IN THE SUPREME COURT OF IOWA

No. 21-0831

STATE OF IOWA ex rel. THOMAS J. MILLER,
ATTORNEY GENERAL OF IOWA,

Plaintiff-Appellee,

vs.

TRAVIS AUTOR, EMILY AUTOR, MICHAEL PAVEY, REGENERATIVE MEDICINE AND ANTI-AGIING INSTITUTES OF OMAHA, LLC, OMAHA STEM CELLS, LLC, and STEM CELL CENTERS, LLC.,

Defendants - Appellants,

Appeal from the Iowa District Court for Polk County
Scott D. Rosenberg, District Judge

APPELLEE'S FINAL BRIEF

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ISSUES PRESENTED

I. Does Article 1, section 9 of the Iowa Constitution provide a right to a jury trial in a civil suit by the Attorney General under the Iowa Consumer Fraud Act that the Legislature directed, "shall be by equitable proceedings"?

Important authorities:

Iowa Const., art. I, § 9
Iowa Code § 714.16
Iowa Code § 714.16A

Weltzin v. Nail, 618 N.W.2d 293 (Iowa 2000)
Iowa Nat. Mut. Ins. Co., 305 N.W.2d 724 (Iowa 1981)
State ex rel. Miller v. Hydro-Mag, Ltd, 436 N.W.2d 617 (Iowa 1989)
State ex rel. Miller v. Vertrue, 834 N.W.2d 12 (Iowa 2013)

II. Has Autor properly preserved error about what remedies are available under the Consumer Fraud Act when he never sought to dismiss or strike the remedies sought and only sought interlocutory appeal of the District Court's order striking his jury demand?

Important authorities:

Benskin, Inc. v. W. Bank, 952 N.W.2d 292 (Iowa 2020)
UE Local 896/IUP v. State, 928 N.W.2d 51 (Iowa 2019)
Meier v. Senecaut, 641 N.W.2d 532 (Iowa 2002)
Teamsters Local Union No. 421 v. City of Dubuque, 706 N.W.2d 709 (Iowa 2005)

ROUTING STATEMENT

The central issue in this appeal is whether a party has a right under the Iowa Constitution to a jury trial in a case brought by the Attorney General under the Iowa Consumer Fraud Act. Resolution of this question requires the Court to apply the well-settled rule that Article 1, Section 9 of the Iowa Constitution does not extend to a claim in equity. To determine whether the claim at issue is "equitable," the Court must apply an established test to determine whether the "essential nature" of this lawsuit suit is in equity. Because this case presents the application of existing legal principles it should be transferred to the Iowa Court of Appeals. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

The Attorney General filed a civil lawsuit in July 2020 that alleged Appellants Travis Autor, Regenerative Medicine and Anti-Aging Institutes of Omaha, LLC, and Omaha Stem Cells, LLC, (collectively, "Autor"), along with three other Defendants[1], violated Iowa's Consumer Fraud Act, Iowa Code Section 714.16 (CFA or Act). App. 6. The Attorney General alleged that Autor's marketing, promotion, and sale of stem cell therapy and exosome therapy in Iowa was false, misleading, deceptive, and constituted an unfair practice. App. 31 ¶ 115. The Petition sought relief authorized under the CFA and the Older Iowans Act, Iowa Code Section 714.16A (OIA), including an injunction to prevent future violations of the Act, consumer reimbursement, disgorgement, and civil penalties, jointly and severally against all Defendants. App. 32 ¶¶ A, B, C, D. The Attorney General filed a First Amended Petition (FAP) in October 2020 that provided additional facts and continue to allege CFA violations but did not add new claims to its suit. App. 51.

Two weeks later Autor filed a Jury Demand and Answer, denying the allegations in the Petition and demanding a jury. App 94. In December 2020, the Attorney General filed a Motion to Strike Jury Demand (Motion). App.

[1] The lawsuit originally named six Defendants. One Defendant, Michael Pavey, did not file a jury demand in the District Court and has not participated in this appeal. The two additional Defendants were dismissed by District Court order on March 15, 2021. App. ___ (Ruling on Motion to Dismiss).

146. The Attorney General argued that Autor is not entitled to a jury because a lawsuit brought by the Attorney General to enforce the CFA is an "equitable proceeding[]" under the statute, the essential nature of the case is equitable, and that granting a jury trial in a CFA action was without precedent. App. 146. Autor filed a Resistance to Motion to Strike Jury Demand (Resistance) arguing he was entitled to a jury trial and that disgorgement exceeding "net profits", civil penalties and joint and several liability are not available in a court of equity. App. 155. In reply the Attorney General argued that the CFA allows recovery of reimbursement and disgorgement not confined to "net profits", that a District Court can order a civil penalty under its equitable jurisdiction, and joint and several liability is available. App. 163.

The District Court heard oral argument on the Motion in January 2021. Several months later, the Court issued an order granting the Motion and agreeing with the Attorney General. App 202.

STATEMENT OF FACTS

Appellant Travis Autor is an unlicensed chiropractor who has owned and operated a network of stem cell clinics for years.[2] App. 55-6, 60-1 ¶¶ 5, 22(a). Autor opened an Omaha, Nebraska clinic in April 2018. App. 55. First known as Stem Cell Centers, LLC[3] and later renamed Regenerative Medicine and Anti-Aging Institutes of Omaha, LLC, the Omaha clinic offered stem cell therapy and exosome therapy to consumers. App. 54-5 ¶¶ 2, 3.

Stem cell therapy and exosome therapy are procedures in which products purportedly containing stem cells or exosomes are introduced into a person's body via methods such as inhalation, injection, or intravenous administration. Stem cells are the cells that "develop into blood, brain, bones, and all of the body's organs." App. 51-2. According to the U.S. Food and Drug Administration (FDA), stem cells "have the potential to repair, restore, replace, and regenerate cells, and could *possibly* be used to treat many medical conditions and diseases." App. 51-2. However, safe and effective uses of stem cells to treat health and medical conditions are limited. Currently, the only stem cell

[2] Facts stated in this section are as alleged in the Attorney General's First Amended Petition.

[3] Appellant Omaha Stem Cells, LLC conducted business under the name "Stem Cell Centers." App. 54-5 ¶ 2.

products approved for use by the FDA are for patients with disorders that affect production of blood. App. 52. Exosomes, another product Autor sold, are not cells; they are extracellular vesicles released from stem cells. App. 52. There are no FDA-approved uses of exosomes. App. 52.

Stem cell therapy and exosome therapy have become increasingly available throughout the United States in recent years. This has raised serious public health concerns. The FDA has issued several consumer advisories regarding stem cell therapy and exosome therapy, warning potential purchasers, "[s]tem cells have been called everything from cure-alls to miracle treatments. But don't believe the hype." App. 52-3. In late 2019, the FDA issued a special "Public Safety Notification on Exosome Products" in response to a Nebraska incident in which several consumers required hospitalization after being treated with stem cell and exosome products contaminated with *E. coli* bacteria. App. 52-3. Google prohibits advertisements of stem cell therapy on its platforms in light of safety concerns.

Despite these risks, Autor claimed that stem cell therapy and exosome therapy provided at the Omaha clinic could heal a range of common health problems and reverse the aging process. The clinic advertised that stem cell and exosome therapies could treat, cure, prevent, or reverse a variety of medical conditions, such as chronic obstructive pulmonary disease, neuropathy,

joint pain, knee pain, and Alzheimer's disease. App. 59-60, 63-7, 70-4 ¶¶ 18, 32-48, 62-81. The clinic also claimed stem cell and exosome therapies could have anti-aging effects. App. 67-70 ¶¶ 49-61.

In order to reach Iowa's consumer base, Autor directed significant marketing and promotional efforts into the State. In addition to claims on websites and social media accounts, Autor targeted direct mailers to older Iowans and published newspaper and television advertisements in Iowa media outlets. App. 59-60 ¶¶ 18-19. Autor's representatives conducted over 90 live events at Iowa hotels and restaurants, where a salesperson presented a lengthy, purportedly "educational" slideshow that reiterated claims that stem cell and exosome therapy could provide relief from health problems and reverse the aging process. App. 60 ¶¶ 20-21. Slideshow presenters referred to clinical studies to provide legitimacy for their claims, but these studies did not necessarily stand for the proposition extrapolated from them, were often limited in application, and taken out of context. App. 64-6, 67-74 ¶¶ 35-41, 50-61, 65-69, 71-81.

Hundreds of Iowans attended Autor's seminars. App. 62 ¶ 28. Many ultimately paid thousands of dollars for stem cell therapy or exosome therapy (none of which is covered by health insurance) with prices ranging from $1,400 to over $27,000. App. 62 ¶ 28. The majority of Iowa consumers were

older people with health problems. App. 62, 81-2 ¶¶ 28, 108-11. Numerous consumers financed their purchase through an on-site third-party lender, incurring significant additional expense in finance charges and interest payments. App. 28 ¶ 28.

In July 2020, the Attorney General filed a civil lawsuit against Autor alleging violations of Iowa's Consumer Fraud Act. The CFA is a remedial statute that authorizes the Attorney General to seek to enjoin and obtain redress for fraudulent and deceptive conduct in connection with the sale, lease, and marketing of merchandise in the State. *See generally* Iowa Code § 714.16. The purpose of the CFA, which was enacted in 1965, is to protect Iowans. *State ex rel. Miller v. Hydro-Mag, Ltd.*, 436 N.W.2d 617, 620-22 (Iowa 1989). Prior to its adoption, a defrauded or deceived consumer seeking redress from a fraudulent seller or advertiser was relegated to proceeding through a common law fraud action that, "was generally ineffective." *Id.* As the Iowa Supreme Court has recognized, "[t]he burdens of a common-law action were 'sufficient to dissuade all but the most persistent and seriously injured customer.'" *Id*. (quoting Note, *Developments in the Law: Deceptive Advertising*, 80 Harv. L. Rev. 1005, 1016-17 (1967); *see also* Jack E. Karns, *State Regulation of Deceptive Trade Practices Under "Little FTC Acts": Should Federal Standards Control?*, 94 Dick. L. Rev. 373, 374 (1990) (discussing difficulty

in pursuing claim based on fraudulent marketing and sale before enactment of state consumer protection statutes). The Act created a new cause of action that provided, "broader protection to the citizens of Iowa" than was available under common law fraud. *Hydro-Mag*, 436 N.W.2d at 622. Like its counterparts across the country, the Iowa Attorney General's Office is tasked with enforcing the Act to pursue false, misleading and deceptive conduct in a wide range of matters.[4] *See generally* Iowa Code § 714.16.

In its Petition, the Attorney General asserted that Autor's marketing, promotion, and sale of stem cell therapy and exosome therapy violated the Act because it was false, misleading, deceptive, and constituted an unfair practice. App. 82 ¶ 115. The Petition identified specific statements made in Autor's presentations throughout the State about stem cell and exosome therapy's purported safety and efficacy, alleged that Autor lacked the "reasonable basis" to substantiate health and medical claims required under the CFA, and engaged in other unfair and deceptive conduct. App. 51.

The Petition sought three primary types of relief, each of which is authorized specifically in Iowa Code section 714.16(7). It requested the District

[4] The Attorney General strongly disagrees with Autor's explicit and implicit criticisms of historical enforcement of the CFA and of changes to the statute enacted by the General Assembly. However, such issues are of minimal, if any, relevance to the analysis of the specific legal question presented in this matter.

Court issue an injunction to prevent Autor from committing future CFA violations. App. 83 ¶¶ A, B. It sought consumer reimbursement for, "amounts necessary to restore to Iowans all money acquired by means of acts or practices that violate" the CFA and disgorgement if the cost of administering reimbursement outweighed benefit to consumer or consumers could be located. App. 84 ¶¶ C, D. It asked the Court to issue civil penalties under the CFA and OIA. Iowa Code § 714.16A; App. 84 ¶¶ E, F. The Attorney General sought a joint and several judgment for reimbursement and attorney's fees against all Defendants. App. 84 ¶¶ C, D, H.

Autor filed a Jury Demand and Answer, generally denying the allegations in the Petition and demanding a jury. App 94. The Attorney General filed a Motion to Strike Jury Demand arguing that Autor is not entitled to a jury because lawsuits brought by the Attorney General to enforce the CFA are "equitable proceedings" under the statute, the "essential nature" of the suit is equitable, and that granting a jury trial in such matters was without precedent. App. 146. Autor resisted the Motion and contended that he was entitled to a jury trial because the remedies sought – consumer reimbursement in excess of Autor's "net profits", civil monetary penalties, and joint and several liability – could not be provided in an equity court. App. 155. In its Reply the Attorney General responded that that consumer reimbursement was not limited to "net

profits" and that a court could order a civil penalty under its equitable jurisdiction in the context of a CFA suit. App. 163. After oral argument, the District Court granted the Motion. App. 202.

ARGUMENT

This case presents only one issue: whether the District Court properly struck Autor's jury demand in a suit brought by the Attorney General under Iowa's Consumer Fraud Act. Article I, Section 9 of the Iowa Constitution does not provide a right to a jury trial for civil suits in equity. *Weltzin v. Nail*, 618 N.W.2d 293, 298-99 (Iowa 2000); *Iowa Nat. Mut. Ins. Co. v. Mitchell,* 305 N.W.2d 724, 728 (Iowa 1981). By both statute and character, lawsuits under the CFA are properly heard by a court in equity. The Legislature decided consumer fraud actions brought by the Attorney General "shall be by equitable proceedings." Iowa Code § 714.16(7). The essential nature of this suit is in equity because it has a remedial purpose that is consistent with the goals of an equitable proceeding, *see State ex rel. Miller v. Vertrue*, 834 N.W.2d 12, 32 (Iowa 2013), and seeks remedies that are available under an equity court's broad jurisdiction. *See Weltzin*, 618 N.W.2d at 296. Autor has offered no principled reason for deviating from this well-settled constitutional analysis.

His attempt to obtain a ruling from this Court limiting the remedies available under the Act fares no better. This is an interlocutory appeal of a single order granting the Attorney General's motion to strike Autor's jury demand. App. 202. Autor never moved to strike or dismiss the requested remedies. Nor did he seek summary judgment. The availability of remedies was thus never properly presented or ruled on by the District Court. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). And that question cannot now be considered on this limited interlocutory appeal.

The District Court's order striking Autor's jury demand should be affirmed.

I. ARTICLE I, SECTION 9 OF THE IOWA CONSTITUTION DOES NOT PROVIDE A RIGHT TO A JURY TRIAL IN A SUIT BY THE ATTORNEY GENERAL UNDER THE COSUMER FRAUD ACT THAT THE LEGISLATURE DIRECTED "SHALL BE BY EQUITABLE PROCEEDINGS."

Whether a party is entitled to a jury trial is a legal question and therefore the standard of review is for correction of errors at law. *Homeland Energy Sols., LLC v. Retterath*, 938 N.W.2d 664, 683 (Iowa 2020).

Error was preserved on the issue of whether Autor is entitled to a jury trial on Constitutional and statutory grounds by the litigation of those issues below. In its Motion the Attorney General argued that Autor's jury demand should be struck. App. 149. Autor argued he was entitled to a jury trial because the remedies sought by the Attorney General were not available in equity and that Article 1, Section 9 of the Iowa Constitution entitled him to a jury trial. App. 155. The District Court granted the Motion, denying Autor's jury demand. App. 202 Accordingly, the issue of whether Autor is entitled to a jury trial was preserved for appellate review.

Article 1, Section 9 of the Iowa Constitution states, in pertinent part, "[t]he right of trial by jury shall remain inviolate…" However, it is well-established that, "the right to trial by jury is not absolute in all civil cases." *Danner v. Haas*, 134 N.W.2d 534, 537-8 (Iowa 1965) (overruled on other grounds by *Needles v. Kelley*, 156 N.W.2d 276 (Iowa 1968)); *see also Weltzin*,

618 N.W.2d at 298 ("Iowa has not made this mandate limitless"); Todd E. Pettys, *The Iowa State Constitution*, 2nd ed. 87 (2017) ("[s]ection 9's declaration that the 'right of trial by jury shall remain inviolate' might lead one to think that litigants are entitled to jury trials in civil proceedings of all kinds. The Iowa Supreme Court, however, has taken a narrower view of the provision"). There is no right to a jury trial in special proceedings, *see O'Hara v. State*, 642 N.W.2d 303, 314 (Iowa 2002), and the right to a jury trial is not fundamental in proceedings created by statute. *State ex rel. Bishop v. Travis*, 306 N.W.2d 733, 734 (Iowa 1981) (no right to jury trial in paternity proceedings that are "entirely statutory").

The right to a jury in a civil trial under Article 1, Section 9, "extends only to those cases where a jury was necessary according to the course of procedure at common law." *Iowa Nat. Mut. Ins. Co*, 305 N.W.2d at 728 (quoting *State ex rel. Kirby v. Henderson*, 124 N.W. 767, 769 (Iowa 1910)); *Bishop*, 306 N.W.2d at 734. The common law maintained the distinction between actions at law tried to a jury and actions in equity tried to a court without a jury. *Iowa Nat. Mut. Ins. Co.*, 305 N.W.2d at 727. "[T]here is no right to a jury trial generally in cases brought in equity." *Weltzin*, 618 N.W.2d at 296. This limitation dates back to the adoption of the Iowa Constitution. *Littleton v. Fritz*, 22 N.W. 641, 643 (Iowa 1885) (for a case of "equitable cognizance, neither

party could, at the time of the adoption of the constitution, demand a jury trial as a matter of right. There was no statute law or constitutional provision then in force which gave an absolute right to a trial by jury in an equity case") (citing *State v. Orwig*, 25 Iowa 280 (Iowa 1868); *Clough v. Seay*, 49 Iowa 111 (Iowa 1878)). To determine whether a case is properly in law or equity, Iowa courts look at the "essential nature" of a lawsuit, not merely at the remedies sought. *Weltzin*, 618 N.W.2d at 297. Courts also look to a "historical test" to determine whether a cause of action was entitled to a jury trial under common law. *See Iowa Nat'l Mut. Ins. Co.*, 305 N.W.2d at 726.

The case of *Weltzin v. Nail* highlights the application of Article 1, Section 9 in the context of a civil claim in equity. In *Weltzin*, shareholders made a jury demand in a shareholder derivative lawsuit against a corporation's officers and directors, which the defendants moved to strike. 618 N.W.2d at 293. In considering the jury trial claim, the Iowa Supreme Court noted that Rule of Civil Procedure 178[5] (now renumbered Rule 1.903(1)) contemplates that not all civil claimants are entitled to a jury trial and concluded, "in some cases, there is simply no right to a jury." *Id.* at 298-99. The Court found that the "essential nature" of the shareholder derivative action was in equity and,

[5] Rule 1.903(1)) states, "All issues shall be tried to the court except those for which a jury is demanded. Issues for which a jury is demanded shall be tried to a jury unless the court finds there is no right thereto…" Iowa R. App. P. 1.903(1).

because the constitutional right to a jury trial does not extend to equitable claims, the plaintiffs were not entitled to a jury. *Id.* at 297, 302-3. It acknowledged the Article 1, Section 9 jury right is very similar to the Seventh Amendment right and that Iowa courts look to federal jurisprudence, though they are not bound to follow it. *Id.* at 297-98. Exercising its right to independently interpret Iowa's Constitution, the Court declined to follow the United States Supreme Court's "opposite[]" Seventh Amendment ruling in *Ross v. Bernhard*, 396 U.S. 531, 532-37, 542, 90 S.Ct. 733, 735-38, 740, 24 L. Ed.2d 729, 733-36, 738 (1970), which found a shareholder claim is heard by a jury. *Id.* at 300. *Weltzin* is consistent with a line of Iowa cases that have focused on the "essential nature" of a lawsuit to determine whether it is properly heard in law or in equity. *See Homeland Energy,* 938 N.W.2d at 684 (citing *Hedlund v. State*, 930 N.W.2d 707, 718 (Iowa 2019), as amended (Sept. 10, 2019)); *Zwanziger v. O'Brien,* 822 N.W2d 745, at *4 (Iowa Ct. App. Oct. 3, 2012); *Carstens v. Cent. Nat'l Bank & Tr. Co.*, 461 N.W.2d 331, 333 (Iowa 1993); *Duntz v. Zeimet*, 478 N.W.2d 635, 636 (Iowa 1991); *Henderson*, 124 N.W at 769.

The Article 1, Section 9 right to a jury trial in a civil matter does not extend to this lawsuit because it is properly in equity. The Legislature has directed that a lawsuit brought by the Attorney General to enforce the Act is

by, "equitable proceedings." Iowa Code § 714.16(7). A cause of action under the CFA did not exist at common law and is not analogous to causes of action available under common law. *Vertrue*, 834 N.W.2d at 30 (citing *State ex rel. Miller v. Pace*, 677 N.W.2d 761, 770 (Iowa 2004). The CFA was enacted, in part, to remedy flaws in common law causes of action by, among other things, eliminating certain elements of proof otherwise required. *Hydro-Mag*, 436 N.W.2d at 622. Finally, the remedies sought in this case are available in a court of equity.

A. Because the Legislature Explicitly Created Consumer Fraud Actions As "Equitable Proceedings," Parties Do Not Have a Right to a Jury Trial.

The appropriate starting place for determining whether a CFA lawsuit is properly in equity or at law is the statute itself. *See Doe v. State*, 943 N.W.2d 608, 610 (Iowa 2020) ("[a]ny interpretive inquiry thus begins with the language of the statute at issue"). Subsection 7 of the Act describes methods through which the Attorney General may enforce the statute. The first sentence of Subsection 7 unambiguously states: "[a] civil action pursuant to this section shall be by equitable proceedings." Iowa Code § 714.16(7); *see also* Iowa Code Ch. 611 (describing, generally, different types of actions and proceedings).

Relying on this directive, the Iowa Supreme Court has always considered Attorney General suits under the CFA to be in equity. *See, e.g., State ex rel. Miller v. Cutty's Des Moines Camping Club, Inc.*, 694 N.W.2d 518, 524 (Iowa 2005) ("[a]ctions brought under the Consumer Fraud Act are tried in equity, Iowa Code § 714.16(7), so our review on appeal is ordinarily de novo") (citing *State ex rel. Miller v. New Womyn, Inc.*, 679 N.W.2d 593, 596 (Iowa 2004)). The Iowa Court of Appeals recently recognized that a consumer fraud action brought by the Attorney General is in equity based upon the language in Subsection 7, in contrast to a private consumer fraud action brought by an individual citizen, which is "at law" under Iowa Code Section 714H.5. *Deng v. White*, 941 N.W.2d 360, 2019 WL 6358427, fn. 3 (Iowa Ct. App. Nov. 27, 2019).

The Iowa Legislature clearly has the authority to direct that a civil lawsuit under the CFA be heard in equity. *See Iowa Nat. Mut. Ins. Co.*, 305 N.W.2d at 728 (holding that Legislature has the power to determine whether to allow a jury in cases where no jury right existed at common law); *see also Gray v. Nash Finch. Co.*, 701 F. Supp. 704, 708 (N.D. Iowa 1988) ("[a]lthough it is a truism that courts interpret the laws, it is also true that the Iowa legislature has some power to define the nature of a cause of action as equitable and therefore triable to the court rather than to a jury") (citing *Littleton*, 22 N.W.

at 643-44). As the Court discussed in *Iowa National Mutual Insurance Company*, the Legislature has exercised this power frequently since the Iowa Constitution was adopted by, for example, removing the right to a jury trial in divorce, mortgage and mechanics' lien cases. 305 N.W. 2d at 728 (citing *Littleton*, 22 N.W. at 644) (noting that it was within the legislative power to remove the statutory right to jury trials in divorce and foreclosure proceedings); *see also Broulik v. Henderson*, 254 N.W. 63, 65 (Iowa 1934).

In both mortgage foreclosures and forcible entry and detainer statutes, the direction that a claim be heard by, "equitable proceedings" is uniformly understood to mean it is in equity. *See First State Bank, Belmond v. Kalkwarf*, 495 N.W.2d 708, 711 (Iowa 1993) (stating, "Mortgage foreclosure proceedings are equitable" based on § 654.1 ("[a] deed of trust or mortgage of real estate shall not be foreclosed in any other than by action in court by equitable proceedings")); *Porter v. Harden*, 891 N.W.2d 420, 423-4 (Iowa 2017) (finding forcible entry and detainer actions are equitable based on § 648.15 ("[w]hen title is put in issue, the cause shall be tried by equitable proceedings")); *see also Henderson*, 124 N.W. at 770 (no right to jury trial where statute governing removal of public official stated the proceeding shall be "tryable as an equitable action"); *Great Western Bank v. Thurman Enter., Inc.*,

2012 WL 8262462 at *2 (Polk Co. Dist. Ct. Oct. 18, 2012) (foreclosure proceedings are in equity under Iowa Code § 654.1, § 611.5).

The CFA's repeated references to the "court" and absence of reference to a jury, jury instructions or jury demand supports a conclusion that a case under the Act is in equity. Subsection 7 states that, the "court" may issue an injunction, make orders for restitution and disgorgement and appoint a receiver "in cases of substantial and willful violation of this section," a traditionally equitable power. *Id.; see*, *e.g.*, Fed. R. Civ. P. 66. It assigns to the "court" the responsibility to make factual findings that are a prerequisite to assessing a civil penalty. *Id.* ("court may impose a civil penalty not to exceed forty thousand dollars per violation against a person *found by the court* to have engaged in a method, act, or practice declared unlawful under this section…") (emphasis added). The statute's consistent use of the word "court" demonstrates that the Legislature intended CFA matters to be heard in by a judge in equity. *See Iowa Nat. Mut. Ins. Co.*, 305 N.W.2d at 725-26 (finding that legislature's references to "the court" in small claims statute supports finding that case should be tried to magistrate or judge, not jury); *see also Wertz v. Chapman Tp.*, 741 A.2d 1272, 1274 (Pa. 1999) (statute that directs "court" may make findings and order relief indicates judge, rather than jury, is decision-maker).

B. The Essential Nature of a Consumer Fraud Action Brought by the Attorney General is in Equity.

Beyond the statutory directive, this action is in equity under the analytical framework used by Iowa courts. To determine whether a matter lies in equity or law, courts look at: "the pleadings, relief sought, and essential nature of the cause of action." *Homeland Energy*, 938 N.W.2d at 684-5 (citing *Carstens*, 461 N.W.2d at 333); *Wetzstein v. Dehrkoop*, 44 N.W.2d 695, 700 (1950). The "essential nature" of a lawsuit is the most significant consideration when determining whether the case belongs in equity or at law. *Homeland Energy,* 938 N.W.2d at 684-5. "It is the nature of the cause of action, *i.e.* where the case is properly docketed, that is the deciding factor." *Id.* (quoting *Weltzin*, 618 N.W.2d at 297).

The purpose of this lawsuit is to remediate the harms caused to Iowa consumers due to fraudulent and deceptive practices. The CFA is a remedial statute. *Vertrue*, 834 N.W.2d at 132 (citing *Cutty's*, 694 N.W.2d at 527-28); *see also State ex rel. Turner v. Koscot Interplanetary Inc.*, 191 N.W.2d 624, 630 (Iowa 1971). Its principal purpose is to safeguard Iowans from fraud and deception in the sale or advertisement of products and services. *Hydro-Mag*, 436 N.W.2d at 620-22 ("[t]he historical development of consumer law reveals that the Consumer Fraud Act was enacted to better protect consumers from fraud"). In light of its purpose, courts give the CFA, "a liberal interpretation,

not an illusory one." *Vertrue*, 834 N.W.2d at 132 (citing *Cutty's*, 694 N.W.2d at 527-28).

In this matter, the Attorney General seeks to enforce the Act consistent with its purpose. The Petition alleges that Autor engaged in fraudulent and deceptive conduct claiming that stem cell therapy and exosome therapy would help Iowans with common medical problems and selling it at the cost of thousands of dollars. App. 82 ¶¶ 114-16. The Petition seeks to enjoin future misconduct, and to obtain consumer reimbursement and a civil penalty. App. 83-4 ¶¶ A-F.

The versatility of the CFA supports a finding that this matter is equitable in nature. The CFA is "designed to infuse flexible equitable principles into consumer protection law so that it may respond to the myriad of unscrupulous business practices modern consumers face." *Vertrue* 834 N.W.2d at 34 (citing *Cutty's*, 694 N.W.2d at 525). A hallmark of equity is its "capacity of expansion…so as to keep abreast of each succeeding generation and age.'" *Assoc. Inv. Co. Ltd. Partnership v. Williams Assoc. IV*, 645 A.2d 505, 511 (Conn. 1994) (quoting 1 J. Pomeroy, *Equity Jurisprudence* § 67, p. 89 (5th ed. 1941)). A closer examination of the statute illustrates this point. One type of "unlawful conduct" under the CFA is an "unfair practice," which is defined as, "an act or practice which causes substantial, unavoidable injury to consumers that

is not outweighed by any consumer or competitive benefits which the practice produces." Iowa Code § 714.16(1)(n). This standard is adaptable and responsive to commercial practices in a variety of settings, allowing the CFA to remain relevant even as marketplaces change. "An unfair practice is nothing more than conduct 'a court of equity would consider unfair.'" *Cutty's* 694 N.W.2d at 525 (citing *S. Atl. P'ship v. Riese*, 284 F.3d 518, 535 (4th Cir. 2002)).

To the extent some courts have used a "historical test" that looks to whether a cause of action was entitled to a jury at English common law, *see Iowa Nat. Mut. Ins. Co.,* 305 N.W.2d at 726-7, such analysis points to the same conclusion. The CFA did not exist at common law, *Hydro-Mag*, 436 N.W.2d at 620-22, and "is not a codification of common law fraud principles." *Vertrue*, 834 N.W2d at 30 (quoting *Pace*, 677 N.W.2d at 770). As noted above, it is different from common law fraud, in that in can be pursued by the Attorney General on consumers' behalf without a showing of reliance or damages. *Hydro-Mag*, 436 N.W.2d at 621*; see* Iowa Code §714.16(2)(a); *see also Martin v. Heinold Comm.*, 643 N.W.2d 734, 754-5 (Ill. 1994) (where consumer fraud statute did not require reliance, knowledge or belief, it did not resemble cause of action at common law).

Autor contends that the "essential nature" of this matter is at law. In support, he points to late nineteenth and early twentieth century convictions involving fraud upon the public as predecessors to the CFA. But these cases shed no light on the "essential nature" of this CFA lawsuit because they are different in key respects. First, while these criminal prosecutions alleged fraudulent conduct, the statutes that they enforced were punitive and looked backward to the defendant's past misconduct only. They lacked protective features of the Act, such as authorizing an injunction to prevent future misconduct or consumer reimbursement. Second, several of these prosecutions enforced specific regulations aimed at preventing a particular type of misconduct. *See, e.g., State v. Hutchinson Ice Cream Co.*, 147 N.W. 195, 197 (Iowa 1914) (statute, "establishing an ice cream standard"); *State v. Armour Packing Co.*, 100 N.W. 59, 60-1 (1904) (statute regulating "imitation butter"); *State v. Schlenker*, 84 N.W. 698 (Iowa 1900) (statute prohibiting adulteration of milk); *see also State v. Kindy Optical Co.*, 248 N.W 332, 334 (Iowa 1933) (civil regulation of "practice of medicine and surgery"). These laws did not, and could not, reach the novel and unforeseen types of fraudulent conduct that the CFA is designed and intended to address. The Iowa Supreme Court has explicitly rejected Autor's contention, in this context, that the placement of the

CFA in Iowa Code Chapter 714 supports the conclusion that it has a penal nature. *Koscot*, 191 N.W.2d at 629.

Autor further argues that this suit resembles a legal action in debt because it, "seek[s] primarily to impose statutory penalties and gross receipts." (Autor Br. at 41). This description mischaracterizes the suit by focusing on two aspects of the requested relief (civil penalty and "net profits"), while unilaterally dismissing two others that provide important consumer protections (injunction and reimbursement). More importantly, however, this suit is not analogous to an action in debt, which must be for a fixed and definite sum of money or one that can be readily made fixed or definite either from fixed data or agreement. 26 C.J.S. *Debt* § 4, p. 5 (2001). In *The Town of Decorah v. Dunston Brothers*, the Iowa Supreme Court held that an action seeking to recover a fine in a fixed amount was an action in debt. *The Town of Decorah v. Dunston Bros.*, 1872 WL 348 (Iowa 1872); *see also Jewell v. Nuhn*, 155 N.W. 174, 175-76 (Iowa 1915). However, the potential civil penalty here is not a fixed or definite sum, nor can it readily be made fixed or definite. The CFA authorizes a civil penalty *up to* $40,000 and the OIA authorizes a penalty *up to* $5,000, but neither is in a set amount. Iowa Code § 714.16(7); Iowa Code § 714.16A(1)(a).

Finally, Autor argues that the CFA's statutory history shows that, "it was intended to be punitive" based on a sentence in the *Koscot* case referring to the absence of a penalty in the CFA, and the subsequent amendment of the Act in 1987 to allow for a civil penalty. (Autor Br. at 46-8). It is accurate that, in 1987, Iowa's General Assembly amended the CFA to allow for a civil penalty in enforcement actions by the Attorney General. *See* Act of May 29, 1987, ch. 164, § 3, 1987 Iowa Acts 240, 240-41. However, a monetary penalty in a remedial statute does not change the law's purpose and is considered a way to encourage compliance. *See First State Bank v. Iowa Dept. of Nat'l Res.*, 502 N.W.2d 164, 166 (Iowa 1993) (civil penalty does not change nature of remedial environmental law); *see also Scully v. Iowa Dist. Court for Polk Co.*, 489 N.W.2d 389, 393 (Iowa 1992) (monetary penalty for civil contempt is remedial because it enforces compliance or provides compensation); *State v. Ralph Williams' North West Chrysler Plymouth, Inc.*, 510 P.2d 233, 242 (Wash. 1973) (under consumer fraud statute, "providing for fines in a civil proceeding does not convert the proceeding to a criminal or penal one"). The addition of a penalty did not transform the remedial purpose of the Act to a punitive one.

Indeed, in the same 1987 amendment, the Legislature reinforced the Act's equitable nature by adding the following key sentence: "[a] civil action under this section shall be by equitable proceedings." Act of May 29, 1987, ch. 164,

§ 3, 1987 Iowa Acts 240. The simultaneous introduction of this language alongside the penalty provision indicates that the Legislature wanted CFA cases brought by the Attorney General to remain in a court of equity. It is a "basic rule of statutory construction that all provisions or sections of a statute must be considered together in the light of all other provisions or sections, and, if possible, harmonized." *State v. Valeu*, 134 N.W.2d 911, 912 (Iowa 1965).

The balance of the 1987 amendment supports a conclusion that the law is in equity. The amendment continued to allow a District Court to issue an injunction and consumer restitution, added a prohibition on "unfair practices," and eliminated reliance, damages, intent to deceive and knowledge as elements of proof to prove a CFA violation.[6] Act of May 29, 1987, ch. 164, §§ 1, 2, 3, 1987 Iowa Acts 240-1; *see also Hydro-Mag*, 436 N.W.2d at 622. The Iowa Supreme Court has continued to describe and treat the CFA as remedial after the 1987 amendment. *See, e.g., Cutty's*, 694 N.W.2d at 528 (in 2005). In the 2013 *Vertrue* decision, the Court both recognized the Act's remedial nature

[6] The fact that reliance, damages and intent to deceive are not elements of proof under the CFA accords with the equitable nature of the Act. *See* 27A Am. Jur. 2d *Equity* § 54 (1996) ("…unlike at law, intention to defraud or to misrepresent is not a necessary element of fraud in equity") (citing *Pearce v. Chrysler Group LLC Pension Plan*, 893 F.3d 339, 347 (6th Cir. 2018).

and increased the District Court's civil penalty award under the CFA and OIA upon its *de novo* review. *Vertrue*, 834 N.W.2d at 32, 45.

Finally, the cases Autor cites regarding the right to a jury trial in a criminal matter are not relevant because they rely on different constitutional protections that govern the rights of defendants in criminal cases. *See, e.g., Sarich v. Havercamp,* 203 N.W.2d 260, 265 (Iowa 1972) (right to a jury trial under Fifth and Fourteenth Amendments of the United States Constitution). Autor quotes the Mendoza-Martinez test to contend the CFA is punitive (Autor Br. at 53) but make no substantive argument that the CFA qualifies as "punitive" under its seven factors.

C. To the Extent the Relief Sought is Relevant, The Relief Sought Here Is Consistent With Equitable Proceedings.

The relief sought by the plaintiff is a factor in the analysis of whether this lawsuit should be heard in law or equity, though it does not dictate the conclusion. "[T]he remedy sought is of minimal importance - it is the nature of the cause of action, *i.e.* where the case is properly docketed, that is the deciding factor." *Weltzin*, 618 N.W.2d at 297; *see also Van Sloun v. Agans Bros., Inc.*, 778 N.W.2d 174, 179 (Iowa 2010) (where both equitable and legal relief are request, the "primary purpose" of the lawsuit controls); *Moser v.*

Thorp Sales Corp., 312 N.W.2d 881, 895 (Iowa 1981). When the Court considers the relief sought in this context, it can, "nevertheless consider the case's primary purpose or controlling issue for assistance." *Homeland Energy*, 938 N.W.2d at 685. In this matter, the Attorney General seeks an injunction, consumer reimbursement, disgorgement, and a civil penalty. All of these remedies are specifically authorized by Subsection 7 of the CFA. The Attorney General also seeks a finding of joint and several liability, common in CFA cases. These remedies advance the CFA's remedial purpose and are consistent with a holding that the matter is in equity.

As a preliminary matter it is clear that an equity court has broad authority to issue any necessary relief. Autor argues that some of the monetary remedies and the finding of joint and several liability requested by Attorney General are "inconsistent" with the requirement that a CFA action be heard in equity. (Autor Br. at § III). This argument fails because it takes too narrow a view of equity. It is well-established that a court hearing a matter in equity can provide complete relief to the parties before it, including monetary relief. "Generally, if the cause of action is equitable in character, even in part, and equity jurisdiction once attaches, full and complete adjustment of the rights of all parties will be properly made in the suit." *Weltzin*, 618 N.W.2d at 296 (quoting 27A Am. Jur. 2d *Equity* § 5 (1996)); *see also Grandon v. Ellingson*,

144 N.W.2d 898, 901 (Iowa 1966); *Ryman v. Lynch,* 41 N.W. 320 (Iowa 1889); *McDowell v. Lloyd*, 22 Iowa 448, 450 (Iowa 1867) ("[a] court of equity having acquired jurisdiction over the subject-matter for one purpose, may be invested with jurisdiction for other purposes, so as to secure complete equity and justice between the parties").

The ability of an equity court to make orders and judgments for a range of types of remedies has its roots in common law in which, "there were many situations….in which an equity court could 'establish purely legal rights and grant legal remedies which would otherwise be beyond the scope of its authority.'" *Mertens v. Hewitt Assoc.*, 508 U.S. 248, 256, 113 S. Ct. 2063, 2068, 124 L.Ed.2d 161 (1993) (quoting 1 J. Pomeroy, *Equity Jurisprudence*, §181, p. 257 (5th ed. 1941)). Allowing a trial court to exercise its equitable discretion is particularly appropriate when the public interest is involved, because "those equitable powers assume an even broader and more flexible character than when only a private controversy is at stake." *Porter v. Warner Holding Co.*, 328 U.S. 395, 398, 66 S.Ct. 1086, 1089, 90 L.Ed. 1332 (1946).

In this context Autor contends that the only reading of Subsection 7 that gives effect to the entire statute is one that restricts the remedies available to those traditionally available in equity. (Autor Br. at 57-9). Autor's position would have the Court read Subsection 7 to mean that civil actions under this

section shall be by equitable proceedings *only if* they seek certain remedies – effectively ignoring enumerated remedies in the statute that do not fall under this parameter. However, under canons of statutory interpretation, "[n]o word should be ignored, and no provision should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence." *Vroegh v. Iowa Dept. of Corr.,* 2022 WL 981824 at *10 (Iowa 2022).

1. An Injunction Is an Equitable Remedy.

A central element of the relief the Attorney General seeks is an injunction to prohibit Autor from engaging in unlawful conduct in Iowa in the future. App. 83 ¶ A. The CFA clearly authorizes the Attorney General to seek and obtain an injunction. Iowa Code § 714.16(7). Injunctive relief is a classic equitable remedy. "Generally, the issuance of an injunction invokes the equitable powers of the court and courts apply equitable principles." *Max 100 L.C. v. Iowa Realty Co., Inc.,* 621 N.W.2d 178, 181 (Iowa 2001); *see also Hedlund*, 930 N.W.2d at 750 ("an injunction is a form of equitable relief") (Appel, J., concurring in part and dissenting in part).

Autor argues the injunctive relief sought here is not "meaningful" because he has stopped marketing and selling stem cell and exosome therapy in

Iowa and the appealing companies are "defunct." (Autor Br. at 42, 49). However, the CFA authorizes an injunction even when unlawful conduct has ceased:

> If it appears to the attorney general that a person *has engaged in*, is engaging in or is about to engage in a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice.

Iowa Code § 714.16(7) (emphasis added). The Act's reference to a practice that a person "has engaged in" makes clear that an injunction may issue even when prohibited conduct occurred in the past.

The fact that Autor states he is not currently active in Iowa does not obviate the need for an injunction. Preventing the recurrence of CFA violations is part of the remedial nature of the Act and injunctive relief can be used to avoid violations based on prior conduct. *See State ex rel. Dobbs v. Burche*, 729 N.W.2d 431, 436 (Iowa 2007). Courts have rejected the argument that an injunction is unnecessary simply because a party claims to have ended certain conduct. *See, e.g., State ex rel. Turner v. Limbrecht*, 246 N.W.2d, 330, 334 (1976) (argument that injunction is unnecessary because past conduct poses no threat is of "doubtful validity") (overruled on other grounds by *Hydro-*

Mag, 436 N.W.2d at 622); *see also State ex rel. Douglas v. Ledwith*, 281 N.W.2d 729, 736 (Neb. 1979) ("[a]n injunction is a remedy designed to control future behavior…"). Adopting Autor's reasoning would limit the Attorney General's ability to effectively use the CFA to enjoin fraudulent and deceptive conduct. If the Attorney General could not obtain an injunction because a party paused its unlawful conduct, he would be left unable to effectuate a permanent solution to repeat offenders. *See MyInfoGuard LLC v. Sorrell*, 2012 WL 5469913 (D. Vt. Nov. 9, 2012) (prohibiting an injunction when violative conduct is in the past, "would provide potential defendants with a comically easy way to avoid suits by the State…."). Accordingly, an injunction is a significant element of the relief sought in this matter.

2. Equitable Relief Includes Consumer Reimbursement and Disgorgement.

The remedies of consumer reimbursement and disgorgement that the Attorney General seeks are equitable and further the CFA's remedial purposes.[7] The Act specifically allows the District Court to enter judgments and

[7] Autor criticizes monetary relief in unrelated consumer fraud settlements entered into by the Attorney General's office as divorced from consumer harm. Although the Attorney General disagrees with Autor's characterization of these settlements, they are irrelevant because they are unrelated to the facts in this case, where the Attorney General is actively seeking reimbursement. However, Autor's reference to a 2017 resolution with General Motors inaccurately suggests that the State of Iowa received $120,000,000. (Autor Br. at 30). In fact, that is the total amount paid by the Defendant to 49 States and the District of Columbia that participated in the settlement; Iowa received $1,500,000, its allocated share of that total.

orders to "restore" money and property to consumers and to provide "reimbursement" to them. Iowa Code § 714.16(7). Iowa courts have, at times, used the term "restitution" to describe reimbursement.[8] *New Womyn*, 679 N.W.2d at 597 ("…our civil fraud statute provides for restitution on behalf of all consumers…"). This is appropriate because restitution is an, "'act of….restoration of anything to its rightful owner; the act of making good or giving equivalent for any loss, damage or injury.'" *Weltzin*, 618 N.W.2d. at 300 (quoting Black's Law Dictionary 1477 (rev. 4th ed. 1968)). Like an injunction, "[r]estitution is an equitable remedy which creates no right to a jury." *Id.*; *see also Koscot*, 191 N.W.2d at 629; *Porter*, 328 U.S. at 400-2.

When the cost of administering reimbursement exceeds its benefits or a consumer entitled to reimbursement cannot be located, the Court may order those funds to be "disgorged" to the Attorney General for administration and implementation of the CFA. Iowa Code § 714.16(7).[9] Disgorgement is an equitable remedy. "[An order for disgorgement] may be considered as an equitable adjunct to an injunction decree. Nothing is more clearly a part of the subject matter of a suit for an injunction than the recovery of that which has

[8] In 1994 the Legislature replaced the word, "restitution" with "reimbursement" in the CFA and the OIA. Act of May 2, 1994, ch. 1142, §§ 5, 6, 1994 Iowa Acts 318, 319-20.

[9] The CFA was amended in 1992 to allow a District Court to order disgorgement. Act of April 13, 1992, ch. 1062, § 3, 1992 Iowa Acts 72, 73.

been illegally acquired and which has given rise to the necessity for injunctive relief…" *Porter*, 328 U.S. at 399; *see also Chauffeurs, Teamsters and Helpers*, *Local No. 391 v. Terry*, 494 U.S. 558, 570, 110 S.Ct. 1339, 1347-48, 108 L.Ed.2d 519, 570 (1990). In consumer protection cases brought by the FTC, courts have found disgorgement should be measured by what the consumer paid, less refunds or chargebacks. *See, e.g., FTC v. Com. Planet, Inc.*, 815 F.3d 593, 603 (9th Cir. 2016) (*abrogated on other grounds by AMG Cap. Mgmt., LLC v. F.T.C.*, 141 S.Ct. 1341 (2021)); *FTC v. Windward Marketing, Inc.*, 1997 WL 33642380 (N.D. Georgia Sept. 30, 1997).

Consumer reimbursement fulfills a core remedial purpose of the CFA by literally restoring consumers to the same financial position that existed before the fraudulent conduct. "[R]estitutionary relief is appropriate….where such relief would be required to reestablish the status quo ante which existed prior to the defendant's deceptive and unfair acts." *State ex rel. Kidwell v. Master Distributors*, *Inc.*, 615 P.2d 116, 124 (Idaho 1980). In prior cases under the CFA, the Iowa Supreme Court has affirmed District Court orders issued in equity to reimburse consumers. *See State ex rel. Miller v. Santa Rosa Sales and Marketing, Inc.*, 475 N.W.2d 210, 219 (Iowa 1991) (allowing creation of consumer reimbursement fund); *New Womyn*, 679 N.W.2d at 597 (statute allows return of, "the money [consumers] have lost"). The Court has also

rejected bids to apply harsh rules to reduce consumer reimbursement. In *Vertrue*, Defendants argued that a reimbursement award should be offset by the "voluntary payment" doctrine, under which a party who voluntarily pays money in response to an incorrect or illegal claim cannot recover unless he shows fraud, coercion or mistake. *Vertrue*, 834 N.W.2d. at 32. Because this rule would "vitiate" the purpose of the CFA, and because it is bound to give the law a "liberal interpretation" to effectuate the purpose of the statute, the Court did not adopt this approach.[10] *Id.* Courts around the country have affirmed awards of refunds measured by the amount paid by the consumer and found they are consistent with being heard in equity. *See State ex rel. Humphrey v. Alpine Air Prod.*, 490 N.W.2d 888, 896 (Minn. 1992) (affirming order for "complete restitution" of $400 in equity); *State ex rel. Douglas v. Schroeder*, 384 N.W.2d 626, 628 (Neb. 1986); *Ralph Williams' North West Chrysler Plymouth, Inc.*, 510 P.2d at 241; *State ex rel. Slatery v. HTC Med. Ctrs., Inc.*, 603 S.W.3d 1, 37 (Tenn. Ct. App. Aug. 23, 2019) (affirming that "'the refund of monies paid' constitutes an equitable remedy") (citing *FTC v.*

[10] Calculation of a reimbursement remedy is a fact-intensive inquiry undertaken by the District Court that includes assessment of the parties' evidence and underlying findings. *See, e.g., Vertrue*, 834 N.W.2d at 29 (describing analysis of expert testimony in district court hearing on remedies under CFA).

Stratford Career Inst., 2016 WL 3769187 at *4 (N.D. Ohio July 15, 2015)); *see also Com. Planet, Inc.*, 815 F.3d at 603.

Autor's argument that consumer reimbursement and disgorgement must be limited to "net profits" should be rejected because it is contrary to the plain words of the statute. The CFA contains no reference to a wrongdoer's "net profits" or "gross receipts" and instead describes returning "any moneys and property" and "reimbursement" that have been acquired by an unlawful practice. Specifically, Subsection 7 states,

> The court may make orders or judgments as necessary…which are necessary to *restore* to any person in interest *any moneys or property*, real or personal, which have been acquired by means of a practice declared to be unlawful by this section….if a person has acquired moneys or property by any means declared to be unlawful by this section and if the cost of administering *reimbursement* outweighs the benefit to consumers or consumers entitled to the *reimbursement* cannot be located through reasonable efforts, the court may order disgorgement . . . it is not necessary in an action for *reimbursement* or an injunction, to allege or to prove reliance . . .[a] claim for *reimbursement* may be proved by any competent evidence. . .

Iowa Code § 714.16(7) (emphasis added). The key terms "restore" and "reimburse" make clear that a consumer should be made whole under the CFA by restoring what she or he has lost. "Restore" means, "to put back, return as to a former place, position or rank . . . to give back; make return or restitution

of (anything taken away or lost)." Webster's College Dictionary (1991, p. 1148). "Reimburse" means, "to make repayment to for expense or loss incurred. 2. To pay back; refund; repay." *Id.* (p. 1135). Because these terms are otherwise undefined, the Court should use their everyday meaning and consider the remedial purpose of the statute to protect consumers. *See Myria Holdings Inc. v. Iowa Dept. of Rev.*, 892 N.W.2d 343, 348 (Iowa 2017) (when words are undefined in a statute, the Court should give them their common, ordinary meaning, interpreted in the context of the statute and its history).

Autor relies on the Restatement (Third) of Restitution for the argument that "restitution" is confined to "net profits." (Autor Br. at 63-4.) The Restatement is a treatise on the law of unjust enrichment, which is a doctrine of restitution – not "reimbursement," as authorized by the CFA. Restatement (Third) of Restitution ("Restatement") § 1 (2011); *see also Smith v. Harrison*, 325 N.W.2d 92, 94 (Iowa 1982). The doctrines of "unjust enrichment" and "restitution" are not all-encompassing. "[T]he law of restitution is very far from imposing liability for every instance of what might plausibly be called unjust enrichment." Restatement §1 cmt. b. Indeed, "there are cases in which the essence of a plaintiff's right and remedy is the reversal of a transfer, and thus a literal 'restitution' without regard to whether the defendant has been enriched by the transfer in question." *Id.* §1 cmt. c. In this matter, where the

CFA identifies a reimbursement remedy to make consumers whole, there is no need to turn to the Restatement. Even if the Court does so, however, in the case of fraud, the Restatement requires an examination of the underlying facts to determine the measure of restitution: "[a] transfer induced[11] by fraud or material misrepresentation is subject to rescission and restitution. The transferee is liable in restitution as necessary to avoid unjust enrichment." *Id.* § 13(1). A measure of unjust enrichment must be calibrated to the purpose of the relevant law. "Restitution should be measured to reflect the substantive law purpose that calls for restitution in the first place." *Id.* § 49 cmt. a (quoting Dan Dobbs, *Law of Remedies* § 4.5(1) at 629 (2nd ed. 1993)). Because the CFA's purpose is to protect the public and it calls for "reimbursement" to consumers, no "net profits" limitation should read into it.

Autor also relies on *Liu v. SEC* to argue that a monetary remedy should be limited to "net profits," but that case is confined to an analysis of a disgorgement – not reimbursement. *Liu v. SEC*, 140 S.Ct. 1936, 1941, 207 L.Ed. 401 (2020). Even with regard to disgorgement, the case is inapposite. In *Liu*, the U.S. Securities and Exchange Commission sought an order for disgorgement of profits from fraudulent developers under a provision of the Securities

[11] The CFA does not require a showing that a consumer was "induced" to enter into a transaction. Iowa Code § 714.16(2)(a).

and Exchange Act ("SEC Act") that authorized the agency to obtain "equitable relief." *Liu*, 140 S.Ct. at 1942, 207 (discussing 15 USC § 78u(d)(5)). Because the SEC Act authorized the agency to seek "equitable relief," the Court found that it had to analyze whether the remedy of profits measured by defendants' gross receipts, "falls into 'those categories of relief that were *typically* available in equity.'" *Liu*, 140 S.Ct. at 1942 (emphasis in original) (citation omitted). It concluded that disgorgement beyond "net profits" did not. *Id.* at 1944-47.

Unlike the SEC Act, the CFA does not authorize categorical "equitable relief." Instead, it enumerates specific remedies. Iowa Code § 714.16(7). As a result, this Court need not interpret what is encompassed by "equitable relief," what remedies were, "typically available in equity" or read a "net profits" restriction into the statute. It can and should rely on the express statutory directive allowing disgorgement if the cost of administering reimbursement exceeds the benefit to consumers or consumers cannot be found. Iowa Code § 714.16(7); *see also FTC v. Noland,* 2020 WL 4530459 at *4 (D. Ariz. 2020) (declining to extend *Liu* in FTC false advertising case regarding disgorgement due to "textual differences" between the two relevant statutes). Finally, it is notable that *Liu* recognizes that even within the categories of "remedies typically available in equity" the Court, "has carved out an exception when the

'entire profit of a business of undertaking' results from the wrongful activity," as the Attorney General alleges is the case in this matter. *Id.* (citing *Root v. Railway Co.*, 105 U.S. 189, 203, 269 L.Ed. 975 (1881)).

Autor's additional arguments fare no better. Autor contends that the Attorney General effectively seeks "damages." However, the fact that a lawsuit seeks monetary relief does not mean a jury is warranted when the "suit itself is founded in equity." *Weltzin,* 618 N.W.2d at 300; *Carstens*, 461 N.W.2d at 333. The inverse situation arose in *Weltzin*, where the plaintiff shareholders sought a remedy they termed "damages." *Weltzin*, 618 N.W.2d at 300. The Iowa Supreme Court found the plaintiffs were actually requesting "restitution" because the recovery they sought was based on the company's monetary losses. *Id.* Here, as in *Weltzin*¸ the Attorney General seeks to recover for Iowans' monetary losses due to Autor's fraudulent and deceptive conduct.

Autor's contention that consumers who are left with a deficient recovery under a "net profits" limitation can file private consumer fraud lawsuits is unworkable. This approach would require individuals to retain counsel and commence litigation – a hurdle that most or all consumers would not be able to clear. It would result in significant inefficiencies, with numerous duplicate cases regarding the same underlying conduct filed across the State. Other

courts have rejected this piecemeal method as a poor alternative to an AG enforcement suit. *See, e.g., State ex rel. Nixon v. Continental Ventures*, *Inc.*, 84 S.W.3d 114, 120 (Mo. 2002) (restitution in a consumer fraud case may be less "tedious" and "expensive" and "potentially more expeditious" than numerous individual cases).

3. An Equity Court May Order a Civil Penalty.

A District Court sitting in equity may issue a civil penalty remedy. The CFA allows for but does not mandate a civil penalty up to $40,000 per violation. Iowa Code § 714.16(7). The Act's penalty provision encourages sellers and marketers to comply with the statute's prohibitions on fraudulent and deceptive conduct. Indeed, Iowa courts have found that similar civil penalties in the context of a remedial statute are, "essentially regulatory" and are intended to, "secure compliance with the statute." *First State Bank*, 502 N.W.2d at 166; *see also Scully,* 489 N.W.2d at 393.

The additional penalty authorized by the OIA similarly incentivizes cooperation with the CFA with regard to older consumers who are particularly vulnerable to fraud. The OIA allows a penalty of up to $5,000 for a CFA violation against a person age 65 or older. Iowa Code § 714.16A(1)(a). To decide whether to impose an OIA penalty and the amount, the District Court must weigh several factors – a paradigmatic exercise of a court's traditional

equitable powers. Iowa Code § 714.16A(2). The OIA penalty provision furthers the CFA's remedial purpose: it has the "self-evident goal of protecting Iowa consumers who are vulnerable to unfair sales tactics because of their age." *Vertrue*, 834 N.W.2d at 45.

Equity courts' broad jurisdiction allows them to issue a civil penalty. *See Miller Oil Co. v. Abramson*, 109 N.W.2d 610, 613 (Iowa 1961) (equity court will apply penalty when required by statute). As discussed above, a court hearing a case in equity is empowered to make, "full and complete adjustment of the rights of all parties…" including issuing remedies that might be considered legal. *Weltzin*, 618 N.W.2d at 296. Other courts have found that issuing a civil penalty is an appropriate exercise of a court's equitable jurisdiction in consumer protection matters. *See, e.g., Hage v. General Service Bureau*, 306 F.Supp.2d at 890; *Alpine Air Prod., Inc.*, 490 N.W.2d at 897; *State v. State Credit Ass'n.*, 657 P.2d 327, 330 (Wash. 1983) (civil penalty available once equity jurisdiction is invoked). Even if a civil penalty was found to be a punitive remedy, that does not necessarily undermine the exercise of equity jurisdiction. *See Weltzin*, 619 N.W.2d at 300 (finding punitive damages, "are also within the purview of the equity court").

It is important to distinguish *Tull v. United States*, which Autor relies upon. In that matter, a real estate developer sought a jury trial in a case

brought by the U.S. Environmental Protection Agency (EPA) for an injunction and civil penalties based on violations of the Clean Water Act (CWA). *Tull v. United States*, 481 U.S. 412, 107 S. Ct. 1831, 95 L.Ed.2 365 (1987). The United States Supreme Court ultimately concluded that the defendant was entitled to a jury trial. But neither *Tull* nor Iowa law mandate the same outcome here.

The *Tull* case was decided under the federal Seventh Amendment right to a jury trial. *Id.* at 414. It is well-established that the Seventh Amendment applies only to cases in federal court, and not to state court matters. *Pearson v. Yewdall*, 95 U.S. 294, 296, 24 L.Ed. 436, 1877 WL 18560 (1877) ("We have held over and over again that art. 7 of the amendments to the Constitution of the United States related to trials by jury applies only to the courts of the United States…."); *Channon v. United Parcel Serv., Inc.*, 629 N.W.2d 835, 852 (Iowa 2001). Iowa courts have elected not to follow Seventh Amendment precedent in interpreting the Iowa Constitution when they found reason not to do so based on State law or fact. *See, e.g., Weltzin*, 618 N.W.2d at 300.

Even if this Court were to examine this matter through the *Tull* framework, the CFA demands a different result for two reasons. First, the Supreme Court found that the EPA enforcement action was analogous to an action in debt. *Tull*, 481 U.S. at 420. As discussed above, however, consumer fraud

cases are not like matters in debt because they do not seek a fixed or definite sum. *See The Town of Decorah* 1872 WL 348; *Jewell*, 155 N.W. at 175-76. Further, the *Tull* Court recognized that equity courts could traditionally issue monetary awards, such as a civil penalty, when that relief was interwoven or related to injunctive relief: "[a] court in equity was empowered to provide monetary awards that were incidental to or intertwined with injunctive relief." *Tull*, 481 U.S. at 424, 107 S.Ct. at 1839*; see also Terry*, 494 U.S. at 571, 110 S.Ct. at 1348. Under the CFA, relief in the form of a civil penalty is intertwined with an injunction. All types of relief are authorized within Subsection 7 of the Act and subject to the same, "equitable proceedings" directive. Iowa Code § 714.16(7). The Act allows the District Court to assess a civil penalty, "*in addition* to the remedies otherwise provided for in this subsection," suggesting a penalty should be issued as an adjunct to other remedies. *Id.* (emphasis added). The District Court must make the same findings to order an injunction, restitution, and disgorgement as is required for a civil penalty. *See id.* (allowing civil penalty, "against a person *found by* the court to have engaged in a method, act or practice declared unlawful under this section") (emphasis added). The need to make common findings reinforces the interrelated nature of the civil penalty with all other parts of the statute. *See Paolino v. JF Realty*, 2013 WL 12320080 at *3 (D. R.I. 2013) (where plaintiff must prove

"same facts" to obtain injunction and civil penalties, such relief is "inextricably intertwined") (citing *Gwaltney of Smithfield Ltd. v. Chesapeake Bay Found, Inc.*, 484 U.S. 49, 58, 108 S.Ct. 376, 381, 98 L.Ed. 306 (1987)).

The California Supreme Court declined to adopt *Tull*'s reasoning based on its finding that a civil penalty advanced the remedial purpose of its consumer protection laws. *Nationwide Biweekly Admin Inc. v. The Superior Court of Alameda Cnty.*, 462 P.3d 461 489-491 (Cal. 2020). *Tull* has also been rejected in environmental enforcement cases seeking injunctions and civil penalties by both Iowa District Courts, *see, e.g., State of Iowa ex rel. Iowa Dep't. of Nat. Res. v. Northwest Iowa Area Solid Waste Agency*, CVCV 024553 (Sioux County Dist. Ct. Jan. 17, 2014), and other State courts. *See State v. Irving Oil Corp.*, 955 A.2d 1098, 1106-7 (Vt. 2008) (*Tull* inapplicable because civil penalty serves remedial purpose and is part of equitable relief); *Comm'r. of Envtl. Prot. v. Conn. Bldg. Wrecking Co., Inc.*, 629 A.2d 1116, 1121-2 (Conn. 1993) (civil penalty under environmental statute does not require jury trial).

4. An Equity Court May Order Joint and Several Liability.

Autor's argument that equitable proceedings preclude joint and several liability relies on a conflation of "equitable proceedings" with the Supreme Court's interpretation of "equitable relief" in *Liu*. Regardless of whether joint

and several liability has traditionally been a form of equitable relief, "[e]quity courts have long exercised the power to impose joint and several liability, most notably in cases involving breach of the duties imposed by trust law." *Com. Planet, Inc.*, 815 F.3d at 600 *(citing Jackson v. Smith,* 254 U.S. 586, 589, 41 S.Ct. 200, 65 L.Ed. 418 (1921)); Restatement of Trusts § 258 cmt. a (1935); 4 J. Pomeroy, Equity Jurisprudence § 1081, at 231–32 (5th ed.1941)); *see also Nevarez v. USAA Fed. Sav. Bank*, 630 S.W.3d 416, 425–26 (Tex. Ct. App. March 5, 2021) (holding law firm partner jointly and severally liable for equitable claim of money had and received).

It has long been the law in Iowa that if a cause of action is equitable in character, an equity court can provide full relief. *Weltzin*, 618 N.W.2d at 296. Such is the case here. As discussed above (*see* § I.A), because the statute dictates that Attorney General CFA cases be adjudicated by equitable proceedings, and the primary purpose of the State's action is equitable in nature, this case is properly docketed in equity. Therefore, a trial court, sitting in equity, can properly order joint and several liability to accomplish full and complete justice between the parties. *Weltzin*, 618 N.W.2d at 298; *see also Grandon*, 144 N.W.2d at 901.

Further, the CFA gives the Court broad authority to craft "necessary" reimbursement orders and judgments. Iowa Code § 714.16(7). The plain language of the CFA makes clear the Court can do what is "necessary" to "restore" Iowa victims through reimbursement. Indeed, the Iowa Supreme Court has upheld District Courts sitting in equity that have made judgments of joint and several liability against multiple wrongdoers based on CFA violations. *See Vertrue*, 834 N.W.2d at 12 (leaving undisturbed District Court finding that defendants were jointly and severally liable "for all violations of law"); *Santa Rosa*, 475 N.W.2d at 213 (affirming District Court's finding of joint and several liability against multiple defendants). In *Santa Rosa*, the Court held that principals of corporations who are "primary participants" in alleged consumer fraud can be held personally liable for the consumer frauds committed by the corporation. *Santa Rosa*, 475 N.W.2d at 219-20. Like the individual defendant in *Santa Rosa*, the Attorney General has alleged that Mr. Autor, *inter alia*, "formulated, directed, participated in, and authorized OSC and RMAI's advertisement and sale of stem cell therapy in Iowa." App. 55-6 ¶ 5. And like the defendants in *Santa Rosa*, the appellants in this matter can be held jointly and severally liable for their actions which defrauded Iowans.

D. Courts Around the Country Have Found a Defendant is Not Entitled to a Jury Trial in Similar Consumer Fraud Cases.

A majority of other jurisdictions that have considered this issue have found that Attorney General actions brought to enforce consumer protection statutes and seeking injunctive relief, consumer reimbursement, and civil penalties are not entitled to a jury trial because they are properly in equity. The Nebraska case of *State ex rel. Douglas v. Schroeder*, in which the Attorney General brought an action under that state's consumer fraud law related to sale of purported trust forms and sought an injunction, to restore purchase price to the consumers, and to pay a civil penalty and costs of the action, provides an example. *State ex rel. Douglas v. Schroeder*, 384 N.W.2d at 628. The Nebraska Supreme Court found the defendant was not entitled to a jury trial because, with regard to the consumer fraud statute,

> its principal thrust is to prevent unfair or deceptive acts and practices in trade or commerce. Consequently, the act is equitable in nature, in the sense that it seeks to prevent prejudicial conduct rather than merely compensate such damage as may flow therefrom. The monetary consequences imposed to discourage future like acts and practices are ancillary to the act's principal equitable thrust.

Id. at 629-30.

This reasoning has been affirmed by numerous other courts that found that consumer fraud actions seeking an injunction, consumer reimbursement, and

civil penalties are properly in equity. *See Nationwide Biweekly*, 462 P.3d at 488-89, fn. 21 ("a substantial majority of other state courts that have addressed the question whether there is a right to a jury trial in civil actions brought under those states' unfair and deceptive practice laws have concluded there is no right to a jury trial in such actions"); *People v. Shifrin*, 342 P.3d 506, 513 (Colo. Ct. App. Feb. 27, 2014)*; Martin,* 643 N.E.2d at 754-55 ("the Consumer Fraud Act is a statutory proceeding unknown to the common law. Because of this, our constitution does not confer the right to a jury trial for a claim under the Consumer Fraud Act"); *Nunley v. State*, 628 So.2d 619, 621 (Ala. 1993) *Alpine Air Prod.*, 490 N.W.2d at 895 (Minnesota); *State Credit Ass'n.*, 657 P.2d at 620-23 (Washington State); *Kugler v. Market Dev. Corp.*, 306 A.2d 489, 491-92 (N.J. Super. Ct. App. Div. 1973); *see generally* Karen K. Peabody, Annotation, *Constitutional right to jury trial in cause of action under state unfair and deceptive trade practices law*, 54 A.L.R. 631 (1997). In cases finding a right to a jury trial, courts adopted a minority view that a consumer fraud suit was properly considered a "legal" rather than equitable matter or have different underlying facts. *See State v. Credit Bureau of Laredo, Inc.*, 530 S.W.2d 288, 292 (Tex. 1975) (finding consumer fraud action is like a legal action in debt); *Robinson v. McDougal*, 575 N.E.2d 469, 474 (Ohio Ct. App.

Nov. 14, 1988) (plaintiff entitled to jury when recission claim went to trial and no fraud allegations were tried); *see also* Peabody, 54 A.L.R. 631 at § 3.

II. AUTOR APPEALS ONLY THE DISTRICT COURT'S ORDER STRIKING THE JURY DEMAND AND HE NEVER SOUGHT TO DISMISS OR STRIKE THE ATTORNEY GENERAL'S REQUESTED REMEDIES, SO THEIR AVAILABILITY UNDER THE CONSUMER FRAUD ACT IS NOT PROPERLY BEFORE THIS COURT.

The issue of what remedies are available under the CFA is an issue of statutory interpretation which is reviewed for correction of errors at law. *Freeman v. Grain Processing Corp.*, 848 N.W.2d 58, 65 (Iowa 2014).

As an alternative to finding he is entitled to a jury trial, Autor asks this Court to, "issue a ruling that limits the remedies available to the State in prosecuting civil violations of the Consumer Frauds Act to those traditionally available in equity." (Autor Br. at 69.) However, because Autor did not preserve error by obtaining a ruling from the District Court limiting the available remedies, the Court should not take up the invitation to address this issue now.

This tribunal is a court of appellate review, not first view. *See Benskin, Inc. v. W. Bank*, 952 N.W.2d 292, 307 (Iowa 2020). It generally does not, "decide an issue the district court did not decide first in the case on appeal." *UE Local 896/IUP v. State*, 928 N.W.2d 51, 60 (Iowa 2019). "It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before an appellate court will decide them on

appeal." *Meier*, 641 N.W.2d at 537. "It is not a sensible exercise of appellate review to analyze facts of an issue without the benefit of a full record or lower court determination." *Id.*

"Error preservation generally involves two steps: (1) properly raising the issue before the district court and (2) obtaining a ruling." *Matter of Estate of Laube*, 2022 WL 108937 at *5 (Iowa Ct. App. Feb. 12, 2022) (citing *Meier*, 641 N.W.2d at 539).

Autor did not "properly raise" the issue of what remedies are available in this action in front of the District Court. Below he resisted the Motion and simply asked the Court to deny it. App. 160. He argued that the remedies of disgorgement beyond "net profits", civil penalties, and joint and several liability are not available in equity. App. 157-60. Autor asked the Court to find that if the Attorney General seeks these types of relief, a jury trial is required and he urged it to deny the Motion. App. 160.

Upon interlocutory review, Autor now seeks a new outcome: an order issuing from this Court that circumscribes the types of relief available in a CFA enforcement action to those "traditionally available in equity." However, his Resistance did not ask the District Court to issue an order limiting the relief available to remedies "traditionally available in equity." Nor did he file a separate motion asking the District Court to constrain the types of remedies

available to the Attorney General under the CFA or seeking summary judgment. He asked only for a jury trial.

Even if Autor had properly raised this argument below he did not preserve error by obtaining a ruling that addresses the availability of certain remedies under the CFA. "Generally, error is not preserved for appeal on an issue submitted but not decided by the district court when the party seeking the appeal failed to file a posttrial motion asking the district court to rule on the issue." *Teamsters Local Union No. 421 v. City of Dubuque*, 706 N.W.2d 709, 713 (Iowa 2005) (citing *In re Marriage of Oakland*, 699 N.W.2d 260, 266 (Iowa 2005)); *Lamastars v. State*, 821 N.W.2d 856, 862 (Iowa 2012) (citing *Meier*, 641 N.W.2d at 538) (the assumption that a, "court rejected claims not specifically addressed is not a rule of error preservation, but a rule governing our scope of review…thus this assumption is not utilized as a means to preserve error…."); *see also State v. Childs*, 898 N.W.2d 117, 193 (Iowa 2017) (Hecht, J. dissenting). Here, the Order stated, "The Plaintiff's motion to strike the Defendants' jury demand is GRANTED. The Court finds that the jury demand should not be granted for the reasons as stated in the Plaintiff's motion." App 202. The Order does not reflect that the District Court considered – or was on notice of – a request from Autor for a ruling circumscribing the

remedies available under the CFA in an equity court. Autor did not file a motion seeking a ruling.

Autor's contention that the issue of what remedies are available under the CFA was "consensually and necessarily litigated" below is not supported by the record. To preserve error, the record below must show that the District Court was aware of the claim and litigated it. *UE Local 896/IUP*, 893 N.W.2d at 60 (citing *Yee v. City of Escondido*, 503 U.S. 519, 538, 112 S.Ct. 1522, 1532, 118 L.Ed. 153 (1992)*; see also Woods v. Charles Gabus Ford*, 962 N.W.2d 1, 5-6 (Iowa 2021) (citing *Meier*, 641 N.W.2d at 540). Here there is no indication that the District Court was aware that the Autor was asking it to determine *which* remedies are available to the Attorney General in a CFA action; rather, he asked the Court to conclude that he was entitled to a jury trial. The fact that the parties addressed the nature of the remedies authorized by the Act does not change the error preservation analysis. App. 160. The fact that the Attorney General discussed the nature of certain remedies in the context of defending its Motion does not mean that the District Court was being asked to pick and choose what remedies were available to it.

The issue of whether only remedies "historically available in equity" are obtainable under the CFA was not implicitly or "necessarily decided" in the motion practice below, as Autor contends. Neither party sought a ruling

about what remedies were available under the CFA, and the District Court's ruling did not select specific relief available under the Act. App. 202.

The Iowa Supreme Court has found a party must seek and obtain a District Court ruling before making assumptions about what has been decided. It is not sufficient to argue that District Court's conclusion on an issue was implied. In *Teamsters Local Union No. 421 v. City of Dubuque*, the District Court found that the plaintiff was a "critical municipal employee" under a Dubuque municipal policy but did not address his argument that the policy itself was facially invalid. 706 N.W.2d at 712. The Supreme Court rejected the employee's argument that the decision below "impliedly" found the city's policy was valid. *Id.* It found that, by failing to obtain an order on the issue whether the policy was facially invalid, the employee failed to preserve error on that issue. *Id.; see also Meier*, 641 N.W.2d at 540-41 (plaintiff failed to preserve error on question of jurisdiction where District Court did not address that issue in overruling his motion to dismiss). Similarly here, even though the issue of the remedies is part of the analysis of whether Autor is entitled to a jury trial, in order to preserve error Autor needed to obtain a District Court ruling clearly addressing what remedies are available before seeking an order from an appellate tribunal on that issue.

CONCLUSION

For these reasons, the District Court's decision should be affirmed.

REQUEST FOR ORAL ARGUMENT

The Attorney General requests to be heard in oral argument.

Respectfully submitted,

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CERTIFICATE OF COST

No costs were incurred to print or duplicate paper copies of this brief because the brief is only being filed electronically.

/s/ *Amy Licht*
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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font and contains 12,686 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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CERTIFICATE OF FILING AND SERVICE

I certify that on July 8, 2022, this brief was electronically filed with the Clerk of Court and served on all counsel of record to this appeal using EDMS.

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