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**SUPREME COURT
OF THE
STATE OF CONNECTICUT**

SC 21076

**FRANK CHARLES WHITE
PLAINTIFF-APPELLANT**

V.

**FCW LAW OFFICES ET AL.
DEFENDANT-APPELLEE**

**BRIEF OF AMICUS CURIAE
THE NATIONAL ASSOCIATION OF CONSUMER
ADVOCATES, CONNECTICUT CHAPTER,
IN SUPPORT OF THE PLAINTIFF-APPELLANT**

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STATEMENT OF ISSUE

1. Did the Appellate Court correctly conclude that a plaintiff may not recover both punitive damages under the Connecticut Unfair Trade Practice Act, General Statutes § 42-110a et seq., and treble damages under General Statutes § 52-571h because such recovery would violate the principle that a plaintiff is entitled to recover only once for losses sustained in connection with the same transaction, occurrence or event?

STATEMENT OF INTEREST OF AMICUS CURIAE

The National Association of Consumer Advocates (“NACA”) is a nonprofit association of attorneys and consumer advocates committed to representing consumers’ interests.¹ NACA’s members are private- and public-sector attorneys, legal-services attorneys, law professors, and law students whose primary focus is the protection and representation of consumers. NACA’s mission is to promote justice for all consumers by maintaining a forum for communication, networking, and information sharing among consumer advocates across the country, particularly regarding legal issues, and by serving as a voice for its members and consumers in the ongoing effort to curb unfair or abusive business practices that affect consumers. In pursuit of this mission, ensuring that companies comply with state and federal consumer protection laws has been a continuing and significant concern of NACA since its inception. The Connecticut Chapter of NACA has an interest in this case because its members often represent consumers who pursue claims under CUTPA.

Based on this experience, NACA understands that consumers are often subjected to unfair practices by entities that have far greater access to financial and legal resources. CUTPA’s punitive damages provision helps level the playing field: it increases the potential cost of

¹ The students of the Housing Clinic are the primary authors of this brief. This brief does not purport to represent the institutional views of LSO, the Yale Law School, or Yale University. Furthermore, the undersigned counsel confirms, in accordance with Practice Book § 67-7A, that no counsel for any party to this case wrote this brief in whole or in part and neither counsel nor any party contributed to the cost of the preparation or submission of this brief.

violations and allows courts to adjust punitives at their discretion, therefore ensuring that violators of consumers' rights face meaningful consequences.

The Appellate Court's decision bars courts from awarding CUTPA punitive damages if plaintiffs are awarded statutory double or treble damages under another statute based on the same conduct. This tilts the scales in favor of the companies that often violate the rights of consumers who are not as well-resourced or legally sophisticated. The Appellate Court's decision therefore undermines CUTPA's remedial purpose and design.

1. INTRODUCTION

Each year, commercial parties of all types rip off Connecticut residents through bogus collection fees, default fees, and junk fees. To stop these kinds of harms, double or treble damages are not enough. Our state needs CUTPA and its flexible standard for punitive damages to ensure that justice is served. Any fear that plaintiffs may experience a “windfall” from prosecuting unfair trade practices and obtaining relief under two different statutes is outweighed by the danger of a market that already does too little to discourage lawbreakers. CUTPA and state-level enforcement are particularly necessary in light of the new presidential administration’s surrender to financial predators through its sudden defanging of the supervision and enforcement powers of the Consumer Financial Protection Bureau and its unilateral termination of contracts the Federal Trade Commission uses to bolster its enforcement.²

With respect to this matter and all others that may enter our court system moving forward, the Appellate Court’s decision to preclude recovery of CUTPA punitives based on the recovery of statutory double or treble damages threatens to undermine CUTPA’s design and purpose. It would enable predatory businesses to limit their liability, weakening the statute’s deterrent effect and forcing claimants to choose between statutory remedies, thereby discouraging valid claims and restricting the full scope of consumer protection that CUTPA was intended to provide. Courts must retain discretion to stack CUTPA punitives on top of statutory multiple damages in order to deter egregious misconduct and repeated “minor” infractions for which formulaic multipliers are insufficient.

² See [doge.gov](https://www.doge.gov) for more.

The amicus curiae therefore respectfully asks that this Court reverse the judgment of the Appellate Court and remand with direction to have the trial court (1) enter an award of treble damages pursuant to § 52-571h and (2) exercise its discretion in awarding punitive damages under CUTPA.

2. FACTS OF THE CASE

The plaintiff, Frank Charles White, is a licensed and practicing attorney in the state of Connecticut. The defendants, FCW Law Offices and two John Does, used the plaintiff's juris number and established a law practice impersonating him to obtain money from several victims of fraud. After becoming aware of the ongoing identity theft and fraud, the plaintiff filed the present lawsuit in June 2020.

The lower court ruled for the plaintiff and awarded compensatory damages, attorney's fees, and costs under General Statutes § 52-571h, in addition to \$300,000 in punitive damages under CUTPA. [*White v. FCW Law Offices*, Superior Court, judicial district of Middlesex, Docket No. MMX-CV20-6028538-S, 2023 WL 4322728 \(Jun. 28, 2023\), *3](#), *aff'd in part, rev'd in part*, 228 Conn. App. 1 (2024). The Appellate Court reversed the judgment with respect to the damages award, holding that the mandatory language of § 52-571h entitled the plaintiff to treble damages under that statute. *White v. FCW Law Offices*, 228 Conn. App. 1, 11 (2024). However, based on the award of treble damages, the court held that the double recovery rule barred the plaintiff from recovering punitive damages under CUTPA. *Id.*

3. ARGUMENT

The Appellate Court extended the double recovery rule to preclude CUTPA punitive damages based on an award of statutory treble damages. This decision, if affirmed, will undermine CUTPA's

explicit remedial purpose and its intended deterrent effect against unscrupulous actors. We respectfully request that it be reversed.

I. CUTPA is a remedial statute designed to deter all forms of unfair trade practices.

In enacting CUTPA, the General Assembly directed that the statute “be remedial and be so construed.” General Statutes § 42-110b(d). Its purpose is to deter all unfair and deceptive trade practices. See General Statutes § 42-110b(a).

To fulfill this remedial purpose, the General Assembly deliberately drafted CUTPA with open-ended provisions. Unlike fixed statutory causes of action, CUTPA was designed to reach and deter a wide range of misconduct, including practices that were not foreseeable when the law was enacted.

Essential to CUTPA’s deterrent effect are three provisions that work in concert to identify and deter the wide range of practices it prohibits: (1) an open-ended prohibition of unfair and deceptive acts or practices, (2) a private right of action designed to encourage enforcement of that prohibition, and (3) a range of flexible remedies that courts can tailor to each case, ensuring that liability remains an effective deterrent rather than a predictable cost of doing business. Curtailing any one of these provisions would diminish CUTPA’s deterrent effect and undermine its remedial purpose.

A. CUTPA’s broad and open-ended prohibition enables its flexible application.

CUTPA prohibits “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” General Statutes § 42-110b(a). Like its federal counterpart, the Federal Trade Commission Act (“FTCA”), CUTPA offers little guidance

on how this broad prohibition should be construed.³ Instead, the statute empowers courts and the Commissioner of Consumer Protection to interpret and apply its provisions in response to evolving consumer needs. See General Statutes § 42-110b(a)–(c); see also *Sportsmen’s Boating Corp. v. Hensley*, 192 Conn. 747, 755 (1984) (noting that the General Assembly did “not ... define the scope of unfair or deceptive acts ... so that courts might develop a body of law responsive to the marketplace practices.”).

In so framing the statute’s key provision, CUTPA’s drafters were clear about their intent: “I can assure you that there is no ... unfair deceptive act or practice that cannot be reached by this bill.” Conn. Joint Standing Committee Hearings, General Law, Pt. 2, 1973 Sess., p. 705, remarks of Attorney Robert Sils, Dep’t of Consumer Protection. See also Conn. Gen. Assembly House Proceedings, Pt. 6, 1976 Sess., p. 2191, remarks of Representative Ferrari (“There is no limit on human inventiveness in this field. Even if all known unfair trade practices were specifically defined and prohibited, it would at once be necessary to begin over again.”). The legislature deliberately chose to keep CUTPA broad and largely unrestricted for the express purpose of giving consumers the most flexible range of possible protections.

³ See Robert M. Langer & David E. Ormstedt, *The Connecticut Unfair Trade Practices Act*, 54 Conn. B.J. 388, 397 (1980) (“Certainly the language of Section 42-110b of the CUTPA and Section 5 of the FTCA gives little guidance to the uninitiated.”).

B. CUTPA encourages private litigants to enforce its broad prohibition.

To encourage the enforcement of the broad range of claims made available under CUTPA, the General Assembly notably departed from the FTCA by providing a private right of action. See General Statutes § 42-110g(a).⁴ “The Connecticut legislature ... recognized that the commissioner of consumer protection was not adequately staffed to cope with all unfair trade practices and sought to encourage the private sector not only to help themselves but also to protect the public.” *Murphy v. McNamara*, 36 Conn. Supp. 183, 196 n.9 (1979) (describing the original intent when CUTPA was enacted).

However, less than three years after CUTPA’s 1973 enactment, the General Assembly determined that the statute did not go far enough in encouraging private enforcement. See Public Acts 1976, No. 76-303. Originally, CUTPA allowed courts to award costs and attorney fees “to either party.” *Id.* A 1976 amendment limited fee awards to plaintiffs only. *Id.* Speaking in favor of this amendment, Representative Ferarri explained the chilling effect of the original provision and emphasized the importance of private enforcement in achieving CUTPA’s purpose:

The purpose of this act is for it to be a remedial act. The purpose of this act is to stop unfair or deceptive trade practices. The only way to accomplish that effectively is to

⁴ See also Langer & Ormstedt, *supra* note 2, 390 (“The CUTPA departed from the FTCA in giving private litigants the right to bring an action. This right was considered to be as important as state enforcement to the proponents of [CUTPA].”).

encourage litigation by private parties... [Under the provision providing attorney's fees to either party,] an attorney, having a client come into his office and presenting with the possibility of adjudicating a case against a big party ... would have to say to his client ... even though it's a good case, I don't recommend it because of the possibility that you could be hit with \$50,000 or \$100,000 in legal fees should you lose.

Conn. Gen. Assembly House Proceedings, Pt. 6, 1976 Sess., p. 2191–92.

By establishing and strengthening a private right of action, the General Assembly affirmed its intent to grant CUTPA broad leeway in order to give effect to its prohibition against unfair trade practices.

C. CUTPA's flexible remedies ensure that courts can effectively deter unfair trade practices in any form.

To complement CUTPA's broad prohibitions and private enforcement mechanisms, the General Assembly designed deterrent measures that can adapt to a wide range of unfair trade practices. In addition to injunctive and equitable relief, the statute provides for the recovery of actual damages, attorneys' fees and costs, and punitive damages. See General Statutes §§ 42-110g(a) and 42-110g(d).

CUTPA therefore deliberately provides courts with greater flexibility in crafting damages awards than is available under common law or most other statutory causes of action. At common law, for example, punitive damages are limited to the plaintiff's litigation expenses, less taxable costs. See, e.g., *Waterbury Petroleum Products, Inc. v. Canaan Oil and Fuel Co., Inc.*, 193 Conn. 208, 234–38 (1984) (reaffirming this Court's 1906 decision limiting common law punitive damages to litigation expenses). Drafting CUTPA against this

backdrop, the General Assembly departed from the common law rule. See General Statutes §§ 42-110g(d) (providing for award of costs and attorney fees) and 42-110g(a) (equitable relief and punitive damages); see also *Mead v. Burns*, 199 Conn. 651, 666 n.8 (1986) (“CUTPA ... permits a recovery of punitive damages and attorney’s fees that the common law does not ordinarily permit.”).

The General Assembly also departed from the typical statutory scheme of capping punitives at a dollar amount or at a multiple of other damages. See Office of Legislative Research, Research Report 97-R-1140 (Oct. 2, 2003) (listing 37 statutes that authorize punitive damages, 31 of which cap them either at a dollar amount or at a multiple of damages).⁵ Instead, CUTPA leaves punitive damages to “[t]he court ... in its discretion.” General Statutes § 42-110g(a); see also *Ulbrich v. Groth*, 310 Conn. 375, 454 (2013) (“[CUTPA] clearly imposes no specific limit on the ratio of punitive damages to compensatory damages, and ‘we may not read into clear expressed legislation provisions which do not find expression in its words...’” (quoting *Giaimo v. New Haven*, 257 Conn. 481, 494 (2001))).

Therefore, “CUTPA provides an action more flexible and a remedy more complete than [does] the common law” or other statutory causes of action. *Hinchliffe v. American Motors Corp.*, 184 Conn. 607, 617 (1981). “To interpret CUTPA narrowly, perhaps on the ground that a victimized consumer has other, less complete, remedies available to

⁵ Available at <https://search.cga.state.ct.us/r/adv/dtsearch1.asp?cmd=getdoc&DocId=10784&Index=I%3a%5czindex%5c2024&HitCount=1&hits=6f+&hc=672&req=amount&Item=13> (last visited Feb. 20, 2025).

him, effectively negates [CUTPA's] legislative intent" of reaching and deterring all unfair trade practices. *Id.*, 618.

II. This Court has recognized that CUTPA's punitive damages should be calculated on a case-by-case basis to effectively deter defendants.

Under CUTPA, "punishment and deterrence are proper purposes of an award of punitive damages." *Ulbrich v. Groth*, *supra*, 310 Conn. 454 n.64. In *Ulbrich*, this Court articulated five factors for courts to consider when determining whether a lower court's punitive damages award under CUTPA is "so excessive as to constitute an abuse of discretion":

(1) whether the defendant's conduct was reckless, intentional or malicious; (2) whether the defendant's action was taken or omitted in order to augment profit; (3) whether the wrongdoing was hard to detect; (4) whether the injury and compensatory damages were small, providing a low incentive to bring the action; and (5) whether the award will deter the defendant and others from similar conduct, without financially destroying the defendant.

Id., 454 (citing *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 493–94 (2008)).

These factors are consistent with CUTPA's goal of deterring all unfair trade practices. Rather than capping CUTPA's punitive damages at a specific amount or assigning a one-size-fits all formula, the *Ulbrich* factors instruct a trial court to conduct a case-specific inquiry that focuses on the defendant's conduct and the likelihood of the award's deterrent effect. In contrast, multiple damages formulas are calculated only in reference to losses sustained by the plaintiff.

Notably, the *Ulbrich* factors helped articulate what lower courts had already recognized: that for CUTPA to serve as an effective deterrent in all situations, courts could not be limited in awarding punitive damages based on a formulaic rule. See *Bridgeport Harbour Place I, LLC v. Ganim*, 131 Conn. App. 99, 149–150 (2011) (affirming a CUTPA punitive damages award equal to six times the \$20,000 compensatory damages award, noting that the lower court could not be “wedded to a simple multiplier” and that it had considered factors such as “the deterrent purpose of CUTPA punitive damages,” the defendant’s “reprehensible acts,” and the defendant’s wealth); see also [Hennessey v. Connecticut Valley Fitness Centers, Inc., Superior Court, judicial district of Hartford, Docket No. CV-980504488S, 2001 WL 1199840, *3 \(Sept. 12, 2001\)](#) (“[CUTPA] ...[d]amages can be awarded even when there are other statutory remedies that plaintiff has access to. The existence of common law or other statutory remedies does not preclude recourse to CUTPA.”).

III. Our courts have previously awarded CUTPA punitive damages in addition to statutory double or treble damages.

CUTPA punitive damages are intended to be stackable with other statutory punitive damages. Existing case law provides numerous examples where courts have granted both CUTPA punitives and statutory double or treble damages based on the defendant’s same underlying conduct.

For example, in *Herron v. Daniels*, the Appellate Court affirmed an award of CUTPA punitive damages in addition to double damages against a landlord who withheld a tenant’s security deposit. 208 Conn. App. 75, 106–108 (2021). In awarding CUTPA punitives, the lower court focused its analysis on the defendant’s conduct: “Punitive

damages are ... appropriate ... based upon the defendant's indifference to the law ... and her continued inexcusable failure to [change her behavior] ... after the commencement of this action, when at the latest she should have learned what the law is." *Herron v. Daniels*, Superior Court, judicial district of Fairfield at Bridgeport, Housing Session, Docket No. BPH-CV18-6005426-S, 2019 WL 7497101, *7 (Oct. 21, 2019), *aff'd*, 208 Conn. App. 75 (2021). Similarly in *Thorne v. Mackeyboy Auto, LLC*, the plaintiffs alleged multiple types of damages arising from the defendant's same underlying conduct. Superior Court, judicial district of New Haven, Docket No. NNH-CV11-6017210-S, 2013 WL 5879081, *1 (Oct. 11, 2013). Among the damages sought were treble damages pursuant to General Statutes § 52-564 and punitive damages under CUTPA. *Id.* The court awarded both. *Id.*, *8.

In awarding CUTPA punitive damages, the court in *Thorne* reiterated that "[t]here is no precise formula for the calculation of punitive damages under CUTPA. The statute itself simply authorized the court to award punitive damages in its discretion." *Id.*, *4. Focusing its analysis on the defendant's "egregious" conduct, the court awarded CUTPA punitives that were double the amount of the plaintiff's compensatory damages. *Id.*, *4-5. This was in addition to the award of treble damages under § 52-564, along with other damages awards. *Id.*, *8.

In numerous other cases courts have awarded both statutory double or treble damages and CUTPA punitives for the defendant's same conduct, demonstrating the flexibility of CUTPA punitives and the situational variation in which lower courts apply them. See, e.g., *Carrillo v. Goldberg*, 141 Conn. App. 299 (2013) (awarding double damages pursuant to General Statutes § 47a-21 and CUTPA punitives); *Odell v. Wallingford Mun. Federal Credit Union*, Superior Court, judicial district of New Haven, Docket No. NNH-CV10-6012228-

[S, 2013 WL 4734783, *14-15, 20 \(Aug. 8, 2013\)](#) (awarding the plaintiff \$41,403 in statutory theft treble damages and \$41,403 in CUTPA punitives for the defendant's unlawful seizure of plaintiff's social security funds).

IV. Courts must retain their discretion under CUTPA to calculate punitive damages based on their deterrent effect.

Unlike most statutory causes of action, CUTPA targets a wide range of behaviors. To ensure that the defendant pays “the restitution required” in each of the circumstances to which CUTPA applies, the statute places whether and how much to award in punitive damages “at the discretion of the Court.” Conn. Joint Standing Committee Hearings, General Law, Pt. 2, 1973 Sess., p. 700, remarks of Representative Howard Newman and Commissioner Barbara Dunn. Double, treble, and other multiple damages formulas would be insufficient in many cases that would be affected if this Court were to affirm the Appellate Court's decision.

Double or treble damages would not deter particularly egregious conduct. In [Herron](#), for example, the court awarded over \$25,000 in double damages under the Statutory Deposit Act but reasoned that further awarding nearly \$20,000 in CUTPA punitive damages was necessary to incentivize the defendant-landlord to comply with the law. Supra, [2019 WL 7497101, *4](#) (“This utter indifference to her obligations as a landlord ... leaves the Court with no choice but to award CUTPA and punitive damages ... The defendant must be provided with an incentive to comply with security deposit laws and this judgment will hopefully help protect future tenants of the defendant.”). Had the court in [Herron](#) been constrained by the Appellate Court's ruling here, the damages award may have been too

low to deter the defendant-landlord from subjecting future tenants to the same unfair practices. The U.S. Supreme Court has also acknowledged that while double, treble, and quadruple multipliers are most common for punitive damages, higher ratios may be needed where the defendant's conduct is egregious. *State Farm Mutual Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003).

Discretionary punitive damages are also essential where there is a significant disparity in the financial resources of the plaintiff and the defendant. In these cases, compensatory damages may represent a significant loss to the consumer but a negligible amount to the fraudster. Calculating damages with a one-size-fits-all multiples formula would therefore fail to deter further violations of consumers' rights, which is a key goal of CUTPA. "The issue then of the defendant's financial circumstances is relevant and material to the deterrent non-common law punitive damages that the plaintiff would be required to prove under the CUTPA count." *Lenz v. CNA Assurance Co.*, 42 Conn. Supp. 514, 515 (1993).

Because double and treble damages will not always change the decision-making calculus of egregious or repeat offenders, courts must retain discretion to award CUTPA punitives based on their deterrent effect. Affirming the Appellate Court's decision would undermine CUTPA's intended safeguards and tip the scales in favor of those who would like to illegally profit at consumers' expense.

4. CONCLUSION

For the foregoing reasons, the Amicus Curiae respectfully requests that this Court reverse the judgment of the Appellate Court and remand with direction to have the trial court (1) enter an award of treble damages pursuant to § 52-571h and (2) exercise its discretion in awarding punitive damages under CUTPA.

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