were denied. The case proceeded to trial. At the conclusion of the trial, the jury awarded Rolston $706.31 in benefit-of-the-bargain damages, $75 in out-of-pocket damages, $50 in expenses, $250 in lost profits, $80 in lost time, $5,000 in exemplary damages, and $2,500 in attorney's fees. The final judgment included damages of $8,661.31 against Apple. Apple appealed.
HOLDING: Affirmed, in part, modified, in part, conditioned on remittitur.
REASONING: Apple claimed that Rolston could not recover both out-of-pocket ("OOP") and benefit-of-the-bargain ("BOTB") damages. A prevailing consumer is able to recover only one – whichever is greater. To recover on both would be impermissible double recovery. A prevailing consumer may only recover the greater of either OOP or BOTB damages. In this case, BOTB damages were greater so the OOP damages of $75 were impermissible double recovery.

Apple also contended that the $5,000 "exemplary damages" award was improper because a plaintiff cannot recover exemplary damages in an action for violation of DTPA. The court explained that while the DTPA does not authorize the recovery of exemplary damages under Chapter 41, one can recover treble damages for conduct that was committed knowingly. Here, Apple did not challenge the calculations done by the jury. After trebling the sum of the proper damages, however, the sum came to $3,258.93—a number that was significantly lower than the jury's $5,000. The court concluded that the jury's exemplary damages award exceeded the statutory maximum, and, thus, lacked evidentiary support. Based on the lack of evidentiary support, the court suggested a remittitur of that part of the damages.

CONSUMER CREDIT

GEORGIA SUPREME COURT HOLDS LEGAL SETTLEMENT CASH ADVANCES ARE NOT LOANS.

Ruth et al. v. Cherokee Funding, LLC et al., ___S.E.2d ___ (Ga. 2018).
https://law.justia.com/cases/georgia/supreme-court/2018/s17g2021.html

FACTS: Appellees Ronald Ruth, Kimberly Oglesby and a punitive class of similarly situated persons obtained cash advances from appellant Cherokee Funding, LLC to cover legal fees stemming from personal injury lawsuits. The financing agreements extended by Cherokee Funding would provide Ruth and Oglesby funds for personal expenses amassed during their pending lawsuits. The obligation to pay back the funds was contingent on the success of their lawsuits, with no obligation to pay if they were unsuccessful. If they were successful, however, Ruth and Oglesby would pay back the funds to Cherokee Funding, plus interest and various fees. In each case, the party's settled their lawsuits for an undisclosed amount.

Following the settlement, Cherokee funding attempted to collect $84,000.00 from Ruth after lending him $5,550.00 and $1,000 from Oglesby after lending her $400.00. Ruth and Oglesby alleged that their financing agreements with Cherokee Funding violated the Georgia Industrial Loan Act and the Payday Lending Act. They sought relief against Cherokee Funding pursuant to the remedial measures of those statutes. Cherokee Funding filed a motion to dismiss, stating that neither statute applied to their financing agreements with Ruth and Oglesby.

The trial court held that the Payday Lending Act applied, but that the Industrial Loan Act did not. The Georgia Court of Appeals concluded that neither the Industrial Loan Act nor the Payday Lending Act applies to this transaction.
HOLDING: Affirmed.
REASONING: Because Ruth and Oglesby alleged violations under the two Acts, the court stated their claims depended on whether their transactions with Cherokee Funding amounted to "loans." The Industrial Loan Act defines a loan as "any advance of money… under a contract requiring repayment." The Payday Lending Act does not expressly define "loan" but implicitly gives meaning to the term by its provision stating that the Act "shall apply with respect to all transactions in which funds are advanced to be repaid at a later date."
The court stated that when funds are advanced under an agreement where repayment is only on a contingent and limited basis, and not required to be repaid, the funds are not "loans" according to the two definitions set forth in the Acts. Ruth and Oglesby argued that the advances made by Cherokee Funding were, in fact, loans because they only extended to those advances when there was no risk that the contingency would fail to arise, thus making the terms illusory. The court agreed that would be a possible scenario but stated that because evidence to combat a motion to dismiss must be "within the framework of the complaint," it was not the case here. Ruth and Oglesby's original complaint did not allege the financing agreements were illusory. The court concluded that the funds provided by Cherokee were not "loans" pursuant to the Payday Lending Act or the Industrial Loan Act and, therefore, must be dismissed.

The Industrial Loan Act defines a loan as "any advance of money… under a contract requiring repayment."

NEW YORK CREDIT CARD LAW REQUIRES FULL CREDIT PRICE BE POSTED

Expressions Hair Design v. Schneiderman, 808 F.3d 118 (2nd Cir. 2018).
https://law.justia.com/cases/new-york/court-of-appeals/2018/100.html

FACTS: Section 518 of New York General Business Law prohibits credit-card surcharges. Plaintiff, Expressions Hair Design,

planned to charge credit-card customers more than cash customers to account for credit-card companies' swipe fees. Expressions did not want to display two separate prices for each good and service offered, but rather, a single set of prices and the credit card surcharge amount. However, §518 prohibits the pricing scheme that Expressions wished to employ. Expressions sued New York, seeking a declaration that §518 is both unconstitutional and preempted, as well as an injunction against its enforcement.

The district court granted Expressions' preliminary injunction motion and denied New York's motion to dismiss. The district court found that §518 burdens speech by drawing the line between prohibited "surcharges" and permissible "discounts" based on words and labels rather than economic realities. New York appealed.

HOLDING: Vacated and remanded.

REASONING: The Second Circuit agreed with New York and held that §518 regulates conduct, not speech. The court found that prices, although necessarily communicated through language, did not rank as "speech" within the meaning of the First Amendment. Section 518 regulates the difference between a seller's sticker price and the ultimate price that it charges to credit-card customers.

The court found that §518 was readily susceptible to a narrowing construction, and Expression's putative over-breadth challenge failed, meaning the court declined to decide Expression's as-applied challenge.

FAIR AND ACCURATE CREDIT TRANSACTIONS ACT (FACTA) CLASS SETTLEMENT UPHELD

Muransky v. Godiva Chocolatier, Inc., 905 F.3d 1200 (11th Cir. 2018).

http://media.ca11.uscourts.gov/opinions/pub/files/201616486.pdf

FACTS: Plaintiff-Appellee, Dr. David Muransky, made a purchase from Defendant-Appellee, Godiva Chocolatier, Inc., and was given a receipt for the purchase that showed his credit card number's first six and last four digits. FACTA prohibits merchants from printing more than the last five digits of the card number or the expiration date upon receipt provided to the cardholder at the point of the sale or transaction. Muransky brought a class action suit against Godiva for allegedly violating FACTA, asserting that Godiva's willful violation of FACTA exposed Muransky and the class to an "elevated risk of identity theft."

The parties subsequently engaged in mediation of the case. In late November 2015, the parties notified the court of an agreement in principle to settle the case on a class-wide basis. Appellants James Price and Eric Isaacson ("the objectors") objected to a class settlement reached by Dr. Muransky and Godiva. Nevertheless, the district court approved the settlement.

HOLDING: Affirmed.

REASONING: Dr. Muransky argued that the class settlement would be more favorable than going to trial on the case, even if the class members won. He estimated that class members would receive $235 as their pro-rata share of the $6.3 million settlement fund, which is more than double than what they would receive as FACTA actual and statutory damages for a successful trial. Furthermore, Dr. Muransky reasoned that two pending cases before the Supreme Court relating to class certification, posed serious risks to the class members' ability to pursue FACTA claims against Godiva. Lastly, Dr. Muransky acknowledged the difficulty of proving the "willfulness" of Godiva's FACTA violation at trial.

The objectors countered by claiming that the settlement itself, specifically Dr. Muransky's incentive award, and notice of the attorney's fees motion should be subjected to further analysis because they were inadequate and unwarranted.

The court swept aside the objector's argument and held that the district court did not abuse its discretion by awarding Dr. Muransky the $10,000 incentive award for his efforts in the case, as many circuits properly endorse and incentivize such awards for named class representatives. The court upheld the attorney's fees motion by explaining that while the district court erred by requiring class members to object before they could assess the motion, class members were not prejudiced in any way by the objection schedule. The court acknowledged that while the 33% attorney's fees award was bigger than some awards in other suits, it was reasonable based on the results obtained and substantial benefits conferred on the class members.

Finally, reviewing the issue of Dr. Muransky's standing, the court found that the complainant alleged two concrete injuries: one based on statutory violation and its relationship to common law causes of action and another based on Godiva giving Dr. Muransky an untruncated receipt. Ultimately, the court agreed with the district court and upheld approval of the class settlement.