

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

TERRY MOTCHAR, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

PETER GORDON and RICHARD
BOURMAN d/b/a SHADYSIDE PLAZA
ASSOCIATES; SHADYSIDE PLAZA
ASSOCIATES, LLC; HOWARD'S
TOWING AND RECOVERY, LLC; and
HOWARD SZUMINSKY,

Defendants.

CIVIL DIVISION – CLASS ACTION

No. _____

CLASS ACTION COMPLAINT

Filed on behalf of Plaintiff

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NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within **TWENTY (20)** days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you. **YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE.**

IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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CLASS ACTION COMPLAINT

COMES NOW PLAINTIFF, TERRY MOTCHAR ("Plaintiff"), individually and on behalf of a class of similarly situated persons, by and through undersigned Counsel of Record, and files this Class Action Complaint against the above-named Defendants, including Peter Gordon and Richard Bourman d/b/a Shadyside Plaza Associates; Shadyside Plaza Associates, LLC; Howards Towing and Recovery, LLC; and Howard Szuminsky, (collectively "Defendants"), showing the Court as follows:

INTRODUCTION

1. This civil action arises out of Defendants' predatory and illegal towing practices, perpetrated against thousands of people, for Defendants' financial gain.

2. Defendants Peter Gordon and Richard Bourman, together d/b/a Shadyside Plaza Associates own Shadyside Plaza, a strip mall located on the east end of Pittsburgh. On January 13, 2019, Shadyside Plaza Associates, LLC, was created and, upon information and belief, is the

successor to the partnership d/b/a Shadyside Plaza Associates. Hereinafter, Gordon and Bourman d/b/a Shadyside Plaza Associates, and Shadyside Plaza Associates, LLC, are collectively referred to as “Property Defendants.”

3. To attract and retain tenants, and thus maximize revenue, Property Defendants engage Howard’s Towing and Recovery, LLC, a known hyper-vigilant tow business, to remove vehicles that are left unattended by drivers who park in Shadyside Plaza but who do not patronize its tenants’ businesses.

4. Howard’s Towing, on behalf of itself and the Property Defendants, retains possession of these towed vehicles and will not release the vehicles to their owners until it is paid a fee that substantially exceeds the maximum fees the City of Pittsburgh allows for such non-consensual towing services.

5. Against this backdrop, Plaintiff asserts claims under Pennsylvania’s Vehicle Code, common law, and for violations of Pennsylvania’s Unfair Trade Practices and Consumer Protection Law.

THE PARTIES

6. Plaintiff Terry Motchar is a citizen of Pennsylvania, residing in Armstrong County, Pennsylvania.

7. Defendants Peter Gordon and Richard Bourman are residents of Allegheny County, Pennsylvania, and are the owners of, and do business under, the fictitious name Shadyside Plaza Associates.

8. At all times relevant herein, Shadyside Plaza Associates was a Pennsylvania fictitious name, with its principal place of business located at 700 5th Avenue, 4th Floor, Pittsburgh,

Allegheny County, 15219.

9. At all relevant times Shadyside Plaza Associates was the owner of the property at issue in this Complaint.

10. Upon information and belief, Shadyside Plaza Associates, LLC, was created on or about January 13, 2019, and is the successor to the partnership between Gordon and Bourman d/b/a Shadyside Plaza Associates.

11. Upon information and belief, at all times relevant herein, Defendant Howard's Towing and Recovery, LLC is and was a domestic for-profit limited liability company organized and existing under the laws of Pennsylvania with a registered address at 536 Hazelwood Avenue, Pittsburgh, Allegheny County, Pennsylvania 15207.

12. At all times relevant herein, Howard's Towing's principal place of business is and was located at 60 Irvine Street, Pittsburgh, Allegheny County, Pennsylvania 15207.

13. Upon information and belief, at all times relevant herein, Defendant Howard Szuminsky ("Szuminsky"), is and was a resident of Allegheny County, Pennsylvania, holding himself out to be the owner of Howard's Towing and Recovery, LLC (collectively "Howard's Towing"). It is believed and therefore averred that Defendant Szuminsky is also an officer and/or managing member of Howard's Towing and Recovery, LLC.

JURISDICTION AND VENUE

14. The Court has subject matter jurisdiction over this action pursuant to 42 Pa. C.S.A. § 931 and 73 Pa. Stat. Ann. § 201-9.2.

15. The Court has personal jurisdiction over Defendant pursuant to 42 Pa. C.S.A. § 5301.

16. Venue in Allegheny County is proper pursuant to Pa. R.C.P. No. 2179(a) because it is where Defendants reside; where Defendants regularly conduct business; and where the cause of action arose.

FACTUAL ALLEGATIONS

I. Shadyside Plaza

17. Shadyside Plaza is located at 211-221 S. Highland Avenue, Pittsburgh, Allegheny County, Pennsylvania 15206 (0084-F-00214-0000-00) (the “Property”). The Property includes a small parking lot (the “Parking Lot”).

18. Property Defendants lease commercial space at the Property to tenants.

19. Upon information and belief, to attract and retain tenants, Property Defendants employ Howard’s Towing to remove vehicles that are left unattended by drivers who park in the Parking Lot. Consequently, Howard’s Towing acts as the agent of, at the behest of, and/or in conspiracy with Property Defendants when engaging in the unlawful non-consensual towing that is the subject of this complaint.

20. Property Defendants installed and maintain signs at the Property that identify Howard’s Towing as its agent responsible for removing unattended, unauthorized vehicles from the Parking Lot.

II. Howard’s Towing

21. Howard’s Towing has been in business since 2004.

22. Howard’s Towing engages in, or offers wrecker or towing services, whereby motor vehicles are or may be towed or otherwise removed from one place to another by the use of a motor vehicle specifically adapted to and designed for that purpose.

23. Howard's Towing operates in Allegheny County, and does most of its business—non-consensual towing—in Pittsburgh, Pennsylvania.

24. A non-consensual tow “is the towing of a vehicle improperly parked or trespassing on private property at the request of the property owner, or the property owner’s authorized agent without prior consent or authorization by the owner or operator of the vehicle.” *See* 7 Pittsburgh Code § 764.01(f).

25. The centerpiece of Howard's Towing's business model is to patrol private parking lots vigilantly, remove unattended, unauthorized vehicles that are parked there without delay, and hold those vehicles until their owners pay an illegally inflated fee for their return.

26. Upon information and belief, Defendant Szuminsky participated in and directed the wrongful, injury producing conduct alleged herein while acting in the course and scope of his position with Defendant Howard's Towing and Recovery, LLC.

27. A corporate officer, such as Defendant Szuminsky, “may properly be held liable for his actions” individually, and under both the Pennsylvania Unfair Trade Practices and Consumer Protection Law and the Participation Theory. *Moy v. Schreiber Deed Sec. Co.*, 535 A.2d 1168, 1171-71 (Pa. Super. Ct. 1988); *see also Com. ex. rel. Corbett v. Manson*, 903 A.2d 69 (Pa. Commw. Ct. 2006) (holding CEO liable for violations of the UTPCPL as “any person engaged in unfair and deceptive practices,” and applying the participation theory).

III. Defendants Charge Consumers More Than The Law Allows.

28. Pennsylvania allows Property Defendants to, in some circumstances, remove (or have removed) “a vehicle [that] is parked or left unattended” in its private parking lot “at the reasonable expense of the owner of the vehicle.” 75 Pa. C.S.A. § 3353(c).

29. In such circumstances, Pennsylvania law gives Property Defendants “a lien against the owner of the vehicle, in the amount of the reasonable value of the costs of removing the vehicle plus the costs of storage.” *Id.*

30. The Pennsylvania legislature allows cities, like Pittsburgh, to establish maximum reasonable “rates to be charged for removal of vehicles.” *Id.*

31. The City of Pittsburgh has taken advantage of the legislature’s deference and has set the Towing Fees that owners of vehicles may be charged for a non-consensual tow. This Fee Schedule is provided in Pittsburgh’s City Ordinances, at 5 Pittsburgh Code § 525.02 and § 525.05.

32. Relevant to this case, the City of Pittsburgh amended 5 Pittsburgh Code § 525.02, effective August 11, 1997, setting the Towing Fee that may be charged for a non-consensual tow at one-hundred ten dollars (\$110.00). This amount applies to passenger cars, light trucks, motorcycles, and scooters.¹

33. The City subsequently amended § 525.02, effective December 28, 2015, increasing the Towing Fee for a non-consensual tow to one-hundred thirty-five dollars (\$135.00).² This amount also applies to passenger cars, light trucks, motorcycles, and scooters.

34. By law, Defendants are specifically prohibited from charging vehicle owners “any fees, services, costs, expenses or other things than the towing and storage fees permitted [by

¹ See the August 11, 1997 version of 5 Pittsburgh Code § 525.02 (available at https://library.municode.com/pa/pittsburgh/codes/code_of_ordinances/249908?nodeId=CD_OR_D_TITFIVETR_ARTIIITO_CH525TOCH_S525.02SCTOFE&showChanges=true) (last accessed May 15, 2018).

² See the December 28, 2015 version of 5 Pittsburgh Code § 525.02 (available at https://library.municode.com/pa/pittsburgh/codes/code_of_ordinances?nodeId=COOR_TITFIVE_TR_ARTIIITO_CH525TOCH_S525.02SCTOSTFE&showChanges=true) (last accessed May 15, 2018).

Section 525.05(b) and (c)].” 5 Pittsburgh Code § 525.05(d).

35. Property Defendants engage Howard’s Towing to engage in non-consensual tows from the Parking Lot and to enforce Property Defendants’ lien against the vehicles’ owners.

IV. Howard’s Towing Consistently Charges \$200-\$255 Towing Fees.

36. Howard’s Towing consistently charges vehicle owners approximately \$200-\$255 in fees following a non-consensual tow. Indeed, Howard’s Towing’s website confirms its standard fees.³

37. For example:

(a) A Better Business Bureau complaint from March 15, 2018 provides:

Hi - On August 20th, we had come to Pittsburgh to drop our daughter to University of Pittsburgh. After dropping her, we did some shopping at the mini-mall located at **** * (shopped at PA Wine & Spirits). The signs in the parking lot indicate parking is for customers. When we came... out, we found that our car had been towed. We had to return back to Philadelphia that night because our younger daughter was home alone. Howard Towing insisted that we had left the property hence the car was towed. We had to pay **\$205** to get the car back, as we were basically being held hostage late at night with a 5 hour drive ahead of us. Being in a strange city late at night, and the location of this place is very sketchy. My wife, daughter, and I felt very scared trying to talk to these people who absolutely were not going to release our car until we paid the money.

(b) Another Better Business Bureau complaint from December 8, 2017 states:

My car was towed by this company. I parked my car at a Boston market across from Shadyside Hospital. I was planning to eat at the Boston market. I had to first walk into Shadyside Hospital to drop something off I came back to eat at Boston market and my car was gone. When I went in and asked Boston... market where my car was they had no idea. Someone in the restaurant ask if I drove a white Range Rover And stayed somebody walked in and asked if anybody owned the Range Rover no one said anything so they towed it. I was only gone for a total of 30 minutes as I

³ See <http://www.howardstowingpittsburgh.com/private-property-towing.html> (last visited May 17, 2018).

arrived early before my lunch appointment started. My plan was sit and have a conference call have lunch and do some paperwork before my next appointment. I arrived early I thought I could run over and drop something off at the hospital and come right back and have my lunch. There was no complaint from Boston market they actually apologized for what Howard's did. I explained I was only gone for 30 minutes and they said you left the property. I had to pay **\$205** to get my car back when I literally walked across the street and came back right Back because I was eating lunch.

38. Howard's Towing maintains an "F" Rating with the Better Business Bureau.

V. Howard's Towing Has Actual Knowledge Of Pittsburgh's Fee Caps.

39. At all times relevant herein, Howard's Towing has and had actual knowledge of Pittsburgh's Ordinances governing Towing Businesses and the fees that Towing Businesses may charge to operate in the City of Pittsburgh. *See* 5 Pittsburgh Code § 525.01 *et seq.*, and 7 Pittsburgh Code § 761.01 *et seq.* (hereinafter collectively "Towing Ordinances"), which Towing Ordinances are, and at all times relevant herein were available for free on the City of Pittsburgh's website, at <http://pittsburghpa.gov/city-info/open-gov.html>

40. Howard's Towing has repeatedly demonstrated its knowledge of Pittsburgh's Towing Ordinances in its responses to complaints made against it. For example, Howard's Towing demonstrated its knowledge of Pittsburgh's "strict [towing] policy and guidelines" in response to two separate complaints made against it with the Better Business Bureau, explaining in relevant part:

The City of Pittsburgh has strict policy and guidelines which are enforced by both our towing company and those that we contract through and TOWING PERMITS (NON Residential) have been issued and are on display at all locations. Included in the permitting process is an inspection of the location by a City of Pittsburgh Building Inspector to ensure proper number of signs per parking space; proper day

and night-time visibility with regard to amount of light and size of sign.⁴

41. Below is the August 11, 1997 version of 5 Pittsburgh Code § 525.02, conspicuously setting the non-consensual Towing Fee at one-hundred ten dollars (\$110.00) in an easy-to-understand table.

§ 525.02 - SCHEDULE OF TOWING FEES.	
The charges for towing each designated type of vehicle to the City towing pound shall be as follows:	
Type of Vehicle	Towing Fee
Passenger cars, light trucks, motorcycles and scooters	\$ 110
Trucks and Truck Tractors:	

42. Similarly, below is the December 28, 2015 version of 5 Pittsburgh Code § 525.02, which also conspicuously sets forth the non-consensual Towing Fee in an easy-to-understand table, and raising it to one-hundred thirty-five dollars (\$135.00).

§ 525.02 - SCHEDULE OF TOWING AND STORAGE FEES.	
The charges for towing each designated type of vehicle to the City towing pound shall be as follows:	
Type of Vehicle	Towing Fee
Passenger cars, light trucks, motorcycles and scooters	\$ 135
Trucks and Truck Tractors:	

VI. Property Defendants Know of These Illegal Towing Practices.

43. Property Defendants knows or should know that Howard's Towing charges exorbitant Towing Fees to owners for the return of their unattended vehicles. For example:

(a) The City of Pittsburgh requires Property Defendants to give "written consent" to Howard's Towing each and every time Howard's Towing removes a vehicle from the

⁴ See <https://www.bbb.org/pittsburgh/business-reviews/towing-company/howard-s-towing-recovery-llc-in-pittsburgh-pa-14001334/reviews-and-complaints?section=reviews> (last accessed May 16, 2018).

Parking Lot.

The Tow Truck Operator must first obtain the written consent of the private property owner or the owner's agent for each vehicle to be towed. The written consent should have the date and time of the request for the tow. The written consent from the private property owner or owner's agent must include a written signature that is manually affixed to a hardcopy document that provides a description of each vehicle to be towed. The description, at minimum, shall include: the make, the color and plate number of each vehicle to be towed.

7 Pittsburgh Code § 764.21(a).

(b) Upon information and belief, Property Defendants have contracted Howard's Towing to remove unattended vehicles from the Parking Lot. To this end, on at least two occasions, Howard's Towing has explained in response to complaints posted on the Better Business Bureau's website that:

Each land-owner or property manager has directed us to act in enforcing their needs to ensure parking for their guests/patrons...The patrons of that location have contracted our help in removing vehicles of people who have not patronized the store...If, in the event an error occurred [sic] and we mistakenly towed the wrong vehicle, the customer would then immediately be reunited with their vehicle at no charge, and we would not be conversing by e-mail at this time. However; some people maintain that it is their right to park where they wish.⁵

(c) Upon information and belief, Property Defendants reside or are located within the distribution of the Pittsburgh Post-Gazette, which on August 3, 2017 published a story describing one mother's encounter with Howard's Towing after she parked her vehicle in a handicap parking space, presumably, in the Parking Lot.

At 8:30 one evening in mid-July, I parked in a handicap space across the street from Millie's Homemade Ice Cream so we could get her ice cream—one of the simple

⁵ See <https://www.bbb.org/pittsburgh/business-reviews/towing-company/howard-s-towing-recovery-llc-in-pittsburgh-pa-14001334/reviews-and-complaints?section=reviews> (last accessed May 15, 2018).

pleasures [my daughter Mallory] can still enjoy as she is tethered to oxygen and at the end stage of her battle with Cystic Fibrosis.

When we were coming out of Millie's I saw that a tow truck had my car on it and was ready to drive away. I ran across the street and told the driver that my daughter was at Millie's and I needed to go get her up as it's hard for her to walk because of her medical situation.

The driver from Howard's Towing and Recovery said, "I don't care what your daughter has—you can only have your car if you give me \$200." I said I didn't have that much cash on me so he told me I'd need to pick up my car at their impound lot. I told him I wanted to call the police because we have a valid handicap placard and the proper paperwork but more important, if he took my car I wouldn't be able to get my daughter home and her oxygen tank was running out.⁶

(d) On May 5, 2015, WPXI-TV Pittsburgh aired a similar story about predatory towing in the City of Pittsburgh, where the Parking Lot is located. There too, Howard's Towing charged the vehicle owner a \$185 fee, or \$75 more than the City then allowed. Upon information and belief, Property Defendants is a member of WPXI-TV Pittsburgh's media market.⁷

VII. Plaintiff's Experience

44. On or about April 6, 2018, Plaintiff parked his vehicle in the Parking Lot.

45. On the aforementioned date and time, Howards Towing towed Plaintiff's vehicle from the Parking Lot.

46. Howard's Towing charged Plaintiff a two-hundred dollar and no cents (\$200.00)

⁶ To read the heartwarming end of this story, see Diane Shader Smith, *Random Acts of Kindness: When tow truck driver won't let up, strangers step in*, Pittsburgh Post-Gazette (Aug. 3, 2017) (available at <http://www.post-gazette.com/life/random-acts-of-kindness/2017/08/03/Random-Acts-of-Kindness-pittsburgh-handicap-parking-tow-truck/stories/201708030003>) (last accessed May 15, 2018).

⁷ See *Target 11 uncovers changes to protect drivers from predatory towing*, WPXI.com (May 5, 2015) (available at <https://www.wpxi.com/news/local/protect-drivers-predatory-towing-pittsburgh/46195053>) (last accessed May 15, 2018).

fee at that time, which Plaintiff paid in order to take back possession of his vehicle.

47. By impounding/taking possession of Plaintiff's vehicle, and charging Plaintiff amounts in excess of the reasonable and permissible fees established by § 525.05 for its return, Howard's Towing charged, and Property Defendants endorsed, an illegal fee in excess of that which the City of Pittsburgh allows.

CLASS ACTION ALLEGATIONS

48. Plaintiff, pursuant to Rules 1702, 1708 and 1709 of the Pennsylvania Rules of Civil Procedure, asserts this action individually and on behalf of the following class of all Pennsylvania residents:

All owners or operators whose passenger cars, light trucks, motorcycles, and scooters were non-consensually towed from the Parking Lot by Howard's Towing within the applicable statutes of limitation, and who, as a result, were charged and paid a fee in excess of the limits then set by 5 Pittsburgh Code §§ 525.05.

49. Excluded from the classes are Defendants, as well as their past and present officers, employees, agents or affiliates, any judge who presides over this action, and any attorneys who enter their appearance in this action.

50. Plaintiff reserves the right to expand, limit, modify or amend the class definitions, including the addition of one or more subclasses, in connection with her motion for class certification, or at any other time, based on, among other things, changing circumstances and new facts obtained during discovery.

51. **Numerosity – Pennsylvania Rule of Civil Procedure 1702(1).** The members of the classes are so numerous that individual joinder of all class members is impracticable. The precise number of class members and their identities may be obtained from Defendants' books and records.

52. **Commonality – Pennsylvania Rule of Civil Procedure 1702(2).** This action involves questions of law and fact that are common to the class members. Such common questions include, but are not limited to:

(a) Whether Defendants violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), 73 Pa. Stat. § 201-1, *et seq.* and common law by charging fees and collecting sums of money from the Class members in excess of those provided by 5 Pittsburgh Code § 525.02;

(b) Whether Defendants converted or misappropriated Plaintiffs and the class members’ money or property;

(c) Whether Defendants breached a duty of care owed to Plaintiffs and the class members;

(d) Whether Defendants were unjustly enriched to the detriment of Plaintiff and the members of the classes;

(e) Whether Plaintiff and the members of the classes have been damaged and, if so, what is the appropriate measure of such damage; and

(f) Whether treble damages should be imposed against Defendants.

53. **Typicality – Pennsylvania Rule of Civil Procedure 1702(3).** Plaintiff’s claims are typical of the other class members’ claims because, among other things, all class members were comparably injured, or can reasonably be expected to sustain damages, from the uniform prohibited conduct described above. For instance, Plaintiff and each class member was charged and paid an illegal fee in excess of the limit then set by 5 Pittsburgh Code § 525.02. This uniform injury and the legal theories that underpin recovery make the claims of Plaintiff and the members

of the classes typical of one another.

54. **Adequacy of Representation – Pennsylvania Rule of Civil Procedure 1702(4) and 1709.** Plaintiff are an adequate representative of the classes because their interests do not conflict with the interests of the other class members Plaintiff seeks to represent; Plaintiff has retained counsel competent and experienced in complex class action litigation; Plaintiff intends to prosecute this action vigorously; and Plaintiff’s counsel have adequate financial means to vigorously pursue this action and ensure the interests of the classes will not be harmed. Furthermore, the interests of the class members will be fairly and adequately protected and represented by Plaintiff and Plaintiff’s counsel

55. **Predominance – Pennsylvania Rule of Civil Procedure 1708(a)(1).** Common questions of law and fact predominate over any questions affecting only individual class members. For example, Defendants’ liability and the fact of damages is common to Plaintiff and each member of the class. If Howard’s Towing uniformly charges and collects an illegal fee in excess of the limits set by 5 Pittsburgh Code § 525.02, then Plaintiff and each class member suffered damages by the mere fact of their payment to Howard’s Towing. Similarly, if Defendants together fail to satisfy 7 Pittsburgh Code § 764.21(a)’s “written consent” requirement, then Plaintiff and each class member suffered damages as a result of Defendants having removed their vehicle from the Parking Lot illegally.

56. **Manageability – Pennsylvania Rule of Civil Procedure 1708(a)(2).** While the precise size of the class is unknown without the disclosure of Defendants’ records, the claims of Plaintiff and the class members are substantially identical as explained above. Certifying the case as a class action will centralize these substantially identical claims in a single proceeding and

adjudicating these substantially identical claims at one time is the most manageable litigation method available to Plaintiff and the classes.

57. **Risk of Inconsistent, Varying or Prejudicial Adjudications – Pennsylvania Rule of Civil Procedure 1708(a)(3).** If the claims of Plaintiff and the members of the classes were tried separately, Defendants may be confronted with incompatible standards of conduct and divergent court decisions. Furthermore, if the claims of Plaintiff and the members of the classes were tried individually, adjudications with respect to individual class members and the propriety of their claims could be dispositive on the interests of other members of the class not party to those individual adjudications and substantially, if not fully, impair or impede their ability to protect their interests.

58. **Litigation Already Commenced – Pennsylvania Rule of Civil Procedure 1708(a)(4).** On April 19, 2018, Morgan Herzing filed a complaint against Howards Towing and Recovery, LLC and Howard Szuminsky in the Court of Common Pleas of Allegheny County, Pennsylvania. *See* Class Action Complaint, *Herzing v. Howards Towing and Recovery, LLC, et al*, Case No. GD-18-005149 (“*Herzing*”). The *Herzing* matter, which involved some of the same issues involved in this case, was voluntarily dismissed without prejudice on September 14, 2018. Additionally, there is an action pending titled *Markle v. Peter Gordon, et. al.*, GD-18-012037, which involves the same issues involved in this case. To Plaintiff’s knowledge, there are no other cases that have been brought against Defendants, or that are currently pending against Defendants, where a Pennsylvania consumer seeks to represent a class of Pennsylvania residents based on the conduct alleged in this Class Action Complaint.

59. **The Appropriateness of the Forum – Pennsylvania Rule of Civil Procedure**

1708(a)(5). This is the most appropriate forum to concentrate the litigation because Defendants reside or are headquartered in this County and a substantial number of class members were injured in this County.

60. **The Class Members' Claims Support Certification – Pennsylvania Rule of Civil Procedure 1708(a)(6) and (7).** Given the relatively low amount recoverable by each Class member, the expenses of individual litigation are insufficient to support or justify individual suits. Furthermore, the damages that may be recovered by the classes will not be so small such that class certification is unjustified.

61. **The General Applicability of Defendants' Conduct – Pennsylvania Rule of Civil Procedure 1708(b)(2).** Defendants' uniform non-consensual towing practices are generally applicable to the classes as a whole, making equitable and declaratory relief appropriate with respect to each class member.

CAUSES OF ACTION

COUNT I

Asserted on behalf of Plaintiff and Class, against All Defendants
Violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law

62. Plaintiffs incorporate by reference each and every prior and subsequent allegation of this Class Action Complaint as if fully restated herein.

63. Plaintiffs and Defendants are "persons" under the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 Pa. Stat. § 201-1, et seq.

64. The non-consensual towing services that Howard's Towing provides as an agent for, at the behest of, and/or in conspiracy with Property Defendant qualifies as a "trade" and "commerce," as the UTPCPL defines those terms. 73 P.S. § 201-2(3).

65. The services Plaintiffs purchased (whether voluntarily or involuntarily) are “services primarily for personal, family, or household purposes.” 73 P.S. § 201-9.2.

66. The UTPCPL declares as unlawful “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as defined by subclauses (i) through (xxi) of clause (4) of section 21 of this act.” 73 P.S. § 201-3.

67. Under clause (4), unfair methods of competition and unfair or deceptive acts or practices are defined as “[e]ngaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.” 73 P.S. § 201-2(4)(xxi).

68. Defendants violated the UTPCPL by engaging in fraudulent and deceptive conduct which created the likelihood of confusion and misunderstanding.

69. Specifically, Defendants’ false and misleading acts and practices include, but are not limited to (1) asserting Property Defendant’s lien against Plaintiff and class members for an amount in excess of that allowed by law; and (2) holding vehicles removed from the Parking Lot (and refusing to release Property Defendant’s lien) until the consumer paid the unlawful fee demanded.

70. Further, Defendants are “creditors” and/or “debt collectors” under the Pennsylvania Fair Credit Extension Uniformity Act (“PaFCEUA”). 73 P.S. § 2270.1, et. seq.

71. The liens asserted against Plaintiffs and class members, which is the subject of this action, constitute a debt and Defendants refused to release Plaintiffs’ and class members’ vehicles (and that lien) unless Plaintiffs and class members paid the debt.

72. Defendants violated the PaFCEUA by making a false representation of the character, amount, or legal status of the debt by charging more than allowed by law. 73 P.S. §

2270.4(a) & (b)(5)(ii); 15 U.S.C. § 1692e(2).

73. Defendants further violated the PaFCEUA by collecting an amount in excess of that permitted by law. 73 P.S. § 2270.4(a) & (b)(6)(i) ; 15 U.S.C. § 1692f(1).

74. Such conduct constitutes a violation of the UTPCPL. *See* 73 P.S. § 7720.5(a).

75. Plaintiffs and all class members suffered ascertainable losses that necessarily flowed directly from Defendants' fraud, deceit and/or unfair practices, including their violation of the PaFCEUA.

76. Plaintiffs and all class members justifiably relied on Defendants' knowingly false representations that the removal of their vehicles was legal and the fees Defendants' charged were reasonable and allowed under applicable law; indeed, they were forced to pay the unlawful fees for the return of their property.

77. Defendants' conduct in this regard was intentional, wanton, wrongful, reckless, and outrageous, and Defendants knew or should have known they were committing unfair and deceptive acts and practices in violation of the UTPCPL, which constitutes a violation of the UTPCPL.

78. Accordingly, Plaintiffs and individual class members are entitled to recover actual damages, punitive damages, statutory damages, treble damages, costs and reasonable attorneys' fees, and/or other additional relief as the Court deems necessary or proper.

79. Defendants are all jointly and severally liable as a result of their agency relationship, direct participation, and/or their conspiracy to violate Pennsylvania law described herein, as well as under Pennsylvania's Fair Share Act because Defendants engaged in an intentional tort.

COUNT II
Asserted on behalf of Plaintiffs and Class, against All Defendants
Misappropriation/Conversion

80. Plaintiffs incorporate by reference each and every prior and subsequent allegation of this Class Action Complaint as if fully restated herein.

81. At all times relevant herein, Plaintiffs and class members had a property interest in their vehicles and money.

82. Defendants, by their wrongful acts, interfered with Plaintiffs' and class members' property interests in their vehicles by holding or removing their vehicles from the Parking Lot without their consent and by refusing to release these vehicles (or Property Defendants' lien) unless Plaintiffs and class members paid an unlawful fee in excess of the lien amount permitted by law.

83. Defendants had no authority to charge Plaintiffs and class members fees in excess of the fees set by 5 Pittsburgh Code §§ 525.02 and 525.05.

84. As a result, Defendants' collection of fees converted the funds rightfully belonging to Plaintiffs and the class members without their consent. Further, Defendants caused the Plaintiff and class members to suffer a loss of use of their property.

85. The conversion of the vehicles and/or money was illegal, unjustified, outrageous, and intentional, insofar as it is believed and therefore averred that at all times relevant herein Defendants have or had actual knowledge that the process it employed to remove vehicles from the Parking Lot violated Pennsylvania law.

86. Alternatively, if the conversion was not deliberate, it was the result of Defendants' recklessness and gross neglect.

87. The conversion of Plaintiffs' and class members' vehicles and funds benefitted and continues to benefit Defendants, while acting to the severe pecuniary disadvantage of Plaintiffs and the class members.

88. As a result of the conversion, Plaintiffs and class members suffered actual injury and loss in amounts that are capable of identification through Defendants' records.

89. Defendants are all jointly and severally liable as a result of their agency relationship and/or their conspiracy to violate Pennsylvania law described herein, as well as under Pennsylvania's Fair Share Act because Defendants engaged in an intentional tort.

COUNT III
Asserted on behalf of Plaintiffs and Class, against Property Defendants
Negligence

90. Plaintiffs incorporate by reference each and every prior and subsequent allegation of this Class Action Complaint as if fully restated herein.

91. Property Defendants owed and continues to owe a common law duty to Plaintiffs and the class members because, by undertaking the affirmative act of removing (or having Howard's Towing remove) Plaintiffs' and class members' vehicles from their property, they were under a duty to exercise the care of a reasonable person to protect the Plaintiffs and class members from an unreasonable risk of harm, including against the foreseeable criminal conduct of Howard's Towing. *See Schmoyer v. Mexico Forge, Inc.*, 649 A.2d 705, 708 (Pa. Super. Ct. 1994); *see* Restatement (Second) of Torts § 302B.

92. Property Defendants also owed and continues to owe a common law duty to Plaintiffs and the class members to, at minimum, "refrain from willful or wanton misconduct...." *Graham v. Sky Haven Coal, Inc.*, 563 A.2d 891, 896 and 899 (Pa. Super. Ct. 1989).

Willful misconduct means that the actor desired to bring about the resultant harm, or was at least aware that it was substantially certain to ensue; this means that willful conduct requires actual prior knowledge of the trespasser's peril.... Wanton misconduct, by contrast, means that an actor has intentionally done an act of an unreasonable character, in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow. It usually is accompanied by a conscious indifference to the consequences, and not a desire to bring them about; as such, actual prior knowledge of the *particular* injured person's peril is not required. It is enough that the actor realizes, or at least has knowledge of sufficient facts that would cause a reasonable man to realize, that a peril exists, for a sufficient time beforehand to give the actor a reasonable opportunity to take means to avoid the injured person's accident; the actor is wanton for recklessly disregarding the danger presented....

Id.; 563 A.2d at 895 and 891 (Brosky, J., concurring and dissenting opinion) (emphasis in original) (internal citations omitted).

93. Property Defendants breached their common law duty and thus was negligent by engaging and continuing to engage Howard's Towing to remove unattended vehicles from the Parking Lot despite Howard's Towing policies and practices that violate Pennsylvania law. Upon information and belief, the specific negligent acts and omissions committed by Property Defendants include, but are not limited to, some, or all, of the following:

(a) Negligently employing Howard's Towing to remove unattended vehicles from the Parking Lot despite that Howard's Towing is well known for its predatory towing practices;

(b) Negligently engaging Howard's Towing to enforce Property Defendants' lien rights against the vehicles' owners whose vehicles are towed to Howard's Towing and permitting Howard's Towing to charge amounts for that lien in excess of the charges provided for by law; and

(c) Negligently failing to ensure that Plaintiffs and class members were charged an amount for Property Defendant's lien that was at or under the amount permitted by law.

94. In connection with the conduct described above, Property Defendants acted willfully, wantonly, and with complete disregard for the harm Plaintiffs and the class members would suffer at the hands of Howard's Towing through their illegal and criminal towing and billing practices.

95. As a direct and proximate result of Property Defendants' negligent conduct, Plaintiffs and the class members have suffered substantial losses as detailed herein, including the loss of use of their property and money.

COUNT IV

Asserted on behalf of Plaintiffs and Class, against Property Defendants
Negligence Per Se - Violation of 75 Pa. C.S.A. § 3353(c) and Pennsylvania's Vehicle Code and Ordinance Section 525.05

96. Plaintiffs incorporate by reference each and every prior and subsequent allegation of this Class Action Complaint as if fully restated herein.

97. Under 75 Pa. C.S.A. § 3353(c), Property Defendants are permitted to remove (or have removed) Plaintiffs' and class members' vehicles from the Parking Lot, in which case Property Defendant receives by law a lien against each vehicle owner for the "reasonable value of the costs of removing the vehicle plus the costs of storage."

98. Under 75 Pa. C.S.A. § 3353(c), the City of Pittsburgh is authorized to enact ordinances that regulate the provision of non-consensual towing services within the municipality:

...Any city, borough, incorporated town or township may, by ordinance, provide for rates to be charged for removal of vehicles and for municipal regulation of authorized towing services. ...

99. Pursuant to the authority given it under 75 Pa. C.S.A. § 3353(c), the City of

Pittsburgh enacted 5 Pittsburgh Code §§ 525.02 and 525.05, which limits the fees that may be charged to a vehicle owner for a non-consensual tow. At all times relevant herein, this fee was set at either \$110 or \$135.

100. Section 3353(c) and Section 525.05 were enacted to protect Plaintiffs and class members (i.e., vehicle owners) from being charged predatory towing fees such as those charged to Plaintiffs and class members here.

101. The law clearly applies to Property Defendants.

102. Nevertheless, Property Defendants contracted and retained Howard's Towing to remove unattended vehicles from the Parking Lot, and Property Defendants' asserted a lien against the owners of the vehicles in excess of the amount allowed by law.

103. Plaintiffs and the class members suffered actual loss and other damages, including loss of use of their money and property (vehicles), as a result of the failure of Property Defendant to comply with 75 Pa. C.S.A. § 3353(c) and 5 Pittsburgh Code § 525.05 by paying fees in excess of those authorized by law for the release of their vehicles.

104. These damages were the exact type of damages that the aforementioned statute and ordinances were intended to protect against.

COUNT V

Asserted on behalf of Plaintiffs and Class, against Howard's Towing *Negligence*

105. Plaintiffs incorporate by reference each and every prior and subsequent allegation of this Class Action Complaint as if fully restated herein.

106. Howard's Towing owed and continues to owe a common law duty to Plaintiffs and the class members because, by undertaking the affirmative act of removing Plaintiffs' and class

members' vehicles from the Property, Howard's Towing was under a duty to exercise the care of a reasonable person to protect the Plaintiffs and class members from an unreasonable risk of harm.

107. Howard's Towing also owed and continue to owe a common law duty to Plaintiffs and the class members to, at minimum, "refrain from willful or wanton misconduct...." *Graham v. Sky Haven Coal, Inc.*, 563 A.2d 891, 896 and 899 (Pa. Super. Ct. 1989).

Willful misconduct means that the actor desired to bring about the resultant harm, or was at least aware that it was substantially certain to ensue; this means that willful conduct requires actual prior knowledge of the trespasser's peril.... Wanton misconduct, by contrast, means that an actor has intentionally done an act of an unreasonable character, in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow. It usually is accompanied by a conscious indifference to the consequences, and not a desire to bring them about; as such, actual prior knowledge of the *particular* injured person's peril is not required. It is enough that the actor realizes, or at least has knowledge of sufficient facts that would cause a reasonable man to realize, that a peril exists, for a sufficient time beforehand to give the actor a reasonable opportunity to take means to avoid the injured person's accident; the actor is wanton for recklessly disregarding the danger presented....

Id.; 563 A.2d at 895 and 891 (Brosky, J., concurring and dissenting opinion) (emphasis in original) (internal citations omitted).

108. Howard's Towing breached their common law duty by charging amounts in excess of those allowed by law.

109. In connection with the conduct described above, Property Defendant acted willfully, wantonly, and with complete disregard for the harm Plaintiffs and the class members suffered.

110. As a direct and proximate result of Property Defendant's negligent conduct,

Plaintiffs and the class members have suffered substantial losses as detailed herein, including the loss of use of their property and money.

111. Defendant Howard Szuminsky is jointly and severally liable for the actions of Howard's Towing, for upon information and belief, he directly participated in the creation, implementation, and maintenance of Howard's Towing's policy and practice to disregard 5 Pittsburgh Code §§ 525.02 and 525.05.

COUNT VI

Asserted on behalf of Plaintiffs and Class against Howard's Towing *Negligence Per Se - Violation of Pennsylvania's Vehicle Code and Ordinance Section 525*

112. Plaintiffs incorporate by reference each and every prior and subsequent allegation of this Class Action Complaint as if fully restated herein.

113. Under 75 Pa. C.S.A. § 3353(c), the City of Pittsburgh is authorized to enact ordinances that regulate the provision of non-consensual towing services within the municipality:

...Any city, borough, incorporated town or township may, by ordinance, provide for rates to be charged for removal of vehicles and for municipal regulation of authorized towing services. ...

114. Pursuant to the authority given it under 75 Pa. C.S.A. § 3353(c), the City of Pittsburgh enacted 5 Pittsburgh Code §§ 525.02 and 525.05, which limits the fees that may be charged for a non-consensual tow. At all times relevant herein, this fee was set at either \$110 or \$135.

115. Nevertheless, Howard's Towing uniformly and consistently violated the duties they owed vehicle owners under Pittsburgh Code §§ 525.02 and 525.05 by charging illegal fees far in excess of those allowed.

116. Section 525.02 and 525.05 were enacted to protect Plaintiffs and class members

(i.e., vehicle owners) from being charged predatory towing fees such as those charged to Plaintiffs and class members.

117. The law clearly applies to Howard's Towing.

118. Plaintiffs and class members suffered actual loss and other damages as a result of the failure of Howard's Towing to comply with 5 Pittsburgh Code §§ 525.02 and 525.05 by paying fees in excess of those allowed by law for the return of their vehicles and resulting in the loss of use of their property and money.

119. These damages were the exact type of damages that the aforementioned statute and ordinances were intended to protect against.

120. Defendant Howard Szuminsky is jointly and severally liable for the actions of Howard's Towing, for upon information and belief, he directly participated in the creation, implementation, and maintenance of Howard's Towing's policy and practice to disregard 5 Pittsburgh Code §§ 525.02 and 525.05.

COUNT VII
Asserted on behalf of Plaintiffs and Class, against All Defendants
Constructive Fraud

121. Plaintiffs incorporate by reference each and every prior and subsequent allegation of this Class Action Complaint as if fully restated herein.

122. Property Defendants delegated their authority to remove Plaintiffs' and class members' vehicles, and to enforce Property Defendants' lien against the vehicles' owners for the cost of their removal from the Parking Lot.

123. Acting on its own behalf and on behalf of the Property Defendants, Howard's Towing assumed a duty to Plaintiffs and class members upon connecting, loading, and/or removing

their vehicles from the Parking Lot.

124. As such, Howard's Towing acts as a fiduciary while in possession of Plaintiffs' and class members' vehicles, and must act in good faith in their interests.

125. Further, the relative positions of Defendants and Plaintiffs and class members are such that Defendants have the power and means to take advantage of or exercise undue influence over Plaintiffs and class members.

126. Neither Plaintiffs nor any class members can retake possession or control of their vehicles once Defendants have connected, loaded, and/or removed the vehicles from the Parking Lot, without Howard's Towing's consent (and without paying the extortionist fees addressed herein).

127. To increase their own profits and in favor of their own interests, Defendants exploited that relationship with Plaintiffs and the class members by removing their vehicles and charging them fees in violation of Pennsylvania law. As such, Defendants are operating in a way most beneficial to themselves and in a manner directly opposite to the interests of Plaintiffs and class members.

128. Defendants' breach of its confidential relationship was the direct and proximate cause of the injuries that Plaintiffs and the class members suffered.

129. Defendants are all jointly and severally liable as a result of their agency relationship and/or conspiracy to violate Pennsylvania law described herein, as well as under Pennsylvania's Fair Share Act because Defendants engaged in an intentional tort.

COUNT VIII
Asserted on behalf of Plaintiffs and Class, against All Defendants
Breach of Contract/Implied Contract (In the Alternative)

130. Plaintiffs incorporate by reference each and every prior and subsequent allegation of this Class Action Complaint as if fully restated herein.

131. When vehicles are non-consensually towed from the Parking Lot by Howard's Towing, Property Defendants have a lien against the vehicles' owners for the reasonable towing fees, as capped by the City of Pittsburgh ordinances.

132. Howard's Towing, on behalf of itself and Property Defendants, will not release the vehicles (or Property Defendants' lien) unless the vehicles' owner/operator pays an unlawful fee.

133. A contract or implied contract arises between the vehicle owners and Defendants when the vehicle owners park in the Parking Lot, are towed, and pay Howard's Towing the unlawful fees for the Property Defendant's lien to be released.

134. Implicit in each such contract is Defendants' agreement to provide and charge for non-consensual tow services in a manner consistent with Pennsylvania law.

135. Also implicit in each such contract and/or Pennsylvania law is Defendants' duty of good faith and fair dealing.

136. By Howard's Towing charging Plaintiffs a fee in excess of the limits set by 5 Pittsburgh Code §§ 525.02 and 525.05 for release of Property Defendants' lien, Defendants failed to comply with applicable Pennsylvania law, and therefore breached its contractual obligations to Plaintiff.

137. In charging such fees, Howard's Towing was acting on its own behalf and on behalf of the Property Defendants who had the sole legal right to have the vehicle removed from the Parking Lot.

138. Defendants' conduct, as described at length above, constitutes a breach or breaches

of contract and/or implied contract between Defendants and Plaintiff, and the contracts and/or implied contracts between Defendants and each and every class member, as well as the covenant of good faith and fair dealing implied in and/or applicable to each such contract.

139. As a result of Defendants' breaches of contract and/or implied contract and their breaches of the covenant of good faith and fair dealing, Plaintiffs and all other similarly situated individuals were caused to suffer damages and losses as set forth in this Class Action Complaint.

140. Plaintiffs and class members were compelled to pay the unlawful fees to recover their vehicles.

141. Defendants' conduct was intentional, willful, wanton, reckless, and outrageous because Defendants had actual knowledge of Pennsylvania law governing charges for the provision of non-consensual tow services in the City of Pittsburgh, but nevertheless persisted in refusing to follow these laws out of a desire to maximize their own economic gains.

142. Defendant Howard Szuminsky is jointly and severally liable for the actions of Howard's Towing, for upon information and belief, he directly participated in the creation, implementation, and maintenance of Howard's Towing's policy and practice to disregard 75 Pa. C.S.A. § 3353(c), 5 Pittsburgh Code §§ 525.02 and 525.05, and 7 Pittsburgh Code § 764.21(a).

COUNT IX

Asserted on behalf of Plaintiffs and All Classes, against All Defendants

Unjust Enrichment

143. Plaintiffs incorporate by reference each and every prior and subsequent allegation of this Complaint as if fully restated herein.

144. As a result of Defendants' unlawful and deceptive actions described above, Howard's Towing and its owner Howard Szuminsky were enriched at the expense of Plaintiffs

and the class members through the payment of fees that never should have been charged, and in either event, which exceed the amounts allowed under governing authority.

145. As a result of Defendants' unlawful and deceptive actions described above, Property Defendants were enriched at the expense of Plaintiffs and the class members through the payment of fees that never should have been charged for Property Defendants' lien, and in either event, which exceed the amounts allowed under governing authority.

146. Property Defendants received the benefit of maximizing rents and/or profits by towing Plaintiff and the class members' vehicles from the Parking Lot to make room for other patrons; however, in doing so, Property Defendants charged Plaintiffs and the class members an amount for Property Defendants' lien that exceeded that permitted by law.

147. Under the circumstances, it would be against equity and good conscience to permit Defendants to retain ill-gotten benefits they received from Plaintiffs and the class members, in light of the fact that Defendants used illegal, deceptive, and/or unfair practices to induce or force owners to pay illegal fees for the return of their vehicles.

148. Thus, it would be unjust and inequitable for Defendants to retain the benefit without restitution to Plaintiffs and the class members for the benefits received as a result of Defendants' unfair, deceptive, and/or illegal towing and billing practices described herein.

149. Defendant Howard Szuminsky is jointly and severally liable for the actions of Howard's Towing, for upon information and belief, he directly participated in the creation, implementation, and maintenance of Howard's Towing's policy and practice to disregard 75 Pa. C.S.A. § 3353(c), 5 Pittsburgh Code §§ 525.02 and 525.05, and 7 Pittsburgh Code § 764.21(a).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, on his own behalf and on behalf of the class members, respectfully requests the Court enter judgment in Plaintiff's favor and against Defendants as follows:

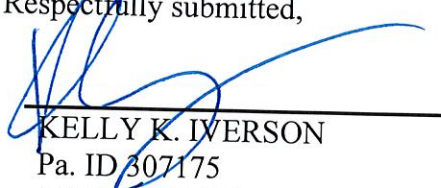
- A. Declaring this action, a proper class action, certifying the classes as requested herein, designating Plaintiff as Class Representative and appointing the undersigned counsel as Class Counsel;
- B. Ordering Defendants to pay actual, consequential, statutory, and/or punitive damages to Plaintiff and the class members, including restitution and disgorgement of all profits and unjust enrichment that Defendants obtained from Plaintiff and the class members as a result of Defendants' unlawful conduct;
- C. Ordering declaratory and injunctive relief as permitted by law or equity, including enjoining Defendants from continuing the unlawful conduct as set forth herein;
- D. Ordering Defendants to pay attorneys' fees and litigation costs to Plaintiff and the other members of the classes;
- E. Ordering Defendants to pay both pre- and post-judgment interest on any amounts awarded; and
- F. Ordering such other and further relief as may be just and proper.

JURY DEMAND

Plaintiff respectfully demands a jury trial on all matters so triable.

Dated: March 16, 2020

Respectfully submitted,



KELLY K. IVERSON

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VERIFICATION

The undersigned does hereby verify that the facts contained in the Complaint are true and correct to the best of my knowledge, information and belief. I make this verification subject to the penalties provided for under 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Date: 12-26-19

By: Terry Motchar
Terry Motchar