IN THE COURT OF APPEALS OF OHIO
FIRST APPELLATE DISTRICT
HAMILTON COUNTY

JEREMY WILLIAMS	COURT OF APPEALS CASE NO.: C1700511
PLAINTIFF-APPELLEE	TRIAL COURT CASE NO.: A1400300
- VS -	
SHARON WOODS COLLISION CENTER, INC.	APPEAL FROM THE COURT OF COMMON PLEAS, HAMILTON COUNTY
DEFENDANT-APPELLANT	

BRIEF OF APPELLEE JEREMY WILLIAMS

Elizabeth Ahern Wells (0078320)
Ronald L. Burdge (0015609)
8250 Washington Village Dr.
Dayton, Ohio 45458
Telephone: 937.432.9500
Facsimile: 937.432.9503
Email: Beth@BurdgeLaw.com

Counsel for Appellee
Jeremy Williams

Dennis A. Becker (0005511)
Becker & Cade
526 A Wars Corner Road
Loveland, Ohio 45140
Telephone: 513.683.2252
Facsimile: 513.683.2257
Email: dabecker@fuse.net

Counsel for Appellant
Sharon Woods Collision Center, Inc.

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II. Statement of the Case

This case is about a 2010 Nissan Maxima owned by Jeremy Williams ("JW") that was in an accident on October 13, 2012 and subsequently repaired by Sharon Woods Collision Center, Inc. ("SWCC") in a substandard, unworkmanlike, and shoddy manner. Amongst other things, SWCC used structural bonding adhesive to attach panels to JW's 2010 Nissan Maxima where structural bonding adhesive was not considered an approved repair method by Nissan, and was inconsistent with I-CAR guidelines, while at the same time welding the panel but failing to follow Nissan prescribed weld points– all making the vehicle unsafe because the crash worthiness purposely built into its design by Nissan had been altered.

A. Statement of Jurisdiction

This Court lacks jurisdiction because SWCC's notice of appeal was not timely filed. Pursuant to App.R. 4(A)(1), a party who wishes to appeal from an order that is final upon its entry shall file a notice of appeal within 30 days of that entry. Where a notice of appeal is not timely filed, the appellate court lacks jurisdiction over the appeal. *In re H.F.*, 120 Ohio St.3d 499, 2008 Ohio 6810, 900 N.E.2d 607, ¶17.

Here, SWCC's notice of appeal was not timely filed within 30 days of the trial court's October 17, 2016 final judgment entry. When a timely Civ.R. 59 motion for a new trial is filed, the motion tolls the time under App.R. 4(A)(1) until the trial court enters an order resolving the post-judgment motion. App.R. 4(B)(2). However, where an Civ.R. 59 motion is untimely, the motion does not toll the time under App.R. 4(A)(1). *Citibank (S.D.) N.A. v. Abu-Niaaj*, 2nd Dist. No. 2011CA45, 2012 Ohio 2099, P9; *Calim v. Precision Swage*, 3d Dist. No. 17-96-11, 1996 Ohio App. LEXIS 5532, *3; *Martin v. Janossy*, 4th Dist. Nos. 07CA24/07AP24, 2008 Ohio 5428, P8; *Finkbeiner v. Lotz*, 6th Dist. No. L-89-181, 1990 Ohio App. LEXIS 318, *2; *Pusey v.*

Bator, 7th Dist. 03 MA 239, 2005 Ohio 4691, P2; *In re Miller*, 9th Dist. No. 06CA0060, 2007 Ohio 1352, P11; *Fougere v. Estate of Fougere*, 10th Dist. No. 17AP-72, 2017 Ohio 7905, P12; *Filby v. Filby*, 11th Dist. No. 2016-G-0054, 2016 Ohio 1372, P10. Here, the trial court entered final judgment in this case on October 17, 2016. Thereafter, on November 14, 2016, SWCC filed a motion for new trial. T.D. 104. However, as outlined below in detail, SWCC's motion for new trial was untimely served. As such, the filing of SWCC's motion for new trial did not act to toll the time under App.R. 4(A)(1). And, since SWCC did not file its notice of appeal until September 20, 2017, the notice of appeal was not timely filed and this Court lacks jurisdiction.

Alternatively, even if SWCC's motion for new trial was timely, SWCC's notice of appeal was still not timely filed within 30 days after the trial court entered its denial of SWCC's motion on December 21, 2016. T.D. 107. When a timely Civ.R. 59 motion for a new trial is filed, the motion tolls the time under App.R. 4(A)(1) until the trial court enters an order resolving the post-judgment motion "upon the journal". App.R. 4(B)(2); App.R. 4(D); Civ.R. 58(A)(1). Here, the trial court entered judgment denying SWCC's motion for new trial on December 21, 2016, via journal entry. T.D. 107. However, SWCC did not file its notice of appeal until August 22, 2017. T.D. 112. As such, even if SWCC's motion for new trial had been timely, SWCC's notice of appeal was still not timely filed within 30 days after the trial court entered its denial of SWCC's motion on December 21, 2016 (T.D. 107) and dismissal of this appeal is warranted.

B. Procedural Posture

On January 17, 2014, JW filed his Complaint alleging that SWCC violated the Consumer Sales Practices Act ("CSPA"), RC 1345.01 *et seq.*, the Motor Vehicle Repair Rule ("MVRR"), OAC 109:4-3-13 *et seq.*, and the CSPA, and committed fraud. T.D. 2.

On May 31, 2016, the case proceeded to a six (6) day jury trial, where the jury returned a

verdict for JW on both his CSPA and MVRR claims. T.D. 51-91. On July 5, 2016, JW filed a Motion for Treble Damages, Statutory Damages, and Attorney Fees and Costs ("Motion for Damages and Attorney Fees"), as the prevailing party under the CSPA (and MVRR) and pursuant to RC 1345.09(B) and (F). T.D. 92. On September 27, 2016, after a hearing and supplemental briefing (see T.D. 95-98) the trial court granted JW's Motion for Damages and Attorney Fees, determined that JW was entitled to judgment against SWCC in the total amount of $105,462.59, and ordered Counsel to prepare a final judgment entry. T.D. 99. On October 17, 2016, the trial court entered final judgment in favor of JW in the total amount of $105,462.52, plus court costs and interest, and notice of final judgment was sent to all parties. T.D. 100.

On November 14, 2016, SWCC filed a Motion for a New Trial. T.D. 104. JW filed his brief in opposition on December 1, 2016. T.D. 105. On December 21, 2016, the trial court denied SWCC's motion, via a journal entry. T.D. 107. On August 22, 2017, the entry denying SWCC's motion for a new trial was re-filed and served at SWCC's request, and over JW's objection, as SWCC claimed it had never received notice of the decision. T.D. 110-112. On September 20, 2017, SWCC filed its notice of appeal. T.D. 114.

C. Statement of Facts

JW filed suit on January 17, 2014, relating to damages cause be unworkmanlike, improper, and sloppy repairs performed by SWCC to his 2010 Nissan Maxima. T.D. 2.

On May 31, 2016, the case proceeded to a six (6) day jury trial. Larry Montanez, Mike Anderson, and David Williams each testified on behalf of JW as expert witnesses at trial. And, as SWCC noted in its brief, they testified that the vehicle was not repaired in accordance with Nissan's specifications or I-CAR's guidelines, and that the vehicle was repaired in an unworkmanlike and sloppy manner. Larry Montanez testified that the cost to re-repair the vehicle

was $11,000. T.P. 308-309. Mike Anderson testified that the vehicle was worthless post repair. T.P. 44. And, David Williams testified that the diminished value of the vehicle due solely to the shoddy repair was $9,337.50. T.P. 467, 472-473.

The jury returned a verdict for JW on both of his CSPA claims. T.D. 51-91. The jury found that SWCC misrepresented the standard, quality, and benefits of repairs, misrepresented its certification with I-CAR, failed to perform repairs in a workmanlike manner and in accordance with prior representations, stalled and delayed and attempted to avoid a legal obligation, charged for labor based upon estimated time instead of actual time, failed to tender replaced parts, failed to provide an itemized list of repairs, represented that certain repairs were performed that were not, and returned the vehicle in an unsafe condition. T.D. 51-66, 68-70, 75-77.

III. Argument

FIRST ASSIGNMENT OF ERROR: The trial court erred in admitting testimony as to diminution in value, permitting such issue to be considered by the jury

First Issue Presented for Review: The trial court did not abuse its discretion when it permitted testimony regarding the subject vehicle's diminished value due to shoddy repairs in a CSPA case

Decisions regarding the admissibility of evidence are within the broad discretion of the trial court and will be upheld absent an abuse of discretion. *Beard v. Meridia Huron Hosp.*, 106 Ohio St. 3d 237, 239, 2005-Ohio-4787, *20, 834 N.E.2d 323, 326 (2005).

The trial court did not abuse its discretion when it permitted testimony regarding the vehicle's diminished value due to shoddy repairs in a CSPA case. The value of the vehicle post loss and pre-repair is completely irrelevant to the issue of damages for shoddy repairs in a CSPA case. While SWCC's analysis may be proper in tort case for diminished value caused by an auto accident, it is wholly inapplicable in a CSPA case for diminished value caused by shoddy repairs.

A question before the trial court was the measure of damages under the CSPA for a

shoddy repair case was where the cost of repair of the vehicle was in excess of the value of the vehicle. Since there was no caselaw on the issue, the trial court looked to the statute itself. The CSPA, at RC 1345.09(G), defines "actual economic damages" as "damages for direct, incidental, or consequential pecuniary losses resulting from a violation of...[the CSPA]". Pursuant to RC 1345.09(H), "nothing in this section shall preclude a consumer from also proceeding with a cause of action under any other theory of law." And, pursuant to RC 1345.13, remedies under the CSPA "are in addition to the remedies otherwise available for the same conduct under state and local law." Additionally, it is well settled that the CSPA is to be construed in favor of the consumer. *Einhorn v. Ford Motor Co.*, 48 Ohio St.3d 27, 29, 548 N.E.2d 933 (1990).

As JW argued at trial, "actual economic damages" under the CSPA could be the cost of re-repair, which was $11,000 according to Mr. Montanez (T.P. 308-309), or the diminished value due to improper, shoddy repairs, which was $9,337.50 according to David Williams (T.P. 467, 472-473). David Williams testified that he reached this figure by taking the total post repair diminished value of $17,415.00 (T.P. 473) and subtracting from it the inherent diminished value due solely to the accident, which was 30% of the $26,925 pre accident value (T.P. 467, 472-473) or $8,077.50. T.P. 457-460; 467, 472-473. The result was diminished value of $9,337.50 due solely to shoddy and improper repairs.

Notwithstanding, SWCC attempts to muddy the waters using the general term "diminished value" as it is used in a tort action to calculate damages caused by an auto accident. However, SWCC's argument ignores the fact that the general term "diminished value" takes on a different meaning as a measure of damages under different legal theories.

For instance, the term diminished value in a breach of warranty case, pursuant to RC 1302.88(B), is the difference at the time and place of acceptance between the value of the goods

accepted and the value they would have had if they had been as warranted.

The term diminished value takes on an entirely different meaning for the purposes of CSPA, where the diminished value due to shoddy repairs is derived from the total diminished value post repair less the inherent diminished value due solely to the accident.

Finally, "diminished value" in a tort action takes on yet a third meaning - a meaning inapplicable to a shoddy repair case under the CSPA. In a tort action, the goal is to determine the diminished value of the vehicle due to the accident– not the diminished value due to shoddy repairs. This is precisely why SWCC's analysis and citation to *Rakich* and *Falter* is flawed.

In *Rakich v. Anthem Blue Cross & Blue Shield*, 10th Dist. No. 06AP-1067, 2007 Ohio 3739, 172 Ohio App.3d 523, the plaintiff brought a claim for negligence seeking damages caused by an auto accident. The repairs were properly performed by the body shop, so the plaintiff was not seeking the diminished value due to shoddy repairs– there was none. Instead, the plaintiff was seeking recovery of the inherent diminished value due solely to the accident plus the cost of original repair. The Court held that the plaintiff's recovery should be limited to the difference in value of the vehicle immediately before and immediately after the accident. *Rakich*, however, can be easily distinguished from the case at bar. Here, JW sued the repair shop, not the tortfeasor or insurance company, here JW brought a claim under the CSPA, not a tort claim, and here repairs were ***not*** properly performed, but repairs were properly performed in *Rakich*. Thus, recovery of the inherent diminished value due solely to the accident plus the cost of the original repair against a repair shop makes absolutely no sense - instead, *subtracting* inherent diminished value due solely to the accident from the total diminished value post repair to reach the diminished value due to shoddy repairs is clearly the more appropriate and logical analysis.

Similarly, *Falter v. Toledo*, 169 Ohio St. 238, 158 N.E.2d 893 (1959) can also be

distinguished. In *Falter*, the plaintiff sued for negligence in an auto accident, and the Ohio Supreme Court expressed the general and alternative ways for determining "damages sustained by an automobile in a collision". *Falter v. Toledo*, at 240. Here, JW did not seek damages sustained by an automobile in a collision. Instead, he sought damages sustained due to shoddy collision repairs. In fact, David Williams specifically excluded the inherent diminished value due solely to the accident from his diminished value calculations.

Therefore, SWCC's formula is wholly inapplicable for calculating diminished value in a CSPA case seeking damages for shoddy repair, the trial court did not abuse its discretion, and this Court should AFFIRM.

Second Issue Presented for Review: SWCC's motion for directed verdict on the issue of diminished value was properly denied

A motion for directed verdict involves an issue of law regarding the determination of the sufficiency of evidence to support judgment and is subject to de novo review, and where reasonable minds could reach different conclusions, the motion must be denied. *Grau v. Kleinschmidt*, 31 Ohio St.3d 84, 90, 31 Ohio B. 250, 509 N.E.2d 399 (1987).

The trial court properly denied SWCC's motion for directed verdict on the issue of diminished value. As outlined above, "actual economic damages" under the CSPA could be the cost of re-repair, which was $11,000 according to Mr. Montanez, or the diminished value due solely to improper, shoddy repairs, which was $12,190.50 according to David Williams. Thus, JW presented evidence sufficient to prove diminished value due to shoddy repairs in a CSPA case. Alternatively, any error was harmless because JW also presented alternative damages under the CSPA, in the form of the cost of re-repair. See T.P. 308-309.

Therefore, the trial court properly denied SWCC's motion for directed verdict on the

issue of diminished value. Alternatively, any error was harmless because JW also presented evidence of alternative damages under the CSPA. Either way, this Court should AFFIRM.

SECOND ASSIGNMENT OF ERROR: The Trial Court erred in awarding attorney fees and expenses for services and costs requested.

First Issue Presented for Review: The trial court did not abuse its discretion when it awarded JW full recovery of attorney fees and litigation costs sought as a prevailing party under the CSPA

A decision whether to award attorney fees under the CSPA is within the sound discretion of the trial court. *Bittner v. Tri-County Toyota* (1991), 58 Ohio St.3d 143, 146. As such, a trial court will not be reversed absent an abuse of discretion. *Id.*

The trial court did not abuse its discretion when it awarded JW full recovery of the attorney fees and litigation costs sought as a prevailing party under the CSPA.

A trial court may award reasonable attorney fees to a consumer where the consumer is the *prevailing party* and the supplier has *knowingly* committed an act or practice in violation of the CSPA. RC 1345.09(F)(2); *Einhorn v. Beau Townsend Ford, Inc.* (1990) 48 Ohio St.3d 27. Here, JW was the prevailing party as to both of his claims brought under the CSPA. T.D. 72, 78; see T.D. 99, at 8. And, the jury found that SWCC knowingly committed an act or practice in violation of the CSPA. T.D. 81.

The Supreme Court of Ohio has detailed the proper procedure to be followed by trial courts when determining the reasonable attorney fees to be awarded. *Bittner v. Tri-County Toyota* (1991), 58 Ohio St.3d 143, 145. According to the Supreme Court, "the trial court should first calculate the number of hours reasonably expended on the case times an hourly fee, and then may modify that calculation by application of the factors listed in DR 2-106(B)." *Id.* This procedure is referred to as the "lodestar" process and results in a presumptively reasonable fee. *Simmons v. BVM, Inc.*, 1995 WL 517032, 3 (Ohio App. 8 Dist., 1995); *Turner v. Progressive*

Corp.,1999 WL 980395, 2 (Ohio App. 8 Dist., 1999). The amount of attorney fees awarded under the CSPA need not bear a direct relationship to the dollar amount of a settlement between the supplier and the consumer. *Bittner*, at 144. And, the burden of proof is on the opponent of a fee request to present specific evidence that a lower amount of fees is appropriate. *US Football League v Natl Football League*, 887 F.2d 408, 413 (2d Cir. 1989); *Gates v Deukmejian*, 987 F.2d 1392, 1397-98 (9th Cir. 1992); *Brinker v Giuffrida*, 798 F.2d 661, 668 (3d Cir. 1986).

As the trial court noted in its Decision on Plaintiff's Motion for Damages and Attorney Fees, Counsel for JW provided an extensive itemized listing of the hours and expenses and hourly rates applied in calculating the attorney fees under the lodestar process (T.D. 99, at 7; see T.D. 92, Exhibits 11-17) and SWCC failed to challenge the reasonableness of the attorney fees or costs (T.D. 99, at 7, see T.D. 93, 97). The trial court also noted that JW's Counsel was highly successful in her pursuit of the claims and that the prosecution of the case involved complex and detailed factual issues. T.D. 99, at 9. Thus, the trial court determined that the attorney fees and litigation costs sought were reasonable. T.D. 99, at 7.

Additionally, where the time spent is not easily separated and the facts are entwined, a trial court may award attorney fees for all time reasonably spent pursuing all claims. *Bryant v. Walt Sweeney Auto, Inc.*, 1st Dist. Hamilton Nos. C-010395, C-010404, 2002-Ohio-2577 (May 31, 2002); *Parker v. I & F. Insulation Co., Inc.*, 1st Dist. Hamilton No. C-960602, 1998 Ohio App. LEXIS 1187 (May 27, 1998); *Doe v. Cuddy*, 21 Ohio App.3d 270 (1st Dist. 1985). Here, JW argued and the trial court held that the facts were so entwined and the claims stemmed from a common core of facts and related legal theories such that an award of the full amount of attorney fees and litigation costs sought was warranted. T.D. 99, at 8; T.D. 92, at 8-9; T.D. 98, at 11-12.

Notwithstanding, SWCC argues that where a consumer is a prevailing party under his

CSPA claim, he can only recover his attorney fees and costs for the specific and separate acts or practices which violated the CSPA, and that it is the duty of the consumer attorney to separate his or her time spent between each and every separate violation alleged. Not only would this be an impossible task, but SWCC's argument is also inconsistent with the liberal construction of the CSPA, the purpose of the fee shifting provision of the CSPA, and a plain reading of the CSPA.

The CSPA "is a remedial law which is designed to compensate for traditional consumer remedies and so must be liberally construed" in favor of the consumer. *Einhorn*, at 29. Since recoveries under the CSPA are generally small and insufficient to cover attorney fees, many consumers would be persuaded not to pursue their rights under the CSPA in court were it not for the fee shifting nature of the Act. See *Einhorn*, at 30. The legislative purpose of the attorney fees portion of the CSPA is "to provide strong and effective remedies, both public and private, to assure that consumers will recover any damages caused by such acts and practices, and to eliminate any monetary incentives for suppliers to engage in such acts and practices." *Einhorn*, at 30 (citing 137 Ohio Laws, Part II, 3219). Awarding attorney fees under the CSPA allows for consumers to obtain relief under the Act and also benefits the community in that it deters violations of the Act by other suppliers. *Bittner*, at 268. For the same reasons, "[p]rohibiting private attorneys from recovering for the time that they spend on a consumer protection case undermines both the purpose and the deterrent effect of the Act." *Bittner*, at 144.

Further, a plain reading of the CSPA reveals that when a supplier knowingly violates the CSPA, a consumer is entitled to attorney fees and costs and no specific finding as to each and every violation need be made. Pursuant to RC 1345.09(F):

> The court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed...if [t]he supplier has knowingly committed ***an act or practice*** that violates this chapter.

Here, the jury found that SWCC knowingly violated the CSPA. T.D. 81. That finding alone was sufficient to entitle SWCC to recovery of reasonable attorney fees and litigation costs expended for recovery of all CSPA violations, under a plain reading of the CSPA. See T.P. 99, at 8.

Therefore, the trial court did not abuse its discretion and this Court should AFFIRM.

THIRD ASSIGNMENT OF ERROR: The Trial Court erroneously denied Appellant's Motion for New Trial

First Issue Presented for Review: The trial court properly denied SWCC's motion for a new trial because the motion was not timely served, and SWCC failed to establish grounds under Civ.R. 59(A)(2) or Civ.R. 59(A)(8)

In reviewing a trial court's decision regarding a motion for new trial, we use the abuse of discretion standard. *Sharp v. Norfolk & Western Railway Co.*, 72 Ohio St.3d 307, 313, 1995-Ohio-224, 649 N.E.2d 1219, 1223 (1995).

First, SWCC's motion for new trial was not timely served. Pursuant to Civ.R. 59(B), a motion for a new trial ***must*** be served not later than twenty-eight (28) days after the entry of the judgment. A trial court may not consider an untimely motion for a new trial, under Civ.R. 59. *Mannix v. DCB Serv.*, 2nd Dist. Montgomery No. 19910, 2004-Ohio-6672, *12 (Nov. 24, 2004)(citing *Snow v. Brown*, 10th Dist. Franklin No. 99AP-1234, 2000 Ohio App. LEXIS 4398 (Sept. 26, 2000)). And, Civ.R. 6 does not apply to extend by three days the time for filing a Civ.R. 59 motion for a new trial. *Harvey v. Hwang*, 103 Ohio St. 3d 16, 18 (2004).

Here, judgment was entered on September 27, 2016. T.D. 99. Judgement is "entered" for the purposes of Civ.R. 59 where an order resolves all claims between all parties. *Horner v. Toledo Hosp.*, 94 Ohio App. 3d 282, 288 (6th Dist. 1993)(citing Civ.R. 54(B).; R.C. 2505.02; Civ.R. 54(A) and (B); *Noble v. Colwell*, 44 Ohio St.3d 92, 540 N.E.2d 1381 (1989); *Lantsberry v. Tilley Lamp Co.*, 27 Ohio St.2d 303, 306, 56 O.O.2d 179, 181, 272 N.E.2d 127, 129 (1971)).

Here, judgment was "entered" for the purposes of Civ.R. 59 on September 27, 2016 when the Court issued its decision on JW's motion for damages and attorney fees, because the decision resolved all claims between the parties. T.D. 99.

However, SWCC did not serve its motion within 28 days of entry of judgment. A motion for a new trial is "served" for the purposes of Civ.R. 59 by compliance with Civ.R. 5(B). See *Gould v. Gould*, 12th Dist. Butler No. CA2004-01-010, 2005-Ohio-416, *6-7 (Feb. 7, 2005). Pursuant to Civ.R. 5(B),

> If a party is represented by an attorney, service under this rule must be made on the attorney...A document is served under this rule by:...(c) mailing it to the person's last known address by United States mail, in which event service is complete upon mailing.

Here, the face of SWCC's own certificate of service reveals that its motion was not served by mail upon Counsel for JW until November 12, 2016. T.D. 104, at 4.

Even if judgment was not entered until October 17, 2016 (T.D. 100), SWCC's motion was still not timely because SWCC did not serve Counsel for JW by mail at Counsel for JW's "last known address". While a certificate of service creates a presumption of service where Civ.R. 5 has been followed, that presumption is rebuttable by presentation of sufficient evidence. See *Babbitt & Weis, LLP v. Flynn*, 10th Dist. Franklin No. 11AP-2, 2011-Ohio-4835, ¶ 6 (Sep. 22, 2011); *Poorman v. Ohio Adult Parole Authority*, 4th Dist. Pickaway No. 01CA16, 2002-Ohio-1059, 2002 Ohio App. LEXIS 1061, *5 (Mar. 6, 2002)(citing *Potter v. Troy*, 78 Ohio App. 3d 372, 377, 604 N.E. 2d 828 (2nd Dist. 1992)). Here, Counsel for JW filed a notice of change of address on March 21, 2016, listing Counsel's new address. T.D. 38. However, SWCC served JW at Counsel's old address. T.D. 104. In fact, Counsel for JW only stumbled upon the motion when her office checked the online docket on November 16, 2016. T.D. 105, at 4. Therefore, the

earliest that SWCC arguably "served" its motion was November 16, 2016 – 30 days after the filing of the October 17, 2016 Final Judgment Entry. Thus, SWCC's motion was still untimely.

Second, even if SWCC's motion was timely served, SWCC was still not entitled to a new trial under Civ.R. 59(A)(2), because SWCC did not commit any "misconduct" and the alleged "misconduct" did not occur during the trial.

Pursuant to Civ.R. 59(A)(2), a new trial may be granted due to misconduct of the prevailing party. The decision whether alleged misconduct sufficiently tainted the verdict with passion or prejudice so as to warrant a new trial lies within the trial court's sound discretion. *Wright v. Suzuki Motor Corp.*, 4th Dist. Meigs No. 03CA2, 03CA3 & 03CA4, 2005-Ohio-3494, *119 (Jun. 27, 2005)(citing *Lance v. Leohr*, 9 Ohio App.3d 297, 298, 9 Ohio B. 544, 459 N.E.2d 1315 (9th Dist. 1983)). And, "before a reviewing court will disturb the exercise of the trial court's discretion, the record must clearly demonstrate highly improper argument by counsel which tends to inflame the jury." *Wright*, at *119 (quoting *Lance*, at 298; *Stephens v. Vick Express, Inc.*, 12th Dist. Butler Nos. CA2002-03-066, CA2002-03-074, 2003-Ohio-1611 (Mar. 31, 2003)).

Here, JW is not guilty of any misconduct. SWCC alleged that "[JW] had a duty to disclose the condition of the vehicle" and "appears to have sold the vehicle without disclosure of such fact." T.D. 104, at 2-3. This statement is false and not based upon any evidence whatsoever. Instead, JW sold the 2010 Nissan Maxima to Jeff Wyler in Fairfield, Ohio on June 18, 2016: (1) with disclosure of the vehicle's unsafe condition and unsafe repairs, (2) with disclosure of the pending lawsuit, and (3) in the same condition as it was after Mr. Montanez inspected– disassembled in the rear, with trim pieces still removed and in the trunk, and with the body panel weld testing performed by Mr. Montanez still clearly visible. T.D. 105, at 5. In fact, JW even left the vehicle at the dealer overnight to allow them time to properly inspect it before providing him

with a value for trade-in. T.D. 105, at 5. Additionally, the alleged "misconduct" could not have tainted the jury verdict, since it supposedly occurred after trial. Further, the alleged "misconduct" could not have prejudiced SWCC because JW had no control over Jeff Wyler's actions and made a full disclosure of the vehicle's condition and the existence of the lawsuit. See T.D. 105, at 5. Finally, the time to inspect the vehicle in response to the expert opinions of Mr. Montanez or Mr. Anderson was before trial, and SWCC's poor decision not to do so does warrant a second bite at the apple. See *Fennell v. City of Columbiana*, 7th Dist. Columbiana No. 09 CO 42, 2010-Ohio-4242, *24 (Sept. 7, 2010).

Third, even if SWCC's motion had been timely served, SWCC was still not entitled to a new trial under Civ.R. 59(A)(8), because SWCC's proposed "evidence" is not "newly discovered" within the meaning of Civ.R. 59(A)(8).

Pursuant to Civ.R. 59(A)(8), a new trial may be granted due to newly discovered evidence which with reasonable diligence the moving party could not have discovered and produced at trial. However, where the evidence did not even exist until after trial, the evidence is not "newly discovered" within the meaning of Civ.R. 59(A)(8). *State v. Petro*, 148 Ohio St. 505, 506, 76 N.E.2d 370 (1947); *Hutt v. Young*, 47 Ohio App. 390, 191 N.E. 879 (5th Dist. 1934); *State v. Price*, 7th Dist. Mahoning No. 92CA72, 1999 Ohio App. LEXIS 2836 (June 11, 1999); *Bachtel v. Bachtel*, 7th Dist. Mahoning No. 03 MA 75, 2004 Ohio App. LEXIS 2488, *16-17 (May 28, 2004); *Schwenk v. Schwenk*, 2 Ohio App.3d 250, 2 Ohio B. 272, 441 N.E.2d 631 (8th Dist. 1982); *Assad v. State*, 1952 Ohio App. LEXIS 870, *4, 127 N.E.2d 631 (10th Dist. 1952); *Hails v. Hails*, 11th Dist. Lake No. 92-L-182, 1993 Ohio App. LEXIS 4814, *3 (Sept. 30, 1993); *Gregory v. Kottman-Gregory*, 12th Dist. Madison No. CA2004-11-039, CA2004-11-041, 2005-Ohio-6558, *26 (Dec. 12, 2005); *Payne v. Cartee*, 111 Ohio App. 3d 580, 593 (4th Dist.

1996); *Zimmerman v. Zimmerman*, 12th Dist. Clermont No. CA89-08-069, 1990 Ohio App. LEXIS 2472, *7 (Jun. 18, 1990). In fact, new conditions will neither change the result of a past trial nor are they material to the issues at trial. *Bachtel*, at *16-17.

Therefore, the trial court did not abuse its discretion and this Court should AFFIRM.

Second Issue Presented for Review: Denial of SWCC's motion for a new trial was not a denial of due process because SWCC never asked for a hearing

SWCC was not denied due process by the trial court's denial of its motion for a new trial because the motion had no legal or factual basis and was not timely served. Moreover, SWCC never asked for an hearing on the motion. Pursuant to Hamilton County Local Rule 14(C), no civil motions will be set for oral argument unless a conspicuous written request for oral argument is made or the trial court determines that oral argument is necessary. Here, the record is deplete of any request for oral argument on SWCC's motion. Thus, SWCC was not denied due process and this Court should AFFIRM.

IV. Conclusion

This Court lacks jurisdiction because SWCC's notice of appeal was not timely filed, so dismissal of the appeal is proper. If this Court determines that it has jurisdiction, then the trial court did not abuse its discretion by permitting testimony regarding the subject vehicle's diminished value due to shoddy repairs in a CSPA case, properly denied SWCC's motion for directed verdict on damages, did not abuse its discretion in awarding attorney fees and litigation costs sought by JW as a prevailing party under the CSPA, and did not abuse its discretion by denying SWCC's late and baseless motion for new trial. Therefore, JW respectfully requests that this Court dismiss this appeal for lack of jurisdiction. Alternatively, JW respectfully requests that this Court AFFIRM the trial court's decisions on all issues.

Respectfully submitted,

ELIZABETH AHERN WELLS (0078320)
RONALD L. BURDGE (0015609)
Attorneys for Appellee
8250 Washington Village Drive
Dayton, Ohio 45459
Telephone: 937.432.9500
Facsimile: 937.432.9503
Email: Ron@Burdgelaw.com
Beth@Burdgelaw.com

www.OhioLemonLaw.com

www.OhioConsumerLaw.com

Certificate of Service

I hereby certify that a copy the foregoing has been served upon **Dennis A. Becker**, Attorney for Appellant Sharon Woods Collision Center, Inc., 526 A Wards Corner Rd., Loveland, Ohio 45140; by ordinary mail on February 26, 2018.

ELIZABETH AHERN WELLS (0078320)
RONALD L. BURDGE (0015609)
Attorneys for Appellee

Appendix 1

ENTERED
AUG 03 2016

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

D115278001

JEREMY WILLIAMS, Plaintiff	:	CASE NO. A1400300
	:	JUDGE MARK SCHWEIKERT (Retired sitting by Assignment)
v.	:	
SHARON WOODS COLLISION CENTER, INC., Defendant	:	COURTS REQUEST FOR ADDITIONAL BRIEFING BY THE PARTIES RELATIVE TO PLAINTIFF'S MOTION FOR TREBLE DAMAGES, STATUTORY DAMAGES, AND ATTORNEY FEES

At the hearing on the Plaintiff's motion for treble damages, statutory damages, and attorney fees, there were multiple disputes raised as to the facts and the law applicable to this case. The Court advised the parties that additional briefing may be necessary once the Court digested the positions being addressed. Having reviewed the transcript of said hearing and the authorities cited by the parties, the Court requests the parties to further brief the following:

1. Please identify the defendant's acts and factual circumstances established at trial upon which the jury based its determination relative to each finding for which the Plaintiff prevailed, and particularly as to the claims asserted in this motion. These factors to be set forth in the judgment entry for the purpose of filing with the Attorney General. Also if the *Marrone* case does apply here, these may be the "essential circumstances or conditions" that need to be compared for similarity.
2. The *Marrone* case and similar cases cited by Defendant in support of the "substantially similar" requirement are all class actions. Defendant indicated in argument that there are cases where *Marrone* has been applied to individual actions for the purpose of limiting treble damages. Please cite to those individual action cases and identify how they might be instructive or not in this case.
3. Regarding the award of attorney fees, both parties point to the *Bittner* case for guidance in this case though regarding different points of law. Defendant argues that *Bittner* requires this Court to examine the fees application separating out the services provided for the claims that were found to be knowingly conducted from those that were not identified as such by the jury. However, *Bittner* relies on *Hensley v. Eckerhart*, a US Supreme Court case dealing with a civil rights action which also encourages the courts to consider "the degree of success obtained" and states, "Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation and indeed in some cases of exceptional success an enhanced award may be justified. In these circumstances the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit." In the Bittner case the Court rejected the contention that the amount of attorney fees awarded pursuant to R.C. 1345.09 (F) must bear a direct relationship to the dollar

amount of the settlement" or arguably the amount of the jury's award in this case. While suggesting that the court might separate out the breach of contract claim from the CSPA claims the *Bittner* court went on to point out the importance of the "results obtained" in determining the reasonableness of the lodestar amount. Please cite this Court to cases where such fee separation has been upheld, clarified, or reversed especially as between multiple CSPA claims which if they were found to be knowingly conducted would have been entitled to attorney fees.

The Court will consider responses received by August 26, 2016.

Judge Mark R. Schweikert
Retired, Sitting by Assignment

Copies to:

Ronald L. Burge
Elizabeth Ahern Wells
Attorneys for Plaintiff

Dennis A. Becker
Attorney for Defendant

Appendix 2

D115831669

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

ENTERED
SEP 27 2016

JEREMY WILLIAMS, Plaintiff	:	CASE NO. A1400300
	:	JUDGE MARK SCHWEIKERT (Retired sitting by Assignment)
v.	:	
SHARON WOODS COLLISION CENTER, INC., Defendant	:	DECISION ON PLAINTIFF'S MOTION FOR TREBLE DAMAGES, AND ATTORNEY FEES AND COSTS

This matter came before the Court following a jury trial wherein the jury returned a verdict for Plaintiff in the total amount of $8,079.78 and responded affirmatively to interrogatories that the Defendant had violated the Consumer Sales Practices Act ("CSPA") by committing certain acts in violation of Revised Code section 1345.01 *et seq,* and had violated the Motor Vehicle Repair Rule ("MVRR") by committing certain acts in violation of OAC 109:4-3-13 *et seq.* The Plaintiff has by motion requested the Court to grant the following:

1. To treble $4,894.76 of the Jury's $8,079.78 actual damages award against Defendant for violations of the CSPA for a total amount of $17,869.30 in actual and trebled damages; and
2. To award Plaintiff an additional $600 in statutory damages against Defendant for violation of the MVRR and the CSPA; and
3. To award reasonable attorney fees of $57,916.75 and reasonable litigation costs of $22,059.83, plus additional fees and costs incurred relating to the prosecution of the fee petition in the amount of $6,750.04 and an enhancement under the decision in *Bittner v. Tri-County Toyota, Inc.,* (1991) 58 Ohio St.3d 143; and
4. To enter final judgment against Defendant for violation of the CSPA and the MVRR.

Treble Damages

Plaintiff claims to be entitled to treble damages for three separate violations of the CSPA by Defendant as determined by the jury in interrogatories 5/5A, 6/6A, and 8/8A where there were economic awards of $3,302.25, $166.67, and $1,425.84 respectively. Revised Code section 1345.09 (B) provides for the consumer to opt for "three times the amount of the consumer's actual economic damages or two hundred dollars, whichever is greater" "where the violation was an act or practice declared to be deceptive or unconscionable by rule adopted under division (B)(2) of section 1345.05 of the Revised Code before the consumer transaction on which the action is based, or an act or practice determined by a court of this state to violate section 1345.02, 1345.03 or 1345.031 of the revised code and committed after the decision containing the determination has been made available for public inspection under division (A)(3) of section 1345.05 of the revised code"

Impact of Marrone - Defendant argues that in accordance with *Marrone v. Phillip Morris USA, Inc.*, 110 Ohio St.3d 5, 2006-Ohio-2869, the alleged violation must be "substantially similar" to an act or practice previously declared to be deceptive by one of the methods identified in 1345.09 (B). The *Marrone* case and those citing it are all class action cases. This is important because, in Ohio, under R.C. section 1345.09 there is no provision to file a class action under the CSPA unless you meet the provisions of 1345.09 (B). To the contrary, a consumer may bring an "individual action" under R.C. 1345.09 (A). Section (B) serves to allow a consumer in an individual action to recover treble damages if the act or practice alleged meets the conditions outlined. Therefore under section (A) of R.C. section 1345.09, if the alleged act or practice is found to be one that is prohibited by R.C. section 1345.02, 1345.03, or 1345.031 it is a violation "*per se*" as the court instructed pursuant to OJI section CV 521.01 and consistent with the

Defendant's proposed jury instructions. Under section (B) of R.C. 1345.09, the consumer can recover treble damages if the "violation", so determined under section (A), falls within the classes of violations previously determined to be deceptive. Presumably, the increased damages are awarded because the Defendant was or should have been aware that its acts were "violations" of the law. The *Marrone* case discusses this in terms of "sufficient notice" to the supplier. This court is not aware of a case where the Marrone analysis is applied to a "individual action" by a consumer. However, the rationale is instructive. Accordingly, in considering the Plaintiff's claims for treble damages this court will consider if the Defendant could reasonably be expected to have sufficient notice that its acts were a violation of the law. In *Maronne* the court said, "Substantial similarity" means a similarity not in every detail, but in essential circumstances or conditions.

In order to proceed with its analysis the court must identify the operative facts, the essential circumstances or conditions, leading to the determination of the jury in each of the relevant interrogatories.

This case evolves from an auto accident on October 13, 2012 when Plaintiff's vehicle was involved in an auto accident and his 2010 Nissan Maxima was damaged in both the front and rear portions of the vehicle. The focus of the Plaintiff's claims is on the repairs that were made by the Defendant to the rear portions of the vehicle.

Plaintiff claims that the jury's determination in interrogatory number 5, that the Defendant failed "to perform repairs in a workmanlike manner" is a violation of the CSPA, R.C. 1345.02 (B)(2), and such has repeatedly been determined by courts of this state prior to the date of the acts in this case. In the memorandum accompanying his motion Plaintiff cites multiple cases recorded in the public inspection files (PIF) of the Ohio Attorney General, certified copies

of which were provided to the court by the Plaintiff. "Performing repairs in a workmanlike manner" is a standard that can be applied very broadly to any number of repair types. It would seem nonsensical for the law to require that a specific unworkmanlike repair be first litigated and recorded before treble damages would incur. Such a holding would deny each first claimant the benefit of treble damages and provide the poor performing supplier protection in the details of the conduct. For example, in this case the Plaintiff cites the following facts to support this claim:

- The evidence showed that repairs to the rear body panel were not performed in a workmanlike manner because: (1) they were not performed according to the manufacturer's specifications because structural bonding adhesive was used where not approved by the manufacturer, Nissan, (2) the welds were extremely poor, not in locations prescribed by Nissan, and the wrong types of welds, and (3) improper corrosion protection was applied.
- The evidence showed that repairs to the trunk floor were not performed in a workmanlike manner because: (1) sprayable seam sealer was used instead of brushable, pumpable seam sealer, and (3) the seam sealer was not refinished.
- The evidence showed that the repairs were all around sloppy work.
- The evidence showed that sloppy, shoddy, and improper repairs to the rear body panel made the vehicle unsafe to drive.

Should the supplier be able to escape treble damages for unworkmanlike repairs if no prior case has been based on poor welds, or inappropriate use of structural bonding adhesive, or improper application of corrosion protection? This court finds that such a level of similarity need not be found. The PIF decisions cited by Plaintiff, *Snider v. Conley's Service* PIF No. 1902; *State ex rel. Fisher v. Tanthorey* PIF file No. 1303; *State ex. Rel. Montgomery v. White dba Harvest Auto*

Body Shop PIF file no. 1666; provide sufficient notice to suppliers of consumer services in the state of Ohio that failure to provide consumer services in a workmanlike manner is a per se violation of the CSPA and subject to trebling of damages found by the trier of fact regardless of the specific conduct of the supplier.

Plaintiff claims that the jury's determination in interrogatory number 6, that the Defendant stalled and delayed and avoided or attempted to avoid a legal obligation is a violation of the CSPA, and such has repeatedly been determined by courts of this state prior to the date of the acts in this case. Plaintiff cites his own testimony at trial, that Mr. Burckard, the agent of Defendant, stalled and delayed in resolving the matter post repair and pre-suit, as the factual basis for this claim. Again stalling, delaying, and generally avoiding or attempting to avoid a legal obligation is a standard that can be applied very broadly to any number of consumer services. The PIF decisions cited by Plaintiff provide sufficient notice to suppliers of consumer services in the state of Ohio that where a supplier has legal obligations to consumers, and where there are no valid legal defenses for not performing those obligations, a supplier who avoids or attempts to avoid those obligations or stalls or delays performing those obligations commits a deceptive act and practice and a per se violation of the CSPA and is subject to trebleing of damages found by the trier of fact regardless of the specific conduct of the supplier or if the supplier is one of vehicle repair as the case herein, or household appliances, *State ex rel. Brown v. Lyons* PIF 10000304 ; or heating and air conditioning, *State ex rel. Brown v. Spears* PIF No. 10000403.

Plaintiff claims that the jury's determination in interrogatory number 8, that the Defendant repaired the Plaintiff's vehicle and returned it to the Plaintiff in an unsafe condition and such has repeatedly been determined by courts of this state prior to the date of the acts in this

case. In this case expert evidence showed the improper installation and repairs to the rear body panel rendered the vehicle unsafe to drive when it was returned to the Plaintiff. Plaintiff cites *Merrett v Gue* PIF No. 10002468 the court specifically found that "releasing the vehicle to the consumer, and knowingly allowing him to drive it in a condition which is dangerous to the consumer and to others on the road" is a violation of the CSPA.

Based on the above analysis the Plaintiff is entitled to treble damages based on the jury's determinations in interrogatories 5/5A ($3,302.25X 3 = $9,906.75), 6/6A ($166.67 X 3 = $350.01), and 8/8A ($1425.84 X 3 = $4277.52).

Attorney Fees

Plaintiff requests that this court award reasonable attorney fees in the amount of $57,916.75, and reasonable litigation costs in the amount of $22,059.83, plus additional fees and costs incurred relating to the prosecution of the fee petition in the amount of $6,750.04, and a full enhancement consistent with the factors listed in DR2-106(B) and the process outlined in *Bittner v. Tricounty Toyota, Inc.,* 58 Ohio St.3d 143(1991). Both the Plaintiff and Defense cite the *Bittner* case as the current law regarding attorney fee awards in CSPA cases such as this.

The total jury award in this case was $8,079.78. At first glance one might think that the Plaintiff's request of a total of $86,726.62 in fees and costs is an outrageous sum in relationship to the jury award. However, in the *Bitter* case, Chief Justice Moyer discarded that concern immediately stating, "At the outset, we reject the contention that the amount of attorney fees awarded pursuant to R.C. 1345.09(F) must bear a direct relationship to the dollar amount of the settlement, between the consumer and the supplier. The Act was amended in 1978 to include the payment of attorney fees '***to prevent unfair, deceptive, and unconscionable acts and practices, to provide strong and effective remedies, both public and private, to assure that consumers will

recover any damages caused by such acts and practices, and to eliminate any monetary incentives for suppliers to engage in such acts and practices.'" He also said, "Prohibiting private attorneys from recovering for the time they expend on a consumer protection case undermines both the purpose and deterrent effect of the Act" Rather, the *Bittner* court instructed that the proper process to determine an appropriate amount is to begin by determining the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. Then that amount should be adjusted "upward or downward" based on the degree of success of the prevailing party not synonymous with amount of recovery, deductions for any distinct unsuccessful claims where the fees should not be awarded, and then a possible adjustment by application of the factors listed in DR2-106(B).

Plaintiff's counsel has provided the court with an extensive itemized listing of the hours and expenses and hourly rates applied in her calculation of her fees and expenses. The court has reviewed these and lacking any challenges from the defendant, they appear reasonable.

The defendant does challenge the requested amount by insisting that the only claims for which fees can be awarded are for those claims where the jury found that the defendant acted knowingly. This challenge is based on the R.C. 1345.09 (F) which, as applied to this case, provides that attorney fees can only be awarded if, "the supplier has knowingly committed an act or practice that violates this chapter." Defendant correctly argues that the *Bittner* court instructs this court to make such an adjustment and that the Plaintiff's counsel has provided no itemization of her fees that would make such an adjustment in an objective manner. The distinction made in the statute is the characterization of the offensive act being committed knowingly. Based on this the court instructed the jury on the relevant definition of knowingly and in interrogatory 19 inquired of the jury which wrongful acts it found to be committed

knowing. The jury responded to that interrogatory citing only the claims "Failed to provide the consumer with written itemized list of repair with identity of the individual; Failed to tender replaced parts." Additionally the jury found for the Defendant on the Fraud claim. Accordingly, the Defendant argues that the Plaintiff should only recover attorney fees and expenses for the claimed violations that the jury found were committed knowingly and not for fees and expenses associated with the fraud claim nor for those other claims where the plaintiff prevailed but the jury did not identify as knowingly committed by the Defendant.

Plaintiff argues that the facts supporting the various claims in this case are entwined and stem from a common core of facts and related legal theories and cites numerous cases where the court did not separate fees and expenses according to a knowingly finding. Also that the plain reading of the CSPA law at R.C. 1345.09(F) would allow fees and expenses if the supplier has knowingly committed a violation, interpreting the law as to not require a sorting or fees and expenses.

This court finds that the claims in this case do stem from a common core of facts and related legal theories and that the Plaintiff has overwhelmingly prevailed on his claims with the jury finding the following violations of the CSPA:

1. That the Defendant did represent that the repair had sponsorship, approval, performance characteristics, accessories, uses, or benefits that it did not have;
2. That the Defendant did represent that the repair was of a particular standard or quality that it was not;
3. That the Defendant did represent that the repair had been performed in accordance with a previous representation, when it had not;

4. That the Defendant did represent that it had a sponsorship, approval, or affiliation that it did not have;
5. That the Defendant did fail to perform repairs in a workmanlike manner.
6. That the Defendant did stall and delay and avoided or attempted to avoid a legal obligation;
7. That the Defendant did charge for labor based upon an estimate of time instead of the actual time taken to perform the repair;
8. That the Defendant did repair the vehicle and return it to the Plaintiff in an unsafe condition;
9. That the Defendant did, in connection with the repair, represent that the repairs were performed when such was not the fact;
10. That the Defendant did , in connection with the repair, fail to provide the Plaintiff with a written itemized list of repairs performed which identified the individual performing the repair or service;
11. That the Defendant did, in connection with the repair, fail to tender to the Plaintiff any replaced parts.

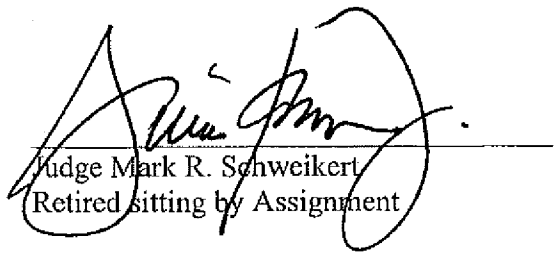
Considering the process outlined in the *Bittner* case this court finds that the Plaintiff's counsel was highly successful in her pursuit of these claims on behalf of the Plaintiff. The court finds that the prosecution of this case did involve some complex and detailed factual issues as illustrated by the various experts who testified and the Plaintiff's success was influenced by counsel's ability to focus the jury on those detailed facts favoring the Plaintiff's claims. Nonetheless, this court is not inclined to adjust the award of attorney fees and expenses pursuant to the factors in

DR 2-106(B) beyond those claimed by Plaintiff's counsel, finding the attorney fees and expenses claimed to be adequate to fully compensate counsel for service rendered herein.

Accordingly, Plaintiff is entitled to judgment against the Defendant in the following amount:

1. Interrogatory 1/1A	$ 475.28
2. Interrogatory 2/2A	$ 2,376.41
3. Interrogatory 4/4A	$ 250.00
4. Interrogatory 5/5A	$ 9,906.75
5. Interrogatory 6/6A	$ 350.01
6. Interrogatory 8/8A	$ 4,277.52
7. Interrogatory 10/10B (See items 10 & 11 Below) The Jury granted an award of $83.33 for other deceptive acts that are the same violations as found in Interrogatories 15 &16. The Plaintiff has elected the statutory amounts over the award.	
8. Interrogatory 13 (Non-economic Damages)	$ 500.00
9. Interrogatory 14 Statutory Amount	$ 200.00
10. Interrogatory 15 Statutory Amount	$ 200.00
11. Interrogatory 16 Statutory Amount	$ 200.00
12. Reasonable Attorney Fees in litigation	$57,916.75
13. Reasonable litigation costs	$22,059.83
14. Reasonable fees and costs regarding fee petition	$ 6,750.04
Total	$105,462.59
Plus court costs and interest	

Pursuant to local rule 17, counsel for Plaintiff shall prepare a journal entry consistent with this decision and present it to the Court accordingly.



Judge Mark R. Schweikert
Retired sitting by Assignment

Copy to:

Attorney for Plaintiff
Ronald L. Burge
Elizabeth Ahern Wells
2299 Miamisburg-Centerville Rd.
Dayton, Ohio 45459-3817

Attorney for Defendant
Dennis A. Becker
526 A Wards Corner Rd.
Loveland, Ohio 45140

Appendix 3

D116011370

ENTERED
OCT 17 2016

IN HAMILTON COUNTY COMMON PLEAS COURT, OHIO

JEREMY WILLIAMS

PLAINTIFF

- VS -

SHARON WOODS COLLISION CENTER, INC.

DEFENDANT

CASE NO. A 1400300

JUDGE MARK SCHWEIKERT
(Retired sitting by Assignment)

FINAL JUDGMENT ENTRY

This matter having been tried to a jury and a verdict returned, and all claims and post trial motions having now been ruled upon, judgment is hereby rendered as follows:

1. Plaintiff Jeremy Williams is granted judgment against Defendant Sharon Woods Collision Center, Inc. in the total amount of $105,462.59, inclusive of $18,735.97 in actual, treble, statutory, and noneconomic damages, and $86,726.62 in attorney fees and litigation costs, plus court costs and interest from the date of judgment at the rate of 3% per annum.

All aspects of this case now being concluded, the Court finds that there is no just cause for delay and this is a Final Judgment Entry.

COURT OF COMMON PLEAS
ENTER

HON. JUDGE MARK SCHWEIKERT

THE CLERK SHALL SERVE NOTICE TO PARTIES PURSUANT TO CIVIL RULE 58 WHICH SHALL BE TAXED AS COSTS HEREIN.

FOR COURT USE ONLY

S.C. Line # : 5

See and approved by:

ELIZABETH AHERN WELLS (0078320)
RONALD L. BURDGE (0015609)
Attorneys for Plaintiff
2299 Miamisburg-Centerville Road
Dayton, Ohio 45459-3817
Telephone: 937.432.9500
Facsimile: 937.432.9503
Email: Beth@OhioLemonLaw.com

DENNIS A. BECKER (0005511)
Attorney for Defendant
526 A Wards Corner Rd.
Loveland, Ohio 45140
Telephone: (513) 683-2252
Facsimile: (513) 683-2257
Email: dabecker@fuse.net

Z:\data\Williams, Jeremy\Trial\Etc\Etc Final Judgment Entry 093016 bw.wpd

Appendix 4

D116783972

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

ENTERED
DEC 2 1 2016

JEREMY WILLIAMS,	:	**Case No. A1400300**
	:	
	:	
Plaintiff,	:	**Judge Tom Heekin**
	:	
v.	:	
	:	
SHARON WOODS COLLISION CENTER, INC.,	:	**ENTRY DENYING MOTION FOR NEW TRIAL**
	:	
Defendant.	:	

This matter came before the Court on Sharon Woods Collision Center, Inc. ("Defendant's") "Motion for New Trial." Jeremy Williams ("Plaintiff") opposes Defendant's Motion. After reviewing the memoranda, the Court finds the Motion not to be well taken.

Accordingly, IT IS THE ORDER OF THE COURT that Defendant's Motion is hereby DENIED.

Be it so Ordered.

Date: 12-21-16

JUDGE TOM HEEKIN

Appendix 5

D119208971

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JEREMY WILLIAMS,	:	Case No. A1400300
Plaintiff,	:	Judge Tom Heekin
v.	:	
SHARON WOODS COLLISION CENTER, INC.,	:	ENTRY DENYING MOTION FOR NEW TRIAL
Defendant.	:	NUNC PRO TUNC 12/21/16

ENTERED
AUG 22 2017

This matter came before the Court on Sharon Woods Collision Center, Inc. ("Defendant's") "Motion for New Trial." Jeremy Williams ("Plaintiff") opposes Defendant's Motion. After reviewing the memoranda, the Court finds the Motion not to be well taken.

Accordingly, IT IS THE ORDER OF THE COURT that Defendant's Motion is hereby DENIED.

Be it so Ordered.

Date: 12-21-16

JUDGE TOM HEEKIN

COURT OF COMMON PLEAS
ENTER
HON. CURT G. HARTMAN
THE CLERK SHALL SERVE NOTICE TO PARTIES PURSUANT TO CIVIL RULE 58 WHICH SHALL BE TAXED AS COSTS HEREIN.