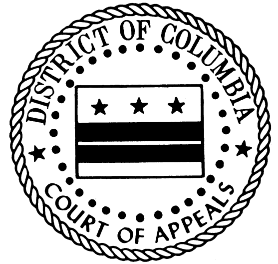

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APPEAL NO. 22-CV-418

DISTRICT OF COLUMBIA
COURT OF APPEALS

THE BURRELLO GROUP, LLC
AND JOSE BURRELLO

Defendants, Appellants

v.

DISTRICT OF COLUMBIA

Plaintiff, Appellee

Appeal from the Superior Court for the
District of Columbia, Civil Division
Case No. 2020 CA 002870 B
(The Honorable Anthony Epstein, Judge)

BRIEF OF APPELLANTS THE BURRELLO GROUP, LLC AND JOSE BURRELLO

Eric J. Menhart, Esq.
Lexero Law
512 C St NE
Washington, DC 20002
Phone: 202-904-2818

Attorney for Appellants

RULE 28 CERTIFICATE OF COUNSEL AND PARTIES

Pursuant to Rule 28(a)(2) of the Rules of the D.C. Court of Appeals, the undersigned counsel of record for the Appellants files this Certificate of Counsel and Parties.

Defendants-Appellants: The Burrello Group, LLC and Jose Burrello

Defendants-Appellants' Counsel: Mr. Eric Menhart, Esq. of Lexero Law

Plaintiff-Appellee: District of Columbia

Plaintiff-Appellee's Counsel: Caroline S. Van Zile, Esq. Solicitor General for the District of Columbia

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Rules of the D.C. Court of Appeals, The Burrello Group LLC states that it does not have any parent corporation or any publicly held corporation that owns 10% or more of its stock.

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayeridentification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

Signature

22-CV-418

Case Number(s)

Eric Menhart, Esq,

Name

09/10/2022

Date

Eric.Menhart@Lexero.com

Email Address

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STATEMENT OF THE ISSUES

I. Whether Summary Judgment Was Improperly Entered and Whether Defendants are Entitled to a Trial by Jury as to Liability

II. Whether Defendants are Entitled to a Trial by Jury as to Remedies

STATEMENT OF THE CASE

On June 28, 2020, a civil action was filed in the Superior Court for the District of Columbia by Plaintiff/Appellee the District of Columbia (hereinafter "Plaintiff" or "Ditrict" or "Appellee") against Defendants/Appellants, The Burrello Group, LLC, d/b/a Burrello Investment Group, and Jose Burrello, a District-licensed real estate broker and agent of The Burrello Group, LLC (collectively "Defendants" or "Burrello" or "Appellants"). (A. 9) In its Complaint, Plaintiff alleged that Defendants are liable for discriminatory practices that limit affordable housing and violate the District of Columbia Human Rights Act (DCHRA), D.C. Code 2-1401.01. (A. 9-10) Plaintiff alleged that Defendants posted multiple advertisements that stated that "vouchers" would not be accepted as rental payment for a property in the District. (A. 10)

On July 24, 2020, Defendants filed their respective Answer and Affirmative Defenses. (A. 33) Later, on September 09, 2022, Plaintiff filed a Motion for Summary Judgment as to liability pursuant to D.C. Code § 2-1401.01. (A. 40) On October 5, 2021, Defendants filed an Opposition to the District's Motion for Summary Judgment. (A. 249) Plaintiff filed a Reply in Support of its Motion for

Summary Judgment on October 18, 2021. (A. 50) The Superior Court denied Plaintiff's Motion for Summary Judgment on October 21, 2021. (A. 266)

Subsequently, Plaintiff filed an Opposed Motion for Reconsideration on November 18, 2021. (A. 271) Defendants then filed an Opposition to Plaintiff's Motion for Reconsideration on December 01, 2021. (A. 281) The Superior Court granted Plaintiff's Motion for Reconsideration and Summary Judgment on December 06, 2021. (A. 287) Plaintiff then filed an "Opposed Motion for Remedies Following the Court's Grant of Summary Judgment on March 24, 2022." (A. 291) Defendants filed their Opposition to the District's Motion for Remedies on April 06, 2022. (A. 304) Plaintiff then filed a Reply in Support of its Motion for Remedies on April 13, 2022. (A. 313) The Superior Court granted in part and denied in part Plaintiff's Motion for Remedies on May 13, 2022. (A. 318) Defendants timely filed their Notice of Appeal on June 06, 2022. (A. 326)

STATEMENT OF RELEVANT FACTS

Defendant Jose Burrello is a District-licensed broker and real estate agent of The Burrello Group, LLC. Defendants lease residential real estate in the District and surrounding areas. Defendants posted advertisements about the availability of real property, 131 R Street, N.E., Washington, D.C. 20002 (the property), to various online platforms. The advertisement included language explaining that the property was "not approved for vouchers." Plaintiff alleges Defendants violated the

DCHRA on the basis of source of income. (A. 22) The language in the advertisements, however, was used only to demonstrate that Defendants never had any type of inspection for a property to be considered for vouchers. (A. 226-227)

Mr. Burrello never had any discriminatory intent. (A. 192) Mr. Burrello identifies as a Latino man and has personally experienced discrimination in his life. Mr. Burrello has no interest in discriminating against anyone. (A. 191-192) Mr. Burrello has worked with people of all ages, races, income sources, sexual identifications and more. Defendants believed in good faith that the property had not undertaken a process to "become eligible" for voucher programs in the District of Columbia. (A. 254)

The trial court initially concluded that "summary judgment should be sparingly granted in cases involving motive or intent." (A. 269) (*citing Hollins v. Fannie Mae,* 760 A.2d 563, 570 (D.C. 2000). This conclusion appeared in the trial court's initial denial of the District's Motion for Summary Judgment. (A. 266) The Court also correctly found that there was a possibility "that a reasonable jury would credit Mr. Burrello's testimony and conclude that he did not subjectively intend to discourage voucher holders."[1] *Id.* Despite this initial and proper

[1] In the interest of full transparency, the Court's full quote was that "A reasonable jury could easily infer that defendants had at least partially a discriminatory reason for including a discriminatory statement in their advertisements, but it is possible, albeit unlikely, that a reasonable jury would credit Mr. Burrello's testimony and conclude that he did not subjectively intend to discourage voucher holders even though that this was the predictable result of the wording he chose." *Id.*

conclusion, the trial court later granted the District's Motion for Reconsideration. The trial court concluded that its initial ruling had been "a manifest error of law" (A. 288) and that "the advertisements themselves are illegal, regardless of defendants' motive." (A. 289). Remedies were later imposed against Defendants by the trial court. (A. 318) This appeal follows.

STANDARD OF REVIEW

"The question whether summary judgment was properly granted is one of law, and we review de novo." *Blair v. D.C.*, 190 A.3d 212, 220 (D.C. 2018). Summary judgment should be granted only if a party demonstrates that "the pleadings, depositions, answers to interrogatories, and admissions to file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Id*. When independently assessing the record, "we view the facts in the light most favorable to the non-moving party to determine (1) whether any genuine issue of material fact exists, and (2) whether appellees are entitled to judgment as a matter of law.'" *Id.* at 220-221. While the moving party bears the burden of demonstrating that there is no genuine issue of material fact, "conclusory allegations by the non-moving party are insufficient to establish a genuine issue of material fact or to defeat the entry of summary judgment." *Id*. at 221. Any doubt, however, "about the

existence of a factual dispute must be resolved in favor of the non-moving party." *Id*.

SUMMARY OF THE ARGUMENT

The trial court erred when granting Plaintiff's motion for summary judgment and motion for reconsideration because it incorrectly relied on *Feemster v. BSA Ltd. Partnership*, 548 F.3d 1063, 1070 (D.C. Cir. 2008), and its holding that "when a policy is discriminatory on its face, the defendant's motive is irrelevant." (A. 288) However, because Defendants' advertisements are not discriminatory on their face, the correct test is the three-part, burden-shifting test articulated by the Supreme Court for Title VII cases in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L.Ed.2d 668, (1973). In the Court's December 6, 2021 Order, the Court rejected the holdings of *McDonnell Douglas Corp.* because it says "the test applies only if the plaintiff does not proffer direct evidence of intentional discrimination." (A. 289) If Plaintiff needed to sufficiently show 'intentional' discrimination for *McDonnell Douglas Corp.* to be inapplicable, then such a requirement directly contradicts the Court's reliance on *Feemster*, which is a case that holds that motive is irrelevant.

Even if Plaintiff successfully proved direct, intentional discrimination on its face, the appropriate test is not *Feemster*, but *Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 140 S. Ct. 1009, 1017, 206 L. Ed. 2d 356 (2020), which

presents a "motivating factor" or "but-for" test. Regardless of whether the analysis falls under *McDonnell Douglas Corp.* for indirect evidence of discrimination or *Comcast Corp.* for direct evidence of discrimination, intent is necessarily part of the required analysis in this case. There is a genuine issue of fact as to motive and intent which must be decided by a jury.

Lastly, Defendants are entitled to a trial by jury for damages. Numerous long-standing precedential decisions, including decisions by this Court of Appeals, support Defendants' positions on this issue.

ARGUMENT

I. Whether Summary Judgment Was Improperly Entered and Whether Defendants are Entitled to a Trial by Jury as to Liability

District of Columbia Superior Court Civil Procedure Rule 38(a) grants a civil litigant the right of trial by jury through the Seventh Amendment to the Constitution, or as otherwise provided by an applicable statute. *See* D.C. Super. Ct. R. 38(a); *see also* U.S. Const. Seventh Amendment.

The trial court states in its December 6, 2021 Order that the only reason summary judgment on liability was initially denied was because there was a "genuine dispute about whether Defendants posted these advertisements wholly or partially for a discriminatory reason." (A. 288). However, the trial court subsequently goes on to state in the same Order that it was persuaded by *Feemster,* 548 F.3d 1063, 1070 (D.C. Cir. 2008), which holds that under the DCHRA (like

Title VII), "when a policy is discriminatory on its face, the defendant's motive is irrelevant." The *Feemster* court concedes that the District of Columbia Court of Appeals has not yet "outlined the boundaries of source-of-income discrimination under the Human Rights Act." *Id*. Moreover, as the trial court notes, *Feemster* is not binding. (A. 288)

While the trial court relied upon the non-binding *Feemster*, this Court of Appeals, in precedent that *is* binding upon the trial court, has already explained that the United States Supreme Court's burden shifting test is proper under the current circumstances. *Futrell v. Dep't of Lab. Fed. Credit Union*, 816 A.2d 793, 802 (D.C. 2003).

This Court explained in *Futrell* that, when considering claims brought under the DCHRA, it is proper to rely upon "the same three-part, burden-shifting test articulated by the Supreme Court for Title VII cases in *McDonnell Douglas Corp.*, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L.Ed.2d 668 (1973)." *Futrell*, 816 A.2d at 802 (*see also Sumes v. Andres*, 938 F. Supp. 9, 12-13 (D.D.C. 1996)).

The *Futrell* court clearly set out the analytical procedure. First, a plaintiff "must make prima facie showing of discrimination by a preponderance of the evidence. The prima facie showing, when made, raises a rebuttable presumption that the employer's conduct amounted to unlawful discrimination." *Futrell*, 816 A.2d at 803. Second, "once the presumption is raised, the burden shifts to the

employer to rebut it by articulating 'some legitimate, nondiscriminatory reasons for the employment action.'" *Id.* (citation omitted). Finally, in the third step, "the burden shifts back to the employee to prove, again by a preponderance of the evidence, that the employer's stated justification for its action 'was not its true reason but was in fact merely a pretext' to disguise discriminatory practice." *Id.*

In the instant case, the trial court initially, and correctly, concluded that a jury should consider the reasons for the posting of the advertisements. (A. 288) When the trial court later improperly granted the Motion for Reconsideration, it engaged in reversible error.

In this case, even if the District succeeded in demonstrating a possibility of discrimination by a preponderance of the evidence, the Burrello Defendants are afforded the opportunity to give a legitimate, non-discriminatory reason for their posting of the advertisement. Defendants provided such a legitimate, non-discriminatory reason by making clear that Mr. Burrello was giving notice that the property in question, to the best of his knowledge, was not 'eligible' for the voucher program. (A. 254) ("I've never gone through the process ... and the property has never gone through the process"). (A. 226-227) Additionally, there is a strong argument that Plaintiff has not proven by a preponderance of the evidence that Defendants' stated justification for its action was untrue and mere pretext. Finally, although the burden of production may shift from the Plaintiff to

Defendant and back to the Plaintiff, the Plaintiff retains the ultimate burden of persuading the finder-of-fact that the Defendant acted with discriminatory "animus." *Futrell*, 816 A.2d at 803. Plaintiff has not met this burden.

In its December 6, 2021 Order, the Court rejected the implementation of the *McDonnell Douglas Corp.* analysis because it says "the test applies only if the plaintiff does not proffer direct evidence of intentional discrimination." (A. 289) The only evidence seemingly relied upon for this conclusion was the language "not approved for vouchers," that appeared in the advertisements. (A. 288)

Defendants disagree, completely, that "not approved for vouchers" constitutes "intentional discrimination" on its face. The language is *not* "no vouchers accepted" or "applications for voucher holders not accepted" or "vouchers will not be accepted" or "NO vouchers" or "market tenants only" or any other instances of language that might plainly demonstrate discrimination. Quite to the contrary, the language merely explains that the *property* was "not approved" for vouchers, which was accurate. This language was not, in and of itself, discriminatory as to any particular applicant. The fact that the language was imperfect does not automatically mean that it was discriminatory, and the law is clear that Defendants have a right to demonstrate "their side of the story" to a jury.

Moreover, Plaintiff in this case has not offered any direct evidence of "intentional" discrimination. Indeed, the Court's finding that Plaintiff offered

direct evidence of "intentional" discrimination seemingly directly contradicts its reliance on *Feemster*, where motive is irrelevant.

Even if the trial court correctly found direct, facial discrimination, a "motivating" factor would still be relevant. This Court of Appeals has previously explained that while "a claim of discrimination under the Human Rights Act is generally considered under the three-part burden shifting test set forth in *McDonnell Douglas Corp.*, that test is deemed inappropriate when a plaintiff offers 'direct' evidence of discrimination." *Jung v. George Washington Univ*., 875 A.2d 95, 110-11 (D.C.) *opinion amended on reh'g*, 883 A.2d 104, (D.C. 2005). If the trial court correctly found that Plaintiff offered direct evidence of discrimination, the reviewing court "would need to use a mixed motives test outlined in *Price Waterhouse v. Hopkins*." *Jung*, 875 A.2d at 111 (*citing Price Waterhouse v. Hopkins*, 490 U.S. 228, 109 S. Ct. 1775, 104 L.Ed.2d 268 (1989)."

In an employment setting, *Price Waterhouse* requires the plaintiff to show that discrimination "was a motivating factor for any employment practice, even though other factors also motivated the practice." *Id*. at 111 (*see also Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 140 S. Ct. 1009, 1019, 206 L. Ed. 2d 356 (2020). Moreover, under *Price Waterhouse*, upon presentation of direct evidence of discrimination, the burden of persuasion shifts to the employer to

demonstrate by a preponderance of the evidence that it would have made the same decision absent the impermissible motive. *Id*.

To warrant treatment under *Price Waterhouse*, a Plaintiff claiming direct evidence of discrimination has a heavy burden, "for not every comment reflecting discriminatory attitudes will support an inference that it was a factor motivating the decision." *Id*. The plaintiff must present evidence of "conduct or statements" by persons involved in the decision-making process that may be viewed as "directly reflecting the alleged discriminatory attitude, sufficient to permit the factfinder to infer that the attitude was more likely than not a motivating factor in the alleged adverse action." *Id*. (*see also Little v. D.C. Water and Sewer Auth*., 91 A3d 1020, 1025 (D.C. 2014).

Most recently, though, in *Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 140 S. Ct. 1009, 1017, 206 L. Ed. 2d 356 (2020), the United States Supreme Court discusses how Congress displaced the motivating factor test in *Price Waterhouse*. In the Civil Rights Act of 1991, Congress provided that a Title VII plaintiff who shows that discrimination is even a "motivating" factor in the defendant's challenged employment decision is entitled to declaratory and injunctive relief. *Id*. Motive and intent, therefore, are necessarily relevant, unlike *Feemster*.

Comcast Corp.'s motivating factor, but-for analysis, defeats *Feemster's* "motive is irrelevant" reasoning. Even if Plaintiff demonstrated a direct, facial discrimination, Plaintiff has not shown how Defendants used source of income as its 'motivating' factor in posting the advertisements under principles set out in *Comcast Corp*.

Plaintiff claims that Mr. Burrello admitted at deposition in this matter that he included the phrase "not approved for vouchers" in his advertisements to deter calls from housing voucher holders. (A. 279) However, Mr. Burrello has made clear that the motivating factor for doing so was to give notice that the property in question, to the best of his knowledge, was not "eligible" for the voucher program. (A. 254). The language "not approved for vouchers" could reasonably be understood, and was intended, to mean that the property has not undertaken an inspection process by the DCHA and is accordingly "not approved for vouchers." Based on Mr. Burrello's testimony that this is the case, a reasonable jury could, and likely would, infer the same.

In the trial court's October 21, 2021 Order denying summary judgment it cites *Hollins*, 760 A.2d 563, 570 (D.C. 2000), which says summary judgment "should be sparingly granted in cases involving motive or intent." (A.269) The Court correctly concluded that a reasonable jury could credit Mr. Burrello's testimony and "conclude that he did not subjectively intend to discourage voucher

holders even though that this was the predictable result of the wording he chose." *Id*. The law is clear that making credibility determinations, weighing the evidence, and drawing legitimate inferences from the facts are jury functions, not those of a judge. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242,255 (1986).

In this case, factual determinations must be made by a jury. Summary judgment is not appropriate. The trial court itself came to this conclusion in its initial denial of the District's Motion for Summary Judgment. This Court of Appeals should now come to the same conclusion.

II. Whether Defendants are Entitled to a Trial by Jury for Damages

Defendants are entitled to a trial by jury for purposes of damages. Defendants properly reserved the right to a trial by jury in their Answer and did not limit their demand in any way. (A. 38) Defendants' position is that the law is remarkably unambiguous on this issue. A jury must make determinations as to the damages, if any, in this case.

First, it is undisputed that the District's Complaint plainly sought "(a) Injunctive and declaratory relief; (b) *Damages*." (A. 23) (emphasis added). Moreover, the District's Motion for Remedies subsequently sought both legal (damages) and equitable (injunctive) relief. (A. 291)

Second, in addition to their jury demand in their Answer, Defendants clearly raised the jury issue when opposing the District's Motion for Remedies. (A. 304-305)

Despite the clear record, the trial court did not address the jury trial issue at all in its May 13, 2022 Order. (A. 318-324) It was reversible error for the trial court to grant an award of damages, based solely on the District's Motion for Remedies, without a jury trial.

Defendants explained in detail at the trial level how the "the right to a jury trial extends to legal remedies in which legal, rather than equitable, rights are at issue." *District of Columbia v. Equity Residential Mgmt., LLC*, 2019 D.C. Super. LEXIS 21 (citing *Johnson v. Fairfax Village Condominium IV Unit Owners Ass'n*, 641 A.2d 495, 505 (D.C. 1994)).

To determine whether a claim is a properly brought before a jury "the Court must examine both the nature of the action and of the remedy sought." *Id.* (*citing Tull v. United States*, 481 U.S. 412,417,107 S. Ct. 1831, 95 L. Ed. 2d 365 (1987). Superior Court Judge Williams previously, and correctly, held that "civil penalties sought pursuant to the CPPA constitute legal relief which provide a Seventh Amendment right to a jury trial." *Id.*

This Court of Appeals has also explained that "where the issue in dispute is legal in nature a constitutional right to trial by jury attaches; where the issue,

however, is equitable in nature there is no constitutional right to a jury trial." *Johnson*, 641 A. 2d at 505 (*citing E.R.B. v. J.H.F.*, 496 A.2d 607,611 (D.C. 1985); *Natl. Life Ins. Co. v. Silverman*, 147 U.S. App. D.C. 56, 454 F.2d 899, 904 (1971)).

This Court of Appeals has also addressed jury trials in the context of damages, holding that it is "an error of law in denying [a party] a jury trial on the question of damages." *Pollock v. Brown*, 441 A.2d 276, 278 (D.C. 1982). Finally, for any meritorious claim of damages, [a litigant] is entitled to a jury trial. *Johnson*, 641 A.2d at 508 (*citing Dairy Queen, Inc. v. Wood*, 369 U.S. 469,476, 82 S. Ct. 894, 899 (1962); *Eldredge v. Gourley*, 505 F.2d 769, 770 (3d Cir. 1974)).

Moreover, there is a long line of precedent demonstrating that government suits for money or civil penalties are commonly tried to a jury, if demanded. *See e.g. Hepner v. United States*, 213 U.S. 103, 115 (1909); *United States v. Regan*, 232 U.S. 37, 47 (1914); *United States v. J.B. Williams Co., Inc.*, 498 F.2d 414 (2d Cir. 1974).

The District previously cited *Tull v. United States*, 481 U.S. 412, 427 (1987), in its Reply in Support of its Motion for Remedies, (holding "that a determination of a civil penalty is not an essential function of a jury trial, and that the Seventh Amendment does not require a jury trial for that purpose in a civil action."). (A. 313-314).

While Defendants agree that *Tull* is relevant to the analysis, that case is one of the most supportive of Defendants' positions on this issue. In *Tull*, a real estate developer was accused of violating the Clean Water Act by filling in wetlands property. *Tull*, 107 S. Ct. at 1833-34. The government had sought both equitable and monetary relief and asked the judge to impose the maximum civil penalty. *Id.* at 1834. The Supreme Court granted cert and held that the Seventh Amendment's guarantee of a jury trial applies to civil actions that seek to collect a civil penalty. *Id.* at 1835.

In characterizing the relief of civil penalties as one at law, the *Tull* court determined that civil penalties "could only be enforced in courts of law" because civil penalties were punitive, as opposed to compensatory in nature. *Id.* at 1838. The *Tull* court concluded that civil penalties under the Clean Water Act were legal rather than equitable because they sought more than a mere restoration of the status quo. *Id.* at 1839.

Of particular note, the *Tull* court noted that if the government wanted to keep a jury out of the deliberations, it was free to bring a separate equitable suit for injunction. However, where the government seeks both legal and equitable relief in the same suit, which occurred in *Tull* and in the instant case, all the issues common to both claims must be tried to a jury. *Id.*

The instant case is plainly one where Defendants are entitled to a jury trial for *both* liability and damages. The District sought "damages" in their complaint. Defendants demanded a jury in their Answer and never waived their timely demand. Similar to the facts in *Tull*, the District in this case sought legal *and* equitable relief in its Complaint. The Supreme Court has recognized that cases almost identical to this one are for juries to determine, and District of Columbia legal precedent is completely in accord.

The Court erred when granting Plaintiff's Motion for Remedies. Defendants are entitled to a trial by jury for damages, especially in a matter like this one, where a grant of summary judgment as to liability was also improper.

CONCLUSION

For the above reasons and authorities stated, Defendants respectfully request that this Court vacate the trial court's Order granting Plaintiff District of Columbia's Motion for Reconsideration and Summary Judgment. Defendants further request that this Court vacate the trial court's Order partially granting Plaintiff's Motion for Remedies and remand this matter for further proceedings.

* * *

Respectfully submitted,

/s/Eric J. Menhart
Eric J. Menhart, Esq.
Lexero Law
512 C St NE
Washington, D.C. 20002
Phone: 202-904-2818

STATEMENT AS TO TYPEFACE

The font used in this Brief is Times New Roman and the type size is 14 point.

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2022 a copy of the foregoing was delivered via the Court's electronic case filing system.

/s/ Eric Menhart
Eric J. Menhart