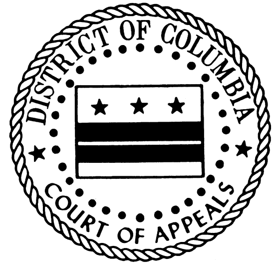


Clerk of the Court
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**No. 23-CV-413**

**DISTRICT OF COLUMBIA COURT OF APPEALS**

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**MA SHUN BELL,**

Appellant,

v.

**WEINSTOCK, FRIEDMAN & FRIEDMAN, P.A., et al**

Appellees.

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On appeal from
Superior Court of the District of Columbia, Civil Division

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# APPELLANT'S OPENING BRIEF

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## Acronyms

Ma Shun Bell – “Ms. Bell” or “Plaintiff”

Weinstein, Friedman & Friedman, P.A.
Friedman & Framme & Thrush, P.A – “Law Firms” or “Defendants”

First Investors Servicing Corporation – “FISC”

Retail Installment Sales Contract – “RISC”

Consumer Protection and Procedures Act – “CPPA”

Unjust Debt Collection Practices Amendment Act of 2022 – “UDCPA”

Fair Debt Collection Practices Act – “FDCPA”

District of Columbia Municipal Regulations – “DCMR” or “Title 16”

FISC v. Bell,. 2017 SC3 001636 – “Small Claims Suit,” “FISC suit”

## I. Jurisdiction

This appeal is from a final order or judgment that disposes of all parties' claims in case 2019 CA 008461 B

## II. Questions Presented

1. Exact question decided in *Bell III*, whether a bare attorney-client relationship provides non-party privity for purposes of res judicata.
2. Whether attorneys and debt collectors are immune from the CPPA
3. Whether AFRA, UCC, UDCPA and abuse of process claims are plausibly pled
4. Whether the court abused its discretion in denying a Rule 56(d) motion and motion to extend time to respond in the final dismissal order after relying on evidence of Rule 12(b)(6) movant

## III. Statement of the Case

On October 17, 2019 Ms. Bell sued Defendants asserting violations of the Consumer Protection and Procedures Act ("CPPA"), the Unjust Debt Collection Practices Amendment Act of 2022 fka the Debt Collection Law ("UDCPA"), the Fair Debt Collections Practices Act ("FDCPA") and abuse of process. The Law Firms removed to federal court. As the bulk of the claims involve local consumer statutes, Ms. Bell voluntarily dismissed the federal case and refiled in Superior Court on December 18, 2019 alleging

claims under local law only. The court granted the Law Firms first Rule 12(b)(6) motion on April 6, 2020 ruling the claims barred by res judicata. Ms. Bell appealed and the Court reversed stating the court failed to engage in a privity analysis. The Law Firms filed a second Rule 12(b)(6) motion based on the exact same res judicata defense attaching "evidence" denied to Ms. Bell, a third Rule 12(b)(6) seeking dismissal for purported pleading deficiencies and "immunity" from the CPPA, a motion to strike Ms. Bell's class allegations and a notion for a blanket protective order seeking denial of all discovery to Ms. Bell until the Court resolves the three motions filed on a single day. Ms. Bell opposed third Rule 12(b)(6) and filed Rule 56(d) and extension of time motions in response to the converted Rule 12(b)(6) motion. The court dismissed Ms. Bell's claims and denied the Rule 56(d) and time extension motions in the same order. Second appeal.

## IV. Statement of Facts

### A. Facts of Case

In the first appeal Ms. Bell briefs about right, wrong and accountability. Specifically, how the rules are rigged against folks like her by design. This second appeal in the same procedural posture on the same exact question is another example. The system forms barriers to entry for those in poverty or marginalized enabling entities like the Law Firms to avoid consequences

for illegal acts using fanciful applications of rules like res judicata attempting to bootstrap their real-time unlawful conduct to a client's default/consent judgment illegally obtained and brazen unfairness. The Law Firms are the lynchpin in creditors' illegal scheme of laundering un-owed debts into valid enforceable money judgments against vulnerable consumers like Ms. Bell to line their own pockets. Without the Law Firms verifying and filing these meritless claims against defenseless Black and Brown folks the creditor cannot garnish wages based on judgments received on meritless claims as the Law Firms did here. Defendants forced Ms. Bell to gift thousands in garnished wages to a multi-billion-dollar behemoth she could neither afford nor owed through their routine sworn verifications of meritless claims to this court as officers. [JA57, ¶49]. Greed being their North Star, the Law Firms as court officers filed numerous sworn verifications that the amounts sought are "a just and true statement of the amount owing by the defendant to plaintiff," despite the face of the documents filed clearly showing the statement false. The Law Firms collected the judgment from Ms. Bell through wage garnishment keeping Ms. Bell in a perpetual state of likely eviction for years from which she still has not recovered. [JA57, ¶48].

Ms. Bell is an African-American single mother of a daughter, special needs son and is guardian of her grandchild. Ms. Bell's son has significant

medical expenses in addition to requiring constant adult supervision. First Investors Servicing Corporation ("FISC") sued Ms. Bell in Small Claims for breach of contract in 2017 based on a Retail Installment Sales Contract ("RISC") after the vehicle was repossessed and allegedly sold. [JA51, ¶¶11, 17]. Weinstein, Friedman & Friedman, P.A. and Friedman & Framme & Thrush, P.A ("Law Firms" or "Defendants") at different stages filed and prosecuted the Small Claims suit. Id. Ms. Bell alleges no AFRA statutory notices were ever sent, no notifications to the DC Police, breach of peace, and there was no legal authority to repossess the vehicle. [JA50-51, ¶¶11-16]. Absent strict compliance with mandatory notice requirements and procedures, a deficiency balance may not lawfully be collected from any person following disposition of the repossessed vehicle. 16 DCMR § 340.5. [JA53, ¶30]. Ms. Bell further alleges the "Explanation of Calculation of Surplus or Deficiency" ("ECSD") letter filed by Defendants filed charges over $100 in retaking fees ($850) and over $3 per day for storage ($10) in violation of AFRA. [JA51, ¶¶18, 24-25]. Ms. Bell allege Defendants charged excessive attorney fees and other costs. [JA51, ¶19-20].

After FISC served Ms. Bell appeared at her only hearing *pro se*. The Law Firms again communicated to Ms. Bell and the court the deficiency amount is owed. Unbeknownst to Ms. Bell it was not. In the mediation, the

Law Firms drafted the Settlement Agreement between FISC and Ms. Bell and Ms. Bell signed at her only hearing before the 2018 judgment. [JA195]. The Law Firms then told Ms. Bell she could leave and did not need to appear before the court again. On the Law Firms' instruction, Ms. Bell left and never appeared before the court again. When Ms. Bell could not keep up with the payments Defendants applied for and received a default judgment on the settlement agreement with FISC. [JA192-94]. The 2018 judgment obtained is entered without an answer filed. Defendants are not parties thereto nor to RISC, settlement agreement or lawsuit. [JA194-95].

Breach of the 2017 settlement is the sole issue resolved in the Small Claims suit. None of the consumer protection claims against FISC nor the Law Firms (nonparties) are resolved or litigated in FISC's suit against Ms. Bell. Ms. Bell moved to vacate FISC's default judgment for lack of notice and was denied. Ms. Bell moved for judicial review of the FISC small claims order and was denied. Ms. Bell requested to appeal and was denied. Yet Defendants are provided multiple opportunities to litigate the exact same issue under the exact same standard twice forcing Ms. Bell to appeal twice in this case and twice in her other case. Defendants are given a level of process Ms. Bell was never provided before being forced to gift $8,000 to a billion-dollar corporation on which Defendants allege to have collected

a 30 percent commission. That Defendants accuse Ms. Bell of attempting to “extort a settlement” by requiring discovery to oppose their sandbag motions is obliviousness on steroids. Rule 56(d) OPP. at 2. Ms. Bell fully paid the judgment through Defendants garnishment of her wages.

Ms. Bell alleges Defendants pursued a deficiency of $8,271.41. [JA51, ¶17].]. Billing and collecting barred deficiency amounts violate AFRA hence the ECSD notice as well as charging, billing and collecting excess storage and retaking fees enforced through both the CPPA and UDCPA. The court erroneously states Ms. Bell “concedes” Defendants “had no role” in collection of the deficiency prior to representing FISC in Court beginning in March 2017.” [JA27]. The SAC does not so concede and the court cites no allegation supporting the conclusion. Id. Also, whether done before or during the 2017 suit is of no moment as billing and collecting the deficiency, storage or retaking fees is barred under AFRA. Ms. Bell alleges based on the violations the deficiency billed, charged and collected by Defendants is barred. [JA33, ¶30; JA54, ¶¶38-40]. Ms. Bell alleges that is the standard policy and practice of the Law Firms to launder barred deficiency debts to enforceable judgments using the court as their washing machine. [JA62, ¶65]. Ms. Bell alleges Defendants filed a court statement

averring "being first duly sworn on oath says the foregoing is a just and true statement of..amount owing by the defendant to plaintiff." [JA51, ¶¶17, 39].

Ms. Bell alleges many complaints filed and **verified** by Defendants do not contain the AFRA repossession notices. [JA53, ¶¶ 34]. Ms. Bell alleges Defendants routinely obtain judgments on and collects barred amounts by using false and misleading affidavits filed in court as court officers. [JA54, ¶ 39]. Ms. Bell alleges actual and constructive knowledge amounts are not owed. [JA55, ¶ 42]. Ms. Bell alleges Defendants communicated to her while she was represented by counsel. [JA52, ¶27]. Ms. Bell alleges that Defendants misrepresent consumers are obligated to pay deficiencies and fails to inform them they are not obligated to pay. [JA55, ¶ 43]. Ms. Bell alleges Defendants do the alleged acts of seeking, billing, collecting and converting the meritless claims to judgments against vulnerable *pro se* and no-show consumers knowingly and intentionally. [JA72, ¶111]. Ms. Bell pleads AFRA, CPPA, UDCPA, UCC, and abuse of process claims.

Despite no right of enforcement for nonparties in the 2017 agreement nor language enabling nonparties to tack on unrelated consumer protection violations under said agreement, the Law Firms seek to do so here. There is no release of claims in the agreement drafted by the Law Firms. [JA195]. The Law Firms are not identified as parties in the settlement/RISC/Small

Claims suit nor the 2018 judgment and have no final judgment to base res judicata. [JA168,180]. The "Assignment of Contract" identifies First Inv. Financial Services, Inc. as the "Assignee" not FISC. [JA179]. No claims or responsive pleading against the Law Firms was ever filed in FISC's suit. As nonparties to FISC's Small Claims suit it is undisputed Ms. Bell could not bring claims against the firms in that suit. In *Bell III* the Court held:

> [W]e do note that (1) appellee failed to present any argument or reasoning as to why they may claim the "benefits" of any terms of the settlement agreement or the RISC given that they are not parties, successors in interest, or assignees to either and (2) even if appellee was protected by the settlement agreement, Ms. Bell cannot be deemed to have waived causes of action through a settlement agreement under AFRA, CPPA, and DCL to the extent that the causes of action do not nullify the small claims judgment. See Bell I, 256 A.3d at 256 n.12.

Bell v. Weinstock, Friedman & Friedman, et al, 285 A.3d 505, n.3 (D.C. 2022)("*Bell III*"). Defendants continue their failure to present argument or reasoning as to why they may "claim benefits of any terms of the settlement or the RISC given that they are not parties, successors in interest/assignees to either." Id. Defendants instead falsely argue to be "contractually assigned [FISC's] legal interest to 30% of any …recovery." RJ Mot. at 9. They are not. Defendants rely on improper affidavits of J. Glick and J. Poss and a "Collection Agreement" ("CA") to claim privity as an "agent." The same Glick falsely averred amounts owed in FISC's 2017 suit. [JA168].

The CA contains the following terms denied to Ms. Bell in connection with the converted Rule 12(b)(6) summary judgment motion granted below:

> 3.1 PROPRIETARY RIGHTS. **All Accounts** placed by FISC with Contractor are, and **shall remain, the exclusive property of the FISC Entities**. FISC shall place Accounts with Contractor in its sole discretion and are placed with Contractor **only for the purpose of collection** in accordance herewith. **Contractor shall acquire no right, title or interest in any Accounts placed with Contractor**.
>
> 2.1 INDEPENDENT CONTRACTOR. Except as implied by the attorney/client relationship, **this Agreement does not make or constitute Contractor as the agent of FISC**, any of its Affiliates **or any Client for any purpose whatsoever,**...Contractor shall, in all respects, be and remain an independent contractor,...
>
> 3.4 RECALL.
> (a) **Notwithstanding any provision herein to the contrary** or any Applicable Law, **FISC shall have the absolute right to recall any Account placed with Contractor at any time, for any reason, in its sole discretion, with or without cause.** Each Account so recalled shall be a "Recalled Account." Any Account placed with Contractor in respect of which no payment has been received by either Contractor or a FISC Entity for the period specified on Schedule A shall be (i) automatically closed, (ii) deemed a Recalled Account as of the last day of the Authorized Collection Period and (iii) promptly returned by Contractor to FISC.
>
> (b) **FISC, in its sole discretion, may place Recalled Account with any other Person. Contractor shall not be entitled to any Commission or other compensation in respect of any payment received by FISC**, Contractor or any other Person **in respect of a Recalled Account** on or after the date that such Account constitutes a Recalled Account.
>
> (c) If a Recalled Account is in litigation at the time that it is recalled (or deemed recalled), Contractor shall deliver, or cause to be delivered, to FISC, at the time of recall, a substitution of attorney signed in blank, for such action.
>
> Schedule A: AUTHORIZED COLLECTION PERIOD- **6 MONTHS**

[JA102]. The CA denied to Ms. Bell prior to Defendants motion while also relying on cherry-picked terms therein, prove Defendants have no right to the account or 2018 settlement judgment to which they claim a mutuality of intertest/agency/privity. [JA87]. The party putting this agreement in issue is Defendants through their second converted 12(b)(6) motion. RJ Mot. at 6. Defendants argue the interest "does not exist [with] every attorney-client" but exists here based on "their **contingency fee agreement** and the nature of FISC's case," "FISC contractually assigned its legal interest to 30% of any financial recovery," (FISC most certainly does not), its claim is special and "will not exist in every circumstance" involving a contingency fee agreement because here FISC only sought a monetary judgment 30 percent of which belongs to the Law Firms – it does not. Ninety-nine percent of attorney contingency fee agreements involve monetary relief for the client out of which the attorney is paid. RJ Mot. 8-10. The circumstance is not distinct as it exists in every attorney-client contingency arrangement thus the court vastly expands preclusion law beyond settled precedent contrary to *Bell III*. The CA also disclaims such interest and commission is lost upon "Recall."

The plain words – "shall remain, the exclusive property of the FISC" and "Contractor shall acquire no right, title or interest in any Accounts placed" proves no privity and deceptive litigation conduct causing Ms.

Bell's fourth appeal to this Court without Defendants producing one piece of discovery. [J196]. Defendants held the CA in their possession yet still made the res judicata argument while actively preventing discovery of the CA ambushing or cheating regular process by filing a concurrent protective order motion. [JA13]. In the affidavit, Glick **again** gives false testimony to court stating "Sections 3.3, **3.4**, 3.6, 3.8 and 4.3 do not apply to Ms. Bell's account." [JA88]. Glick clearly did not want Ms. Bell to see sections 3.1, 3.4, 3.8, 4.4, 8.1, 10.1 or Schedule A showing that Defendants only have the account for "6 months" each of which are dispositive of Defendants res judicata claim. Further, Defendants were not owed "commission" during the 2017 suit nor the day of the 2018 judgment because Defendants did not **collect** any amounts or commissions had been paid weekly by FISC. Defendants knew they were independent contractors not agents of FISC and had no rights or interest in FISC's 2018 settlement judgment but forced Ms. Bell to appeal a wholly frivolous res judicata argument.

**B. <u>Procedural Facts</u>**

Defendants have received more process here than Ms. Bell could ever hope to receive and was repeatedly denied in the FISC suit prosecuted by Defendants. The law Firms have now filed three Rule 12(b)(6) motions one converted to a summary judgment motion through reliance on affidavits

and the CA. The rules permit a single Rule 12(b)(6). Ms. Bell has now been before the Court four times in four years in Bell v. First Investors Servicing Corp., 256 A.3d 246 (D.C. 2021)("Bell I"), Bell v. First Investors Servicing Corp., No. 21-CV-0843 (Nov 9 2022)("Bell II"), the first appeal in this case Bell v. Weinstock, Fried. & Fried., et al, 285 A.3d 505 (D.C. 2022)("Bell III"). Now this second appeal. The Court reversed in 2022:

> we hold that for purposes of res judicata, a decision regarding whether appellee was in privity with FISC requires analyzing the mutuality of their legal interests. The trial court did not engage in that analysis.

[JA166]. Thus, settling the res judicata issue in this procedural posture. On remand, Ms. Bell moved to amend her complaint alleging violation of the newly amended UDCPA. Defendants made no opposition to the amended provisions in opposition and the court granted the motion. [JA42]. As such, the SAC is the operative complaint and Defendants waive any retroactive application arguments never made in relation thereto untimely raised first in a reply. The SAC is now law of the case. The UDCPA no longer require willfulness and violations of the FDCPA violate UDCPA. [JA67-70]. After granting the motion amending, the court ordered:

> ORDERED that Defendant shall have 21 days from the date of this Order **to file evidence** and argument related to the issue of res judicata as articulated herein **and/or a motion to dismiss on any other grounds**.

[JA46]. Ms. Bell received no discovery from the Law Firms propounded on February 10, 2020, but the court permits evidence supporting Defendants

res judicata argument and despite this Court's mandate merely requiring "analysis" not "further fact-finding" as erred by the court. [JA22-23]. There is no mandate to permit evidence or second and third 12(b)(6) motions when the rules only permit one which Ms. Bell already litigated, appealed and won reversal. Though the court's busy calendar may have caused the error, Defendants know the rules and the procedural posture of the matter and in bad faith proceeded despite. March 14, 2025, Defendants filed a motion to strike class allegations, a second Rule 12(b)(6) res judicata motion attaching "evidence" ("RJ Mot."), a third Rule 12(b)(6) ("3rd Mot.), and a motion for a protective order denying Ms. Bell all discovery until all three motions are resolved. [JA13]. Or, dispositively moving by ambush.

On March 28, 2023, Ms. Bell timely opposed the protective order and 3rd Motion, filed a Rule 56(d) motion in response to the RJ and strike motions including a declaration specifying discovery needed and a motion to extend time to oppose both. [JA13-14, JA90]. In her opposition to 3rd motion, Ms. Bell requests leave to amend SAC to remedy any deficiencies to enable a decision on the merits. OPP 3rd Mot. at 15. In the RJ motion Defendants attach the Glick declaration with Glick unilaterally deciding the CA terms relevant and includes said terms in his declaration and claims attorney client privilege as to the rest of the CA. [JA87]; RJ Mot. at 4, n.1.

Contrary to the court, Defendants converted their 12(b)(6) to a summary judgment motion by relying on affidavit "evidence." [JA39].

On April 4, 2023, the Law Firms filed replies to Ms. Bell's oppositions to protective order and 3rd motion. [JA14]. On April 11, 2023, the Law Firms opposed Ms. Bell's Rule 56(d) not Ms. Bell's motions for extension of time or requested leave to amend. Defendants defended their refusal to produce the agreement arguing "the agreement between FFT and FISC, says what it says." OPP to Rule 56(d). at 3. On the same day, Defendants untimely filed, without leave, a "supplement" to the RJ motion including the Poss declaration and the CA in an untimely bid to cure their bad faith litigation tactics. [JA14, 95-122]. On April 18, 2023, Ms. Bell replied reiterating her need to depose Glick and now Poss. On April 20, 2023, the court dismissed Ms. Bell's claims based on res judicata and the 3rd Motion. Ms. Bell was denied the opportunity to oppose the res judicata motion as the court denied her Rule 56(d) motion, leave to amend, and motion seeking an extension of time in the dismissal order. [JA20].

The court also errs in holding Ms. Bell makes "no representations establishing what information she would need to respond to a Rule 12 motion to dismiss." [JA25]. Counsel's affidavit specifically aver needing discovery regarding "mutuality of interest"‥, need to depose Glick relating

to the affidavit claims made regarding retainer, need engagement/retention agreements with various creditors referenced in the Glick affidavit, needs the complete retainer agreement and exhibits. [JA90, Dennis Decl. ¶¶1-7]. The court further errs in not concluding no summary judgment conversion where Defendants rely on "evidence" outside the pleadings. Ms. Bell plausibly pleads her UDCPA and other claims alleging:

> WFF and FFT violated each of the provisions above by misrepresenting the existence and amount of a debt and filing false affidavits purporting to verify a debt. WWF and FFT also communicated with Ms. Bell knowing she was represented by counsel. Charges excess fees relating to the alleged debt and misrepresented the legal status of the debt as neither Ms. Bell nor the putative class members owe a debt and WFF and FFT fraudulently filed a lawsuit in order to turn the barred deficiency amount to an enforceable judgment so that both can collect commissions on all amounts collected. WFF and FFT had no basis to file a legal action against Ms. Bell nor the putative class as no debt was owed.

[JA69-70]. Ms. Bell pleads more factual content supporting her UDCPA claim. [JA50, SAC ¶¶ 1-50, 100.]. Section (f)(5) of UDCPA prohibiting "false representation of character, extent, or **amount**," is prima facia alleged as false verification of debts, misrepresenting deficiency owed, charging excessive storage and retaking fees. D.C. Code § 28-3814(f).

## V. Standard of Review

The standard of review for dismissals under Rule 12(b)(6) is the same as in *Bell III*, de novo "presuming the complaint's factual allegations true and construing them in the light most favorable to [the plaintiff]." Bell, 285

A.3d at 509; Calomiris v. Calomiris, 3 A.3d 1186, 1190 (2010). Defendant "raising a 12(b)(6) defense cannot assert any facts which do not appear on the face of the complaint itself." **Disputed facts resolved in nonmovant's favor**. Washkoviak, et al., v. Student Loan Marketing Assoc., 900 A.2d 168 (D.C. 2006). "The only issue on review of a [Rule 12(b)(6)] dismissal..is the legal sufficiency of the complaint... Grayson v. AT & T Corp., 15 A.3d 219, 228-29 (D.C. 2011). Though "detailed factual allegations' are not necessary to withstand a Rule 12(b)(6) motion, Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007), "a complaint must contain sufficient factual matter, [if] accepted as true, state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Potomac Dev. Corp. v. District of Columbia, 28 A.3d 531, 544 (D.C. 2011).Whether there is "available evidence sufficient to prove the allegations in [her] complaint' 'really had nothing to do with legal sufficiency of the complaint." Vincent v. Anderson, 621 A.2d 367, 372 (D.C.1993). Test already met in *Bell III.*

The Court's review of application of res judicata is also de novo. Id. The Court is not bound by the court's adverse findings and conclusions. Bingham v. Goldberg, Marchesano, Kohlman, 637 A.2d 81, 89 (DC 1994) (questions of law "require an independent appraisal of the record on appeal without deference to the trial court's findings."). Here, res judicata is an

affirmative defense not established on the face of the SAC and must be proved. Taylor v. Sturgell, 553 U.S. 880 (2008). Consideration of matters outside the pleadings treats the motion as one for summary judgment. McBryde v. Amoco Oil Co., 404 A.2d 200, 202 (D.C. 1979). Defendants sought and received dismissal based on "evidence" denied to Ms. Bell. The Court has reversed decisions granting Rule 12 motions where, like here, the dismissal is for failure to match factual allegations to law sections violated. Animal Legal Defense Fund v. Hormel Foods, 258 A.3d 174, 188 (D.C. 2021)("ALDF"); Velcoff v. MedStar Health, Inc., 186 A.3d 823, 827 (D.C. 2018). In ALDF, the Court holds complaints "need not plead law,' nor.. 'match facts to every element of a legal theory'" as "matching" is a straightforward task." Id at 827. As a complaint need not plead relevant law sections violated, the dismissal of Ms. Bell's UDCPA claim for not saying "how FFT violated the statute" is reversable error. [JA30]. The Court also reverses where courts neither accept the truth of plaintiff's allegations nor engaged in any fact finding to determine the issue. Equal Rights Center v. Properties Intern.l, *et al* 110 A.3d 599, 605 (D.C. 2015)("ERC"). In Grier v. Rowland, the Court reversed as "fundamental error" where no given opportunity to oppose. Grier v. Rowland, 409 A.2d 205, 207 (D.C. 1979).

The court reversed in Shipe v. Schenk, finding abuse of process where defendants enforced payment of debt known to be nonexistent using court processes. 158 A. 2d 910, 911 (D.C. 1960). Ms. Bell alleges more than the "act" of filing a frivolous lawsuit. [JA34, 70]. Accepting the truth of the SAC allegations cannot be finding Defendants filed a frivolous civil suit seeking collection of alleged debt without attention to allegations that Defendants knowingly filed false affidavits verifying meritless debts, the frequency done so, or Defendants status as court officers. [JA34]. In Miller-McGee v. Wash Hosp. Ctr., the court reversed where the complaint "at least arguably encompassed" the amendment, "court abuse discretion." 920 A.2d 430, 432, 436 (D.C. 2007). Ms. Bell meet and go far beyond the Miller-McGee standard as the SAC allegations "at least arguably encompass" UDCPA, AFRA, UCC and abuse of process claims ought to be permitted to amend.

The Court has also reversed a res judicata bar for errors of law, failures of proof or where the burdens and incentives for the party to be precluded differ greatly across the proceedings. Smith v. Greenway Apart. LP., 150 A.3d 1265, 1275-1276 (D.C. 2016)(reversed res judicata finding). In Major v. Inner City Prop. Manag. Inc., 653 A.2d 379 (D.C.1995), nonparty res judicata reversed because nonparty offered no evidence proving privity and scope of a principal-agent relationship. In Presley v. Commercial Credit

Corp., 177 A.2d 916, 918 (D.C. 1962), reversed as "whether the servant was acting within the scope of employment [during] alleged tortious act is essentially a question of fact for the jury to determine." In Redevelop. Land Agency v. Dowdey, 618 A.2d 153 (D.C. 1992), rejection of res judicata affirmed, agent title insurer not in privity with principal agency, no mutual or successive relationship to rights or first action did not dispose question at issue in second. In Franco v. District of Columbia, 3 A.3d 300, 304-305 (D.C. 2010), the Court reversed nonparty preclusion bar based on no proof of nonparty exceptions. In Patton v. Klein, 746 A.2d 866 (D.C. 1999), nonparty res judicata reversed doctor and the radiologist not in privity. Defendants not in privity with FISC and the decision is reversable error.

## VI. Summary of Argument

Ms. Bell has been before the Court four times in four years and the reversal mistakes are always against Ms. Bell. The lower courts continue to provide the party least deserving multiple opportunities to correct their failures but are quick to dismiss Ms. Bell's claims without an opportunity to amend or even to oppose as is the case here. Given that Defendants were permitted to file three Rule 12(b)(6) motions when the rules only allow one it seems a reasonable and fair request that Ms. Bell be allowed to amend. Ms. Bell is denied the benefit of any doubt and forced to appeal the same

issues on repeat and in a piecemeal fashion. This case has been going for five years and Defendants have not produced a single piece of discovery so how involved Defendants were in the repossession process is unknowable to Ms. Bell at this third 12(b)(6) procedural posture. Defendants' bad faith litigation tactics carry over even when the Law Firms are defendants instead of engaging in predatory litigation tactics against vulnerable consumers like Ms. Bell for profit converting meritless claims to enforceable judgements. As Ms. Bell plausibly pleads her claims and Defendants not immune from the CPPA and fail to establish non-party privity the court reversibly erred.

# VII. Argument

## A. Each of the following procedures independently deny Ms. Bell a full and fair opportunity to be heard supporting reversal

### i. The court abused its discretion in denying Ms. Bell's Rule 56(d) motion and the opportunity to oppose the converted Rule 12(b) motion after Defendants used "evidence" in support

Rule 12(d) provides "[i]f, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded..., the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion." Super. Ct. Civ. R. 12(d). Rule 56 states when facts are unavailable to nonmovant of summary judgment:

> "If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other…

Super. Ct. Civ. R. 56(d). Rule 56(b) sets a default deadline for summary judgment motions at "30 days after the close of all discovery," expressly deferring summary judgment to allow time to take discovery. Rule 56(d) "affords protection against the premature/improvident grant of summary judgment by permitting a nonmovant to file an affidavit stating how discovery would enable him or her to effectively oppose" the motion." Travelers Indem. Co. v. United Food and Comm. Workers., 770 A.2d 978, 993 (D.C. 2001). Rule 56(d) ensures "parties have been given a reasonable opportunity to make their record complete before ruling." Id at 994. Ms. Bell filed a Rule 56(d) and timely moved for a time extension to oppose the converted Rule 12(d) motion pursuant to Rule 6. Super. Ct. Civ. R. 6(b). The court denied both in its final order dismissing all Ms. Bell's claims. Ms. Bell was denied an opportunity to oppose below which independently warrants reversal. Like in Grier, Ms. Bell was given "no opportunity to oppose" arguments relied by the court. Grier, 409 A.2d at 207; Radbod v. Moghim, et al., 269 A.3d 1035, 1041 (D.C. 2022) (reversed, party must be given "opportunity" to present all evidence).

In *Bell III*, the Court issued the following reversal and remand:

> We find the reasoning in the first category of cases persuasive and in line with the District's law on privity. Although attorneys may act as agents of their clients when they act in their role as counsel, the required mutuality of interests will not exist in every circumstance. It is not sufficient that the actions taken by an attorney in a prior case were on behalf of a client or within the scope of their agency. Even in such circumstances,. interests of attorneys may not align with their clients' and attorneys do not have full control over litigation such that it may be automatically assumed that they had fully litigated their interests in an earlier representation of a client.. we hold that for purposes of res judicata, a decision regarding whether appellee was in privity with FISC **requires analyzing** the mutuality of their legal interests. The trial court did not engage in that analysis.

*Bell III*, 285 A.3d 511. The court repeats the mandate in the dismissal order but also errs stating *Bell III* is remanded for further fact-finding. [JA92]. If more fact-finding it is abuse of discretion to deny discovery to Ms. Bell on "evidence" used by Defendants to support motion. Radbod, 269 A.3d at 1041. The court also emphasizes *Bell III* language "we make no determination regarding whether [Plaintiff's] claims may be dismissed on alternative grounds." [JA22-23]. The court then dismissed all Ms. Bell's claims based on res judicata. In doing so, the court relies on Glick and Poss affidavits and the CA after Defendants sought a protective order concurrent with motion denying Ms. Bell discovery thereon. [JA87 JA95, JA76]. An improper **third** 12(b)(6) and a motion to strike class allegations also filed. The additional 12(b)(6) motions are procedurally improper:

> Limitations on Further Motions. Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another

> motion under this rule **raising a defense or objection that was available to the party but omitted from its earlier motion**

Super. Ct. Civ. R. 12(g)(2). Defendants raised the res judicata defense in its first 12(b)(6) that is the subject of *Bell III* reversal. Defendants file three 12(b)(6) motions like the rules don't apply to them. The orders should be reversed. The court also improperly allows Defendants' "evidence" despite a mandate for "analysis." [JA105-06]. Defendants are permitted "**to file evidence and argument**" relating to res judicata." [JA46]. It is extremely prejudicial to Ms. Bell to permit the **Law Firms**, after the issues were raised in opposition prior to first appeal and ignored, to then after a successful appeal, allow Law Firms to come back down and attempt to correct their failures by submitting "evidence" both failed to submit prior to first appeal. Ms. Bell was denied even the opportunity to appeal FISC's default order against her even once and was forced to gift a billion-dollar corporation over $8,000 that devastated her financially simply because she had no lawyer and Defendants' predatory litigation as "officers of the court."

The Law Firms are sophisticated parties represented by counsel not *pro se* as Ms. Bell was when said Law Firms deceived into entering a settlement agreement resulting in a default judgment against her. There is no basis for permitting the Law Firms as sophisticated litigants a second opportunity to correct their failures after Ms. Bell successfully appealed. Letting evidence

contrary to mandate warrants reversal. The court abused its discretion in denying the Rule 56(d) and extend motions. [JA20]. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950)(reinstate motion denial reversed where violations of rules denied opportunity to oppose...[], denying due process). If error "jeopardized..fairness of.. proceeding.., or...had a possibly substantial impact upon the outcome, the case should be reversed. Koppal v. Travelers Indem, Co., 297 A.2d 337, 339 (D.C.1972).

### ii. Rule 14 does not permit naming the Law Firms in FISC's Small Claims suit against Ms. Bell and Rule 13 is inapplicable thus application of res judicata denies Ms. Bell a full and fair opportunity to litigate claims against said firms in that suit

As Ms. Bell is denied the opportunity to oppose below the following is presented here. Rule 14 specifies when Ms. Bell as defendant in FISC's Small Claims suit may bring in a third-party defendant:

> A defending party **may**, as third-party plaintiff, serve a summons and complaint, in the manner and within the time limits prescribed by Rule 4, on a nonparty who is or may be liable to it for all or part of the plaintiff's claim against it.

Super. Ct. Civ. R. 14(a)(1). First, the language is a permissive "may" not "shall," applying res judicata makes permissive claims mandatory. Rule 14 does not permit naming Law Firms as third-party defendants to FISC's Small Claims suit by Ms. Bell as Law Firms are not alleged liable for any amount for which FISC sued. Oklahoma City v. McMaster, 196 U.S. 529,

533,(1905); Rest. (Second) of Judgments § 25, 26(not precluded in second action from raising claims he cannot present in first). Defendants essentially seek to make a party defendant's claims against a nonparty compulsory <u>in Small Claims court</u> despite Rule 13 expressly inapplicable. <u>*Bell I*</u>, 256 A.3d at 255("Rule 2 specifically excludes from the list of rules applicable to the Smalls Claims.., Super. Ct. Civ. R. 13 ('Counterclaim and Crossclaim')"); Super. Ct. Sm. Cl. R. 2. Ms. Bell's class action claims are crossclaims and also outside the jurisdiction of Small Claims as the amount sought exceeds the $10,000 jurisdictional limit thus cannot be litigated in FISC suit even if Rule 13 applied. D.C. Code § 11-1321. Applying preclusion does not serve the "expeditious" and "informal" purpose. The typical small claims litigant cannot decipher if his/her future claims against nonparties are barred. Ms. Bell also was not provided a full and fair opportunity to litigate her claims against Law Firms as Law Firms engaging in tortious conduct in real time.

### iii. <u>The Court can find that Defendants waived the res judicata argument by its egregious conduct of moving by ambush</u>

Defendants strategically decided to ignore the "mutuality of interest" question when raised in Ms. Bell's Opposition to first 12(b)(6) in 2020. Ms. Bell argued "[a]s was held in <u>Carr v. Rose</u>, 701 A.2d 1065 (1997), Defendants have not proven with evidence that they share a sufficient

"mutuality of interest" with FISC....to establish privity. 2020 OPP at 7. The argument was ignored with no mention of evidence of interest. Defendants waived rebuttal but now want to relitigate the issue. Rosenblatt v. Fenty, 734 F. Supp. 2d 21, 22 (D.D.C. 2010)("[A]n argument in a dispositive motion that opponent fails to address..deemed conceded.").This is the second appeal on Defendants intentional violations of the rules for purposes of delay. Ms. Bell is forced to appeal the exact same question resolved in *Bell III* based on Defendants 2020 Rule 12(b). *Bell III*, 285 A.3d at 507. Defendants are perfectly aware of the procedural history and prior reversal mandating "analysis" of "the mutuality of their legal interests." [JA105-06]. Yet, Defendants file self-serving declarations with cherry-picked terms of the CA to highlight denying the agreement to Ms. Bell. [JA87].

Defendants are aware of Rule 12(d) and the Court's mandate. Perhaps the court's heavy calendar caused it to overlook the rule and mandate but Defendants are well aware of both. Defendants use its superior position as the party holding the bulk of relevant discovery to move by ambush using the CA as both shield and sword supporting a finding of waiver.

An example of a similar situation in Wender where the Court explains:

> [w]here a party authorizes the partial disclosure of materials otherwise subject to a valid claim of attorney-client privilege, the [entire] privilege must be treated as waived, id., we stated also: 'Discovery of assertedly

> privileged material cannot be circumvented by delaying the first waiver of the privilege until a strategically advantageous stage of a trial.'

Wender v. United Serv. Automobile Assoc., 434 A.2d 1372, 1374 (D.C. 1981). The multiple trips to the Court deny Ms. Bell due process. This time denied opportunity to oppose the motion so could raise no defenses.

> [I]f discovery has any purpose, plaintiff's opponent was entitled, upon the unveiling of the ["collection agreement"] to a reasonable opportunity to prepare to defend against it. If the trial judge was not disposed to deny the plaintiff the right to assert this eleventh hour contention, the only reasonable solution would have been to grant a sufficient delay to permit the defendant his right to prepare.

Id. at 1375 ("that sort of emergency litigation which could degenerate into 'quick-draw hip-shooting' is precisely what the discovery rules" are designed "to prevent"). The process is not a "game of blind man's bluff" but "a fair contest." Id. Defendants do not want a fair contest but a cheating one as both know the tactic is egregiously unfair but did it anyway. Ms. Bell is prejudiced by the bad faith litigation and should not be forced to appeal a third time thus request a finding that the defense is waived.

### B. Alternatively, the court vastly expands and upsets settled preclusion law by finding privity based on a bare attorney-client relationship involving a contingency agreement

A basic principle of American law is that a lawsuit does not decide rights of non-parties. Taylor, 553 U.S. at 881("one is not bound by a judgment" in a suit "in which he is not a party."). The principle has a few narrow and

discrete exceptions, none of which apply. The Court holds "[a] privy is one so identified in interest with a party to the former litigation that **he or she represents precisely the same legal right in respect to the subject matter of the case.**" *Bell III*, 285 A.3d 509; Franco, 3 A.3d at 305. The law firms have no pre-existing qualifying relationship with FISC during FISC's suit. Taylor and EdCare Manag., Inc. v. Delisi hold that nonparty preclusion may be justified based on a few discrete types of "pre-existing substantive legal relationship[s]" between the person to be bound and a party to the judgment. 50 A.3d 448 (2012). None of those relationships exist here. The mere existence of an attorney-client relationship involving a contingency fee agreement is no such relationship. A lawyer is not assigned his client's claim and there is no "preexisting substantive relationship" upon entering into a contingency fee agreement. Bell *III*, 285 A.3d at 511, n.8("Attorneys and clients have 'the common objective' to obtain a 'favorable outcome ... [b]ut that level of common interest ... is **not the kind of estate, blood, or legal interest that would give rise to privity**"); Rucker v. Schmidt, 794 N.W.2d 114, 119 (Minn. 2011)."[A]n award of attorney's fees was insufficient to be the 'something more' than an attorney-client relationship necessary to find privity." *Bell III*, 285 A.3d at 510, 511("We find the reasoning in the first category of cases persuasive and in line with the District's law on privity.").

Like the Dowdey title insurer, Defendants act as "attorneys only" with no mutual interest in their *client's* suit, realized or claimed, and the second suit issues alleged are undisposed in the 2017 suit thus no privity. Dowdey, 618 A.2d at 164. The Court's privity cases require "alignment of interest" as instituted Franco, Major, Patton, Wolf, Dowdy, Smith, Price and Presley. Defendants argue for the exact same extreme expansion of preclusion rejected in ***Bell III*** arguing for a per se exception of non-party preclusion based merely on the attorney-client relationship. Regardless of how much lipstick put on that pig the result is the same precluding non-identical claims that could not be brought in first action and denial of due process based solely on the attorney-client relationship. This is not a "discrete, limited exception to the fundamental rule that a litigant is not bound by a judgment to which she was not a party" discussed in both Taylor and Franco. The expansion is contrary to ***Bell III***, the Court's measured and circumspect preclusion jurisprudence and letter and spirit of Rules 13 and 14. Dowdey, 618 A.2d at 153. The extreme application is contrary to due process.

Nonparty privity is not established through Defendants assertion of the standard payment arrangements of the vast majority of plaintiff attorneys and their clients, most of whom solely seek monetary relief. Nearly all the cases filed in this jurisdiction seek monetary relief only and Defendants

attempt to distinguish the FISC suit fails. In fact, Defendants file thousands of collection cases seeking monetary relief only for contract breach. Are Defendants in privity with all creditor clients to assert a res judicata bar? It does not square with case precedent and debt collection laws when law firm is violating law in real time during suit as is here. Privity nullifies consumer protection statutes in abusive debt collection by firms in real time. Heintz v. Jenkins, 514 U.S. 291, 299 (1995); D.C. Code § 28–3814(b)(5).

"Judgment by consent for/against injured person does not extinguish claim against person not sued in first action.." Rest. (Second) of Judgments § 51(4). "[J]udgment alone is foundation for res judicata bar." Oklahoma, 196 U.S. at 533. Defendants have no final judgment as neither is named in the FISC suit except as counsel. Wang v. 1624 U St., Inc., 252 A.3d 891, 898 (D.C. 2021)(reversed, settlement did not release claims being pursued).

**i. The trial court reversibly erred as the plain language of the "agreement" state Defendants are independent contractors and can never acquire any right or interest in the account**

Defendants continue their failure to assert why they "may claim the 'benefits' of any terms of the settlement agreement or the RISC given that they are not parties, successors in interest, or assignees to either." *Bell III*, 285 A.3d, n.3. Ms. Bell waives no claims against Defendants in settlement [JA195]. Defendants do not claim to be "parties, successors in interest, or

assignees" to 2017 settlement or the RISC and cannot under CA. "Attorney may represent his/her client concerning their rights, but the attorney does not acquire those rights. An attorney and..client do not have a mutual or successive relationship to same rights of property because of representing client." Lane v. Bayview Loan Serv., LLC, 297 Va. 645, 657 (Va. 2019). Defendants argue that under the contingency fee agreement, Defendants "**would** [as in future] split any monetary recovery 70%/30%." RJ Mot. at 9.

First, the CA explicitly disclaims "interest" claimed stating the accounts "shall remain, **the exclusive property of the FISC**" and Defendants "**shall acquire no right, title or interest in any Accounts** placed" thus prima facie dispositive of the claim of mutuality of interest. [JA102]. The CA explicitly disclaims **agency** identifying Defendants as "Independent Contractors." Id("Contractor shall,...remain an independent contractor.."). Second, Defendants commission is for "**amount of Gross Proceeds collected**," not litigating FISC's suit. Throughout suit, Defendants had no commissions and regardless they are by FISC not Ms. Bell and FISC cannot represent Defendants "interest" against Ms. Bell even based on their failed argument that a commission is a mutual interest. If accounts are "recalled," despite litigation, Defendants get zip. [JA103]. Defendants commission "interest" is contingent on amounts **collected** from Ms. Bell – zero during the 2017 suit

and resulting judgment. FISC retains "absolute right" to **recall** "for any reason, with/without cause" without paying the "commission." Accounts are deemed recalled after **six months** proving no mutual interest beyond mere attorney-client relationship during the 2017 suit. [JA103]. Defendants knew this but made the frivolous argument anyway continuing their predatory litigation tactics even in this suit. The party must be "so identified in interest with [FISC] that [Defendants'] represents precisely the same legal right in respect to the subject matter of [FISC's] case." Smith v. Jenkins, 562 A.2d 610, 615 (D.C 1989). The "evidence" proves the decision reversible error.

### C. The trial court reversibly erred as Defendants are not exempt from the CPPA as debt collectors or attorneys

The CPPA is a "comprehensive statute designed to provide procedures and remedies for a broad spectrum of practices which injure consumers." Atwater v. District of Columbia Dep't of Con. & Reg. Affairs, 566 A.2d 462, 465 (D.C.1989). Being remedial, the statute is enacted to "assure that a just mechanism exists to **remedy all improper trade practices** and deter the continuing use of such practices [and to] promote, through effective enforcement, fair business practices throughout the community. D.C. Code § 28-3901(b)(1) and (b)(2). The statute must "be construed and applied liberally to promote its purpose." D.C. Code § 28–3901(c). "While the

CPPA enumerates a number of specific unlawful trade practices, see D.C. Code § 28-3904, **the enumeration is not exclusive.**" Id. Trade practices that violate other laws, including the common law, also fall within the purview of the CPPA. Id. at 465-66; (D. C.Code § 28-3905(b)); § 28-3905(k)(1)(A); Osbourne v. Capital City Mortg. Corp., 727 A.2d 322, 325-26 (D.C.1999) ("CPPA apply..**to all other statutory and common law prohibitions.**")." The definition of "merchant" is also not limited to one who directly supplies goods or services to consumers, but includes all persons connected to the supply-side of a consumer transaction. Adam A. Weschler & Son, Inc. v. Klank, 561 A.2d 1003 (D.C. 1989)(Intermediaries offering/selling goods/ services on behalf of other parties, but do not offer or sell goods/services owned by themselves, are connected to the supply side of a consumer transaction); D.C. v. Cashcall Inc., et al, Case No. 2015 CA 006904 B (denied 12(b)(6) finding debt collector can be a "merchant").

Defendants concede being "merchants" but make two arguments. 2nd OPP 2, 7. 1) attorneys exempt from CPPA under "professional services" exemption, citing Bergman v. D.C., 986 A.2d 1208 (D.C. 2010), Banks v. D.C. Dep't of Consumer & Reg. Affairs, 634 A.2d 433 (D.C. 1993) and Pietrangelo v. Wilmer Cutler Pickering Hale & Dorr, LLP, 68 A.3d 697, 715 (D.C. 2013); and 2) debt collection is exempt from the CPPA, not a

trade practice. Defendants give no CPPA text exempting debt collection. Ms. Bell shows the opposite. Defendants instead rely on erroneous federal case Baylor v. Mitchell Rubenstein & Assoc., 55 F. Supp. 3d 43 (D.D.C. 2014) that is not binding and unsupportive Pietrangelo, Bergman, Banks.

### i. The court reversibly erred, attorneys not immune from CPPA

The CPPA exempts the "professional services of ...lawyers" from its purview. D.C. Code § 28–3903(c). The "professional services" exemption must be interpreted narrowly to effectuate the broad and comprehensive purpose of the CPPA. Atwater, 566 A.2d at 465; Jones and Assoc. v. D.C., 642 A.2d 130, 133 (D.C. 1994)( remedial legislation exemptions narrowly construed); A.H. Phillips, Inc. v. Walling, 324 U.S. 490, 493 (1945). A narrow interpretation is consistent and does not conflict with the remedial purpose of the Act to remedy all improper trade practices. Defendants are not exempt because they are attorneys as the Act has no blanket attorney immunity as erred below. Were blanket immunity intended irrespective of lawyer's activity the Act would read "all lawyers exempt" not narrowly exempting "professional services." D.C. Code § 28-3903(c)(2)(C).

Banks holds "the performance of legal services is an act that 'make[s] available,' or 'provide[s] information about,' a 'service[ ]' that is 'part[ ] of the economic output of society'" and is trade practice under the Act and

“the Act’s prohibitions against deceptive trade practices [do not] interfere with this court’s authority to regulate the practice of law.” Banks, A.2d at 437. Like in Banks, “[t]he applicability of the CPPA to Banks did not turn on the nature of this court's regulatory power over professional conduct of members of our Bar. Indeed, the case had nothing at all to do with that issue.” Id. at 1227. Same here, the case is not about professional services to clients but alleged abusive commercial/entrepreneurial collection practices. The Court’s “authority over Bar admission or attorney discipline” is in no way implicated as Ms. Bell is not Defendants client suing for malpractice but for abusive debt collection practices. Attorney immunity is contrary to Act’s plain language. The trial court erroneously concludes as follows:

> Defendant’s..as FISC’s litigation attorneys render Defendants immune from suit under the CPPA, and,... AFRA. An **attorney’s professional legal services** provided to a client cannot be the basis of a CPPA claim.

[JA29]. Maryland’s similar “professional services” exemption held by Maryland Court of Appeals as not applicable to lawyer’s debt collection activities, “a license to practice law is not a license to engage in deceptive or unfair debt collection activities with impunity.” Andrews & Lawrence Prof. Servs. v. Mills, 223 A.3d 947, 958, 467 Md. 126 (2020).

Ms. Bell alleges Defendants are debt collectors engaged in abusive debt collection practices suing both in that capacity. No duty or standard of care,

etc. is needed to prove her CPPA claim. In Heintz, the Supreme Court established attorneys "engage[d] in consumer debt collection activity, even when…consist[ing] of litigation" are subject to FDCPA. 514 U.S. at 299. SAC alleges violation of FDCPA as a law of the District. [JA68]; D.C. Code § 28-3904 (k)(1)(A). Defendants' entrepreneurial debt collection endeavors are not exempt. Other courts limit similar exemptions in connection with deceptive trade practices statutes. CFPB v. Frederick Hanna & Assocs., P.C., 114 F. Supp. 3d 1342 (N.D. Ga. 2015)(practice of law exclusion inapplicable to law firm's debt collection activities).

It seems illogical to allow lawyers to engage in deceptive trade practices while prohibiting the lawyer's clients from doing so. As most clients will simply enlist their attorney to engage as a shield protecting the client from liability while giving the lawyer carte blanche to engage in such practices under the guise of "professional services." Defendants expanded read of the exemption runs contrary to the CPPA's purpose. D.C. Code § 28-3901(c). Collecting past-due debts does not require a law license nor does verifying a complaint. Lay debt collection agencies engage in such activities as a matter of course. Defendants' misrepresentations and omissions to consumers and the courts as debt collection methods are not "professional services" of a lawyer. Section § 28–3814(a)(3) of the UDCPA a "debt

collector" is defined as any person engaging directly or indirectly in debt collection. Defendants engage in debt collection in and outside the courts. Defendants are listed with DCRA as a for profit corporation.

The court relies on Pietrangelo which is a legal malpractice case brought by a client against his attorney involving the attorney's professional services and alleging improper legal advice. 68 A.3d at 703(sued law firm relating to pro bono representation). Ms. Bell not the Law Firm's client, professional services not provided to Ms. Bell and this is not a legal malpractice suit. Defendants also rely on Bergman, which holds that the D.C. Rules of Professional Conduct do not trump a duly enacted D.C. statute, especially where the D.C. statute is mandatory in nature, and the D.C. professional responsibility rules are silent on the issue. 986 A.2d at 1208. Like in Bergman, the CPPA is an exercise of police power to enact legislation for the protection of District residents "from intrusive and exploitive practices" and a "valid statute which restrict, certain practices by Bar members." Id. at 1228-29. The exemption is inapplicable as Defendants are sued for abusive debt collection practices. Enlarging the exemption as attorney immunity is contrary to CPPA's plain language and purpose thus reversible error.

**ii. Debt collection is a "trade practice," not exempt from CPPA**

Defendants argue that debt collection is not a trade practice relying on Baylor, a case contrary to CPPA plain language and not binding on the Court. "On a question of purely local law, [this Court] is undeniably the final arbiter." Meiggs v. Assoc. Builders, Inc., 545 A.2d 631, 633 (D.C. 1988). Federal court interpretations of the CPPA such as Baylor are not controlling. A "trade practice" is "any act which does or would create, alter, repair, furnish, make available, provide information about, or, directly or indirectly, solicit or offer for or effectuate, a sale, lease or transfer, of consumer goods or services." D.C. Code § 28–3901(a)(6). Serving the 2017 suit where Defendants "duly sworn on oath says the foregoing is a just and true statement **of the amount owing** by the defendant to plaintiff" is an "act" that "directly/indirectly" "provides information about" consumer credit services. Defendants are connected to supply-side of the consumer credit sale and engages in a trade practice. Litigating suits, filing false affidavits, misrepresenting excess fees and deficiencies, **provide information about** or effectuate sale or transfer consumer goods/services (credit) thus a "trade practice." Defendants self-identify as debt collectors and licensed as a "debt collection agency" in Maryland under license #1681411.9. Defendants, admit being "hired to service or help to collect the at-issue debt." 1st MTD. p. 9. False representations made also by "Berrie Smith/Berrinice Smith."

In D.C. v. Fair Collections and Outsourcing, Inc., court rejects the argument. Case No. 2015 CA 008479 B(deceptive trade practice collecting debts not owed). Cashcall and Fair Collections are enforcement actions by the Office of Attorney General (OAG), the body charged with CPPA administrative enforcement and entitled to substantial deference. Kalorama Hghts Ltd. Pship v. DCRA., 655 A.2d 865, 868 (D.C.1995). Also, UDCPA violations are "prohibited acts" and "unlawful act or practice" under the CPPA. D.C. Code § 28-3909("28-3814"). The Baylor federal court improperly reads a debt collection exemption into a very broad **remedial** statute where exemptions cannot be created out of whole cloth. Jones, 642 A.2d at 133. The Act contains no exemption for the most notoriously abusive practices in consumer protection law. One can just look at actual CPPA exemptions and ask how does debt collection reasonably fit in that group. It doesn't. The Court has also held the CPPA applies to deceptive billing practices which is inherently related to debt collection. District Cable Ltd. P'ship v. Bassin, 828 A.2d 714, 723 (D.C. 2003). Ms. Bell alleges the filing of meritless lawsuits, false claims and omissions about debt, unlawful billing and collecting deficiencies not owed, excessive storage and retaking fees in violation of AFRA. 16 D.C.M.R. § 340, 342 ("constitutes an unfair trade practice"); D.C. Code § 28- 3904 (dd)("violate any provision of title

16 of" of DCMRs). DCMRs are enforced through the CPPA, the UDCPA and the UCC. Id. Defendants do not dispute CPPA plain language literally prohibits misrepresenting Title 16 barred deficiency debt as owed. Id. D.C. Code § 1-350-10 confirms debt collection is subject to the CPPA as a law that "govern[s] the collection of delinquent debt." Under this interpretation, the Act functions as a "symmetrical and coherent regulatory scheme," FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133 (2000), with no need to rewrite, explain away, or ignore any of the Act's provisions. Under Defendants' interpretation, it does not. Defendants cite no secret debt collection exemption in CPPA. Accepting allegations as true, construing all inferences and ambiguities in Ms. Bell's favor, the court reversibly erred.

### D. The court reversibly erred as Ms. Bell pleads AFRA claims

AFRA provides "[a] deficiency does not arise unless the holder has complied with all of the requirements of §§ 340 through 349," "[c]harges under § 342.1(c) shall not exceed three dollars ($ 3) per day, and the total ordinary expenses of retaking shall not exceed ($100)," "failure to abide by the requirements constitutes an unfair trade practice, the remedies" include those in "Chapter 39 of Title 28 of the D.C. Code," and in "Chapter 38 of Title 28" [debt collection law]and the UCC. 16 D.C.M.R. § 340, 342. Violations of DCMRs of AFRA are enforced through "remedies" in both

the CPPA and the UDCPA. [1] §16 DCMR 340.7. SAC alleges Law Firms involved in repossession. Misrepresenting, billing and collecting amounts barred by AFRA like deficiencies, excessive storage and retaking fees violate AFRA and are enforceable through the CPPA as the court explains. [JA29];16 DCMR § 340.6. As sections violated are expressly identified in SAC and the AFRA which regulates **repossessions** in the District, the claim of no repossession allegations involving Defendants lacks merit.

Ms. Bell alleges Defendants collected barred deficiency amounts by filing the ECSD charging and collecting excess retaking, storage, attorney fees, etc. violating AFRA. [JA31, SAC ¶¶17-22]. Billing and collecting a deficiency that **does not arise** violate AFRA and multiple CPPA and UDCPA sections unrelated thereto as alleged.16 DCMR § 342.2, 340.5. It is also part of repossession hence ECSD. Ms. Bell pleads violations of AFRA by Defendants. The extent of Defendants role is indeterminable at this procedural point, second appeal of third 12(b)(6), no discovery. Accepting the above allegations as true, and construing all facts, ambiguities and inferences in Ms. Bell's favor, Ms. Bell plausibly allege an AFRA claim warranting reversal. Francis v. Rehman, 110 A.3d 615, 625 (D.C. 2015)

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[1] "The **remedies** set forth in § 340.6 are in addition to any other **remedy** provided by the laws of the District of Columbia, including, but not limited to, Chapter 38 of Title 28 [**debt collection law**] of the D.C. Code and UCC.

**E. The court reversibly erred as Ms. Bell pleads UCC claims**

Ms. Bell alleges that Defendants "are debt collection law firms" and multiple violations of the UCC. Ms. Bell alleges Defendants "did not act in good faith" in violation U.C.C. § 1-304." [JA65, ¶81]. The section provides "[e]very contract or <u>duty</u> within this subtitle imposes an obligation of good faith **in its performance and enforcement**." D.C. Code § 28:1-304. Defendants purport to have enforced the RISC in FISC's name (a secured party) in the 2017 suit. Ms. Bell alleges Defendants **enforced** and collected barred deficiency amounts and fees violating duty of good faith. D.C. Code § 28:9-611(secured party must send reasonable authenticated notice). Ms. Bell alleges Defendants enforced in bad faith without required notices and did not inform Ms. Bell the deficiency is barred. [JA64-65, ¶78-82]. UCC liability is not limited to "secured parties" but "persons" or enforcers. A person "is liable for damages in the amount of any loss caused by failure to comply." D.C. Code § 28:9-625(b). "Person" is defined as "any other legal or commercial entity." D.C. Code § 28:1-201(b)(27). Ms. Bell alleges Defendants are "debt collection law firms" or "commercial entities." [JA48-49]. Ms. Bell plausibly pleads UCC claims. <u>Poola v. Howard Univ.,</u> 147 A.3d 267, 276 (D.C. 2016)("a plaintiff's burden is not onerous."). As no discovery is provided it cannot be established at this early stage the extent to

which Defendants were involved in the repossession. [JA196]. Accepting allegations as true, and construing facts, ambiguities and inferences in Ms. Bell's favor, Ms. Bell plausibly allege UCC claim warranting reversal.

## F. The court reversibly erred as Ms. Bell pleads UDCPA claims

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Potomac, 28 A.3d at 543-44. A party satisfies Rule 8 by providing a short and plain statement of claim showing pleader is entitled to relief and a demand for the relief sought. Super. Ct. Civ. R. 8(a)2, 3. Claims of no specific facts, willfulness or proximate cause allegations are meritless. The SAC pleads all despite no requirement. The court dismissed stating Ms. Bell "does not explain **how**...conduct satisfies the elements of any of these provisions," which is repeatedly rejected by the Court. [JA30]. ALDF, 258 A.3d at 827(not required to do "straightforward task" of matching allegations to law sections); Velcoff, 186 A.3d at 827. It also seems only fair given the **three** 12(b)(6) motions allowed Defendants, that justice so requires Ms. Bell be allowed to amend to match allegations and law as stated making denial of leave an abuse of discretion. [JA38] Crowley v. N. Am. Telecom. Ass'n, 691 A.2d 1169, 1174 (D.C.1997) (Where omission can be remedied readily w/o prejudice to deny is abuse).

Ms. Bell pleads 111 paragraphs most alleging deception as to existence of **amounts** owed including a sworn false statement to court by Defendants. The "im**plausible**" is that Defendants are not on notice of the UDCPA claim to warrant dismissal as a matter of law. The decision is error.

The SAC, as the operative complaint Defendants sought and obtained dismissal, asserts violations of amended UDCPA where willfulness and proximate cause not required. [JA58, ¶¶40, 43, 50, 67, 109]; D.C. Code § 28-3814 (u)("debt collector that violates any provision...may be liable"). But Ms. Bell pleads willfulness and proximate cause alleging Defendants "know or should know" that failure to comply with AFRA, relieves consumers of deficiencies. SAC ¶¶40, 43 ("actively conceals"), 109("full knowledge of noncompliance" and "willfully failed to comply"), 50("direct and proximate result of the acts"). Ms. Bell pleads vast factual content as basis for UDCPA claim. [JA48, SAC ¶¶ 1, 18-19, 27, 32, 33-36, 39-50, 100]. After doing so:

> [Ms. Bell] does not explain how Defendant's conduct satisfies the elements of any of these provisions....Without a clear understanding of how Plaintiff believes Defendant's actions constituted a violation of the DCL, the Court has no basis to identify a plausible claim for relief.

[JA30]. So concluded below. The Court holds "complaints need not plead law,' nor do they have to 'match facts to every element of a legal theory." ALDF, 258 A.3d at 188; Velcoff, 186 A.3d at 827. Though not required, Ms. Bell pleads UDCPA sections and a slew of facts missed by the court.

Ms. Bell alleges violations of D.C. Code § 28-3814(c) prohibiting debt collectors from collecting or attempting to collect debts by "threat of any action that the debt collector cannot legally take" like filing a deficiency barred lawsuit in small claims as alleged. [JA67]. Ms. Bell alleges violation of D.C. Code § 28-3814(f)(5) using deceptive/misleading representations or means to collect/attempt to collect debt like misrepresenting a deficiency is owed or the character/extent/amount of a claim through a sworn and false affidavit. [JA68-69, SAC ¶¶98, 100]. Ms. Bell pleads facts violating FDCPA as *per se* violations of UDCPA, no "willfulness" in FDCPA. [JA68, ¶95]; D.C. Code §28-3814(z). Ms. Bell plausibly allege UDCPA violations.

Defendants waive any objection to application of the amended UDCPA where "willfulness" and proximate cause are no longer a required by not raising it in opposition to Ms. Bell's **granted** motion to amend. [JA42]. The reliance on <u>Baylor</u> is misplaced both procedurally and substantively as case decided on summary judgment and survived 12(b)(6) willfulness. SAC:

> [Defendants] obtained judgments and collected barred debt as a regular and uniform business practice,..submitting false, misleading affidavits in court, representing amount as "just and true statement of the amount owing by the defendant to plaintiff, exclusive of all set-offs and just grounds for defense" and by using the mails and other instrumentalities of commerce to collect such barred deficiency amounts.

SAC ¶¶39, 100. The forgoing violates FDCPA and UDCPA. SAC alleges under UDCPA unopposed waiving retroactive claim. SAC is law of case.

Also, the conduct complained of has always been the law of both the FDCPA and UDCPA fka DCDCL as both predate alleged conduct and Defendants had "an opportunity to know what the law is and to conform." Landgraf v. USI Film Prod., 511 U.S. 244, 265 (1994). The UDCPA is remedial not "affecting contractual or property rights." Landgraf, 511 U.S. at 271. This Court holds, "a new remedial statute, like a new procedural one, presumptively apply to pending cases." Lacek v. Wash. Hosp. Ctr. Corp., 978 A.2d 1194, 1197-98 (D.C. 2009). Willfulness deals with remedy or enforcement modes. SAC alleges deceptive billing and collection thus plausibly pleads UDCPA claim. Swierkiewicz v. Sorema N.A., 534 U.S. 506, 510-12 (2002). Accepting factual allegations as true and construing all, inferences and ambiguities in Ms. Bell's favor, the court reversibly erred.

### G. The court reversibly errs as abuse of process plausibly pled

"There are two essential elements to an abuse of process claim: '(1) the existence of an ulterior motive; and (2) an act in the use of process other than such as would be proper in the regular prosecution of the charge.'" Hall v. Hollywood Credit Clothing Co., 147 A.2d 866, 868 (D.C. 1959); Hall v. Field Enterprises, 94 A.2d 479, 481 (D.C. 1953). This is not a case about one unfounded lawsuit, Ms. Bell alleges Defendants knowingly file sworn affidavits in this court repeatedly averring amounts claimed are due

and owing under penalty of perjury extorting barred-deficiency amounts from vulnerable and unwitting consumers. [JA55, ¶¶43-50]. Ms. Bell allege Defendants routinely file false affidavits as a regular business practice with the ulterior motive of laundering uncollectable debt to valid enforceable judgments. [JA70]. It is error to find Ms. Bell does not plead Defendants did anything "beyond file a lawsuit on behalf of its client" as it does not accept the truth of Ms. Bell's allegations independently warranting reversal in light of the clear record. [JA34]. Ms. Bell alleges as officers of the court, Defendants **regularly** file false affidavits using them to coerce settlement in court mediation and obtain default judgments knowing the debts are not owed routinely converting meritless claims to enforceable judgments against vulnerable consumers like Ms. Bell. [JA70, ¶¶ 43, 64-70, 101-104]; Shipe, 158 A. 2d at 911. Defendants' deception to Ms. Bell and more regularly the court as officers thereof is alleged. The authority holding knowingly filing an unfounded/frivolous claim is "not by itself" abuse of process is not this case. Ms. Bell alleges more like knowing deceptive filings to the court as officers **regularly** (class action) against pro se/no-show consumers.

Ms. Bell argues three points of authority supporting plausibility. Osinubepl-Alao v. Plainview Fin. Serv., Ltd., 44 F.Supp. 3d 84, 94 (D.C. 2014)("submit[ing] deceptive documents to the Superior Court in an

attempt to collect a debt they knew they were not owed," would establish defendants acted with "ulterior motive of collecting the debt and attorneys' fees, an end which would not be otherwise legally obtainable"). Shipe, 158 A. 2d at 911(process to enforce payment of a debt known to b nonexistent, is actionable abuse); McCullough v. Johnson, Rodenburg & Lauinger, LLC, 637 F.3d 939 (2011)(law firm "willfully filed a lawsuit 'with..ulterior purpose of extracting money from [party] that he did not owe,'"). The court rejected authority despite similar abuse of knowingly making false claims to court under oath – more than simply filing one frivolous lawsuit. Ms. Bell alleges Defendants launder junk uncollectable debt into valid and enforceable judgements using their law licenses to aver false amounts due by exploiting informal procedures of Small Claims to accomplish ends not regularly or legally obtainable like extorting payments not owed from vulnerable consumers like Ms. Bell. Defendants "hoodwink" courts into granting default/consent judgments against absent or *pro se* defendants on meritless claims to easily collect commissions. The allegations of deception and trickery against numerous vulnerable consumers repeatedly is unaddressed.

Unlike in Kopff v. World Research Group, LLC, the judicial process does not offer junk debt laundering to valid judgments against vulnerable consumers forcing them to pay un-owed debts through the routine filing of

false affidavits by court officers. 519 F.Supp.2d 97, 100 (D.D.C. 2007).[2] Neither Jacobson, Morowitz, Kopff nor Great Socialists relied on by the court involve officers of the court **routinely** and **knowingly** filing false affidavits **to the court** verifying amounts owed to convert meritless claims to enforceable judgments to collect commissions on the junk debt. [JA70, SAC ¶¶101-104]. Defendants are the lynchpin in creditors' scheme as without them filing countless meritless claims as court officers, vulnerable consumers like Ms. Bell's wages are not garnished based thereon. Ms. Bell had no ability to obtain an attorney making her easy pickings like similar financially distressed consumers. Defendants exploit the vulnerabilities to easily collect their commissions. Unlike Morowitz, Defendants do more than merely file "a counterclaim and subsequently withdrew it." Morowitz v. Marvel, 423 A.2d 196, 198 (D.C. 1980). No prima facie showing for dismissal as a matter of law is made and the court does not consider facts as pled. Pollock v. Brown, 395 A.2d 50, 52-53 (D.C. 1978). Accepting as true Ms. Bell's factual allegations and construing inferences and ambiguities as to the abuse of process in Ms. Bell's favor the court reversibly erred.

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[2] The Legal Aid Society et al., Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers 1-2 (May 2010) (66% of debt collection cases against black and Latino clients were "clearly meritless," as compared to 35% of all). https://takerootjustice.org/wp-content/uploads/2019/06/Report_DebtDeception_201005.pdf

**H. Prayers for relief not subject to dismissal by Rule 12(b)(6)**

Prayers for relief are not subject to dismissal under Rule 12 and Ramirez is inapplicable to Article I courts. Plaintiff's prayer for injunctive relief and punitive damage are demands for relief not "claims" under Rule 12(b)(6) thus not subject to dismissal thereunder. Further, punitive damages are warranted when defendant commits a tortious act "accompanied with fraud, ill will, recklessness, wantonness, oppressiveness, willful disregard of the plaintiff's rights, or other circumstances tending to aggravate the injury." Parker v. Stein, 557 A.2d 1319, 1322 (D.C.1989); Robinson v. Sarisky, 535 A.2d 901, 906 (D.C.1988). As long as there is a basis for compensatory or actual damages there is a basis for punitive damages. Ayala v. Washington, 679 A.2d 1057, 1070 (D.C. 1996)("nominal actual damages may justify the imposition of punitive damages."); BMW of North America, Inc. v. Gore, 517 U.S. 559, 576 (1996)(Repeated "trickery and deceit" targeting people "financially vulnerable" specially reprehensible worthy of greater sanctions). Ms. Bell alleges Defendants repeatedly misrepresent the existence of a debt not owed to "financially vulnerable" consumers. The CPPA also expressly permits injunctive relief against Defendants deceptive practices. D.C. Code § 28-3905(k)(1)(D) and (C). Ms. Bell alleges Defendants communicated with her while she is represented by counsel and "regularly report...to

consumer credit reporting organizations the deficiencies…are valid debts."

Ms. Bell still has a credit report and remains represented by counsel.

Defendants have also denied Ms. Bell any discovery for five years.

## VIII. Conclusion

Ms. Bell respectfully requests that the trial court's order be reversed.

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## Certificate of Service

I, Radi Dennis, certify that on this 23rd day of October 2024, a true and accurate copy of Appellant's Opening Brief will be served electronically through the Court of Appeals C-Track electronic filing system upon:

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