election.

Moreover, even if the “election of remedies” jurisprudence cited by the appellate court was applicable (and it is not), it supports Napleton’s position. Under that jurisprudence, an election of remedies occurs if “double compensation is threatened” or a plaintiff’s action causes a defendant to

“materially change[] his position in reliance” on plaintiff’s actions. *See* A.125-26, ¶¶ 61-62 (citing *Kel-Keef Enter., Inc. v. Quality Components Corp.*, 316 Ill. App. 3d 998, 1008-10 (1st Dist. 2000)). Here, both are satisfied. In this case, “double compensation” was not merely “threatened;” it actually happened. Wilson recovered his out-of-pocket costs and kept the car for the full lease term and drove it over 25,000 miles. In addition, Wilson’s actions caused the parties to change their positions, both outside this lawsuit (where Napleton paid the \$60,000 lease-end balance on the car), *see* R.905, 1149-51, and in this lawsuit (where Napleton incurred years of legal fees due to Wilson’s refusal to rescind).

Fourth, the appellate court conflated Wilson’s decision to keep the car with his refusal to accept Napleton’s settlement proposals. The appellate court examined this issue through the lens of Napleton’s settlement offers, all of which involved Wilson surrendering the car, and which the appellate court found were inadmissible under Rule of Evidence 408.

In focusing on settlement, the appellate court missed the larger point. Setting Napleton’s settlement offers aside, the fact remains that Wilson ***kept the car***. Certainly, Wilson was not required to accept a settlement offer. But he was required to make the same decision that every other fraud plaintiff must make: to affirm the transaction or seek to rescind it. Even if Napleton never made a settlement offer, Wilson was required to make that decision.

Fifth, the appellate court’s approach violates the precept that every plaintiff has a duty to mitigate its damages. *See Clarkson v. Wright*, 108 Ill. 2d

129, 133 (1985); *Kelly v. Chicago Park Dist.*, 409 Ill. 91 (1951); *Pioneer Bank & Tr. Co. v. Seiko Sporting Goods, U.S.A Co.*, 184 Ill. App. 3d 783, 790 (1st Dist. 1989). Here, Wilson (or his trust) voluntarily made \$55,442 in lease payments (plus insurance, maintenance, and registration) between May 2018 and December 2020 to avoid a loss on re-sale which his own expert testified might be as low as \$6,000. R.1109-11; A.67; C.11628. Wilson was required to mitigate damages he “might have avoided with reasonable effort without undue risk, expense, or humiliation.” *Pioneer Bank & Tr. Co.*, 184 Ill. App. 3d at 790. There was no evidence that a trade-in, return, or sale of his luxury Aston Martin would have caused Wilson “risk, expense, or humiliation.”

Wilson had many options to mitigate. He could have traded in the Aston Martin to get a new car (which is precisely what he tried in May 2018), or he could have sold the car outright, either to another dealer or to a private party. He also could have returned the car to Napleton (which is why Napleton tried to introduce evidence regarding its offers to rescind in 2018 and 2019). Any of those options would have stopped his future car payments and established the outer bounds of his damages.

Wilson did not pursue those options. Instead, after a half-hearted effort to shop the car, he stopped all efforts to trade-in or sell the Aston Martin in mid-2018 and decided to keep it. R.903, 1146. Wilson’s expert testified there was a market for the car and that re-sale could have resulted in as little as a

\$6,000 loss to Wilson.¹² R.1109-11; A.67; C.11628. In his Opening Brief, Wilson disputes there was a market for the car, and cites the testimony of George Chapes, Arizona dealer who supposedly “shopped the hell out of the Aston Martin.” WB at 15, citing R.810-11. But Wilson selectively quotes Chapes’ testimony. Chapes admitted he contacted only 2-3 people about the car and was impeached with prior testimony that he never even bothered to inspect the car. R.815-18.

III. This Court Should Reverse The Appellate Court’s Finding That “Aggravation And Inconvenience” Damages Are Recoverable.

On the issue of “aggravation and inconvenience” damages, the appellate court created new law. Since 1818, the term “aggravation and inconvenience” has been mentioned in less than three dozen appellate court decisions. Damages for “aggravation and inconvenience” have been awarded only in a handful of reported cases. The damages awarded in those cases were modest in amount and accompanied by a bare minimum of analysis.¹³ Indeed, the appellate court’s discussion of “aggravation and inconvenience” (including

¹² At various times, Wilson has claimed it was “impossible” for him to sell the car because he was only a lessee. Nonsense. Wilson’s lease with Premier permitted early termination. See A.38-42 at ¶¶ 3.h, 15; C.12776-80. That is precisely why he was trying to execute a trade-in in May 2018, which led to this suit.

¹³ See *Vieweg v. Friedman*, 173 Ill. App. 3d 471 (2d Dist. 1988) (awarding \$1,000 in aggravation and inconvenience damages); *Gehrett v. Chrysler Corp.*, 379 Ill. App. 3d 162 (2d Dist. 2008) (awarding \$15,000); *Roche v. Fireside Chrysler-Plymouth, Mazda, Inc.*, 235 Ill. App. 3d 70 (2d Dist. 1992).

Justice Anderson’s dissent) ran to 18 pages. That is longer than the discussion of this issue in all prior decisions *combined*.

Based on Napleton’s research, the \$25,000 award in this case is (by far) the largest award of “aggravation and inconvenience” damages ever sustained by the appellate court. As Justice Anderson noted in dissent below, *see* A.147-59, that is going to attract attention. It is very likely that future plaintiffs (and not just Consumer Fraud Act plaintiffs) will pursue such damages in ever-escalating amounts. *Id.*

And why would they not? The appellate court provided no guidance, standards, or limitations on the calculation or recovery of such damages. Additionally, as Justice Anderson noted, Illinois courts have set a high bar for recovering other types of non-economic damages such as emotional distress.¹⁴ A.158, ¶ 141. No such bar currently exists for “aggravation and inconvenience.” Thus, the door is open for litigants to repackage “emotional distress” as “aggravation and inconvenience” and recover damages that would otherwise be barred. This Court can (and should) avoid such problems by reversing on this issue.

¹⁴ *See Davis v. City of Chicago*, 2020 IL App (1st) 182551-U; *Schandelmeier-Bartels v. Chicago Park Dist.*, 634 F.3d 372, 390 (7th Cir. 2011) (higher damages awards for emotional distress require “first-and-third person testimony regarding ongoing emotional and physical effects”).

A. This Court Should Find The Consumer Fraud Act Does Not Permit Recovery Of Non-Economic Damages.

There is a split in the appellate court on whether non-economic damages are recoverable under the Consumer Fraud Act. The better answer, by far, is that they are not.

In Illinois, the common law “tort of fraudulent misrepresentation has been historically treated as purely an economic tort under which one may only recover damages for pecuniary harm.” *Doe v. Dilling*, 228 Ill. 2d 324, 343 (2008); *see also Bonhomme v. St. James*, 2012 IL 112393, ¶¶ 35-37. In common law fraud actions, the long-standing rule in Illinois is that plaintiffs may only recover economic damages. *See Kim v. State Farm Mut. Auto Ins. Co.*, 2021 IL App (1st) 200135, ¶ 43.

That is the background against which the Consumer Fraud Act was enacted. That background is important, because, as this Court noted in *Martin v. Heinold Commodities, Inc.*, 163 Ill. 2d 33 (1994), “while the intent of the Consumer Fraud Act was to lessen the burden of proof in a claim for certain misrepresentations, there is no suggestion in the Act that damages are to be determined in any manner different than is customary in our State.” *Id.* at 68.

Indeed, there is no textual evidence to suggest the General Assembly intended for the Consumer Fraud Act to permit damages for non-pecuniary harm that was then (and remains) unavailable at common law. Section 10a(a) of the Consumer Fraud Act originally permitted plaintiffs to pursue “actual damages or other relief which the court deems proper.” As the dissent below

notes, that language “has always been held to mean actual *economic* damages” and “signals the legislature’s focus on measurable pecuniary loss.” A.153-54, ¶ 130.

In 1996, the General Assembly removed all doubt on this issue. It amended the Consumer Fraud Act to underscore that recovery thereunder is limited to “actual economic damages.” After the 1996 amendment, Section 10a(a) of the Consumer Fraud Act read as follows:

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.

815 ILCS 505/10a(a) (emphasis added to denote added language).

That unambiguous statutory language forecloses claims for non-economic damages such as “aggravation and inconvenience.” The subsequent statutory phrase (“or any other relief”) does not change that result. That phrase clearly refers to forms of relief other than money damages (*e.g.*, injunctive relief, declaratory relief). Interpreting that phrase to allow damages for non-actual or non-economic harm would lead to a nonsensical result in which the second part of the sentence obviates the first part. That cannot be what the legislature intended. *See Chapman v. Chicago Dept. of Finance*, 2023 IL 128300, ¶ 29 (Statutes cannot be read in ways that render provisions superfluous or meaningless); *Solon v. Midwest Med. Records Ass’n*, 236 Ill. 2d 433, 441-42 (2010).

But there is a wrinkle. In 2003, this Court issued its decision in *Allen v. Woodfield Chevrolet Inc.*, 208 Ill. 2d 12 (2003), which related to a *different* part of the 1996 amendments to Section 10a of the Consumer Fraud Act. *Id.* In 1996, the General Assembly amended Section 10a to: (1) clarify that plaintiffs may recover only “actual economic damages” (*i.e.*, the change discussed above); and (2) limit Consumer Fraud Act claims against automobile dealers. The former was not controversial; the latter was.

In 2003, this Court found the amendments relating to auto dealers were unconstitutional because they were special legislation. *See Allen*, 208 Ill. 2d 12 (2003). In *Allen*, this Court focused exclusively on the statutory provisions relating to auto dealers and analyzed whether those provisions were special legislation. *Allen* did not discuss or analyze the change from “actual damages” to “actual economic damages.” *See id.*; *see also Allen v. Woodfield Chevrolet Inc.*, 332 Ill. App. 3d 605 (1st Dist. 2002). That is not surprising because there is no possible argument that that particular change was special legislation. However, *Allen*’s holding was arguably broad; this Court concluded the 1996 amendments were unconstitutional. It is unclear whether that holding was intended to include the entirety of the 1996 amendments or just the provisions relating to auto dealers.

Subsequent decisions of this Court appear to support the narrow view of *Allen*. Since 2003, this Court has repeatedly found that Section 10a of the Consumer Fraud Act only permits recovery of “actual economic damages.” *See*

Crittenden v. Cook Cnty. Comm'n on Hum. Rts., 2013 IL 114876, ¶ 28; *Price v. Philip Morris, Inc.*, 219 Ill. 2d 182, 283-84 (2005) (Kilbride, dissenting); *Krautsack v. Anderson*, 223 Ill. 2d 541 (2006); *Avery v. State Farm Mut. Auto Ins. Co.*, 216 Ill. 2d 100, 180 (2005). Notably, in *Krautsack*, this Court cited Section 10a(a)'s "actual economic damages" requirement and *Allen* in the same paragraph. *Id.* at 553. *Krautsack* noted that *Allen* had invalidated other portions of Section 10a. *See id.* at n.1. It seems unlikely this Court would have done that if it had invalidated the "actual economic damages" language just three years earlier.

The appellate court has been split on the availability of non-economic damages under the Consumer Fraud Act. The First and Second Districts have fashioned a rule under which plaintiffs who establish "actual economic damages" may ***also*** recover non-economic damages. *See, e.g., Morris v. Harvey Cycle and Camper, Inc.*, 392 Ill. App. 3d 399 (1st Dist. 2009). This Court, however, has never endorsed that approach. Below, the Third District panel was divided. The majority adopted the position taken by the First and Second Districts, calling it the "*Morris* Rule." A.133, ¶ 76. The dissent took the opposite position.

The dissent has the stronger position. This Court, for at least four decades, has delineated between economic and non-economic damages, drawing lines as to when such damages are and are not recoverable. *See Moorman Mfg. Co. v. Nat'l Tank Co.*, 91 Ill. 2d 69, 81 (1982) (economic loss not

recoverable under strict tort liability).¹⁵ Nothing in the Consumer Fraud Act suggests the legislature intended for the money damages available thereunder to be any broader than those available under common law. Further, awarding “aggravation and inconvenience” as a form of “other relief” conflicts with this Court’s precedent regarding the Act. *See Martin*, 163 Ill. 2d at 68-69. Finally, while the Consumer Fraud Act only allows for an award of “actual economic damages or any other relief,” it does not permit both. 815 ILCS 505/10a.

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

Separate and apart from whether the Consumer Fraud Act permits recovery of non-economic damages, this Court should find that the particular species of non-economic damages at issue in this case (“aggravation and inconvenience”) is not recoverable.

The appellate court did not grapple with the myriad problems associated with this particular category of damages. Illinois law provides neither a definition, nor a legal standard, for when “aggravation and inconvenience” becomes actionable, if ever. Nor does Illinois law explain how to measure damages for this concept. Nor does Illinois law explain how, if at all, “aggravation and inconvenience” differs from “emotional distress.” These are significant issues with far reaching consequences. Virtually every litigant can

¹⁵ *In re Illinois Bell Switching Station Litig.*, 161 Ill. 2d 233 (1994) (same); *Snover v. McGraw*, 172 Ill. 2d 438, 448 (1996) (distinguishing between economic damages and non-economic damages); *Redarowicz v. Ohlendorf*, 92 Ill. 2d 171, 176 (1982) (plaintiff cannot recover solely economic losses in tort).

plausibly claim some degree of “aggravation and inconvenience.” But the appellate court did not identify the differentiating factors that might create liability for “aggravation and inconvenience” in some cases that are not also present (in some form or another) in thousands of other cases.

Moreover, as Justice Anderson noted below in dissent, Wilson provided no evidence to support the calculation of these damages or establish their reasonableness. A.155, ¶ 133. Damages awards must be supported by evidence and cannot be based on speculation, hypothesis, conjecture, or whim. *See Lewis v. Lead Indus. Ass’n*, 2020 IL 124107, ¶ 30. Below, Wilson’s attorney simply pulled two figures (\$30,000 and \$50,000) out of thin air during closing argument and the jury awarded \$25,000. A.63; C.5553. It was all arbitrary. In addition, given the inchoate, undefined nature of such damages, it is not clear how they can be calculated in any meaningful way.

The appellate court suggested that aggravation and inconvenience damages must be “reasonable.” A.135, ¶ 79 (citing *McGrady v. Chrysler Motors Corp.*, 46 Ill. App. 3d 136, 140 (4th Dist. 1977)). But the term “reasonable” by itself lacks meaning. Any assessment of “reasonableness” requires context. “Reasonable” compared to what? And “reasonable” based on what factors? No comparators were offered by Wilson, and none were set forth by the appellate court. Presumably, that is because Illinois jurisprudence affords no such factors or comparators.

If this Court does not reverse on this issue, the Court should (and must) provide guidance to future litigants. The Court should articulate what factors courts may consider in determining when such damages are available, how such damages should be calculated, what standards govern that analysis, what factors dictate the availability of such damages, and what a jury instruction on this issue must say. There is no Illinois law addressing any of those points.

CONCLUSION

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

**NAPLETON'S GOLDCOAST IMPORTS, INC.'S RESPONSE TO
WILSON'S CROSS-APPEAL**

**NATURE OF THE CASE, STATEMENT OF JURISDICTION, AND
STATEMENT OF FACTS ON CROSS-APPEAL**

Napleton has set forth the nature of the case, statement of jurisdiction, and statement of facts with respect to Napleton's appeal to this Court. Napleton believes those are equally applicable to Wilson's cross-appeal. Rather than re-state those sections *in toto* with respect to Wilson's cross-appeal, Napleton respectfully incorporates the Nature of the Case, Statement of Jurisdiction, and Statement of Fact in its Opening Brief, *supra* at 1-17, by reference herein.

STATEMENTS OF THE ISSUES ON CROSS-APPEAL

1. Whether this Court should review the merits of the trial court's remittitur on Count I.
2. If this Court elects to review the merits of the trial court's remittitur on Count I, whether the trial court correctly remitted the actual damages awarded to Wilson.
3. If this Court elects to review the merits of the trial court's remittitur on Count I, whether the trial court correctly remitted the punitive damages awarded to Wilson.
4. Whether the trial court erred in awarding fees to Wilson and in calculating those fees

ARGUMENT ON CROSS-APPEAL

I. This Court Need Not – And Should Not – Reach The Merits Of The Trial Court’s Remittitur Of Out-Of-Pocket Damages.

In his Opening Brief, Wilson asks this Court to consider the merits of the trial court’s remittitur, find it was improper, and reinstate the jury’s original award. *See* WB at 23-48. This Court should not do so. As set forth above, this Court need not (and, therefore, should not) review the merits of a remittitur that was improvidently granted. *See supra* at 23-24. Nonetheless, if this Court is inclined to examine the merits, it should conclude, contrary to Wilson’s claim, that the lower court’s remittitur did not go far enough. The merits of the trial court’s remittitur is reviewed for abuse of discretion. *Franz v. Calaco Dev. Corp.*, 352 Ill. App. 3d 1129, 1139 (2d Dist. 2004).

A. The Trial Court Should Have Remitted Wilson’s Damages To \$0 Because Wilson Was Not Entitled To Recover Out-Of-Pocket Costs Or Aggravation And Inconvenience Damages.

The trial court should have remitted Wilson’s damages to \$0 because Wilson was not entitled to recover his out-of-pocket costs or damages for “aggravation and inconvenience.” Those arguments are addressed in Sections II and III, *supra* at 25-40, and are incorporated by reference herein.

In an effort to salvage his claim, Wilson now contends that Napleton waived its objections to out-of-pocket damages by proposing an alternate jury instruction in the trial court. WB at 37. This argument fails for three main reasons.

First, this is a new argument which was **not** raised in the trial court or appellate court. Thus, it is waived. *Bank of New York Mellon v. Rogers*, 2016 IL App (2d) 150712, ¶ 72, *citing Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996) (“It is well settled that issues not raised in the trial court are forfeited and may not be raised for the first time on appeal.”).

Second, neither of the cases cited by Wilson stand for the proposition that proposing an alternate instruction waives an objection. In both cases, the party proposed the challenged instruction in the first instance. *See People v. Kelley*, 105 Ill. App. 2d 481, 484-85 (4th Dist. 1969), *People v. Watts*, 81 Ill. App. 2d 283, 286-87 (3d Dist. 1967). Indeed, *Kelley* expressly stated that “[i]nstructions given at [a party’s] request and not objected to by him cannot be challenged[.]” *Kelley*, 105 Ill. App. 2d at 485. That is entirely consistent with the long-standing rule in Illinois that “to preserve an objection to a jury instruction a party must both specify the defect claimed **and** tender a correct instruction.” *Deal v. Byford*, 127 Ill. 2d 192, 202-203 (1989). That is precisely what Napleton did.

Third, Wilson offers an incomplete (and thus misleading) version of events. In response to Wilson’s proposed jury instructions, Napleton served written objections, which expressly objected to Wilson’s Proposed Instruction No. 17 on the grounds that out-of-pocket damages were not a proper measure of damages. SA.80-82; C.5495, 5528-29. Napleton proposed an alternate instruction (Alt1) that expressly limited the recoverable damages to “benefit of

the bargain” damages. SA.82-83; C.5529; C.5541. Napleton then tendered a secondary alternate instruction (Alt2) that permitted out-of-pocket damages (but provided information that was omitted from Wilson’s Instruction 17). SA.84; C.5542. In so doing, Napleton expressly stated in its objections that Alt2 was submitted only in the event the trial court overruled Napleton’s objections and found the jury instructions must include out-of-pocket damages. SA.81-84; C.5528-29, 5541-42. Thus, Napleton did exactly what Illinois requires to preserve its objection: it identified the defect in Wilson’s Instruction 17 and tendered alternate instructions in the event its objections were overruled.

B. Napleton Did Not Proximately Cause Wilson’s Out-Of-Pocket Costs.

Even if Wilson was entitled to recover his out-of-pocket costs, his damages claim would fail. A fraud plaintiff must prove its damages were “proximately caused” by a defendant’s fraudulent statement or omission. *See Leahy Realty Corp. v. Am. Snack Foods Corp.*, 253 Ill. App. 3d 233, 254 (2d Dist. 1993); *Connick v. Suzuki Motor Co., Ltd.*, 174 Ill. 2d 482, 501 (1996); *Roboserve, Inc.*, 78 F.3d at 274. This is true with respect to both common law fraud and the Consumer Fraud Act. *Id.* Here, the trial court made two critical factual findings:

- Wilson “would have had to make some type of car payments as well as insurance and maintenance costs” regardless of which car he drove; and
- Wilson’s “payments were in part made from a children’s trust.”

A.67; C.11628.¹⁶ Those findings should have spelled the end of Wilson's damages claims. He cannot seek reimbursement of costs he never paid. Nor can he seek reimbursement of costs he would have incurred regardless of anything Napleton said or did. Proximate cause does not exist in either situation. The trial court, however, allowed Wilson's damages to stand. That was error.¹⁷

First, as the trial court found, Wilson was going to incur out-of-pocket costs such as monthly car payments, insurance premiums, maintenance costs, and vehicle registration fees regardless of whether he drove the 2014 Aston Martin or some other car. A.67; C.11628. Wilson conceded this point at trial and admitted he was going to incur these costs regardless of whether he kept his Mercedes, leased this particular Aston Martin, or leased or bought some other vehicle. No matter what he did, he was going to incur those expenses. His testimony on this point was clear and unambiguous. *See* SA.67-77; R.914-920, 928-30, 938. Thus, none of those costs (all of which were awarded as damages) were proximately caused by any "fraud" by Napleton. As he

¹⁶ On this point, the trial court was partially correct. Wilson's payments were made by a trust. SA.64-68; R.909-13. But there is no evidence the Wilson Toy Box trust was a children's trust.

¹⁷ Ordinarily, a damages award is reviewed under the manifest weight of the evidence standard. *People ex rel Peters v. O'Connor*, 311 Ill. App. 3d 753, 758 (3d Dist. 2000). However, Napleton is not disputing the trial court's factual findings. Instead, Napleton challenges the trial court's application of the law. Thus, *de novo* review is appropriate. *See SK Hand Tool Corp. v. Dresser Indus., Inc.*, 284 Ill. App. 3d 417, 427 (1st Dist. 1996) (A "speculative award may be considered erroneous as a matter of law.").

admitted, Wilson was going to incur those costs regardless of what Napleton said or did. *Id.*

Wilson cannot sidestep this problem by claiming his costs for the Aston Martin were higher than they would have been on a different vehicle. Wilson did not present *any* evidence to show what that difference in costs might be. R.914-20, 928-30. Instead, Wilson swung for the fences and sought reimbursement of every cost from dollar one. R.938.

In his Opening Brief, Wilson claims Napleton is foreclosed from challenging proximate causation for Wilson's damages because Napleton did not assert a setoff counterclaim. The appellate court rejected this argument. *See* A.127-39, ¶¶ 65-67. This Court should as well. A fraud plaintiff always bears the burden of establishing proximate causation. *See Leahy Realty Corp.*, 253 Ill. App. 3d at 254; *Connick*, 174 Ill. 2d at 501 (1996). It is a required element of the cause of action, and a plaintiff's burden on this issue does not depend on whether the defendant asserts an affirmative defense. Moreover, Wilson's invocation of setoff is misplaced. Setoff occurs when two parties have competing claims that are mutual, mature, and liquidated. *See Clark v. Cannon Steel Erection Co.*, 359 Ill. App. 3d 739, 748 (1st Dist. 2005). That is not the situation here. Napleton is not asserting its own competing claim. Rather, Napleton is simply arguing that it did not cause Wilson's "damages."

As the appellate court noted, Wilson's reliance on *Vieweg v. Friedman*, 173 Ill. App. 3d 471 (2d Dist. 1988), is misplaced. *See* A.128, ¶ 66. In *Vieweg*,

the plaintiff drove a car for several months and then demanded a full refund from the dealer for breach of warranty. After trial, the trial judge, *sua sponte*, reduced the plaintiff's damages to account for the time she had driven the car. *Id.* at 476. On appeal, the Second District noted that the trial court's eleventh-hour reduction was tantamount to a setoff which needed to be pled as an affirmative defense. *Vieweg* is an outlier and its reasoning (which would require that virtually any argument to reduce a plaintiff's damages be accompanied by a setoff defense) was rejected below, *see* A.128, ¶ 66, and has been rejected by subsequent panels in the Second District. *See Ciampi v. Ogden Chrysler Plymouth, Inc.*, 262 Ill. App. 3d 94, 112 (2d Dist. 1994); *Barkei v. Delnor Hosp.*, 207 Ill. App. 3d 255, 264-65 (2d Dist. 1990).¹⁸

Second, Wilson cannot personally recoup monthly lease payments because Wilson did not make those payments. Instead, the Wilson Toy Box trust made the monthly lease payments. SA.64-68; R.911-15; CI.6-9. At trial, Wilson admitted the Wilson Toy Box trust has a separate legal and financial existence from Wilson personally. *See* SA.66-67; R.913-14. That is fatal to Wilson's claim because the Wilson Toy Box trust is not a plaintiff in this case.

¹⁸ Wilson also cites *MidAmerica Bank, FSB v. Charter One Bank, FSB*, 232 Ill. 2d 560 (2009). But that decision did not embrace *Vieweg's* holding on its merits; it cited *Vieweg* for the unremarkable notion that setoff is an affirmative defense. *Nadhir v. Salomon*, 2011 IL App (1st) 110851, is similarly inapposite. That case did not involve a challenge to proximate causation. It involved a defendant who asserted damages claims as affirmative defenses (rather than counterclaims) and, therefore, could not setoff its damages against damages awarded to the plaintiff.

Neither is “Jeffrey Wilson as trustee of Wilson’s Toy Box trust.” Instead, Wilson brought this case in his personal capacity excluding the Wilson Toy Box trust, a real party in interest, from this action.

II. This Court Need Not – And Should Not – Reach The Merits Of The Trial Court’s Remittitur Of Punitive Damages.

For the reasons set forth above, *supra* at 23-24, this Court should not reach the merits of the trial court’s remittitur of punitive damages. If it does so, however, it should find the trial court did not go far enough. The evidence in this case did not support any punitive damages award, much less the \$1 million awarded by the jury or the \$400,000 ultimately awarded by the trial court.

A. The Trial Court Erred In Submitting Punitive Damages To The Jury.

Punitive damages are not favored in Illinois and are only available in cases involving “wantonness, malice, oppression, willfulness, or other circumstances of aggravation.” *Franz*, 352 Ill. App. 3d at 1137; *Tully v. McLean*, 409 Ill. App. 3d 659, 670 (1st Dist. 2011); *see also Mook v. Johnson*, 2018 IL App (3d) 170229, ¶ 27. “Because punitive damages are penal in nature, courts must take caution to see that they are not improperly or unwisely awarded.” *Mook*, 2018 IL (3d) 170229 at ¶ 27; *Koehler v. Packer Group, Inc.*, 2016 IL App (1st) 142767, ¶ 89.

Fraud is an intentional tort. Thus, every fraud case necessarily involves allegations of intentional conduct. But punitive damages are not available in every fraud case. “Deceit alone cannot support a punitive damages award.”

Home Sav. & Loan Assoc. of Joliet v. Schneider, 108 Ill. 2d 277, 284 (1985). Punitive damages are not available in cases involving “simple” or “garden variety” fraud. *See Roboserve, Inc.*, 78 F.3d at 275-76 (citing Illinois cases); *Europlast, Ltd. v. Oak Switch Sys., Inc.*, 10 F.3d 1266, 1276 (7th Cir. 1993) (Same). Rather, punitive damages are only available where there is “some element of outrage similar to that usually found in crime.” *Loitz v. Remington Arms Co., Inc.*, 138 Ill. 2d 404, 415-16 (1990). In the fraud context, punitive damages are reserved for cases involving “gross fraud” where “extraordinary or exceptional circumstances clearly show[] malice or willfulness.” *Home Sav. & Loan Assoc.*, 108 Ill. 2d at 284.

The trial court abused its discretion in submitting the question of punitive damages to the jury. *See Franz*, 352 Ill. App. 3d at 1138 (this issue is reviewed for “abuse of discretion”). This case does not involve “gross fraud” or “exceptional or extraordinary circumstances.” And there was no evidence of wantonness, malice, or oppression. There was not even evidence of financial gain: Napleton paid more for the car (\$140,000) than it received from PFS (\$135,177). There was nothing to justify a punitive damages instruction.

In the trial court, Wilson obtained leave to seek punitive damages by directing to the trial court to Bart Miller’s 2021 purchase. C.3008-3164, 3693; R.33-68. In other words, Wilson’s argument for punitive damages is based on the **Miller** transaction rather than the **Wilson** transaction. That is not proper. To obtain punitive damages, Wilson must show that he (not Miller) was the

victim of malicious and wanton conduct. As the U.S. Supreme Court has made clear, the Due Process Clause requires that any punitive damages award must be based on the facts of **this** case – not the facts of some other purchase.¹⁹ If the law were different, *any* disappointed car buyer could get punitive damages simply by pointing to some other buyer’s experience. No such evidence exists here (which is why Wilson keeps alluding to the Miller transaction).

Indeed, this case involves three significant facts that strongly demonstrate Napleton was unaware of the Aston Martin’s accident history in November 2015.

First, the two people who handled Carlton Jones’s August 2015 trade-in and Wilson’s November 2015 lease were brand new at Napleton. Perry Galecki and Norbert Sobotko joined Napleton in mid-2015. R.760, 955. The photographs of the damaged Aston Martin scattered throughout Wilson’s brief might be germane if Galecki or Sobotko had been working at Napleton when they were taken. But they were not. Nor were they working at Napleton when parts were ordered for the repairs to the car. There is no evidence that they knew about the Aston Martin’s accident history in 2015. None of the people

¹⁹ See *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 423 (2003) (“A defendant should be punished for the conduct that harmed the plaintiff, not for being an unsavory individual or business.”); *Philip Morris USA v. Williams*, 549 U.S. 346, 350 (2007) (“the Constitution’s Due Process Clause forbids a State to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties.”); *Duignan v. Lincoln Towers Ins. Agency, Inc.*, 282 Ill. App. 3d 262, 271 (1st Dist. 1996) (“Punitive damages must derive from the wrongful conduct giving rise to a cause of action.” (citation omitted)).

involved in the repairs (Carlton Jones, WBW employees Jany and Antepenکو, and Napleton employees Principato and Sprandel) told Galecki or Sobotko about the car's accident history. R.573, 658-59, 1374. Wilson makes much of the fact that Galecki had access to the dealership's 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 saw no evidence that would put him on notice that the CarFax report might be inaccurate. R.999, 1241-42.

Second, Galecki relied on the same CarFax report as Wilson. The date on the August 22, 2015 CarFax report is significant. *See* A.33-37; C.12768-72. August 22, 2015 is *not* the date Wilson leased the Aston Martin. Rather, it is the date Napleton purchased the car from Carlton Jones. SA.8; C.12549; R.572-73. Galecki ran that report and relied on it when he authorized Napleton's purchase of the car from Jones for \$140,000 (\$5,000 more than Wilson paid). SA.8; C.12549; R.996, 1239-42. Moreover, Wilson has never explained why Napleton would pay \$140,000 (and pay off a \$130,000 loan) for a car it supposedly knew was worth far less than that.

Third, the evidence showed Westmont Body Werks did an excellent job of repairing the car and made it virtually impossible to detect the accident damage. Wilson drove the car over 25,000 miles and had no idea. R.890. Galecki fully inspected the car and had no idea. R.996-98. And Wilson's expert,

Robert Isham, could not detect the repairs with the naked eye. R.1099-1102; *see also* SA.18.

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

Under Illinois law, courts look to three factors in assessing the propriety of a punitive damages award: (1) the nature and enormity of the wrong; (2) the financial status of the defendant; and (3) the potential liability of the defendant. *Deal v. Byford*, 127 Ill. 2d 192 (1989); *Franz*, 352 Ill. App. 3d at 1143; *Koehler v. Packer Grp., Inc.*, 2016 IL App (1st) 142767 at ¶ 103. Wilson's Opening Brief does not acknowledge or discuss this three-factor test. Thus, Wilson has waived any argument that the punitive damages awarded below satisfy any part of this three-factor test. *See* Sup. Ct. R. 341(h)(7). In any event, examination of those three-factors demonstrates the punitive damages awarded below were improper.

The punitive damages awarded below bear no relationship to the nature or enormity of any wrong done to Wilson. As the trial court noted, Wilson was barely injured. A.67; C.11628. His use and enjoyment of his luxury sports car were not impaired by its accident history. Despite driving the car over 25,000 miles, Wilson had "no clue" it had been in an accident. R.890. Wilson's only potential loss on the Aston Martin came when he tried to trade it in and discovered that cars with accident histories capture lower prices. But even then, the diminution in value at lease-end was only \$6,000. R.1109-11; A.67; C.11628. Such a loss cannot justify punitive damages.

Napleton's financial status does not justify punitive damages. The undisputed evidence showed the Napleton dealership is a money-losing enterprise. It had a negative value in 2015 and continues to have negative cash flow from operations. R.1288-89. Its \$4.8 million net worth in 2023 was due to capital infusions from its owners. R.1286-91. A \$400,000 award is about 8% of Napleton's net worth. While there is no bright line rule on this issue, punitive damages in such amounts (especially based on a single transaction with no physical harm) are excessive.²⁰

The third factor does not apply here. That factor is intended to protect future plaintiffs by reducing punitive damages in situations that might involve future claims by other plaintiffs arising out of a single event. *See Hazelwood v. Ill. Central Gulf R.R.*, 114 Ill. App. 3d 703 (4th Dist. 1983); *Deal*, 127 Ill. 2d at 192. This case arises out of a single consumer transaction – not a mass tort. Thus, there are no other plaintiffs who can assert a claim arising from this transaction.

In lieu of addressing the three-factor test embraced by this Court, Wilson instead mounts three specific criticisms of the trial court's remittitur –

²⁰ *See Proctor v. Davis*, 291 Ill. App. 3d 265, 287 (1st Dist. 1997) (reversing punitive damages award that was 2% of defendant's net worth); *Holland v. Schwan's Home Serv., Inc.*, 2013 IL App (5th) 110560, ¶¶ 252-53 (sustaining punitive damages of 1% of defendant's net worth); *Howard v. Zack Co.*, 264 Ill. App. 3d 1012, 1028-29 (1st Dist. 1994) (affirming punitive damages of 5% of defendant's net worth); *Blount v. Stroud*, 395 Ill. App. 3d 8, 23 (1st Dist. 2009) (affirming 3% of net worth punitive damages).

none of which fits within this Court's established three-factor framework and none of which find support in the record.

First, Wilson, relying primarily on *Mook v. Johnson*, 2018 IL App (3d) 1700229, contends the trial court improperly intruded into the jury's province in remitting punitive damages. However, this Court has previously acknowledged that courts have an obligation to protect against excessive punitive damages awards. *See International Union of Operating Eng'r, Local 150 v. Lowe Excavating Co.*, 225 Ill. 2d 456, 490 (2006) ("*Lowe*"). As set forth herein, there are well-established tests under Illinois law and the Due Process Clause of the Fourteenth Amendment to determine whether an award is excessive. *See Koehler*, 2016 IL App (1st) 142767 at ¶¶ 95, 103. The trial court applied those factors. And while Napleton contends the trial court applied those factors incorrectly (thus resulting a punitive damages award that was too high), the trial court was permitted to – indeed, *required* to – review the jury's punitive damages award under those factors.

Second, Wilson contends the trial court "ignored" evidence that the Aston Martin was unsafe. WB at 33-34. There was no such evidence. At trial, Wilson admitted he had no evidence the Aston Martin was unsafe. SA.63; R.898. After trial, when Wilson argued (for the very first time) that the car was unsafe, the trial court challenged Wilson's counsel to cite any evidence to support that claim. Wilson's attorney was unable to do so. SA.78-79; R.1828-29. In addition, the structural damage from the October 2014 accident was

“very minor” and the frame rails and suspension were undamaged. R.645. In any event, the damage to the car was fully repaired. R.661.

In his Opening Brief, Wilson once again fails to cite any evidence that the Aston Martin was unsafe. Instead, Wilson cites testimony to the effect that future car buyers might view a car with an accident history as unsafe, *i.e.*, they would pay less for it. WB at 49. But that is evidence of economic harm; not evidence of a safety threat.

Third, Wilson contends the trial court erroneously reduced the jury’s damages award to account for fee-shifting under the Consumer Fraud Act. WB at 34-35. For starters, while the trial court mentioned this factor, it is not clear whether it reduced the punitive damages based on this factor or, if so, by how much. In short, Wilson is asking this Court to reverse an adjustment that may not have been made in the first instance.

Further, Wilson’s argument is based on a fundamental misunderstanding of this Court’s decision in *Lowe*, 225 Ill. 2d 456. In *Lowe*, this Court did not find that an award of attorney’s fees must be considered as “actual damages” for purposes of measuring the actual damages/punitive damages ratio. Instead, *Lowe* discussed the intersection of punitive damages and attorney’s fees in a different context, *i.e.*, whether punitive damages awards should be equitably adjusted to make a plaintiff (who could not recover fees via fee-shifting) whole for its fees and costs. *Id.* In that context, *Lowe*’s discussion of attorney’s fees hurts Wilson because, unlike the plaintiff in *Lowe*,

Wilson can recover his fees, which supports a reduction of punitive damages award.²¹

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

There are three “guideposts” to assess whether punitive damages violate the Fourteenth Amendment’s Due Process Clause: (1) reprehensibility of the defendant’s misconduct; (2) disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) difference between the punitive damages awarded and the civil penalties authorized in comparable cases. *Koehler v. Packer Grp., Inc.*, 2016 IL (1st) 142767, ¶ 95, citing *State Farm Mut. Auto. Ins. Co.*, 538 U.S. at 409. Wilson’s Opening Brief ignores the first and third factors. Thus, he has thus waived any argument regarding those factors. *See* Sup. Ct. R. 341(h)(7).

1. Napleton’s Conduct Was Not Reprehensible.

The first guidepost (degree of reprehensibility) is the most important because it measures “the enormity” of the defendant’s offense. *See Doe v. Parillo*, 2021 IL 126577, ¶ 44, citing *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575 (1996). The “degree of reprehensibility” is measured by five factors: (1) whether the harm caused was physical rather than economic; (2) whether

²¹ The other decisions cited by Wilson involved situations where courts considered punitive damages in the face of nominal actual damages. *See Kirkpatrick v. Strosberg*, 385 Ill. App. 3d 119 (2d Dist. 2008); *Blount v. Stroud*, 395 Ill. App. 3d 8 (1st Dist. 2009). To the extent they contend *Lowe* considered attorney’s fees in calculating the actual/punitive damages ratio, they are mistaken.

the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; (3) whether the target of the conduct had financial vulnerability; (4) whether the conduct involved repeated actions or was an isolated incident; and (5) whether the harm was the result of intentional malice, trickery, or deceit, or mere accident. *Koehler*, 2016 IL App (1st) 142767, ¶ 96, citing *State Farm Mut. Auto. Ins. Co.*, 538 U.S. at 419. After considering those factors, the trial court found the degree of reprehensibility in this case was “relatively minor.” SA.68; C.11629.

The trial court correctly found this case involved neither physical violence nor a threat to health or safety, and that Wilson was not a financially vulnerable person. A.67-68; C.11628-29. Those findings are reviewed under the manifest weight standard. *See People ex rel. Peters v. O’Connor*, 311 Ill. App. 3d 753, 758 (3d Dist. 2000). Wilson does not come close to overcoming that standard. There is no physical harm or threat to safety in this case. SA.63, 78-79; R.898, 1828-29. No one was injured and Wilson is claiming only economic loss. Similarly, as the trial court correctly found, Wilson is not “a financially vulnerable plaintiff.” A.67-68; C.11628-29. He leased a luxury sports car for \$135,000, sight unseen. And Wilson has a trust called the Wilson Toy Box which he uses to hold rental properties. R.911-14.

Nor does this case involve repeated actions. Napleton engaged in a single transaction with Wilson. Thus, this case does involve conduct like that at issue in *Tully v. McLean*, 409 Ill. App. 3d 659 (1st Dist. 2011), where the

defendant misappropriated funds from that plaintiff on more than 100 separate occasions. The Miller transaction (which occurred six years later) is not relevant to this analysis. Even if it was, two unrelated transactions (six years apart) do not show a pattern and practice. Finally, the jury's verdict does not establish that Napleton acted with intentional malice. As set forth above, it is not clear whether the jury based its punitive damages award on Wilson's 2015 lease or Miller's 2021 purchase. 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). Thus, the reprehensibility factors strongly favor Napleton.

2. There Is Disparity Between The Actual And Punitive Damages.

The disparity factor is typically referred to as the "ratio" factor. In *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991) the U.S. Supreme Court found that a 4:1 ratio was "close to the line." *Id.* at 23-24. Subsequent decisions have loosened that standard to the point where courts may sustain single-digit ratios. However, in practice, the higher single-digit ratios are more commonly employed in cases involving physical violence or threats to safety. *See Doe*, 2021 IL 126577 at ¶ 55; *Cahnman v. Timber Ct. LLC*, 2021 IL App (1st) 200338, ¶¶ 91-92. Here, the current ratio is 4:1. That is already on the high end for a one-time financial transaction involving a sophisticated plaintiff. However, the ratio becomes more suspect if the actual damages are reduced. If the \$25,000 for "aggravation and inconvenience" is eliminated, the ratio becomes 5:1.

Reducing Wilson's damages to \$40,000 (*i.e.*, the highest possible benefit-of-the-bargain award) increases the ratio to 10:1. And removing Wilson's out-of-pocket damages altogether (which is the correct legal result) eliminates Wilson's ability to recover any punitive damages.

3. Relevant Civil Penalties Do Not Support Imposition Of Punitive Damages.

The third guidepost calls for a comparison of the punitive damage award to "civil penalties authorized or imposed in comparable cases." *See Koehler*, 2016 IL App (1st) 142767 at ¶ 100. The comparison is not to awards in other cases. Rather, "[t]he purpose of this guidepost is to accord substantial deference to *legislative judgments* concerning appropriate sanctions for the conduct at issue." *Id.* (emphasis in orig.) (citing *BMW of N.A., Inc.*, 517 U.S. at 583). The Illinois General Assembly has made it clear the appropriate ratio in consumer-oriented transactions is a 2:1 ratio. The General Assembly has enacted numerous consumer protection statutes that call for treble damages (*i.e.*, recovery of actual damages and additional damages of double that amount, *i.e.*, a 2:1 ratio).²² Those statutes strongly suggest that punitive damage awards in consumer cases that exceed a 2:1 ratio run counter to

²² *See* Motor Vehicle Franchise Act, 815 ILCS 710/13 (treble damages for willful and wanton conduct); Illinois Anti-Trust Act, 740 ILCS 10/7 (treble damages available for willful violations); Illinois Odometer Act, 625 ILCS 5/3-112.1 (permitting treble damages if violation was intentional); Illinois Dating Referral Services Act, 815 ILCS 615/45 (consumer may recover treble damages); Illinois Dance Studio Act, 815 ILCS 610/10 (Same); Illinois Consumer Fraud Act, 815 ILCS 505/2W (Same); Illinois Physical Fitness Services Act, 815 ILCS 645/11 (Same); Illinois Pay Per Call Services Consumer Protection Act, 815 ILCS 520/15 (Same).

Illinois' legislatively-crafted public policy and are, therefore, constitutionally suspect. The award in this case substantially exceeds that figure.

III. The Trial Court Erred In Allowing Recovery Of Attorneys' Fees.

The trial court awarded Wilson \$185,000 in attorneys' fees under the Consumer Fraud Act's fee-shifting provision, 815 ILCS 505/10a(c). *See* A.67; C.11628. Wilson now contends the trial court erred by not awarding him additional fees. Wilson is wrong. If anything, the trial court erred by awarding any fees to Wilson. Where the trial court properly granted fees is a question of law that is reviewed *de novo*. *See Spencer v. DiCola*, 2014 IL App. (1st) 121585, ¶ 34. The trial court's findings on the reasonableness of fees is reviewed for abuse of discretion. *Id.*

A. Wilson Did Not Present The Evidence Required To Support His Fee Petition.

Wilson's fee petition should have been dead on arrival because he did not provide the trial court with the evidence required to support a fee petition. A plaintiff must support its fee petition with admissible evidence. *See* Ill. R. Evid. 803(6); *Aliano v. Sears, Roebuck & Co.*, 2015 IL App (1st) 143367 at ¶ 31; *In re Marriage of DeLarco*, 313 Ill. App. 3d 107, 115 (2d Dist. 2000); *Kaiser v. MEPS Am. Prop., Inc.*, 164 Ill. App. 3d 978, 983-84 (1st Dist. 1987).²³ A fee petition should include an "attestation by counsel of the rates charged in other, noncontingent matters and/or fee awards received in other similar litigation."

²³ Newly-enacted Supreme Court Rule 300 (effective July 1, 2025) also requires parties' seeking fees to attach "relevant excerpts of the agreement" to the fee petition. Sup. Ct. R. 300.

Young v. Alden Gardens of Waterford, LLC, 2015 IL App (1st) 131887, ¶¶ 102, 114.

Wilson did not carry his evidentiary burden. He did not produce his engagement agreement(s) with the McJessy firm. Thus, the trial court did not know what Wilson agreed to pay in this case.²⁴ Similarly, Wilson did not produce any evidence to show what his lawyers typically charge clients in other cases. *See* C.5712-6575. Thus, his petition should have been denied.

This was not a harmless omission. Below, Wilson sought compensation at \$475 per hour, *see* C.5731, and was ultimately awarded compensation at \$375 per hour. A.67; C.11628. But the evidence showed that Wilson’s lawyers charge – at most – \$275 per hour. Wilson presented no evidence on this issue; but Napleton did. Napleton presented fee petitions from other lawsuits involving Wilson’s counsel. In those petitions, they consistently averred that attorney rates at their firm fall between a “substantially reduced rate” of \$160 per hour (in 2013 and 2016) and \$275 (in 2021). C.8424-26, 8802-04, 8952-9029. Based on those fee petitions, the highest rates that should have been awarded were \$275 per hour for the two attorneys involved, and \$100 per hour for the paralegal. The trial court’s compromise rates of \$375 and \$130 per hour were arbitrary. A.67; C.11628.

²⁴ Below, Wilson stated he had a contingent fee arrangement with his attorneys. However, many such agreements reflect hourly rates that may apply upon termination or *quantum meruit* recovery. Thus, the trial court should have reviewed that agreement (even if *in camera*).

B. The Trial Court Erred In Setting A \$375 Per Hour Rate.

As set forth above, there is no evidence that Wilson’s counsel have ever charged more than \$275 per hour. C.8802-04, 8952-9029. And yet, Wilson demanded that Napleton pay them \$475 per hour. The trial court split the difference, at \$375 per hour, but that is still \$100 per hour too high. Wilson did not cite any evidence that his attorneys have ever charged anyone \$375 per hour (much less \$475 per hour). Instead, Wilson claimed below that “courts have widely established” a market rate for consumer fraud claims. He is wrong.

First, as set forth above, Wilson was required to provide the trial court with his “rates charged in other, noncontingent matters and/or fee awards received in other similar litigation.” *Young*, 2015 IL App (1st) 131887 at ¶¶ 102, 114; *Casey v. Rides Unlimited Chicago, Inc.*, 2022 IL App (3d) 210404, ¶ 27 (attorney seeking fees submitted an affidavit that detailed his hourly billing rate over time). The purpose for that requirement is simple: the rate an attorney charges in similar matters is highly relevant in determining that attorney’s market rate. In fact, it is the most relevant factor in that analysis. *See Johnson v. GDF, Inc.*, 668 F.3d 927, 933 (7th Cir. 2012). Wilson’s failure to do this is fatal to any attempt to secure anything above \$275 per hour.

Second, there is no such thing as general market rate for consumer fraud claims. Every attorney is different; not all attorneys are entitled to the same “market rate.” Similarly, every case is different; some are far more complex than others. Wilson completely ignores that and presumes there is a single “market rate” for every attorney who represents plaintiffs in consumer

fraud cases. Under Wilson’s argument, even the most inept of consumer fraud lawyers would capture the same rate as the David Boies of consumer fraud lawyers – even though they are very different attorneys – simply because they practice in the same subject matter area. That is simply not a reflection of reality.

Third, Wilson’s “market rate” analysis in the trial court was really an analysis of just one attorney, Dmitry Feofanov. Wilson gathered six court orders (entered over a four-year span) in which a handful of judges found \$475 per hour was a reasonable rate for Mr. Feofanov. *See* C.5731-32. Those few orders (picked from amongst hundreds of fee petition rulings in the Chicago area) might be germane if Mr. Feofanov was Wilson’s counsel. But he is not, and they are not evidence of a market rate for anyone other than Mr. Feofanov. And, as the court noted in *Casey*, Mr. Feofanov (unlike Wilson) submitted evidence reflecting his historical billing rates. *Casey*, 2022 IL App (3d) 210404 at ¶ 27. Wilson has tried to rescue his “market rate” theory by reference to a national fee survey. That survey is inadmissible hearsay and has been rejected by numerous courts.²⁵

²⁵ *See, e.g., Lambert v. S.W. Credit Sys., Inc.*, No. 17-C-5228, 2019 WL 13276113, *2 (N.D. Ill. Jan. 28, 2019); *Farooq v. Portfolio Recovery, LLC*, No. 15-C-6106, 2016 WL 2909650, *2 (N.D. Ill. May 19, 2016); *Stockman v. Global Credit & Collection Corp.*, No. 14-C-6862, 2015 WL 4999851, *4 (N.D. Ill. Aug. 21, 2015) (collecting cases); *see also Casey*, 2022 IL App (3d) 210404 (Noting that plaintiff had submitted a fee survey, but not expressly relying on it).

C. Wilson's Requested Fees Are Not Reasonable.

In deciding whether to award fees, courts consider several factors, including: (1) the degree of the opposing party's culpability or bad faith; (2) the ability of the opposing party to satisfy an award of fees; (3) whether an award of fees against the opposing party would deter others from acting under similar circumstances; (4) whether the party requesting fees sought to benefit all consumers or businesses or to resolve a significant legal question regarding the Act; and (5) the relative merits of the parties' positions. *Krautsack v. Anderson*, 223 Ill. 2d 541, 554 (2006). Wilson's brief does not squarely address those factors. Nor does he respond to Napleton's discussion of most of those factors. Instead, Wilson raises two arguments, both of which lack merit.

First, Wilson contends that Napleton did not object to the reasonableness of his fees in the trial court. WB at 58. Wilson's claim on this point is demonstrably false. Napleton lodged numerous objections to Wilson's fees in the trial court. C.8409-9033. To the extent Wilson contends Napleton was required to go further and provide line-by-line, entry-by-entry objections to Wilson's petition, that is simply a misstatement of law. Neither litigants nor trial courts are required to engage in such onerous exercises. *See In re Marriage of Kane*, 2016 IL App (2d) 150774, ¶ 31 ("While reviewing courts have commented favorably where trial courts did undertake a line-by-line review there is simply no requirement for trial courts to do so."); *see also Pillai v. St. George Warehouse of IL, Inc.*, 2022 IL App (2d) 200089-U, ¶ 86.

Second, Wilson contends the trial court erred by using percentages to reduce Wilson's requested fees. WB at 48-49. The appellate court rejected this argument, *see* A.141-42, ¶¶ 99-100, and this Court should as well. Wilson greatly oversimplifies the trial court's analysis on this issue. As Napleton pointed out below (and the trial court agreed), *see* A.66-68; C.11627-29, significant portions of the pre-trial and trial proceedings for which Wilson sought reimbursement were related entirely to Count I.

In an effort to identify recoverable fees, the trial court did a significant amount of work. It examined each of 20 categories that were first identified by Wilson in his fee petition. *See* A.66-68; C.11627-29; C.5723-28. For each category, the trial court (using its first-hand familiarity with the case and using the parties' extensive briefing on this issue as a guide, *see* C.5720-33, 8398-8655), assessed whether the work contained therein related solely to Wilson's Consumer Fraud Claim, solely for Wilson's fraud claim, or both. Then, based on that analysis, the trial court allowed, disallowed, or partially allowed the fees in each category.

As the appellate court noted, the trial court's methodology was not arbitrary and was well-documented. *See* A.142, ¶ 99. Wilson's suggestion that Napleton and/or the trial court were required to go entry-by-entry through Wilson's petition and lodge objections to specific time entries seeks to impose an insurmountable burden that is unsupported in law.

CONCLUSION

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

Dated: May 8, 2026

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

/s/ Timothy D. Elliott
 Timothy D. Elliott (ARDC# 6237023)
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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 66 pages.

Date: May 8, 2026

/s/ Timothy D. Elliott

Timothy D. Elliott

CERTIFICATE OF SERVICE

I, Timothy D. Elliott, an attorney, certify that on May 8, 2026, I caused to be served a copy of the foregoing Combined Opening and Response Brief and Supplementary Appendix of Defendant/Appellant/ Cross Appellee Napleton's Goldcoast Imports Inc. via electronic mail to the following:

Attorneys for Plaintiff/Appellees/Cross-Appellants

Kevin McJessy

Joseph Borders

McJessy Ching & Thompson LLC

3759 N. Ravenswood Ave., Suite 231

Chicago, IL 60613

borders@mcandt.com

mcjessy@mcandt.com

/s/ Timothy D. Elliott

Nos. 132430, 132511, consolidated

In the
Supreme Court of Illinois

JEFFREY WILSON,

Plaintiff-Appellant / Cross-Appellee,

v.

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

Defendant-Appellee / Cross-Appellant.

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

**SUPPLEMENTARY APPENDIX OF APPELLEE/CROSS-APPELLANT
NAPLETON'S GOLDCOAST IMPORTS INC.**

Timothy D. Elliott (No. 6237023)
Ronald Menna (No. 6198904)
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Counsel for Appellee / Cross-Appellant

E-FILED
5/8/2026 7:36 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS FOR SUPPLEMENTARY APPENDIX

Defendant Napleton's Goldcoast Imports Inc., d/b/a Napleton's Aston Martin of Chicago Notice of Appeal filed February 1, 2024 (C.12810-12815)	SA1
C. Jones Purchase Agreement November 27, 2013 (admitted into evidence as Defendant's Exhibit 8 (C.12550))	SA7
Retail Purchase Agreement August 22, 2015 (admitted into evidence as Defendant's Exhibit 5 (C.12549))	SA8
Carfax Report June 26, 2021 (admitted into evidence as Plaintiff's Exhibit 161 (C.12438-12446))	SA9
Car Image at WBW (admitted into evidence as Defendant's Exhibit 60 (C.12575))	SA18
November 9, 2024 Hearing Transcript (R.1874-1887)	SA19
January 18, 2024 Hearing Transcript (R.1901-1930)	SA33
Excerpts from August 10, 2023 Trial Transcript Jeffrey Wilson Cross-Examination (R.898, 911-20, 928-30, 938)	SA63
Excerpts from October 13, 2023 Hearing Transcript (R.1828-1829)	SA78
Plaintiff's Proposed Jury Instruction 17 Filed August 14, 2023 (C.5495)	SA80
Excerpts from Defendant's Objections and Proposed Alternate Instructions to Plaintiff's Second Amended Proposed Jury Instructions Filed August 14, 2023 (C.5528-5529, 5541-5542)	SA81

**APPEAL TO THE ILLINOIS APPELLATE COURT
THIRD DISTRICT
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS**

Case No. 18 L 1245
e-filed in the 18th Judicial Circuit Court
DuPage County
ENVELOPE: 26234391
2018L001245
FILEDATE: 2/1/2024 3:57 PM
Date Submitted: 2/1/2024 3:57 PM
Date Accepted: 2/1/2024 4:14 PM
DW

JEFFREY WILSON,	)	
	)	
Plaintiff/Appellee,	)	
	)	Case No. 18 L 1245
v.	)	
	)	Judge David E. Schwartz
NAPLETON'S GOLDCOAST IMPORTS INC.,	)	
d/b/a Napleton's Aston Martin of Chicago	)	
	)	
Defendant/ Appellant.	)	
	)	

NOTICE OF FILING

PLEASE TAKE NOTICE that on February 1, 2024, the undersigned filed the **NOTICE OF APPEAL** of Defendant-Appellant, Napleton's Goldcoast Imports Inc., d/b/a Napleton's Aston Martin of Chicago, with the Clerk of the Eighteenth Judicial Circuit Court of DuPage, Illinois, a copy of which is hereby served upon you.

Dated: February 1, 2024

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

/s/ Timothy D. Elliott
John J. Pcolinski, Jr.
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300 East Roosevelt Road., Ste. 220

C 12810 V7
SA1

Wheaton, IL 60187

Ph: (630) 668-8500

telliott@rathjewoodward.com

DuPage Co. Firm No. 69400

Attorneys for Defendants-Appellants

CERTIFICATE OF SERVICE

I, Timothy D. Elliott, an attorney, certify that I caused a copy of the foregoing ***Notice of Filing*** to be served via electronic mail on counsel of record this 1st day of February, 2024:

Kevin McJessy
Joseph Borders
McJessy Ching & Thompson LLC
3759 N. Ravenswood Ave., Suite 231
Chicago, IL 60613
jborders@mcandt.com
mcjessy@mcandt.com

/s/ Timothy D. Elliott

Candice Adams
e-filed in the 18th Judicial Circuit Court
DuPage County
ENVELOPE: 26234332
2018L001245
FILEDATE: 2/1/2024 3:55 PM
Date Submitted: 2/1/2024 3:55 PM
Date Accepted: 2/2/2024 9:02 AM
NK

Dated: February 1, 2024

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

/s/ Timothy D. Elliott

John J. Pcolinski, Jr.

DuPage Attorney No. 313805

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telliott@rathjewoodward.com

DuPage Co. Firm No. 69400

Attorneys for Defendants-Appellants

CERTIFICATE OF SERVICE

I, Timothy D. Elliott, an attorney, certify that I caused a copy of the foregoing ***Notice of Appeal*** to be served via electronic mail on counsel of record this 1st day of February, 2024:

Kevin McJessy
Joseph Borders
McJessy Ching & Thompson LLC
3759 N. Ravenswood Ave., Suite 231
Chicago, IL 60613
jborders@mcandt.com
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/s/ Timothy D. Elliott

NAPLETON'S ASTON MARTIN OF CHICAGO



DealerCAP

217 Ogden Avenue
Downers Grove, IL 60515
Main: (630) 960-2000
Fax: (630) 960-2112

www.napletonsastonmartinofchicago.com

CTL # 2333150 ASTON MARTIN

586

RETAIL PURCHASE AGREEMENT

Purchaser's Name(s): CARLTON JONES

Deal Number: 586
Date: 11/27/2013

Address: 2100 N LINCOLN PARK WEST CHICAGO IL 60614

County: Cook
DOB: 05/25/1975

Home Telephone: (832)233-3150

Work Telephone:

Issuing State: IL Exp. Date: 05/05/2014

E-mail Address:

State I.D.#

Issuing State:

Exp. Date:

The above information has been requested so that we may verify your identity. By signing below, you represent that you are at least 18 years of age and have authority to enter into this Agreement. The Odometer Reading for the Vehicle you are purchasing is accurate unless indicated otherwise. Please refer to the Federal Mileage Statement for full disclosure.

YEAR 2014	MAKE ASTON MARTIN	MODEL RAPIDE S	COLOR STRATUS WH	STOCK NO. AM1652
VIN/SERIAL NO. SCFEHDDAT7EGED3597		ODOMETER READING 146		
SALESPERSON: 146 BESINGER III, LEONARD W				
THE VEHICLE IS: ☐ NEW ☐ USED		PRIOR USE DISCLOSURE: ☐ DEMONSTRATOR ☐ EXECUTIVE ☐ RENTAL ☐ OTHER		

WARRANTY STATEMENT

Any warranties by a manufacturer or supplier other than our Dealership are theirs, not ours, and only such manufacturer or supplier shall be liable for performance under such warranties. We neither assume nor authorize any other person to assume for us any liability in connection with the sale of the Vehicle and the related goods and services. If we enter into a service contract with you at the time of, or within 90 days of, the date of this transaction, we may not limit or modify the implied warranties. **CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY)** The information you see on the window form for this Vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale. Traducción española: Vea el dorso. This Vehicle is being sold by our Dealership to you:

☐ With the attached 30 day Power Train Warranty. Any implied warranties are limited in duration to the term of the Power Train Warranty. Our share of the repair cost is:

- ☐ If Vehicle is not more than 2 years old, 50% of the total repair costs.
- ☐ If Vehicle is 2 or more years old, but less than 3 years old, 25% of the total repair costs.
- ☐ If Vehicle is 3 or more years old, but less than 4 years old, 10% of the total repair costs.

☐ With the attached Used Vehicle Limited Warranty. Any implied warranties are limited in duration to the term of the Limited Warranty.

☐ AS-IS: THIS VEHICLE IS SOLD AS IS WITH NO WARRANTY AS TO MECHANICAL CONDITION. You will bear the entire expense of repairing or correcting any defects that presently exist or that may occur in the Vehicle. We expressly disclaim all express and implied warranties, including any implied warranties of merchantability and fitness for a particular purpose.

☐ With a Service Contract between you and

X X

TRADE-IN VEHICLE INFORMATION

Year: 2013	Make: ASTO	Model: N/A	Color: N/A
VIN/Serial No.: SCFFDAAM4DGA14751	Odometer Reading: 3387		
Trade-In Allowance: 155000.00 N/A		Balance Owed & Lienholder: 151650.00 CHASE N/A	

OTHER MATERIAL UNDERSTANDINGS AND INTEGRATED DOCUMENTS

☒ IF THIS BOX IS MARKED, PLEASE SEE ATTACHED DELIVERY CONFIRMATION
☒ IF THIS BOX IS MARKED, PLEASE SEE ATTACHED SPOT DELIVERY AGREEMENT

CASH PRICE OF VEHICLE	198979.63
LICENSE FEE	25.00
TITLE FEE	95.00
STATE SALES TAX	3754.00
COUNTY TAX	441.69
OPTIONAL ERT FEE	25.00
DOCUMENTARY FEE* (See Reverse Side)	184.50
TOTAL SELLING PRICE	203484.62
LESS: TRADE-IN ALLOWANCE	155000.00
PLUS: EST. TRD PAYOFF TO CHASE	151650.00
SUBTOTAL	200134.62
	N/A
	N/A
	N/A
TOTAL DUE	200134.62
DEPOSIT/PARTIAL PAYMENT (If Deposit, see Deposit Receipt)	10000.00
	N/A
UNPAID BALANCE DUE	190134.62

On the front and back of this Agreement and any documents which are a part of this transaction or incorporated herein comprise the entire agreement affecting this retail Purchase Agreement and no other agreement or understanding of any nature concerning the same has been made or entered into, or will be recognized. I have read the terms and conditions of this Agreement, including the terms and conditions that appear on the reverse side, and agree to them as if they were printed above my signature. I further acknowledge receipt of a copy of this Agreement. This Agreement shall not become binding until signed and accepted by an Authorized Dealership Representative. If the box beside "AS IS" is marked in the Warranty Statement Section above, then THIS VEHICLE IS SOLD AS IS WITH NO WARRANTY AS TO MECHANICAL CONDITION.

Purchaser

Accepted by Authorized Dealership Representative

0415

chaser

FORMS & SUPPLIES CALL 1-(800)-ADP-ADP-ADP

CATALOG #8953153-29524

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NAPLETON'S ASTON MARTIN OF CHICAGO



DealerCAP

217 Ogden Avenue
Downers Grove, IL 60515
Main: (630) 960-2000
Fax: (630) 960-2112

www.napletonsastonmartinofchicago.com

CTL # 2333150 ASTON MARTIN

RETAIL PURCHASE AGREEMENT

Purchaser's Name(s): **CARLTON R JONES JR** Deal Number: **1731**
Address: **2100 N LINCOLN PARK W APT 8BS CHICAGO IL 60614-0970** Date: **08/22/2015**
Home Telephone: **[REDACTED]** Work Telephone: **[REDACTED]** County: **COOK**
DOB: **[REDACTED]** /1975
-mail Address: **[REDACTED]** State I.D.# **[REDACTED]** Issuing State: **IL** Exp. Date: **05/05/201**

The above information has been requested so that we may verify your identity. By signing below, you represent that you are at least 18 years of age and have authority to enter into this Agreement. The Odometer Reading for the Vehicle you are purchasing is accurate unless indicated otherwise. Please refer to the Federal Trade Commission's Used Car Buyer's Guide for full disclosure.

YEAR 2015	MAKE ASTON MARTIN	MODEL RAPIDE S	COLOR STRATUSWHI	STOCK NO. AM1720
VIN/SERIAL NO. SCFHMDBSXF GF05030		ODOMETER READING ☐ Not Accurate		SALESPERSON: 31 SOBOTKO, NORBERT
THE VEHICLE IS: ☐ NEW ☐ USED		PRIOR USE DISCLOSURE: ☐ DEMONSTRATOR ☐ EXECUTIVE ☐ RENTAL ☐ OTHER		

WARRANTY STATEMENT		CASH PRICE OF VEHICLE	215000.00
any warranties by a manufacturer or supplier other than our Dealership are theirs, not ours, and only such manufacturer or supplier shall be liable for performance under such warranties. We neither assume nor authorize any other person to assume for us any liability in connection with the sale of the Vehicle and the related goods and services. If we enter into a service contract with you at the time of, or within 90 days of, the date of this transaction, we may not limit or modify the implied warranties. CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY) The information you see on the window form for this Vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale. Traducción española: Vea el dorso. This Vehicle is being sold by our Dealership to you: With the attached 30 day Power Train Warranty. Any implied warranties are limited in duration to the term of the Power Train Warranty. Our share of the repair cost is: ☐ If Vehicle is not more than 2 years old, 50% of the total repair costs. ☐ If Vehicle is 2 or more years old, but less than 3 years old, 25% of the total repair costs. ☐ If Vehicle is 3 or more years old, but less than 4 years old, 10% of the total repair costs. With the attached Used Vehicle Limited Warranty. Any implied warranties are limited in duration to the term of the Limited Warranty. AS-IS: THIS VEHICLE IS SOLD AS IS WITH NO WARRANTY AS TO MECHANICAL CONDITION. You will bear the entire expense of repairing or correcting any defects that presently exist or that may occur in the Vehicle. We expressly disclaim all express and implied warranties, including any implied warranties of merchantability and fitness for a particular purpose. With a Service Contract between you and <u>X</u>			
			4894.00
		XZILON PROTECTI AUTO BLOCK	
		LICENSE FEE TITLE FEE	25.00 95.00
		STATE SALES TAX COUNTY TAX	7147.00 800.87
		OPTIONAL ERT FEE	25.00
		DOCUMENTARY FEE* (See Reverse Side)	168.43
		TOTAL SELLING PRICE	228155.30
		LESS: TRADE-IN ALLOWANCE	140000.00
		PLUS: EST. TRD PAYOFF TO jp morgan	130644.36

TRADE-IN VEHICLE INFORMATION		SUBTOTAL	218799.66
Year: 2014 Make: ASTO Model: RAPIS Color: N/A			N/A
Serial No.: SCFHDDAT7EGF03597 Odometer Reading: 4790 ☐ Not Accurate			N/A
Trade-In Allowance: 140000.00 N/A	Balance Owed & Lienholder: 130644.36 jp morgan chase N/A		N/A
OTHER MATERIAL UNDERSTANDINGS AND INTEGRATED DOCUMENTS		TOTAL DUE	218799.66
* THIS BOX IS MARKED, PLEASE SEE ATTACHED DELIVERY CONFIRMATION		☐ DEPOSIT/ ☐ PARTIAL PAYMENT	N/A
* THIS BOX IS MARKED, PLEASE SEE ATTACHED SPOT DELIVERY AGREEMENT		(If Deposit, see Deposit Receipt)	N/A
		UNPAID BALANCE DUE	218799.66

Front and back of this Agreement and any documents which are a part of this transaction or incorporated herein comprise the entire agreement affecting this Purchase Agreement and no other agreement or understanding of any nature concerning the same has been made or entered into, or will be recognized. I read the terms and conditions of this Agreement, including the terms and conditions that appear on the reverse side, and agree to them as if they were read above my signature. I further acknowledge receipt of a copy of this Agreement. This Agreement shall not become binding until signed and accepted by the authorized Dealership Representative. If the box beside "AS IS" is marked in the Warranty Statement Section above, then THIS VEHICLE IS SOLD AS IS WITH NO WARRANTY AS TO MECHANICAL CONDITION.

[Signature]
Purchaser

[Signature]
Accepted by Authorized Dealership Representative

0427

158F

Star: Login into www.astonmartinofchicago.com or Call 1-800-237-2372 Item # 8963153-29524

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6/26/2021

CARFAX Vehicle History Report for this 2014 ASTON MARTIN RAPIDE: SCFHDDAT7EGF03597
065NAPLETON SUPPLEMENTAL RESPONSE TO 5TH SET RTP



History-Based Value Report

**SHOW ME THE
 CARFAX
 GREAT VALUE**

History events affecting this vehicle's value



**Service
 History**



**Accident
 Reported**

\$82,570 CARFAX Value
\$73,500 Dealer Price *
\$9,070 Savings

*As reported to CARFAX as of 6/25/2021, 21:36 PM EST



Vehicle History Report™

US \$39.99

2014 ASTON MARTIN RAPIDE

VIN: SCFHDDAT7EGF03597
 SEDAN 4 DR
 GASOLINE
 REAR WHEEL DRIVE



Accident reported



Inspection found minor damage repairs



2 Previous owners



31 Service history records



Types of owners: Personal Lease



32,418 Last reported odometer reading



This CARFAX Vehicle History Report is based only on information supplied to CARFAX and available as of 6/26/21 at 6:10:24 PM (CDT). Other information about this vehicle, including problems, may not have been reported to CARFAX. Use this report as one important tool, along with a vehicle inspection and test drive, to make a better decision about your next used car.



Ownership History

The number of owners is estimated

Year purchased

Type of owner

Owner 1

2013
 Personal

Owner 2

2015
 Lease

<https://www.carfax.com/VehicleHistory/p/Report.cfx?partner=dlr>

PLAINTIFF'S
 EXHIBIT

161

1/9

Purchased from re:SearchIL

C 12438 V6

SA9

6/26/2021

CARFAX Vehicle History Report for this 2014 ASTON MARTIN RAPIDE: SCFHDDAT7EGF03597

066NAPLETON SUPPLEMENTAL RESPONSE TO 5TH SET RTR

Estimated length of ownership	yr. 8 mo.	yr. 1 mo.
Owned in the following states/provinces	Illinois	Arizona
Estimated miles driven per year	2,757/yr	5,126/yr
Last reported odometer reading	5,255	32,418

 Title History CARFAX guarantees the information in this section	Owner 1	Owner 2
	☒ Guaranteed No Problem	☒ Guaranteed No Problem
	☒ Guaranteed No Problem	☒ Guaranteed No Problem

Salvage | Junk | Rebuilt | Fire | Flood | Hail | Lemon

Not Actual Mileage | Exceeds Mechanical Limits


GUARANTEED - None of these major title problems were reported by a state Department of Motor Vehicles (DMV). If you find that any of these title problems were reported by a DMV and not included in this report, CARFAX will buy this vehicle back.
 View Certificate

 Additional History Not all accidents / issues are reported to CARFAX	Owner 1	Owner 2
	☒ No Issues Reported	☒ No Issues Reported
	☒ No Issues Reported	☒ No Issues Reported
	☒ No Issues Reported	☒ No Issues Reported
	☒ No Issues Indicated	☒ No Issues Indicated
	Accident Reported	Minor Damage
	Ask Your Dealer	Ask Your Dealer
	Warranty Expired	Warranty Expired

Total Loss
 No total loss reported to CARFAX.

Structural Damage
 CARFAX recommends that you have this vehicle inspected by a collision repair specialist.

Airbag Deployment
 No airbag deployment reported to CARFAX.

Odometer Check
 No indication of an odometer rollback.

Accident / Damage
 Accident reported: 10/17/2014. Inspection found prior damage: 03/09/2021.

Manufacturer Recall
 Check with an authorized Aston Martin dealer for any open recalls.

Basic Warranty
 Original warranty estimated to have expired.

 Detailed History			
Owner 1 Purchased: 2013		Personal Vehicle 2,757 mi/yr	
 Low mileage! This owner drove less than the industry average of 15,000 miles per year.			
Date	Mileage	Source	Comments
07/15/2013		US Customs	Vehicle exported from - Southampton, England and imported to - Baltimore, MD
07/18/2013	10	Napleton's Aston Martin Chicago Chicago, IL 312-888-2967 napletonsastonmartinofchicago.co n!	Vehicle offered for sale



https://www.carfax.com/VehicleHistory/p/Report.cfx?partner=dlr_3&vin=scfhddat7egf03597

2/9

6/26/2021

CARFAX Vehicle History Report for this 2014 ASTON MARTIN RAPIDE: SCFHDDAT7EGF03597
067NAPLETON SUPPLEMENTAL RESPONSE TO 5TH SET RTP

<u>60 Verified Reviews</u> 1,758 Customer Favorites		
07/24/2013	36	Napleton's Aston Martin Chicago Chicago, IL 312-888-2967 napletonsastonmartinofchicago.co m 4.6 / 5.0 <u>60 Verified Reviews</u> 1,758 Customer Favorites Vehicle serviced - Vehicle washed/detailed - Interior cleaned
10/10/2013	107	Napleton's Aston Martin Chicago Chicago, IL 312-888-2967 napletonsastonmartinofchicago.co m 4.6 / 5.0 <u>60 Verified Reviews</u> 1,758 Customer Favorites Vehicle serviced
11/08/2013	108	Napleton's Aston Martin Chicago Chicago, IL 312-888-2967 napletonsastonmartinofchicago.co m 4.6 / 5.0 <u>60 Verified Reviews</u> 1,758 Customer Favorites Vehicle serviced
11/27/2013		Napleton's Aston Martin Chicago Chicago, IL 312-888-2967 napletonsastonmartinofchicago.co m 4.6 / 5.0 <u>60 Verified Reviews</u> 1,758 Customer Favorites Vehicle sold
11/27/2013		Illinois Motor Vehicle Dept. Vehicle purchase reported - Titled or registered as personal vehicle
12/02/2013	142	Napleton's Aston Martin Chicago Chicago, IL 312-888-2967 napletonsastonmartinofchicago.co m 4.6 / 5.0 <u>60 Verified Reviews</u> 1,758 Customer Favorites Vehicle serviced - Four tires replaced
12/19/2013	146	Illinois Motor Vehicle Dept. Chicago, IL Title #X3353694758 Title issued or updated - Registration issued or renewed - First owner reported - Loan or lien reported - Vehicle color noted as White
03/11/2014	1,074	Napleton's Aston Martin Chicago Chicago, IL 312-888-2967 napletonsastonmartinofchicago.co m 4.6 / 5.0 <u>60 Verified Reviews</u> 1,758 Customer Favorites Vehicle serviced - Tire(s) balanced - Tire(s) mounted - Alternator replaced - Engine/powertrain computer/module reprogrammed
04/22/2014	1,653	Napleton's Aston Martin Chicago Vehicle serviced

https://www.carfax.com/VehicleHistory/p/Report.cfx?partner=dir_3&vin=scfhddat7egf03597

3/9

6/26/2021

CARFAX Vehicle History Report for this 2014 ASTON MARTIN RAPIDE: SCFHDDAT7EGF03597
068NAPLETON SUPPLEMENTAL RESPONSE TO 5TH SET RTP

312-888-2967
 napletonsastonmartinofchicago.co
 m

★ 4.6 / 5.0

60 Verified Reviews

♥ 1,758 Customer Favorites

05/12/2014 Illinois Motor Vehicle Dept. Chicago, IL Registration issued or renewed

05/19/2014 1,894 Napleton's Aston Martin Chicago Chicago, IL 312-888-2967 napletonsastonmartinofchicago.co m Vehicle serviced

★ 4.6 / 5.0

60 Verified Reviews

♥ 1,758 Customer Favorites

06/25/2014 2,376 Napleton's Aston Martin Chicago Chicago, IL 312-888-2967 napletonsastonmartinofchicago.co m Vehicle serviced

★ 4.6 / 5.0

60 Verified Reviews

♥ 1,758 Customer Favorites

08/01/2014 2,979 Napleton's Aston Martin Chicago Chicago, IL 312-888-2967 napletonsastonmartinofchicago.co m Vehicle serviced

★ 4.6 / 5.0

60 Verified Reviews

♥ 1,758 Customer Favorites

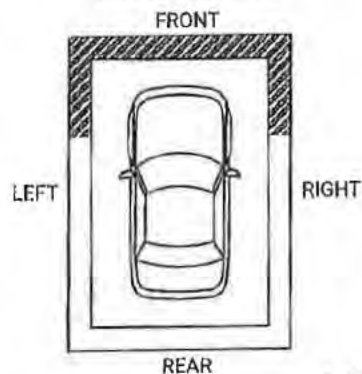
10/17/2014 Damage Report

⚠ Accident reported
 - Damage to front
 - Damage to left front
 - Damage to right front
 - Vehicle towed

This incident was first available for display by CARFAX on 04/20/2018.



Damage Location



01/06/2015 3,724 Napleton's Aston Martin Chicago Vehicle serviced

https://www.carfax.com/VehicleHistory/p/Report.cfx?partner=dir_3&vin=scfhddat7egf03597

4/9

6/26/2021

CARFAX Vehicle History Report for this 2014 ASTON MARTIN RAPIDE: SCFHDDAT7EGF03597
069NAPLETON SUPPLEMENTAL RESPONSE TO 5TH SET RTP

312-888-2967
 napletonsastonmartinofchicago.co
 m

★ 4.6 / 5.0

60 Verified Reviews

♥ 1,758 Customer Favorites

02/13/2015 3,726

Napleton's Aston Martin Chicago
 Chicago, IL
 312-888-2967
 napletonsastonmartinofchicago.co
 m

✕ Vehicle serviced

★ 4.6 / 5.0

60 Verified Reviews

♥ 1,758 Customer Favorites

03/24/2015

Illinois
 Motor Vehicle Dept.
 Chicago, IL

Registration issued or renewed

05/28/2015 3,728

Napleton's Aston Martin Chicago
 Chicago, IL
 312-888-2967
 napletonsastonmartinofchicago.co
 m

✕ Vehicle serviced
 - Maintenance inspection completed

★ 4.6 / 5.0

60 Verified Reviews

♥ 1,758 Customer Favorites

08/21/2015 4,729

Napleton's Aston Martin Chicago
 Chicago, IL
 312-888-2967
 napletonsastonmartinofchicago.co
 m

✕ Vehicle serviced
 - Vehicle washed/detailed

★ 4.6 / 5.0

60 Verified Reviews

♥ 1,758 Customer Favorites

08/23/2015 4,790

Napleton's Aston Martin Chicago
 Chicago, IL
 312-888-2967
 napletonsastonmartinofchicago.co
 m

Vehicle offered for sale

★ 4.6 / 5.0

60 Verified Reviews

♥ 1,758 Customer Favorites

09/01/2015 4,793

Napleton's Aston Martin Chicago
 Chicago, IL
 312-888-2967
 napletonsastonmartinofchicago.co
 m

✕ Vehicle serviced

★ 4.6 / 5.0

60 Verified Reviews

♥ 1,758 Customer Favorites

10/26/2015

Napleton's Aston Martin Chicago
 Chicago, IL
 312-888-2967
 napletonsastonmartinofchicago.co
 m

✕ Vehicle serviced

★ 4.6 / 5.0

60 Verified Reviews

♥ 1,758 Customer Favorites

11/27/2015 5,255

Napleton's Aston Martin Chicago

Vehicle sold

YCC

https://www.carfax.com/VehicleHistory/p/Report.cfx?partner=dlr_3&vin=scfhddat7egf03597

5/9

6/26/2021

CARFAX Vehicle History Report for this 2014 ASTON MARTIN RAPIDE: SCFHDDAT7EGF03597
070NAPLETON SUPPLEMENTAL RESPONSE TO 5TH SET RTP

Chicago, IL
 312-888-2967
 napletonsastonmartinofchicago.com

★ 4.6 / 5.0

60 Verified Reviews

♥ 1,758 Customer Favorites

Owner 2

Purchased:
2015



Low mileage! This owner drove less than the industry average of 15,000 miles per year.

Lease Vehicle
5,126 mi/yr

Date	Mileage	Source	Comments
12/31/2015		Arizona Motor Vehicle Dept. Scottsdale, AZ Title #22E1015365015	Registration issued or renewed - Title or registration issued - New owner reported - Loan or lien reported - Titled or registered as lease vehicle
01/09/2016	6,268	Honest-1 Phoenix #168 Phoenix, AZ 602-404-6785 honest-1.com ★ 4.7 / 5.0 52 Verified Reviews ♥ 52 Customer Favorites	✕ Vehicle serviced - Maintenance inspection completed
02/08/2016	7,155	Bentley Lamborghini Scottsdale Phoenix, AZ 855-460-7499 scottsdalebentley.com ★ 5.0 / 5.0 10 Verified Reviews ♥ 38 Customer Favorites	✕ Vehicle serviced - Console repaired - Interior trim checked - Brakes checked - Exterior trim checked - Drivability/performance checked
03/21/2016	8,045	Bentley Lamborghini Scottsdale Phoenix, AZ 855-460-7499 scottsdalebentley.com ★ 5.0 / 5.0 10 Verified Reviews ♥ 38 Customer Favorites	✕ Vehicle serviced - Interior trim checked - Exterior trim checked - Brakes checked
04/23/2016	9,577	Honest-1 Phoenix #168 Phoenix, AZ 602-404-6785 honest-1.com ★ 4.7 / 5.0 52 Verified Reviews ♥ 52 Customer Favorites	✕ Vehicle serviced - Maintenance inspection completed - Oil and filter changed
04/28/2016	9,716	Bentley Lamborghini Scottsdale Phoenix, AZ 855-460-7499 scottsdalebentley.com ★ 5.0 / 5.0 10 Verified Reviews ♥ 38 Customer Favorites	✕ Vehicle serviced - Interior trim checked
09/06/2016	13,686	Bentley Lamborghini Scottsdale Phoenix, AZ 855-460-7499	✕ Vehicle serviced

JCC

https://www.carfax.com/VehicleHistory/p/Report.cfx?partner=dlr_3&vin=scfhddat7egf03597

6/9

6/26/2021

CARFAX Vehicle History Report for this 2014 ASTON MARTIN RAPIDE: SCFHDDAT7EGF03597
 071NAPLETON SUPPLEMENTAL RESPONSE TO 5TH SET RTP

		5.0 / 5.0 <u>10 Verified Reviews</u> 38 Customer Favorites	
04/15/2017	20,831	Honest-1 Phoenix #168 Phoenix, AZ 602-404-6785 honest-1.com 4.7 / 5.0 <u>52 Verified Reviews</u> 52 Customer Favorites	Vehicle serviced - Maintenance inspection completed - Oil and filter changed - Engine oil/fluid leak checked
07/18/2017	23,294	Honest-1 Phoenix #168 Phoenix, AZ 602-404-6785 honest-1.com 4.7 / 5.0 <u>52 Verified Reviews</u> 52 Customer Favorites	Vehicle serviced - Maintenance inspection completed - Oil and filter changed
12/19/2017	28,086	Honest-1 Phoenix #168 Phoenix, AZ 602-404-6785 honest-1.com 4.7 / 5.0 <u>52 Verified Reviews</u> 52 Customer Favorites	Vehicle serviced - Maintenance inspection completed - Oil and filter changed
04/06/2018	30,812	Honest-1 Phoenix #168 Phoenix, AZ 602-404-6785 honest-1.com 4.7 / 5.0 <u>52 Verified Reviews</u> 52 Customer Favorites	Vehicle serviced - Maintenance inspection completed - Refrigerant added for leak check checked - A/C refrigerant recharged - A/C system flushed
02/14/2019	32,270	Bentley Lamborghini Scottsdale Phoenix, AZ 855-460-7499 scottsdalebentley.com 5.0 / 5.0 <u>10 Verified Reviews</u> 38 Customer Favorites	Vehicle serviced - Body electrical system checked - Battery/charging system checked - No-start/hard start condition checked
02/12/2021	32,404	Napleton's Aston Martin Chicago Chicago, IL	Vehicle offered for sale
03/07/2021		Napleton's Aston Martin Chicago Chicago, IL	Vehicle offered for sale
03/09/2021	32,418	TRUE360 Inspection Report trueframe.com	Vehicle inspected for prior damage - Minor damage reported - Cosmetic repairs found to: left side, right side, front-end View the complete TRUE360 Report
03/10/2021		McLaren Scottsdale Scottsdale, AZ 480-214-7260	Vehicle serviced



Minor damage is usually cosmetic,
including dents or scratches to the
vehicle body.

YGC

https://www.carfax.com/VehicleHistory/p/Report.cfx?partner=dlr_3&vin=scfhddat7egf03597

7/9

6/26/2021

CARFAX Vehicle History Report for this 2014 ASTON MARTIN RAPIDE: SCFHDDAT7EGF03597

072NAPLETON SUPPLEMENTAL RESPONSE TO 5TH SET RTP

03/12/2021

Napleton Aston Martin Maserati
Downers Grove, IL
630-723-0086
astonmartinchicago.com

 Vehicle serviced
- Four tires mounted

04/05/2021

Napleton's Aston Martin Chicago
Chicago, IL
312-888-2967
napletonsastonmartinofchicago.co
m

 Vehicle serviced

★ 4.6 / 5.0

60 Verified Reviews

♥ 1,758 Customer Favorites

05/13/2021

Napleton's Aston Martin Chicago
Chicago, IL
312-888-2967
napletonsastonmartinofchicago.co
m

 Vehicle serviced

★ 4.6 / 5.0

60 Verified Reviews

♥ 1,758 Customer Favorites

06/09/2021

Napleton's Aston Martin Chicago
Chicago, IL
312-888-2967
napletonsastonmartinofchicago.co
m

 Vehicle serviced

★ 4.6 / 5.0

60 Verified Reviews

♥ 1,758 Customer Favorites

06/26/2021

CARFAX Car Care

Manufacturer Recommended Maintenance
Schedules



Get this vehicle's maintenance schedule,
service history and recall alerts at
carfax.com/service.

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Glossary

Accident Indicator

CARFAX receives information about accidents in all 50 states, the District of Columbia and Canada.

Not every accident is reported to CARFAX. As details about the accident become available, those additional details are added to the CARFAX Vehicle History Report. CARFAX recommends that you have this vehicle inspected by a qualified mechanic.

- According to the National Safety Council, Injury Facts, 2015 edition, 8% of the 254 million registered vehicles in the U.S. were involved in an accident in 2013. Over 74% of these were considered minor or moderate.
- This CARFAX Vehicle History Report is based only on information supplied to CARFAX and available as of 6/26/21 at 6:10:24 PM (CDT). Other information about this vehicle, including problems, may not have been reported to CARFAX. Use this report as one important tool, along with a vehicle inspection and test drive, to make a better decision about your next used car.

Damage Indicator

Damage can be a result of many different types of events. Examples include contact with objects (other cars, trees, traffic signs, road debris, etc), vandalism, or weather-related events. Not every damage event is reported to CARFAX. As details about the damage event become available, those additional details are added to the CARFAX Vehicle History Report. CARFAX recommends that you have this vehicle inspected by a qualified mechanic.

https://www.carfax.com/VehicleHistory/p/Report.cfx?partner=dlr_3&vin=scfhddat7egf03597

8/9

6/26/2021

CARFAX Vehicle History Report for this 2014 ASTON MARTIN RAPIDE: SCFHDDAT7EGF03597

- 073NAPLETON SUPPLEMENTAL RESPONSE TO 5TH SET RTP**
- This CARFAX Vehicle History Report is based solely on information supplied to CARFAX and available as of 6/26/21 at 6:10:24 PM (CDT). Other information about this vehicle, including problems, may not have been reported to CARFAX. Use this report as one important tool, along with a vehicle inspection and test drive, to make a better decision about your next used car.

Damage Severity

Damage events result in one of the following severity levels:

- **Minor:** Generally, minor damage is cosmetic (including dents or scratches), may only require reconditioning, and typically does not compromise a vehicle's operation and/or safety.
- **Moderate:** Moderate damage may affect multiple components of the vehicle and may impair the vehicle's operation and/or safety.
- **Severe:** Severe damage usually affects multiple components of the vehicle and is likely to compromise the vehicle's operation and/or safety.

CARFAX recommends getting a pre-purchase inspection at a certified collision repair facility.

First Owner

When the first owner(s) obtains a title from a Department of Motor Vehicles as proof of ownership.

Lease

When someone leases a car from a dealer, the dealer actually sells the vehicle to a leasing company. The leasing company then collects payments for the vehicle from the new owner for 24, 36, 48 or more months. A leasing company can be an independent car dealer or a car manufacturer.

New Owner Reported

When a vehicle is sold to a new owner, the Title must be transferred to the new owner(s) at a Department of Motor Vehicles.

Ownership History

CARFAX defines an owner as an individual or business that possesses and uses a vehicle. Not all title transactions represent changes in ownership. To provide estimated number of owners, CARFAX proprietary technology analyzes all the events in a vehicle history. Estimated ownership is available for vehicles manufactured after 1991 and titled solely in the US including Puerto Rico. Dealers sometimes opt to take ownership of a vehicle and are required to in the following states: Maine, Massachusetts, New Jersey, Ohio, Oklahoma, Pennsylvania and South Dakota. Please consider this as you review a vehicle's estimated ownership history.

Title Issued

A state issues a title to provide a vehicle owner with proof of ownership. Each title has a unique number. Each title or registration record on a CARFAX report does not necessarily indicate a change in ownership. In Canada, a registration and bill of sale are used as proof of ownership.

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@CARFAXInc



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6/26/21 6:10:24 PM (CDT)

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9/9

Purchased from re:SearchIL

C 12446 V6

SA17



C 12575 V6

SA18

Candice Adams
e-filed in the 18th Judicial Circuit Court
DuPage County
ENVELOPE: 26297443
2018L001245
FILEDATE: 2/6/2024 4:53 PM
Date Submitted: 2/6/2024 4:53 PM
Date Accepted: 2/7/2024 8:21 AM
KB

1 STATE OF ILLINOIS)
2) SS.
COUNTY OF DU PAGE)

3
4 IN THE CIRCUIT COURT OF DU PAGE COUNTY
FOR THE EIGHTEENTH JUDICIAL CIRCUIT OF ILLINOIS

5 JEFFREY WILSON,)
6)
Plaintiff,)
7) No. 18 L 1245
-v-s-)
8) STATUS
NAPLETON'S GOLDCOAST IMPORTS,)
9 INC. d/b/a NAPLETON'S ASTON)
MARTIN OF CHICAGO, an Illinois)
10 corporation,)
11 Defendant.)

12
13 REPORT OF PROCEEDINGS had at the
14 hearing of the above-entitled cause, before the
15 HONORABLE DAVID E. SCHWARTZ, Judge of said Court,
16 recorded on the DuPage County Computer Based Digital
17 Recording System, DuPage County, Illinois, and
18 transcribed by LILI B. CINTA, Certified Shorthand
19 Official Court Reporter, commencing on the 9th day
20 of November, A.D. 2023.
21
22
23
24

—LILI B. CINTA, CSR #084-002979, Official Court Reporter—

1 PRESENT VIA ZELLE:

2 MC JESSY, CHING & THOMPSON, LLC, by
3 MR. KEVIN P. MC JESSY,
4 appeared on behalf of the Plaintiff.

5 PRESENT IN PERSON:

6
7 RATHJE and WOODWARD, LLC, by
8 MR. TIMOTHY D. ELLIOTT,
9 appeared on behalf of the Defendant.

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—LILI B. CINTA, CSR #084-002979, Official Court Reporter—

1 THE COURT: Line 1 is Wilson versus Napleton's.

2 MR. MC JESSY: Good morning, your Honor. Kevin
3 McJessy on behalf of the plaintiff, Jeff Wilson.

4 THE COURT: Good morning. Mr. Elliott was
5 apparently here and had to be in another courtroom
6 for a couple of minutes. He will be back.

7 I didn't think I'd see you guys quite this
8 soon. But okay. Can you hang around for a few
9 minutes? Or what would you like to do today?

10 MR. MC JESSY: I can. I think I am just going
11 to ask the Court to continue their motion until next
12 week when we are back in court. But I can certainly
13 wait.

14 THE COURT: All right. When he comes back in, I
15 will have you jump back on. All right?

16 MR. MC JESSY: Okay. Very good. Thank you,
17 your Honor.

18 (Whereupon the Court attended to other
19 matters on its call, after which the
20 following proceedings were had
21 herein:)

22 THE COURT: Recalling Line 1, Wilson versus
23 Napleton.

24 MR. ELLIOTT: Good morning, your Honor. Tim

—LILI B. CINTA, CSR #084-002979, Official Court Reporter—

1 Elliott, E-l-l-i-o-t-t, on behalf of the defendant.

2 MR. MC JESSY: Good morning, your Honor. Kevin
3 McJessy on behalf of the plaintiff, Jeffrey Wilson.

4 THE COURT: Mr. Pcolinski popped in on Zoom for
5 a second, but then he is gone.

6 Mr. McJessy is suggesting we just enter and
7 continue this until next week when we are here again
8 and take it up then.

9 MR. ELLIOTT: I'd rather not do that, only
10 because this is our post-judgment motion. Next week
11 is when the bond was supposed to be up.

12 THE COURT: Right.

13 MR. ELLIOTT: And so, I do think there are
14 things we can accomplish today since we are all here.
15 Let me take up my proposed list, your Honor.

16 Number one, we have obviously filed a
17 motion. I don't know whether Mr. McJessy wants to
18 respond or stand on his papers. Obviously, these
19 issues, for the most part, have been extensively
20 briefed before your Honor.

21 THE COURT: Right. I'm aware.

22 MR. ELLIOTT: Number two, you did order a
23 remittitur. And we need to understand whether the
24 plaintiff is going to accept or reject that.

—LILI B. CINTA, CSR #084-002979, Official Court Reporter—

1 Number three, counsel have had some
2 communications. Mr. McJessy has found a math error
3 in the ruling which I think you anticipated when you
4 delivered the ruling.

5 THE COURT: Shocking.

6 MR. ELLIOTT: And we agree with him. So, I
7 don't know if we can adjust that now. And then we
8 have also had some discussions given what we think is
9 the new number, which is about \$698,000 all in. We
10 have -- I think we have reached agreement on what the
11 bond amount would be if that is the final judgment
12 amount. And I think -- and Mr. McJessy can correct
13 me if I am wrong -- that we landed at \$762,000.

14 MR. MC JESSY: That sounds --

15 MR. ELLIOTT: And I wonder --

16 MR. MC JESSY: -- correct.

17 MR. ELLIOTT: -- if we could make progress on
18 those items today.

19 THE COURT: I appreciate that. And if you guys
20 agree on a math error, I am not going to fight you on
21 it. I will accept whatever number you guys come up
22 with.

23 It's based on how I ruled on the various
24 items; correct, Mr. McJessy?

—LILI B. CINTA, CSR #084-002979, Official Court Reporter—

1 MR. MC JESSY: It is, your Honor. It's
2 accepting your rulings and then doing the math.

3 THE COURT: What did I do? Where was I wrong?

4 MR. MC JESSY: On the attorney's fees
5 calculation, there was a paragraph that got missed.

6 THE COURT: Gotcha.

7 MR. MC JESSY: That's what it appears to be.

8 THE COURT: Well, if you guys agree on the bond
9 amount, when is the bond going to be posted?

10 MR. ELLIOTT: Well, the date you had set for
11 that was November 14th. So, we were going to -- if
12 we agree on the amount today, it sounds like we do --
13 we were going to go ahead and make arrangements
14 between now and the 14th to try and get that done.
15 Hopefully it can be done by the 14th or very close.

16 THE COURT: Okay.

17 MR. MC JESSY: All right. And here is where
18 we are at, your Honor. I am not quite sure I
19 understand. It may just be my lack of understanding,
20 and it's something I will have to look at. But I
21 don't understand Mr. Elliott's comment about the
22 acceptance or rejection of the remittitur. And I do
23 think that there may be an issue.

24 We may have to -- we haven't actually filed

—LILI B. CINTA, CSR #084-002979, Official Court Reporter—

1 papers in response to the motion that they filed. I
2 do have some concern. I want to make sure that we
3 don't waive any of our rights for appellate purposes
4 by not filing something in response to their filing,
5 just like they were concerned that, if they didn't
6 file something, that their rights would be waived for
7 purposes of appeal.

8 Similarly, I want to make sure that there
9 isn't a concern that, if we don't respond in some
10 fashion, get something in the record, that we could
11 be potentially waiving our rights or arguments before
12 the Appellate Court. So, I don't want to risk that.

13 And lastly, we may have to file or raise
14 similarly post-trial -- or post-judgment matters with
15 an appropriate motion, as well. And we are taking a
16 look at that. I'd assumed we would address all that
17 by the hearing next Tuesday. But this motion got
18 noticed up, obviously, for today.

19 THE COURT: Understood.

20 MR. MC JESSY: So, those are my concerns. I
21 just want to make sure that, similarly, we are not
22 making any errors, in light of the fact that the
23 final judgment got entered on October 23rd.

24 THE COURT: Okay. Yeah. And there is going to

—LILI B. CINTA, CSR #084-002979, Official Court Reporter—

1 be an issue because there is some law that says, in a
2 jury verdict -- on a jury verdict, you have to file a
3 post-trial motion.

4 MR. MC JESSY: Right.

5 THE COURT: And a recent case came down, I
6 thought, that sort of didn't require that. Or I
7 shouldn't say that. There is one that's up for
8 argument that was in front of Judge Cerne where there
9 was no post-trial motion filed. It's up for oral
10 argument at the end of the month in the Third
11 District. So, that's going to be an issue.

12 MR. ELLIOTT: We were leery enough that we filed
13 this motion. I think --

14 THE COURT: Is that --

15 MR. ELLIOTT: -- I had signaled that to your
16 Honor.

17 THE COURT: -- why you filed?

18 MR. ELLIOTT: Yes.

19 THE COURT: That's -- I think there is at least
20 some case law that says on a jury. This is sort of a
21 mixed bag because part of it's bench and part of it's
22 jury. So you don't want to certainly waive that
23 right.

24 MR. ELLIOTT: I understand if Mr. McJessy wants

—LILI B. CINTA, CSR #084-002979, Official Court Reporter—

1 to -- I completely understand if he wants to file a
2 written response in his own motion. Can we perhaps
3 just set a time for --

4 Mr. McJessy, do you have a time that you
5 know where you might be able to do that? Is it one
6 week? Or --

7 THE COURT: Well, I have you guys up next
8 Tuesday. I didn't mean to cut you off.

9 What I am thinking about doing today is,
10 first of all, correcting the judgment amount and
11 making it nunc pro tunc back to the date I entered
12 the judgment because you guys have agreed on an
13 amount.

14 Secondly, in today's order, you could put
15 the agreed bond amount in there if you want. You
16 are --

17 MR. ELLIOTT: Sure.

18 THE COURT: -- shaking your head. I can't tell
19 if it's a yes or a no.

20 MR. ELLIOTT: That's a yes. Sorry.

21 THE COURT: Okay. And third, what I'd like to
22 do is just enter and continue your motion to next
23 Tuesday. And Mr. McJessy can take a look at it and
24 figure out how he wants to respond.

—LILI B. CINTA, CSR #084-002979, Official Court Reporter—

1 You filed it. I think you have protected
2 yourself. It's filed with the clerk's office. So, I
3 don't think that's going to affect anything unless
4 you tell me otherwise.

5 MR. ELLIOTT: No. I mean, the judgment is not
6 going to be final until the motion to reconsider is
7 ruled upon anyway. But I mean, we can do all the
8 blocking and tackling, in terms of getting the bond
9 and all that stuff. And then it hadn't occurred to
10 me that Mr. McJessy would want to file his own
11 post-trial motion. But I understand -- having
12 thought about it now -- why he would.

13 THE COURT: I was pretty confident that both of
14 you were unhappy with my judgment order which means
15 it's probably the exact right number. But that's
16 just me editorializing.

17 No. I get it. I don't -- you guys have
18 done an excellent job on this case all around. And I
19 think both sides would privately acknowledge that the
20 lawyering has been outstanding. So, go ahead.

21 MR. ELLIOTT: And I do want to address
22 Mr. McJessy's question. I have to admit I am not a
23 remittitur expert. But having done the research, I
24 do think it's pretty clear that the plaintiff needs

—LILI B. CINTA, CSR #084-002979, Official Court Reporter—

1 to either accept or reject your remittitur. I'm
2 assuming they are going to accept it. But I don't
3 know that. And so --

4 THE COURT: I don't make that assumption. I
5 don't know either. And I don't expect Mr. McJessey to
6 comment on that.

7 The day I entered the judgment was on
8 October 31st, so nobody's time has run.

9 MR. ELLIOTT: That's correct.

10 THE COURT: You guys are ahead of the game on
11 this.

12 So let's, for today, if you want to correct
13 the judgment amount in today's order, you can. Or if
14 you guys want to do it on Tuesday, you can, as well.

15 MR. ELLIOTT: I think I am happy to prepare an
16 order --

17 MR. MC JESSY: I can give the Court the judgment
18 number. I don't think there is a disagreement about
19 it. But if we want to wait until Tuesday so I
20 don't -- Mr. Elliott may want to go back to the
21 office and, you know, check the calculation I sent.
22 I don't have an objection.

23 But the number that we had come up with was
24 \$698,656.38.

—LILI B. CINTA, CSR #084-002979, Official Court Reporter—

1 MR. ELLIOTT: We have checked the number that
2 Mr. McJessey provided, and we are comfortable with it.

3 Maybe it makes sense if -- if they are
4 going to file a motion, maybe it makes sense to just
5 do all the changes to the judgment at the same time.
6 I think maybe what I would suggest today is that we
7 just say the parties agree that 762,000 is the
8 appropriate bond amount on the existing judgment.
9 And all other matters, the post-trial motion is
10 continued generally until the 14th.

11 THE COURT: I think that's --

12 MR. ELLIOTT: So, I think we are landing, Judge,
13 where you started.

14 MR. MC JESSY: Yeah. And that's fine.

15 THE COURT: That's fair with me. And the other
16 thing is I have got you guys at 11:00 a.m. on -- you
17 are my last case that day on the 14th, so I will have
18 plenty of time to talk to you all.

19 All right. So, who is going to do the
20 order today then?

21 MR. ELLIOTT: I am happy to do the order, your
22 Honor.

23 THE COURT: Mr. Elliott will do an order
24 basically entering and continuing his motion to next

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1 Tuesday at 11:00 a.m. You can put that judgment
2 amount in there and bond amount in there if you guys
3 are comfortable doing that. And then we will
4 continue to move forward.

5 MR. ELLIOTT: Okay.

6 MR. MC JESSY: Very good.

7 MR. ELLIOTT: I think I will save the judgment
8 amount until you rule on the post-trial motions. But
9 the bond amount I think makes sense.

10 THE COURT: Great. All right. Thanks, guys.
11 Good work, as always. And I will see you next
12 Tuesday.

13 MR. MC JESSY: Thanks, your Honor.

14 MR. ELLIOTT: Thank you.

15 (Which were all the proceedings had at
16 the hearing of the above-entitled
17 cause, this date.)
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—LILI B. CINTA, CSR #084-002979, Official Court Reporter—

1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF DU PAGE)

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LILI B. CINTA
OFFICIAL COURT REPORTER
Eighteenth Judicial Circuit of Illinois
DuPage County, Illinois
CSR License No. 084-002979

—LILI B. CINTA, CSR #084-002979, Official Court Reporter—

1 IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
 2 DU PAGE COUNTY, ILLINOIS

3 JEFFREY WILSON,)

4 Plaintiff,)

5 - vs -)

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

8 Defendant.)

Candice Adams
 e-filed in the 18th Judicial Circuit Court
 DuPage County
 ENVELOPE: 26315777
 2018L001245
 FILEDATE: 2/7/2024 3:57 PM
 Date Submitted: 2/7/2024 3:57 PM
 Date Accepted: 2/7/2024 4:00 PM
 JC

No. 2018 L 1245

9
 10 REPORT OF PROCEEDINGS had at the hearing of
 11 the above-entitled cause, before the Honorable
 12 DAVID E. SCHWARTZ, Judge of said court, recorded on the
 13 DuPage County Computer Based Digital Recording System,
 14 DuPage County, Illinois, and transcribed by ANGELA M.
 15 MONTINI, Certified Shorthand Official Court Reporter,
 16 commencing on the 18th day of January, 2024.
 17
 18
 19
 20
 21
 22
 23
 24

1 RESENT:

2
3 McJESSY, CHING & THOMPSON LLC, by
4 MR. KEVIN P. McJESSY,
MR. JOSEPH J. BORDERS,

5 appeared on behalf of The Plaintiff;

6 GUERARD KALINA & BUTKUS, by
7 MR. JOHN J. PCOLINSKI,

8 -and-

9 RATHJE & WOODWARD, LLC, by
MR. TIMOTHY D. ELLIOTT (via Zoom)

10 appeared on behalf of The Defendant.
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1 THE COURT: Good morning, everyone.

2 This is 18 L 1245, Wilson versus
3 Napleton's. Can I have names for the record, please,
4 starting with the plaintiff.

5 MR. MC JESSY: Kevin McJessy on behalf of the
6 plaintiff, Jeffrey Wilson, your Honor.

7 MR. BORDERS: Joseph Borders on behalf of the
8 plaintiff.

9 MR. ELLIOTT: Good morning, your Honor.
10 Tim Elliott, E-l-l-i-o-t-t, on behalf of
11 the defendants. I apologize, I thought the order
12 said this was via Zoom.

13 THE COURT: It is optional, it is okay. We can
14 hear you.

15 MR. PCOLINSKI: Your Honor, John Pcolinski,
16 P-c-o-l-i-n-s-k-i, also for the defendant, and I came
17 for the coffee and the attorneys' lounge.

18 THE COURT: Understood. Your normal reason for
19 being here.

20 Good to see you all. And I say that with
21 not even a hint of sarcasm. I have looked at the
22 cross motions to reconsider and it is sort of
23 interesting. Both sides are saying that I am right
24 on some things and wrong on others and it is back and

1 forth.

2 But I have reviewed everything and I am
3 happy to listen to argument if anyone wants to add
4 anything to what they have submitted. For the
5 record, I will say that the briefs are very thorough
6 as always in this case.

7 So for argument sake, I think I am going to
8 let the plaintiff go first if they wish to add
9 anything, so Mr. McJessy or Mr. Borders, anything you
10 would like to add or emphasize, now is your chance.

11 MR. MC JESSY: Judge, I think we're largely
12 prepared to stand on the papers that we've submitted.

13 The only point I would like to raise as
14 sort of a point of emphasis is that the Court --
15 well, there is two things, I guess, I would like to
16 address.

17 One is this issue that has come up that
18 they have raised that we did not accept the
19 remittitur and, therefore, somehow a new trial is
20 automatically required.

21 I just want to address that because I think
22 it is clear, including from the transcript that was
23 attached to the brief that Napleton filed, that there
24 was a discussion about whether acceptance was

1 required on the record, but the Court at no point
2 said here's my decision and you have to either accept
3 this remittitur or I will order a new trial.

4 Instead, the Court entered judgment based
5 upon the submissions that were made and there never
6 was an opportunity for Mr. Wilson to -- it was never
7 a condition -- the entry of the order was never
8 conditioned on Mr. Wilson's acceptance.

9 The argument by Napleton seems to be that
10 we should have sua sponte accepted it without a
11 formal requirement by the Court or, alternatively,
12 that by filing any sort of post-trial motion
13 addressing that issue somehow that that constitutes a
14 rejection.

15 And I think that the issue is fairly clear.
16 I don't really think that -- they are not right on
17 that point. The case law is very clear. Even the
18 case they cited and quoted and block quoted in their
19 response, or it might have been in their original
20 brief, says that a party has to be given by the
21 Court, not by opposing counsel or not somehow implied
22 or to be construed or -- I am trying to think of the
23 word I am looking for -- somehow by osmosis derive
24 from the record that a party has to do something.

1 Now, I don't think in this instance because
2 of the way that this proceeded, I don't think that it
3 is required that Mr. Wilson accept the remittitur.
4 The Court entered the judgment on October 31st. It
5 is entered. I think we described in our response or
6 it might have been in our reply brief that if there
7 is no appeal of this case and the Court doesn't
8 change -- we advocate the Court change, obviously,
9 its ruling, but if the Court doesn't and that amount
10 stands and nobody appeals, then that's the order.

11 If there is an appeal and the Appellate
12 Court affirms, then that's the order. If the
13 Appellate Court doesn't affirm and reverses, then
14 that's the order.

15 At this point, I think that is sort of the
16 procedural posture that we're left in, but I did want
17 to address that because it is sort of this issue that
18 came out of left field. I don't think that the
19 transcript that counsel cited where this is -- came
20 up in discussion and, frankly, I believe what I
21 advised the Court was I didn't know how it had to be
22 handled. I didn't think the rule was particularly
23 clear on the issue as I understood it at that time.
24 And Mr. Elliott said he was no expert on it, either,

1 but he had looked at the rule and this was his
2 thought. And the Court didn't put -- never ordered
3 any sort of formal response by Mr. Wilson.

4 So I just wanted to address that point
5 because it is the 900-pound gorilla here, right, that
6 I think is a nonissue, but to the extent that the
7 Court would consider it to be an issue, I at least
8 wanted to make sure that I addressed that out of the
9 box.

10 The second issue I would like to emphasize
11 in addition to the things that are set forth in our
12 pleading, is that we -- Mr. Wilson takes strong
13 opposition to the Court's use of remittitur as a
14 means of reducing the actual damages award that the
15 jury gave.

16 Now, just to be -- I guess lawyers being
17 creatures of who we are, we never want to say
18 something and then have that be construed as, well, I
19 also didn't mean not to raise something else. So I
20 want -- I am not going to address the issue of the
21 Court's remittitur of the punitive damages award. Of
22 course, we don't agree with that, and I see the Court
23 nodding. I don't think I need to rehash that
24 argument because I think it is pretty well set forth

1 in the briefs.

2 If the Court had a question about that, I
3 would be happy to address it, but the Court has heard
4 these arguments multiple times, so I want to try to
5 spend my time wisely here and not waste the Court's
6 time.

7 But I do want to address the fact that the
8 Court used remittitur as a means to reduce the actual
9 damages award that the jury had entered. There
10 really has been no argument to this Court that the
11 jury instructions that were given were not correct.
12 And the jury entered its damages award based on the
13 jury instructions that they were given.

14 And the Court used the Doctrine of
15 Remittitur basically to exclude Mr. Wilson's lease
16 payments prior to the date that he discovered the
17 fraud. And I just want to -- and this purely is just
18 a point of emphasis because it is addressed in the
19 briefs, but remittitur is not really -- you know,
20 remittitur is designed to address damages that
21 demonstrate passion or partiality or corruption on
22 behalf of the jury, or there is language in some of
23 the decisions that refer to shocking the conscience
24 of the Court.

1 But those damages in particular, the
2 pre-discovery of the fraud damages really aren't
3 those kind of damages. They are quantifiable, there
4 was evidence to establish those damages, they are
5 consistent with the jury instructions that the jury
6 was given.

7 If there is an argument against those
8 damages and Napleton never asserted this, it clearly
9 would have been set-off as the case -- as the Vieweg
10 case that we cited says.

11 Which in that case, just to refresh the
12 Court's recollection, the plaintiff had sued -- it
13 wasn't a fraud case, it was a Magnuson-Moss Warranty
14 case. And in that case, the plaintiff had asserted a
15 claim for breach of warranty and the Court awarded
16 damages and then said, yeah, but you have had the car
17 for, I think a year, I don't remember what it was,
18 ten months, and you have driven it X number of miles
19 and the value of that is 21 cents a mile, and so I am
20 going to reduce your damages award by that amount.

21 And on appeal, the Court said, no, that is
22 a set-off and a set-off has to be asserted in the
23 pleadings. It wasn't asserted in the pleadings, so
24 that is not a basis for reducing the damages award.

1 And I know that Napleton's took the
2 position that -- they actually admit, they say, yeah,
3 but that is what Vieweg says, but nobody has followed
4 that. But that is not true. The Illinois Supreme
5 Court in the MidAmerica Bank case expressly followed
6 that holding and that language and endorsed that
7 case.

8 And they cite two cases where they say that
9 Courts have not followed Vieweg, but in both of those
10 cases, one was the Capiccioni case in which instance
11 the Court said, well, set-off isn't the issue in
12 front of us, so Vieweg doesn't apply. And I can't
13 remember the name of the other case, it escapes me
14 offhand.

15 But the second case, the Court was
16 considering whether plaintiff was seeking essentially
17 double recovery damages for the same thing twice.
18 And they said, well, Vieweg doesn't apply here
19 because the issue in front of us is whether the
20 plaintiff is entitled to double recovery. The amount
21 for -- the same amount for the same claim twice and
22 so Vieweg doesn't apply.

23 There is no case that says Vieweg doesn't
24 apply. If they want to do a cert set-off, which is

1 what this is, they would have had to introduce
2 testimony as to what the value of the use of the car
3 was to Mr. Wilson during that period of time, and
4 they didn't do that and they never asserted a set-off
5 defense.

6 And the second point I would have on this
7 issue of using remittitur as a means to reduce the
8 actual damages award is that damages do -- damages
9 start accruing from the time of the fraud. And we
10 discussed -- I point out the Knox case which is, you
11 know, of course the famous Illinois case on the
12 discovery rule. And basically what our point was, or
13 my point was, or Mr. Wilson's point was in citing
14 that case is the discovery rule says, look, your
15 claim starts to run when you discover the fraud or
16 should have discovered the fraud or should have
17 discovered your cause of action.

18 It doesn't mean that you don't get damages
19 that happened before that event. As a matter of
20 fact, those cases that we cite for the discovery rule
21 say, look, your damages happen and you just don't
22 know it yet, and so we're not going to start the
23 statute of limitations running until you know or
24 should know it.

1 Well, that doesn't mean that you can't go
2 back and get your damages from when the time the
3 event occurred that caused your damages. In fact,
4 the point of those cases is that you absolutely can.
5 We're not going to start your statute of limitations
6 running until you discover the fraud or should have
7 discovered the fraud.

8 So that's why we cite those cases. We are
9 not citing them that the discovery rule -- we timely
10 filed our complaint. There is no issue about the
11 discovery rule and statute of limitations, but the
12 reasoning of those cases sort of explains or
13 demonstrates that the damages run from the time of
14 the event, the time of the fraud, which occurred when
15 Mr. Wilson purchased his vehicle when he was told
16 that it hadn't been in an accident and when they
17 withheld that information from him.

18 The last case I would like to sort of point
19 out because I think this is a great case, is the Coe
20 case we cited, which is admittedly a case from
21 Georgia, but that case is sort of -- illustrates this
22 point just wonderfully because that is a situation
23 where somebody paid an accountant, paid attorneys to
24 create this tax shelter for them.

1 The representations were fraudulent. The
2 people took advantage of that tax shelter for several
3 years before the IRS finally said you have a problem
4 here, this isn't right, and they sued for fraud.

5 And the Court in that case observed that
6 their damages would be the amounts that they paid for
7 that fraudulent advice. Now, those amounts were paid
8 long before they discovered the fraud. And there was
9 no argument in that case, well, you know what, you
10 had the benefit of this fraudulent -- you had the
11 benefit of the fraudulent tax advice for three years.

12 You didn't have to pay taxes on that money
13 for three years, so, therefore, that is really a
14 benefit to you. Now, granted the fraud comes along
15 and we discover it and you realize you have been
16 damaged and you have to pay, you know, you have to
17 negotiate to pay the penalties and what have you, but
18 the point is that the damages that they incurred from
19 the time of the fraud were recoverable.

20 And I just think all of those cases sort of
21 go to that point, so those are the points that I
22 wanted -- if I have the opportunity -- you were
23 gracious enough to give me the opportunity. I don't
24 want to reiterate every point in the briefs, but

1 those are the points I did want to emphasize.

2 THE COURT: Okay. Let me talk briefly with you
3 about your second point. I remember during the trial
4 we argued about this, about whether or not Mr. Wilson
5 had actually suffered any damages for those three
6 years or so that he drove the car.

7 And my position was that he wasn't damaged,
8 he drove this beautiful car, made the payments, and
9 he got that benefit. And you argued and I let the
10 case go to the jury on that issue. But don't I have
11 the option as the trial judge to at least reserve and
12 direct a verdict on that issue that you have not met
13 your burden? That in my evaluation of the evidence,
14 the burden of proof is you have to prove damages.
15 And I know you say damages -- any damage from the
16 fraud is recoverable.

17 But I, as the trial judge, can say the
18 burden was not met. I am not calling it a
19 remittitur, I am saying that you didn't meet the
20 burden on those three years of payments. How would
21 you respond to that?

22 MR. MC JESSY: I would respond two ways. First,
23 I don't know the answer to that specific question
24 that you're asking, but I would say that if that is

1 the case, if the Court can take that away from the
2 jury, I would say that it wouldn't be appropriate
3 here because there was evidence that he suffered
4 those damages.

5 I think the jury gets to decide proximate
6 cause. They get to decide whether Mr. Wilson's
7 payments on the lease were the result of the fraud
8 that occurred. The Court -- I would think that the
9 Court wouldn't get to make the decision that, no,
10 that was actually a benefit to you, Mr. Wilson. You
11 enjoyed the car and, therefore, those payments
12 weren't damages to you.

13 I think that the jury gets to decide
14 whether the damages, whether those payments were
15 proximately caused from the fraud. And it is a jury
16 issue. And Napleton's, I think, was free to argue,
17 they didn't, but I think they could have argued to
18 the jury that we don't think that you should find --
19 I mean, it is a proximate cause issue. It is an
20 issue for the jury.

21 Mr. Wilson's damages were not caused by our
22 fraud. They were caused by something else. There
23 was some other thing. It was just he had no damages,
24 you shouldn't award him that. They didn't make that

1 argument and I think that argument falls squarely
2 within the role of the jury to decide.

3 THE COURT: Okay.

4 MR. MC JESSY: I mean, the question you phrased,
5 I am not -- I never saw that come up in any of the
6 cases that I reviewed, so I am reluctant to --

7 THE COURT: It just occurred to me while you
8 were arguing it and I, as a former plaintiff's
9 lawyer, it pains me to take away damages that a jury
10 has awarded and that was just my impression in terms
11 of burden of proof and whether or not there was proof
12 that Mr. Wilson suffered those damages. That is just
13 comments that I am making. I don't expect you to
14 necessarily be prepared for that. I am just sort of
15 having a discussion, okay?

16 MR. MC JESSY: I appreciate that.

17 THE COURT: Thank you, Mr. McJessy.

18 Who is going to argue for Napleton's?

19 MR. PCOLINSKI: Mr. Elliott.

20 MR. ELLIOTT: I will your Honor.

21 THE COURT: Okay. Mr. Elliott, anything you
22 would like to add to the well-briefed motions,
23 responses and replies filed by everybody?

24 MR. ELLIOTT: Yes, your Honor. I am just going

1 to raise two points, one very briefly. I want to
2 respond to the Vieweg case. We've addressed that at
3 Page 6 of our response brief. That case just doesn't
4 apply.

5 And the notion that the Illinois Supreme
6 Court adopted that holding on the merits in
7 MidAmerica Bank is flatly false. We addressed that
8 in the footnote on Page 6 of our response, your Honor
9 can read it. The only thing that the Supreme Court
10 cited to that case was for the proposition that
11 set-off is an affirmative defense.

12 On the damages I will just simply say I
13 think your Honor recalls that we argued that the
14 entire out-of-pocket theory of damages was wrong to
15 begin with and should have just been the diminution.

16 But here is the good news. We don't need
17 to worry about that because we are entitled to a new
18 trial. The law on this is really clear and this is
19 what I want to focus on.

20 On the remittitur, the law is clear.
21 Remittitur cannot be a unilateral action by a trial
22 court judge. It is a finding by the judge that the
23 jury's damages award, whether punitive or actual,
24 can't stand. And rather than ordering a new trial

1 from the get-go, the Court has the option of offering
2 a remittitur to the plaintiff.

3 The plaintiff has to accept it. Plaintiff
4 can't remain silent. They can't -- plaintiff can't
5 object to it, the plaintiff can't play games and try
6 to avoid making a decision. In the absence of
7 acceptance -- in the absence of acceptance there is
8 no remittitur, it is a new trial. And there is no
9 discretion on that. We outlined the law on that very
10 clearly.

11 The argument that you have heard for why
12 that law doesn't apply is incredibly disingenuous.
13 Essentially the plaintiff is blaming you, your Honor,
14 in saying that you did not adequately advise them of
15 their rights. Baloney.

16 When the remittitur was first offered, I
17 said in court, they have to accept it, Judge. They
18 have to accept it or reject it. And Mr. McJessy said
19 I don't know about that, I am not real familiar with
20 that. He was on notice. We didn't have any trouble
21 researching the law on this.

22 He is right, at the time, I think I made a
23 comment to the effect of I'm not really an expert on
24 this, but we didn't have trouble researching the law

1 on this. And I don't think they had trouble
2 researching the law on it, either. They have had
3 every opportunity to accept the remittitur. They
4 have refused. They have objected to it in every
5 paper that you have seen and even today they are
6 continuing to object to it.

7 We are entitled to a new trial. And we can
8 argue about all the rest of the things, but I don't
9 think we need to because I think this case has to go
10 to a new trial.

11 THE COURT: Question for you, Mr. Elliott.

12 MR. ELLIOTT: Sure.

13 THE COURT: What is a plaintiff supposed to do
14 if a trial judge orders a remittitur and that order
15 is in error. The trial judge makes a mistake. His
16 remittitur is just simply wrong. What is a plaintiff
17 to do? If they accept it, are they then barred from
18 their appeal?

19 MR. ELLIOTT: No, your Honor. They have two
20 choices and the two choices are very clearly laid out
21 in the law. Choice No. 1 is to say, you know what,
22 your Honor, we want a new trial. We don't accept
23 your remittitur, we want a new trial. That's the
24 option they have elected.

1 THE COURT: They don't want that option. They
2 don't want that option, I know that. But go ahead,
3 second option.

4 MR. ELLIOTT: But they are fighting you on every
5 step. The second option is to say we accept it and
6 then they can appeal it. And Supreme Court Rule 366,
7 which we found without any problem, and I am guessing
8 the plaintiff's did as well, simply says when you
9 accept the remittitur, you don't waive your arguments
10 on appeal.

11 It is very clear in Supreme Court Rule 366.
12 That is the law, they know the law, they are bound by
13 the law. And they have not only objected but they
14 have doubled down in their briefing, doubled down in
15 their reply briefing, and then doubled down again
16 today.

17 Your Honor, no one in this case really
18 wants to go through the burden of a new trial, but
19 that is where they've left us.

20 THE COURT: No one accept me, right?

21 Thank you, Mr. Elliott. Anything else you
22 would like to add to that point?

23 MR. ELLIOTT: No. And we pointed to the law, it
24 is not discretionary, Judge. It is quite clear that

1 is the horse they have chosen to ride. They don't
2 get to have it both ways.

3 THE COURT: Thank you, Mr. Elliott.

4 Mr. McJessey, I will give you last word on
5 that issue.

6 MR. MC JESSY: On that issue, your Honor, and
7 this is from the transcript, I think if we had done
8 anything other than what we did, the Court never
9 having put Mr. Wilson to the task of making a choice
10 to accept or reject, if we had just consented, and I
11 raised this issue at the hearing, that I think we
12 would waive any right to -- that we would have to
13 appeal. Because we weren't put to a choice, we would
14 have just been voluntarily deciding to agree to
15 something or not to dispute it without asserting any
16 rights.

17 So that's just -- I think it is sort of a
18 ludicrous assumption. And Mr. Elliott sort of
19 acknowledged it there, that -- even at that hearing,
20 and he did say, he said I do want to address
21 Mr. McJessey's question, and I have to admit I am not
22 a remittitur expert.

23 So what Mr. Elliott is saying is that
24 because he raised this issue at a hearing, and I

1 assume you would say even if nobody raised this
2 issue, even if there was never a choice put to
3 Mr. Wilson, he had to -- and I use this phrase in the
4 briefs -- sua sponte come forward and do something.
5 There is no case, none that they cited, none that I
6 found that say that.

7 Mr. Wilson can't be forced to just do
8 something because opposing counsel says something at
9 a hearing or he is just implicitly obligated to do
10 something.

11 If he had been put to a choice, he would
12 have made a choice. The order was -- the final
13 judgment was entered. It was entered on October
14 31st. That ended the matter. There was nothing to
15 accept or reject at that point. The Court didn't say
16 I will enter final judgment for this amount or I will
17 order a new trial, your choice. That is really what
18 the remittitur process allows for.

19 Now, again, I don't think because of the
20 procedural posture of this it really makes any
21 difference to how this played out, but that is my
22 point, your Honor.

23 THE COURT: All right. Thank you both.

24 MR. ELLIOTT: Your Honor, may I respond very

1 briefly?

2 THE COURT: You may. Go ahead, Mr. Elliott.

3 MR. ELLIOTT: It's not what Mr. Elliott says.

4 It is what the Illinois Supreme Court says. And all
5 they have to do is say two words, I accept. Even now
6 he is not willing to say that. Even if we are to
7 assume that he had no understanding of the law, which
8 as a lawyer with many years of experience, we all
9 know how to research, even if he had no understanding
10 of the law at that initial conference, he was on
11 notice that he should go research it.

12 After our briefs were filed, everybody knew
13 what position we were taking. The law is very
14 clearly spelled out. In response and reply and even
15 today, he is acting like he doesn't really know what
16 to do. This is a game. He has not accepted it. We
17 are entitled to a new trial, your Honor.

18 THE COURT: All right. Thank you, both. And I
19 will have to confess that none of us are experts in
20 the area of remittitur because it is such an unusual
21 aspect of law.

22 I did look at the Tri-G versus Burke
23 Bosselman & Weaver case that both sides seem to cite.
24 I don't read it quite as strongly as Mr. Elliott

1 does, so I am not going to order a new trial on that
2 basis. The Third District may well disagree with me
3 because I think they are going to be next ones to
4 take a look at this.

5 So, respectfully, I am going to deny both
6 motions and enter judgment today. I thought last
7 time we had agreed or you guys had agreed I made a
8 math error in the number I mentioned in the briefs
9 was \$698,656.38. Is that correct in terms of the
10 amount that -- based on my ruling?

11 MR. MC JESSY: That is correct.

12 MR. ELLIOTT: I don't have the numbers in front
13 of me, your Honor.

14 THE COURT: It's in the briefs.

15 MR. ELLIOTT: I assume someone is going to draft
16 up an order and maybe we can just eyeball the
17 numbers. The other thing is I was going to ask you
18 is we're lined up to put up -- can we -- I understand
19 that interest will run from today, but can we stay
20 enforcement for seven days to allow us to come up
21 with the satisfactory bond? I believe Mr. McJessey
22 has agreed on the amount previously.

23 THE COURT: Right, I know we talked about that
24 before. That is not a problem. I am happy to give

1 you as much time you need to post the bond. And I
2 had one other question for you guys. I had a ton of
3 material back in my chambers, and I don't know if I
4 kept the exhibits or if you guys kept the exhibits.
5 And if I have them and you need them for the record,
6 you need to let me know what you need. I don't need
7 you to answer that right this minute. But I will
8 hang on to everything that I have, so that if there
9 are exhibits that somehow didn't get filed properly
10 but you need them for the record, I am happy to help
11 with that.

12 MR. MC JESSY: All right. We have the exhibits
13 and -- I mean, we have electronically. So we have an
14 order ordering which exhibits are in the record.

15 There are two exhibits that -- I think it
16 is Exhibit 183 and 184, but I am not sure. I don't
17 have my computer up in front of me. They were the
18 financial statements of Napleton. And if we can have
19 today's order reflect that we have authority or
20 court's order to file those under seal because I
21 wouldn't want those to be -- I am sure Napleton's
22 wouldn't want those to be part of the public record.

23 THE COURT: Looks like Mr. Elliott left, so,
24 Mr. Pcolinski, you get to answer. Oh, he is back.

1 MR. PCOLINSKI: He is back. He somehow got cut
2 out.

3 THE COURT: I take it there is no problem with
4 that?

5 MR. PCOLINSKI: Well, no, I would not stand in
6 the way of him making a record for appeal,
7 absolutely. The clerk's office ought to have
8 whatever is going to be transmitted to Elgin -- I
9 mean to Ottawa.

10 THE COURT: Ottawa.

11 MR. MC JESSY: Mr. Elliott, did you catch that?

12 THE COURT: Kevin just wanted to have the
13 financials of Napleton under seal. You're muted. He
14 just wanted to have the financials of Napleton under
15 seal if those, in fact, are part of the record, and I
16 am sure you guys would actually want that, correct?

17 MR. ELLIOTT: They are. I think there is a
18 couple of exhibits that have that, and I don't
19 remember off the top of my head what they are.

20 THE COURT: Okay. Anything else for today?

21 MR. PCOLINSKI: Your Honor, I think as a
22 practical matter, we're going to need a little time
23 to make sure that we reach agreement on the language
24 of the order, and I would want to confer with

1 Mr. Elliott and with Mr. McJessey on that. Can we
2 submit that later today and call your --

3 THE COURT: Of course. You can even submit it
4 tomorrow and we can backdate it to today. I think
5 for purpose of interest and the judgment being final
6 and appealable, we will make it effective today. But
7 if you guys want to submit the order this afternoon
8 or tomorrow, I am okay with that.

9 MR. MC JESSY: And can we at least tentatively
10 agree among counsel and the Court that the order
11 should be simple and can say that the motions are
12 denied for the reasons stated in open court.
13 Judgment is hereby entered in the corrected amount of
14 whatever the corrected amount is. There is leave to
15 file the exhibits with the clerk of court and leave
16 to file whatever the two exhibits are under seal, I
17 think it is 183 and 184, but we can put that
18 specifically in the order, and I think the order
19 really doesn't need to include anything else.

20 THE COURT: Well, accept the bond issue.

21 MR. MC JESSY: The bond issue, and that the
22 judgment is stayed for 14 days to give them
23 opportunity to file an appeal bond.

24 THE COURT: Is 14 enough to stay the enforcement

1 for you guys, Mr. Elliott?

2 MR. MC JESSY: He said seven, so I --

3 MR. ELLIOTT: Yeah, I was going to say seven
4 might be a little bit aggressive but 14 should be
5 more than enough. We have already made the
6 arrangements. We just need to --

7 THE COURT: We'll make it 15 days. Enforcement
8 is stayed until February 2nd, so that is 15 days from
9 today. That should be plenty of time for you guys to
10 post.

11 MR. ELLIOTT: All right.

12 MR. PCOLINSKI: We will contact you, your Honor,
13 if that is going to be a hang up.

14 THE COURT: Okay. I was hoping to never hear
15 from any of you again, but okay.

16 MR. MC JESSY: I don't think that would be an
17 issue.

18 MR. PCOLINSKI: I suspect you might be in any
19 event.

20 THE COURT: Mr. Pcolinski has already threatened
21 me with mayhem in the Judge's Night skit, so I am --

22 MR. PCOLINSKI: I am not a writer, Judge.

23 THE COURT: All right. Guys, I have to say for
24 the record one last time, in my years on the bench,

1 this is as fine a litigated case on both sides and I
2 hope you guys can find the path to resolving this.
3 If you can't, you can't. I know you all operate in
4 very good faith and would like to try to get this
5 behind you, but thanks again for all of your hard
6 work.

7 Anything else, Mr. Elliott, before we hang
8 up on you?

9 MR. ELLIOTT: No. Thank you, your Honor.

10 THE COURT: Anything else, guys?

11 MR. MC JESSY: No.

12 MR. PCOLINSKI: No.

13 THE COURT: All right.

14 MR. PCOLINSKI: Thank you, your Honor.

15 MR. MC JESSY: Have a great day.

16 (Which were all of the proceedings
17 had in the above-entitled matter.)

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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF DU PAGE)

4
5 I, ANGELA M. MONTINI, hereby certify that I
6 am a Certified Shorthand Official Court Reporter
7 assigned to transcribe the computer based digital
8 recording of proceedings had of the above-entitled
9 cause, Administrative Order No. 99-12, and Local Rule
10 1.01(d). I further certify that the foregoing,
11 consisting of Pages 1 to 30, inclusive, is a true and
12 accurate transcript hereinabove set forth.

13
14
15
16
17 *Angela M. Montini*
18 _____
19

20 Official Court Reporter
21 Certified Realtime Reporter
22 Eighteenth Judicial Circuit of Illinois
23 DuPage County
24 C.S.R. License No. 084-003716

_____*Angela M. Montini CSR, RPR, CRR*_____

1 reason. Did anyone from Napleton demand that you stop
2 driving the car?

3 A. No, they didn't.

4 Q. Okay. And you didn't stop driving the car
5 because of safety concerns; right?

6 A. Meaning -- safety, meaning the car was -- I
7 could get hurt driving the car?

8 Q. Yes.

9 A. No.

10 Q. In fact, no one has ever told you the car was
11 not safe; right?

12 A. No.

13 Q. No, that's not right? Or no, no one told you
14 that?

15 A. Oh, I'm sorry. No, no one has told me --

16 Q. Okay.

17 A. -- that the car wasn't safe to drive.

18 Q. All right. And nobody from Napleton told you
19 that you had to preserve that car as is; is that right?

20 A. Correct.

21 Q. And no one from Napleton told you to stop
22 driving; correct?

23 A. Correct.

24 Q. And you also never called Napleton and said,

1 THE COURT: It says Page 2 of 2 at the bottom.
2 Are you looking for a different page?

3 MS. WINTERS: There is only one page to it.
4 That's all I have.

5 MR. ELLIOTT: How about 112 then? There we go.
6 This will do.

7 BY MR. ELLIOTT:

8 Q. This is a statement for 2018. Do you see
9 that, sir?

10 A. I do.

11 Q. And this statement is on Chase Bank account
12 owned by something called The Wilson Toy Box dated
13 July 22nd, 2014. What is The Wilson Toy Box?

14 A. So, my wife and I created a trust that
15 we have some of our finances coming in and out of. We
16 used to own a VRB0 that my wife managed. And we have
17 that in there, as well. We subsequently sold that.

18 So, that's the -- how I believe my wife set
19 up our account name with Chase Bank. She facilitated
20 setting that up.

21 Q. So, am I correct that the vast majority of
22 the payments on this lease were not made by you
23 personally, but they came out of this trust?

24 A. I'd have to look at all the statements,

1 Mr. Elliott. My wife facilitated setting up the
2 payments, the online stuff. So I don't -- I can't
3 answer that and tell you that it was this or a
4 different account. I know it was between us. That's
5 all I know.

6 Q. Okay. But you would agree with me that the
7 trust is distinct from your personal bank account,
8 wouldn't you?

9 A. Are you saying my individual banking? Or are
10 you talking about my wife and I jointly? I want to
11 make sure I understand the question, sir.

12 Q. Sure. You and your wife established a trust
13 in 2014; right?

14 A. That sounds about right.

15 Q. Well, according to the bank statement, it was
16 established July 22nd, 2014.

17 A. Oh, okay. Perfect.

18 Q. Does that seem reliable to you?

19 A. That seems reliable, yes.

20 Q. Okay. And was that a revocable or
21 irrevocable trust?

22 A. I don't know the answer.

23 Q. Okay. Who were the beneficiaries of that
24 trust?

1 A. My children would be the beneficiaries. My
2 wife or my children, of course.

3 Q. Okay. And you and your wife are the
4 trustees, at least during your lifetime, of this trust?

5 A. I believe so, yes.

6 Q. Okay. And that trust made payments on this
7 particular lease; is that correct?

8 A. Off of this statement, it looks correct. I
9 don't know if, during the five years, my wife changed
10 it. I can't answer that question.

11 Q. Did you ever go back and look and see who
12 actually made the payments -- you or this trust?

13 A. It's our trust. These are -- this is our
14 funds. So, we made the payments, if that's what you
15 are asking.

16 Q. I understand. But this particular trust is
17 distinct from your personal finances; right? They are
18 separate and distinct?

19 A. I would have to say yes.

20 Q. Okay. So, for example, when you report to
21 the taxing authorities or others, the trust files, for
22 example, separate returns; right?

23 A. I believe so, yes.

24 Q. Okay. And has separate financial operations

1 from you individually; right?

2 A. Mr. Elliott, I am not an expert on trusts.
3 We were told by our advisor that it made sense to do a
4 trust years ago back in, I guess, 2014. I don't get
5 involved in it, if I am being honest. I don't. So --

6 Q. No. I --

7 A. I don't want to give an answer that's not
8 true. I don't know the answer.

9 Q. I am not second-guessing the advice that your
10 financial advisor gave you.

11 A. Right.

12 Q. The point I am making is payments on this
13 lease were not made by Jeffrey Wilson, individually.
14 They were made by Wilson Toy Box; right?

15 A. That's -- at least on this statement, it sure
16 is. I can't tell you if it changed over the five
17 years, if my wife made the change. She pays all of our
18 bills.

19 Q. Okay. But you didn't make any effort to
20 parse that out when you put together your damages
21 analysis in this case; right?

22 A. I don't think so.

23 Q. Okay. Now, if you hadn't bought this car --

24 A. Uh-huh.

1 Q. -- if you were still driving the Mercedes,
2 for example --

3 A. Sure.

4 Q. -- you would still have to make monthly
5 payments; right?

6 A. Until I paid it off; correct.

7 Q. Okay. And if you had bought one of the other
8 Aston Martins that you were looking up on the internet
9 and you were driving that 25,000 miles, you would have
10 been making monthly payments toward that car; right?

11 A. Had I purchased another one, you are correct.

12 Q. Okay. So, you were going to have monthly car
13 payments, regardless of which option you chose; right?
14 Buying no car, buying this car, or buying another car;
15 is that right?

16 A. At that point, yes.

17 Q. Okay. And you were driving this car
18 25,000 miles. And if you are driving a car like that,
19 you are making payments; right?

20 A. Yeah. I made all my payments. Yes.
21 Correct.

22 Q. As a matter of fact, if this jury were to
23 award you all 60 of those car payments back, you would
24 essentially have had the car five years, driven the

1 full mileage limit in less than half of that, and
2 gotten it for free; right?

3 A. I wouldn't have bought it. But yeah, I guess
4 you could look at it that way. But that's not --
5 that's not how I view it. I would never have purchased
6 the car, had they been honest with me.

7 Q. I understand your testimony about not
8 purchasing it. I think we all get that.

9 A. Yeah.

10 Q. My point is what the damages are.
11 And you had the car and you drove it a lot;
12 correct?

13 A. In three years, 25,000 miles, I don't
14 know if that's a lot, sir. That's a low mileage limit
15 for the lease, if that's what you are referring to.
16 But in real -- most leases are 10, 12, 15,000 miles a
17 year. So, I don't drive it a lot.
18 I don't put a lot of miles on it. I did 25. That's
19 not a lot of mileage, though, if that's what you are
20 referring to.

21 Q. I would agree with you that a lease on a
22 Honda, on a Toyota, on a Ford might be 10 or 12 or
23 15,000 miles a year.

24 How about leases on exotic cars? Do you know

1 what those usually have?

2 A. I have only leased one exotic, sir. That's
3 it.

4 Q. But if this jury were to award you damages
5 for repayment, you would have gotten the car, gotten to
6 drive it a full 25,000 miles, gotten to use it, got to
7 put your two kids in the back in the car seat and a
8 booster seat, gotten a four-door sedan, had full use of
9 it, and you would have gotten it for free; right?

10 MR. MC JESSY: Objection, your Honor.

11 THE COURT: Overruled. Cross examination.

12 THE WITNESS: Would I have gotten to use it for
13 free is what you are asking?

14 MR. ELLIOTT: That's exactly what I am asking.

15 THE WITNESS: I would have recouped all the money
16 that I put out in this car and the fraudulent act, I
17 guess. I would recoup what I paid to use that car.
18 Correct.

19 BY MR. ELLIOTT:

20 Q. And that's what you are looking for in this
21 lawsuit. You want a car, and you want it for free.
22 You get to keep the car for five years, and get it for
23 free; right?

24 Isn't that what you are asking this jury to

1 award you?

2 A. I am asking the jury to do the right thing.
3 I am not asking them to do that.

4 Q. Okay. Let's move on.

5 You talked about registration fees?

6 A. Uh-huh.

7 Q. There is a registration fee included in the
8 \$19,000 down payment?

9 A. Correct.

10 Q. That's not the Arizona registration fee that
11 you were talking about; right?

12 A. No. I had separate payments to the State of
13 Arizona.

14 Q. Okay. And Arizona has something called a
15 vehicle license tax; correct?

16 A. I believe so, yes.

17 Q. And that's where they have a tax, and it
18 floats up and down. It depends on the value of the
19 car. So, if you have got a \$140,000 car, you are going
20 to have a higher annual license fee than if you are
21 driving a \$20,000 car?

22 A. That's my understanding.

23 Q. Okay. Would you agree with me -- would you
24 agree with me that, regardless of what car you are

1 driving -- whether it was the old Mercedes or this car
2 or one of the other Aston Martins or a new Mercedes,
3 that you were going to have to pay some registration in
4 the state of Arizona?

5 A. Yes.

6 Q. Okay. You were driving this car 80 to
7 90 percent of the time; right?

8 A. Uh-huh.

9 Q. So, if you weren't in this car, you were
10 going to be in some other car. And you are going to
11 have to pay registration; right?

12 A. Correct.

13 Q. Okay. What is the -- what is the delta?
14 What is the difference --

15 A. Of what?

16 Q. -- between this -- let me finish my question.

17 A. Okay.

18 Q. You know where I am going. But let me finish
19 it for the record.

20 A. Go right ahead.

21 Q. What is the difference between the annual
22 registration fee for this Aston Martin and, for
23 example, the Mercedes that you were driving before?

24 A. I don't know the number, sir. I know it went

1 up. I don't know the answer to that.

2 Q. All right. And part of the reason you don't
3 know the number is you are not just seeking that delta
4 in this case.

5 You are asking this jury to award you the
6 entire registration fee for those years you had the
7 car; right?

8 A. Correct. I wouldn't have bought the car.

9 Q. And that's another example where you want the
10 car and you want it for free; right?

11 THE COURT: Objection to that sustained as being
12 argumentative. I am taking Mr. McJessey's, the words
13 out of his mouth.

14 MR. MC JESSY: Thank you, your Honor.

15 THE COURT: Disregard that last question, ladies
16 and gentlemen.

17 BY MR. ELLIOTT:

18 Q. Maintenance costs?

19 A. Yes, sir.

20 Q. You haven't provided this jury with any kind
21 of a listing of the maintenance costs (inaudible), all
22 that sort of stuff; is that right?

23 A. Not yet. We have not, no.

24 Q. So, right now, this jury has no way of

1 Q. Now, your six-month -- or your premium due
2 here is \$932. Do you have any idea how that was
3 calculated, how State Farm came up with that number?

4 A. I wasn't in communication with how they -- I
5 would imagine the topics you just said -- my driving
6 record, the value of the car. That's -- I would assume
7 those are part of how they qualify it. But that's -- I
8 am not an insurance agent. That's my guess.

9 Q. Do you know how much of that depends on the
10 value of the car versus the other factors?

11 A. I do not. No idea.

12 Q. I am sure you know -- you knew this question
13 was coming. But I will ask you.

14 What would your insurance bill have been if
15 you were just continuing to insure, for example, the
16 Mercedes that you had? Do you know?

17 A. I know it was less than this, Mr. Elliott. I
18 don't remember what it was. I don't know that number.

19 Q. And regardless of which car you were driving,
20 whether it's the Mercedes or this car or another Aston
21 Martin, you are going to be carrying some kind of
22 insurance; right?

23 A. Some form of insurance. Yes, I would.

24 Q. If you are driving a car every day, you have

1 got to have insurance; right?

2 A. I would, yes.

3 Q. And you are not just seeking the delta
4 between what your insurance would have been on the
5 other cars and this car. You are asking this jury to
6 award you the entire insurance policy; right?

7 A. I never would have purchased this car. You
8 are correct.

9 Q. But regardless of what car you had, if you
10 hadn't purchased this car, you would still be paying
11 insurance and still be picking up maintenance and still
12 be making monthly payments on some car; is that right?

13 A. I would say yes.

14 Q. Okay. And again, you haven't tried to figure
15 out those deltas. You are just asking this jury to
16 award you everything from dollar one; is that right?

17 A. I am asking to recoup all the damages I
18 incurred acquiring this car, based on the fraud that
19 Napleton's did with me, yes.

20 Q. I am not sure that squarely answered my
21 question.

22 You are asking this jury to award you the
23 entire amount of your insurance, your maintenance, your
24 car payments, and the like on this car; is that right?

1 A. Yes.

2 Q. Even though you drove it the limit of
3 25,000 miles; right?

4 A. Yes.

5 MR. ELLIOTT: Okay. Can we go to Page 2 of
6 this particular policy. I have just a couple of
7 questions. Nicole, can you blow up the top quarter of
8 the page, please.

9 BY MR. ELLIOTT:

10 Q. You said you were driving the car 80 to
11 90 percent of the time?

12 A. Yeah.

13 Q. Your insurance policy says that Christy is
14 the primary driver of that car.

15 A. I have no idea why it says that. Again, she
16 facilitated the policy. She set it up. So, I don't
17 know if they -- just because she is the one who
18 facilitated it, they put her down. But I was the
19 primary driver of that car.

20 Q. Right. So, when it says Christy is driving
21 the car, that's just not right; correct?

22 A. It doesn't look right to me if it's on this
23 document.

24 Q. Is it possible that Christy was listed on

1 (Whereupon, the following proceedings
2 were had in the presence and hearing of
3 the jury:)

4 THE COURT: Mr. Elliott, you may proceed.

5 MR. ELLIOTT: Thank you, your Honor.

6 BY MR. ELLIOTT:

7 Q. Mr. Wilson, on the damages, we talked about
8 the monthly car payments. We talked about the
9 maintenance costs on both this and other cars. We
10 talked about the annual registration fees for the state
11 of Arizona, and we talked about insurance.

12 Anything that we missed in terms of the
13 categories of damages you testified to earlier?

14 A. I don't believe so.

15 Q. Okay. And just to reiterate, on all four of
16 those categories, you're not looking for the difference
17 between what you would have paid if you had another car
18 and what you paid for this car? You're looking for the
19 whole amount, right?

20 A. I'm looking to pay for this car.

21 Q. All right. You were here when Mr. Isham
22 testified this morning, right, the gentleman on the
23 screen?

24 A. The majority. I had to step out to use the

1 factors that go to the point that I just addressed.

2 I think by -- We've cited to the Court -- and
3 I'm not going to go through all the cases -- but
4 numerous cases where on facts far less egregious than
5 this the courts have awarded punitive damages to the
6 plaintiffs and not limited in accordance with the civil
7 penalty guidelines that Mr. Elliott refers to which
8 have no bearing on this. They aren't relevant to the
9 Court's determination and the Court shouldn't consider
10 them.

11 I'm not going to address all of the points.
12 Most of the points that he had raised actually are
13 addressed in our response. So I -- but I did want to
14 raise the point about ignoring -- they seem to think
15 this is just so we told him it wasn't in an accident.
16 Big deal. That's -- that just shows utter and complete
17 disregard for the safety of the customers that they're
18 selling these vehicles to.

19 Getting back to --

20 THE COURT: Let me stop you for one second.

21 MR. MCJESSY: Sure.

22 THE COURT: Where in this record is there any
23 evidence that the car was unsafe?

24 MR. MCJESSY: No. I said, Your Honor, there's no

Peggy Cuda, CSR, #084-002818

1 evidence that the car wasn't repaired properly. But my
2 point is doesn't Mr. Wilson get to make that decision
3 whether he wants to drive a car that's been in an
4 accident that had the airbags replaced?

5 THE COURT: Sure.

6 MR. MCJESSY: That may not --

7 THE COURT: But your point --

8 MR. MCJESSY: That --

9 THE COURT: Go ahead.

10 MR. MCJESSY: Where improperly repaired items may
11 not manifest themselves for some period of time.

12 THE COURT: Okay. I understand the point. But I
13 don't think there's anything in this record that shows
14 that this car was at any time unsafe.

15 MR. MCJESSY: I -- And that's not the point. The
16 point is the complete disregard for allowing the
17 customer to make the decision as to whether they would
18 be comfortable driving this car.

19 THE COURT: Okay. Thank you. Go ahead.

20 MR. MCJESSY: All right. Taking a big step back
21 to where Mr. Elliott started, he said it's our burden
22 to show damages and we failed to account for the
23 expenses that Mr. Wilson would have had to pay
24 regardless of whether he bought this Aston Martin. Not

Peggy Cuda, CSR, #084-002818

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 17
(800.05 Fraud and Deceit—Damages)

If you decide for plaintiff Jeffrey Wilson on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate him for any of the following elements of damages proved by the evidence to have resulted from the conduct of defendant Napleton's Goldcoast Imports, Inc.

Plaintiff Jeffrey Wilson is entitled to have you consider three types of damages: out of pocket losses, compensatory damages for aggravation and inconvenience, and punitive damages.

Whether any of these elements of damages has been proved by the evidence is for you to determine.

Authority: IPI 800.05; *Gerill Corp. v. Jack L. Hargrove Builders*, 128 Ill.2d 179, 131 Ill.Dec. 155, 162-163 (1989), *cert. denied*, 493 U.S. 894 (1989); Restatement (Second) of Torts § 549 (1977); *Giammanco v. Giammanco*, 253 Ill. App. 3d 750, 763 (2nd Dist. 1993); *see also Brown v. Broadway Perryville Lumber Co.*, 156 Ill. App. 3d 16, 25 (2nd Dist. 1987); *Martin v. Allstate Ins. Co.*, 92 Ill. App. 3d 829, 835 (1st Dist. 1981) ("Generally, the measure of damages for fraud is such an amount as will compensate the plaintiff for the loss occasioned by fraud, or, as it has been expressed, the amount which plaintiff is actually out of pocket by reason of the transaction."); *Home Sav. & Loan Assn. v. Schneider*, 127 Ill. App. 3d 689, 694-695 (3rd Dist. 1984), *aff'd in part & rev'd in part on other grounds*, *Home Savings and Loan Ass'n of Joliet v. Schneider*, 108 Ill. 2d 277, 285-86 (1985); *Razor v. Hyundai Motor Am.*, 222 Ill. 2d 75, 83 (2006); *Galo Tan v. Boyke*, 156 Ill. App. 3d 49, 55 (2nd Dist. 1987) ("We additionally reject the defendant's argument that plaintiff's damages were not proximately caused by his misrepresentation. In an action for fraud, 'consequential damages proximately resulting from the fraud are recoverable.'"); *Vieweg v. Friedman*, 173 Ill. App. 3d 471, 476 (2nd Dist. 1988) (aggravation and inconvenience are, in certain circumstances, an element of compensatory damages); *McGrady v. Chrysler Motors Corp.*, 46 Ill. App. 3d 136, 137 ("The trier of fact 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.") (emphasis added); *Gehrett v. Chrysler Corp.*, 379 Ill. App. 3d 162, 180 (2d Dist. 2008) (observing that jury awarded \$15,750 to the plaintiff in fraud claim against dealership as consequential damages for aggravation and inconvenience); *Azimi v. Ford Motor Co.*, 977 F. Supp. 847, 853 (N.D. Ill. 1997); Restatement 2d of Torts, §§ 548(A) & 549(1)(b).

Given _____
 Given as modified _____
 Objection _____
 Refused _____
 Reserved _____

Plaintiff's Instruction No. 15: Non-IPI – Fraudulent Concealment – Principal's Failure To Inform Agent

Objection: There is an IPI instruction on this exact issue. *See* IPI 50.02 (Principal Sued But Not Agent – No Issue As To Agency). The Court should use IPI 50.02 instead of this instruction. Because the Court will be submitting the issue of punitive damages to the jury, the Court should not instruct the jury using IPI 50.11 (*see* IPI 800.07). In such event, IPI 50.02 provides the appropriate instruction regarding liability of a principal for acts of an agent. In addition, the decision cited by Plaintiff is inapposite. It stands for the proposition that the principal has a duty to inform a selling agent of a defect that is not readily discoverable where the “agent is employed to conduct *a single transaction*[.]” *See Heider v. Leewards Creative Crafts, Inc.*, 245 “Ill. App. 3d 258, 267 (2d Dist. 1993). Here, neither Galecki, nor Sobotko, was employed by Defendant for the purpose of conducting a single transaction.

Proposed Alternate: Defendant's Alternate Instruction No. 15Alt.

Plaintiff's Instruction No. 16: IPI 800.04 – Material Fact – Definition

Objection: None.

Plaintiff's Instruction No. 17: IPI 800.05 – Fraud and Deceit - Damages

Objection: Defendant has two main objections to this instruction. *First*, there should be an accompanying instruction that indicates that if the jury finds in favor of

Defendant on liability, it need not consider damages. An additional instruction is attached hereto. **Second**, this instruction does not faithfully follow IPI 800.05. IPI 800.05 contemplates that the instruction will list the different categories of damages sought by a Plaintiff. *See* IPI 800.05 (“Here insert the elements of recoverable damages which have a basis in the evidence.”). All of Plaintiff’s alleged damages (other than punitive damages) should be specifically described within the text of this instruction. Not specifically listing those categories of damages will simply confuse the jury.

In addition, Defendant contends that the correct measure of damages in a common law fraud case “where a buyer...has been misled about the quality of property” is the benefit-of-the-bargain rule, which assesses “the difference between the actual value of the property sold and the value of the property would have if the representations had been true.” *Giammanco v. Giammanco*, 253 Ill. App. 3d 750, 759 (2d Dist. 1993); *Gerill Corp. v. Jack L. Hargrove Builders*, 128 Ill. 2d 179, 196 (1989); *see also* IPI 800.05 at Notes (citing *Gerill Corp.*).

Proposed Alternate: Defendant’s Additional Instruction 17Alt should be provided in addition to any instruction on this point. Defendant proposes giving the jury Defendant’s Alternate Instruction 17Alt(1) in lieu of this Plaintiff’s proposed instruction because 17Alt(1) limits Plaintiff’s damages to benefit of the bargain damages. If the Court finds 17Alt(1) to be unacceptable because any instruction must include out-of-pocket damages, then Defendant tenders Defendant’s Alternate Instruction 17Alt(2), in the alternative.

ALTERNATE INSTRUCTION NO. 17Alt(1)
Fraud and Deceit – Damages
(Defendant’s Proposed Alternate To Plaintiff’s Instruction No. 17)

If you decide for Plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate him for any of the following elements of damages proved by the evidence to have resulted from the conduct of the defendant.

The difference between the actual value of the Aston Martin and the value the Aston Martin would have had if the representations had been true;

Whether any of these elements of damages have been proved by the evidence is for you to determine.

Defendant’s Alternate Instr. No. 17Alt(1)

Illinois Civil Pattern Jury Instruction 800.05 (modified); *Gerill Corp. v. Jack L. Hargrove Builders*, 128 Ill. 2d 179, 196 (1989) (“Under the benefit-of-the-bargain rule, which governs the damage computations in fraudulent misrepresentation cases, damages are determined by assessing the difference between the actual value of the property sold and the value the property would have if the representations had been true.”); *Giammanco v. Giammanco*, 253 Ill. App. 3d 750, 759 (2d Dist. 1993) (“The benefit-of-the-bargain rule best fits the most common fraud scenario where a buyer (or sometimes a lessee) has been misled about the quality of property[.]”).

_____ Given

_____ Refused

_____ Withdrawn

_____ Objection

ALTERNATE INSTRUCTION NO. 17Alt(2)
Fraud and Deceit – Damages
(Defendant’s Proposed Alternate To Plaintiff’s Instruction No. 17)

If you decide for Plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate him for any of the following elements of damages proved by the evidence to have resulted from the conduct of the defendant.

1. Plaintiff’s down payment on the Aston Martin;
2. Plaintiff’s monthly payments on the Aston Martin;
3. Plaintiff’s maintenance costs on the Aston Martin;
4. Plaintiff’s registration costs on the Aston Martin; and/or
5. Plaintiff’s insurance costs on the Aston Martin;

OR, as an alternative to the items listed above (and not in addition to the items listed above), you may award the following:

The difference between the actual value of the Aston Martin and the value the Aston Martin would have had if the representations had been true; and

Whether any of these elements of damages have been proved by the evidence is for you to determine.

Defendant’s Alternate Instr. No. 17Alt(2)

Illinois Civil Pattern Jury Instruction 800.05 (modified); *Gerill Corp. v. Jack L. Hargrove Builders*, 128 Ill. 2d 179, 196 (1989) (“Under the benefit-of-the-bargain rule, which governs the damage computations in fraudulent misrepresentation cases, damages are determined by assessing the difference between the actual value of the property sold and the value the property would have if the representations had been true.”); *Giammanco v. Giammanco*, 253 Ill. App. 3d 750, 759 (2d Dist. 1993) (“The benefit-of-the-bargain rule best fits the most common fraud scenario where a buyer (or sometimes a lessee) has been misled about the quality of property[.]”).

_____ Given

_____ Refused

_____ Withdrawn

_____ Objection