

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

**DISTRICT OF COLUMBIA**

Plaintiff,

v.

**AUSTIN ROYSTER FUNERAL HOME,  
INC. *et al.*,**

Defendants.

Civil Action No. \_\_\_\_\_

Judge: \_\_\_\_\_

**DISTRICT OF COLUMBIA'S MOTION  
FOR TEMPORARY RESTRAINING ORDER**

Plaintiff District of Columbia's ("District"), by and through the Attorney General, and pursuant to the District's Consumer Protection Procedures Act, D.C. Code § 28-3901, *et seq.* ("CPPA"), brings this Motion for a Temporary Restraining Order ("Motion") halting violations of the CPPA by Defendants Austin Royster Funeral Home, Inc. ("ARFH"), Jamelle Royster ("Royster"), and James Agee ("Agee") (collectively "Defendants").

As set forth in the Complaint filed herewith, the Memorandum in Support of this Motion, and the supporting Exhibits, Defendants have violated, and continue to violate, the CPPA by offering and selling funeral services in the District to consumers (i) while misrepresenting that ARFH has an approval status or certification that it does not have; (ii) representing that Defendant Royster has an approval status or certification that she does not have, (iii) misrepresenting that Defendants would perform purchased funeral services, (iv) failing to inform consumers that Defendants were operating without required licenses; (v) failing to inform consumers that Defendants were barred from accepting assignments of insurance process, or holding any amount of funds on behalf of a consumer which exceeded the total price of funeral

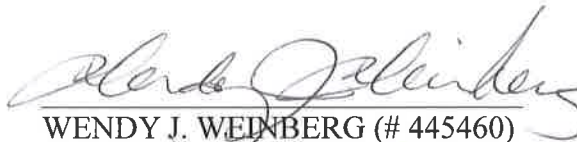
services in the contract between ARFH and the consumer, and (vi) while unconscionably failing to return insurance proceeds in excess of the total price of the funeral services contracted for between ARFH and the consumer. Based on the evidence submitted, the District is likely to prevail on the merits of its claims that Defendants have violated, and are violating, D.C. Code §§ 28-3904(b), (e), (f), and (r)(5).

A proposed temporary restraining order is submitted herewith, together with the Complaint, Exhibits, and Memorandum in Support of this Motion. The District requests that the Court schedule this Motion for a hearing at the earliest possible date.

Respectfully submitted,

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Dated: November 20, 2017

Attorneys for the District of Columbia

**RULE 12-1 STATEMENT**

The undersigned certifies that, prior to filing the instant Motion, counsel for the District contacted Defendants and their counsel and informed them that the District is filing this Complaint and Motion for a Temporary Restraining Order on this date, November 20, 2017.

A handwritten signature in cursive script, appearing to read "Wendy J. Weinberg", written over a horizontal line.

Wendy J. Weinberg  
*Attorney for the District of Columbia*

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

DISTRICT OF COLUMBIA

Plaintiff,

v.

AUSTIN ROYSTER FUNERAL HOME,  
INC., *et al.*,

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Civil Action No.

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Next Event:

Date: November 20, 2017

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**MEMORANDUM IN SUPPORT OF THE DISTRICT OF COLUMBIA'S  
MOTION FOR TEMPORARY RESTRAINING ORDER**

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## **I. INTRODUCTION**

The District of Columbia (the “District”) moves for a Temporary Restraining Order (“TRO”) to stop Austin Royster Funeral Home (“ARFH”), James Agee (“Agee”), and Jamelle Royster (“Royster”) (collectively herein “Defendants”) from violating the District’s Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.*, in connection with their advertising, marketing, promotion, offering for sale, sale, and provision of funeral services in the District of Columbia. This interim relief is necessary to protect consumers who might otherwise purchase funeral services based on Defendants’ false and misleading statements and their failure to disclose material facts and to preserve assets for their eventual return to consumers.

As set forth below and in the Complaint filed herewith, Defendants have dealt dishonestly with the families who have chosen ARFH to provide funeral services and exhibited a striking disregard for District law. All of the Defendants named herein have failed to obtain and/or maintain the licenses necessary to provide funeral services in the District. Defendant Royster has routinely made funeral arrangements for families of the deceased despite never holding the required professional license, and Defendant Agee has allowed this to occur.

In doing so, Defendant Royster has flagrantly violated an order issued by the District of Columbia Board of Funeral Directors (the “Board”) prohibiting her from having any direct contact with consumers that constitutes the practice of funeral directing under District law. Complaint, Exhibit 4. Moreover, the Board suspended Defendant Agee’s license as a funeral director for 90 days on October 21, 2016, in part because ARFH had allowed Royster to make illegal funeral arrangements and because Royster had misappropriated funds owed to a consumer. The Board also revoked ARFH’s Funeral Establishment Endorsement, and ARFH operated without this endorsement from June 23 through the end of October 2017.

ARFH has also failed to maintain the necessary Basic Business License (“BBL”) with the District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”) since February 1, 2016, when it expired. Although ARFH briefly regained its BBL on or about November 4, 2017, it did so only after Defendant Royster wrote a check to the Office of Tax and Revenue for a fine that was shortly thereafter returned for insufficient funds. Consequently, DCRA suspended ARFH’s BBL on or about November 14, 2017, and it remains suspended to date. (Complaint, Exhibit 2) Defendants’ repeated failures to comply with these licensing requirements are not mere technical law violations. In fact, these violations have a direct and deep impact on consumers. One consequence of Defendants’ failure to maintain the necessary licenses is that the District of Columbia Department of Health may not issue death certificates to an unlicensed funeral home. D. C. Code § 7-211(a). Consequently, consumers lack the required documentation to access the bank accounts and insurance policies of their deceased loved ones, to initiate probate proceedings, or even to bury or cremate their bodies. Nevertheless, Defendants have continued to offer for sale and provide funeral services to unsuspecting consumers who have no knowledge that ARFH would not be able to provide these crucial funeral services.

Defendants have also flagrantly violated the Board’s order prohibiting them from misappropriating consumers’ funds. As noted above, the Board revoked ARFH’s Funeral Establishment Endorsement in part because Jamelle Royster had misappropriated \$9,590.80 in insurance proceeds that were due to the decedent’s family assigned to ARFH by a consumer. Complaint, Exhibit 4. The Board’s order expressly barred ARFH from accepting any assignment of insurance proceeds or holding any funds for a consumer that exceed the contract price of the funeral services. *Id.* at p. 13. Notwithstanding the Board’s order, Royster has continued to solicit and misappropriate insurance proceeds assigned to ARFH by consumers. In July 2017, she

obtained \$53,000 from a family's life insurance policy. On September 27, 2017, she provided a \$47,243 check to the beneficiary of the deceased's insurance policy that was returned by the bank for insufficient funds. She has repeatedly promised to remit more than \$47,000 in excess insurance proceeds to a family but has failed to do so. This consumer has yet to receive the promised funds from ARFH. Complaint, Exhibit 7.

For the reasons set forth in this memorandum and the Complaint filed herein, this Court should enter a Temporary Restraining Order (TRO) in the form attached to this Motion. Not only is the District likely to prevail on the merits in this case, but the public interest plainly favors entry of a TRO that will protect the public from Defendants' unlawful funeral service practices and misappropriation of consumers' funds. Moreover, the balancing of the equities here is simple and straightforward, as the benefits to Defendants of continuing their unlawful activities are not entitled to any weight. Indeed, the District's requested relief is needed to protect consumers from further harm during the pendency of this case.

## **II. FACTUAL BACKGROUND**

### **A. The Defendants**

Defendant Austin Royster Funeral Home, Inc. (ARFH) was incorporated to do business in the District of Columbia on April 28, 1993. Since that time, it has advertised, marketed, promoted, offered for sale, sold, and provided funeral services to consumers in the District of Columbia. It conducts its funeral business at 502 Kennedy Street, N.W., Washington, D.C. 20011. Defendant James O. Agee is the Managing Funeral Director at ARFH. Defendant Jamelle Royster, also known as Jamelle Royster-Conley and Jamelle Conley, is the Chief Operating Officer of ARFH.



ARFH advertises its services on the internet at its website, [www.austin-royster.com](http://www.austin-royster.com) and through the website [www.imortuary.com/funeral-homes/district-of-columbia/washington/austin-royster-funeral-home/](http://www.imortuary.com/funeral-homes/district-of-columbia/washington/austin-royster-funeral-home/). On its website, ARFH represents that it is a “family owned business” and claims that:

Since our inception some twenty years ago, The Austin Royster Funeral Home has provided Professional Service with Compassionate Care to thousands of families in and around the Washington metropolitan area. Our service offerings span the spectrum of the diverse community of the Nation's Capitol and we are known to provide reverent, dignified and compassionate service to residents of all incomes, races and genders. As Chief Operating Officer, Jamelle Royster Conley continues this tradition into its third generation. So when the need arises, no matter the day or hour, we stand ready to serve you.

**B. Defendants Have Failed to Obtain and Maintain the Required Licenses**

**1. ARFH’s Failure to Maintain its Licenses**

To conduct business lawfully in the District, a funeral home must have both a Basic Business License and a Funeral Establishment Endorsement. DC Code §§ 47-2851.02(a), 47-2851.03(a)(10)(F), 47-2852.02(a). ARFH has failed to maintain both licenses and exhibited a flagrant disregard for the authority of the regulatory bodies charged with overseeing providers of funeral services.

**ARFH’s Basic Business License:** ARFH’s BBL expired on or about January 31, 2016. From February 1, 2016 through November 3, 2017, ARFH operated without a BBL. On or about November 4, 2017, DCRA briefly reinstated ARFH’s BBL. DCRA did so only after Defendant Royster paid the \$12,000 fine it owed to the District’s Office of Tax and Revenue. However, when Defendants’ check was promptly returned for insufficient funds, DCRA reinstated its suspension of ARFH’s BBL on November 14, 2017. Complaint, Exhibit 12.

**ARFH’s Funeral Home License:** ARFH has similarly failed to maintain the required Funeral Establishment Endorsement with the District’s Board of Funeral Directors. In fact, the

Board has suspended ARFH's license based on Defendants' pattern of dishonest dealings with consumers and the District government.

Following an investigation by DCRA into alleged unlicensed business practices and misappropriation of client funds by ARFH, the Board issued a Cease and Desist Order on March 14, 2016, based on ARFH's permitting Royster to Act as a Funeral Director even though she held no license, submitting false statements to collect fees, charging in excess of its out of pocket expenses to a consumer, committing gross negligence, charging for goods or services not stated in the contract, and failing to provide goods or services that were specified in the contract. Complaint, Exhibit 4.

In its Final Decision and Order dated June 2, 2016, the Board ordered that:

- ARFH be barred from accepting any assignment of insurance proceeds, or holding any amount of funds, on behalf of a consumer, which exceeds the total price of the funeral services specified in the contract;
- ARFH be barred from accepting payments from consumers which are due to third parties on behalf of the consumer; and
- ARFH shall bar Jamelle Royster, or any other unlicensed employee, from having any direct contact with consumers in the conduct of its operations which constitute the practice of funeral directing.

*Id.* at pp. 12 – 13.

Following a hearing, the Board issued a Final Decision and Order on October 21, 2016. Among other things, the Board found that ARFH charged a consumer \$2,458 to cover interment fees and that Defendant Royster wrote a bad check to the cemetery to cover this cost. Complaint, Exhibit 1, at p. 4. The Board also found that Defendant Royster wrote another bad check purportedly to refund \$9,590.80 in life insurance proceeds a consumer assigned to ARFH in excess of the costs of the funeral. *Id.* Moreover, the Board found that Defendant Royster had lied to DCRA investigators, falsely claiming that the amounts due to the cemetery and to the

consumer had been paid, when in fact these payments had not been made, and had overcharged the consumer for these cemetery costs. Complaint, Exhibit 1 at p. 5.

ARFH appealed the Board's decision but agreed to a settlement prior to conclusion of the appeal process. Under the terms of the settlement, ARFH agreed to pay a fine of \$12,000 within 45 days, agreed that its license would automatically be suspended in the event that it failed to pay the fine, and promised that it would "seek to diligently and in good faith comply with all D.C. laws and regulations regarding its practice as a funeral home establishment." Complaint, Exhibit 5). Despite agreeing to these settlement terms, ARFH failed to pay the required fine. Consequently, the Board suspended ARFH's Funeral Establishment Endorsement for failure to comply with the settlement on June 23, 2017.

## **2. Defendants Agee and Royster Have Failed to Obtain and Maintain Funeral Director Licenses**

The Board found that Defendant Royster has never held a license as a funeral director and therefore cannot make any funeral arrangements, other than the receipt of preliminary information. Complaint, Exhibit 5; *see* 17 D.C.M.R. § 3013.2(l)(1), D.C. Code § 3-411(a). Because Defendant Agee, a manager who was a licensed funeral director, allowed Royster to assume an active role in making funeral arrangements, the Board suspended his license for 90 days and imposed a \$1,300 fine. Complaint, Exhibit 1. Despite the Board's orders, Defendant Royster has continued to violate the District's licensing requirements, with the apparent acquiescence of Defendant Agee. As the declarations of consumers submitted in support of this motion reflect, Royster:

- Met with Carla Jones to make funeral arrangements for Ms. Jones's father, drafted the contract for the services, and remained the contact concerning the death certificate and cremation.

- Met with Quantella Gregory to make arrangements for the funeral of her grandmother, resulting in DCRA's issuance of a notice of infraction to Royster for practicing as a Funeral Director without a license. Complaint, Exhibit 9.
- Met with Terrell Hayes to make arrangements for the funeral of his father, drafted the contract for the funeral services, and remained the contact concerning the death certificate and cremation. Complaint, Exhibit 11.
- Served as the principal contact with Darlene Thomas concerning the provision of a death certificate for Ms. Thomas's mother. Complaint, Exhibit 6.

Through their misconduct, which has continued to the present date, Defendants Royster and Agee have clearly flouted the District's licensing requirements.

### **C. Defendants Have Failed to Deliver the Promised Services to Consumers**

A consequence of Defendants' failures to maintain the required licenses is that the District Department of Health cannot issue death certificates to an unlicensed funeral home. D.C. Code §7-211(a). Absent a death certificate, consumers are unable to access the deceased's bank accounts, insurance policies, to begin probate proceedings, or to bury or cremate the body. D.C. Code § 7-214(a).

As the Declaration of Darlene Thomas submitted herewith indicates, Defendant Royster has promised repeatedly to provide Ms. Thomas with the death certificate for her mother, who died on September 20, 2017. Royster has provided various excuses for her failure to provide the death certificate, including that a conversion to a new electronic system by the District was causing delays, that vital records was still processing the death certificate, that Royster was in the hospital being examined for chest pains and undergoing testing, that the death certificate was in Royster's car, that DC law does not allow death certificates to be picked up in person, that the doctor had neglected to submit an electronic copy of the certificate, and that the Funeral Director had signed the certificate in the wrong place and that it had to be redone. Complaint, Exhibit 6, paragraphs 8 – 20.

Unsurprisingly, when Ms. Thomas herself went to the District's vital records office on November 1, 2017 to obtain the death certificate, a supervisor there told her that there was no record on file for her mother. Complaint, Exhibit 6, paragraph 15. At no point did Royster or anyone else at ARFH inform Ms. Thomas that Defendants lacked the necessary licenses to secure death certificates. Complaint, Exhibit 6, paragraph 6. To date, Ms. Thomas has not received this death certificate. Complaint, Exhibit 6, paragraph 20.

ARFH applied for death certificates for at least seven other consumers at a time when it did not have a BBL: "MV" – Date of Death ("DOD") 06/28/2017; "JD" - DOD 07/11/2017; "LP" - DOD 07/15/2017; "DT"- DOD 09/20/2017; "LJ" - DOD – 06/01/2017; "MK", DOD – 07/28/2017; "DK"- DOD 08/23/2017. ARFH remains unable to obtain the death certificates for these seven individuals. Consequently, some of the families of these seven individuals likely have been unable to conclude the affairs of the deceased or bury or cremate the bodies based upon ARFH's lack of the required licenses.

Moreover, in the course of investigating this matter, the Attorney General's Office has learned that ARFH currently possesses the bodies of four decedents and the cremated remains of 97 other decedents. Due to its lack of licensure and questionable financial standing,<sup>1</sup> Defendants inability to perform funeral services likely will impact a significant number of families still seeking the ultimate disposition of their deceased loved ones.

#### **D. Defendants Have Continued to Receive and Misappropriate Consumers' Funds**

Notwithstanding the June 2, 2016 order of the Board of Funeral Directors, Defendants have continued to receive insurance proceeds in excess of the amounts due to ARFH under the

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<sup>1</sup> In addition to a history of sending dishonored checks, as is set forth *infra*, ARFH is currently facing its pending eviction from its principal premises located at 502 Kennedy St., N.W. due to nonpayment of rent. See Exhibit 13, attached to this memorandum.

contracts with consumers. Acting on behalf of ARFH, Defendant Royster obtained an assignment of insurance proceeds totaling \$53,000 from Changus Hayes for the funeral of his father, even though the funeral was contracted to cost only \$5,767. Complaint Exhibit 7. According to Mr. Hayes's declaration, defendant Royster found out that Changus Hayes was the sole beneficiary of a \$53,000 life insurance policy and asked him if he would make an assignment of the policy to Austin Royster. Mr. Hayes agreed to this assignment based on Jamelle Royster's representations that part of the insurance proceeds would cover Austin Royster's charges for the funeral services and that Austin Royster would refund to him the rest of the insurance funds. Complaint, Exhibit 7, paragraph 10.

Metropolitan Life Insurance Company transferred the proceeds of its insurance policy to ARFH on July 23, 2017. Mr. Hayes has made repeated vain attempts to obtain the balance due to him of approximately \$47,243 from Defendants Royster and ARFH, including numerous telephone calls and two trips to Washington, D.C. from his home in Florida in September and again in November 2017. Complaint, Exhibit 7 paragraphs 12-15. During the September trip, Royster gave Mr. Hayes a check for \$47,243, which was returned by his bank for insufficient funds. Complaint, Exhibit 7 paragraphs 13. Defendant Royster continued to give Mr. Hayes excuses for her failure to pay him, including that she was waiting for business checks to come in the mail and that she needed to get a W-9 form signed because the amount being paid was above \$600. Complaint, Exhibit 7 paragraphs 14. During Hayes's second trip to Washington in November, Defendant Royster instructed Mr. Hayes to meet her at a bank in Bowie, Maryland, where she would give him a certified check for the amount owed to him. However, the bank was closed by the time that Ms. Royster arrived. At his insistence, she gave him a check to cover his travel expenses together with a note acknowledging that ARFH continued to owe him the

\$47,000 and that a cashier's check would be given to him on November 7, 2017. Complaint, Exhibit 7 paragraphs 16.

It was not until November 7, 2017 that Jamelle Royster finally told Mr. Hayes that ARFH was having licensing problems with the District government and that she could not release any funds to him until the matter was resolved. Complaint, Exhibit 7 paragraphs 5. However, prior to that time, no one had informed the Hayes family that ARFH or Royster lacked the licenses or authorization required by District law to provide funeral services. Complaint, Exhibit 7 paragraphs 5. To date, Mr. Hayes has yet to receive the more than \$47,000 owed to him. Complaint, Exhibit 7 paragraph 17.

**E. Defendants Have Demonstrated Their Disregard for the District's Regulatory Authorities and Have Violated Settlement Agreements with the District**

Defendants' past conduct shows they cannot be trusted to comply with District consumer protection laws pending a resolution of this case. Defendant Royster, acting unlawfully on behalf of ARFH, has continued to perform funeral services. She has continued to solicit and receive insurance proceeds from consumers and failed to refund the balance due to them. And she has continued to write checks to consumers and even to the District government that are returned for insufficient funds. A temporary restraining order is needed to prevent her, Agee and ARFH from continuing to receive funds for purported funeral services and to prevent Defendants from dissipating assets owed to consumers.

**III. ARGUMENT**

**A. The Standard for Granting a Temporary Restraining Order**

In deciding whether to grant provisional injunctive relief under District of Columbia law, the Court must consider whether: 1) the movant is substantially likely to succeed on the merits; 2) the movant is in danger of being irreparably harmed during the pendency of the action, absent injunctive relief; 3) the movant will suffer greater harm than the non-movant if

the relief is not granted; and 4) the public interest favors granting the injunctive relief. *See District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 21 (D.C. 1993); *In re Antioch University*, 418 A.2d 105, 109 (D.C. 1980); *Wieck v. Sterenbuch*, 350 A.2d 384, 387 (D.C. 1976). Each of these factors is part of a continuum, such that a strong likelihood of success on the merits may justify an injunction where there is a lesser showing of irreparable injury. *District of Columbia v. Greene*, 806 A.2d 216, 223 (D.C. 2002).<sup>2</sup> Courts apply the standard for a granting a preliminary injunction when evaluating applications for temporary restraining orders. *See Experience Works, Inc. v. Chao*, 267 F. Supp. 2d 93, 96 (D.D.C. 2003).

Irreparable injury may be presumed when the Attorney General exercises express statutory authority to enjoin violations of the law. *See SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 808-09 (2d Cir. 1975) (where government “suits for injunctions are creatures of statute, [p]roof of irreparable injury or the inadequacy of other remedies as in the usual suit for injunction is not required”) (quotations omitted). Yet, the District has shown irreparable harm here: District consumers and the public will be harmed unless the District’s relief is granted. All factors favor entry of a Temporary Restraining Order under the CPPA.

**B. The Temporary Restraining Order Should Be Entered Because Defendants Have Continued to Offer and Sell Funeral Services in the District in Violation of the CPPA**

The Attorney General is authorized to bring an action for “temporary or permanent” injunctive relief against the actual or intended “use of [a] method, act, or practice” that violates the CPPA. D.C. Code §§ 28-3904, 28-3909(a). Defendants have misrepresented to consumers that they are authorized to provide funeral services, failed to disclose their lack of required licenses, and misappropriated consumer funds. These misrepresentations about their services and failure to disclose these material facts in offering and selling funeral services to consumers

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<sup>2</sup> *Accord Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).



in DC violates multiple provisions of the CPPA. *See* D.C. Code §§ 28-3904(b), (e), (f), (r)(5), and (v).

Defendants will not suffer any legally cognizable harm from entry of the requested preliminary injunction. The injunction would only require Defendants to offer and provide funeral services lawfully.

**1. The District has a substantial likelihood of succeeding on the merits of its CPPA claims**

There is a substantial likelihood that the District will prevail on the merits of its CPPA claims alleged in the Complaint. *See* Comp. ¶¶ 57-67. The District has shown that Defendants have engaged, and will continue to engage, in unlawful trade practices under the CPPA by permitting unlicensed individuals to offer funeral services, failing to provide the services offered, and mishandling consumers' funds.

**a) Defendants have made material misrepresentations or failed to disclose material facts to consumers regarding their licensing status**

It is a violation of the CPPA for Defendants to “misrepresent as to a material fact if such failure tends to mislead” and to “fail to state a material fact if such failure tends to mislead.” D.C. Code §§ 28-3904(e) - (f). The District need not prove that Defendants intentionally or willfully made these misrepresentations or omissions, but only that the statements were made or that material facts were omitted when Defendants offered their funeral services to consumers.<sup>3</sup>

Defendants misrepresented to consumers that Defendants were licensed to provide funeral services, that Royster was a Funeral Director, and that Defendants would perform the purchased funeral services. Defendants in fact failed to inform consumers that they were operating without the required licenses, that they were barred from accepting an assignment of insurance proceeds or any amount that exceeded the contract price of the funeral services

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<sup>3</sup> *See Fort Lincoln Civic Ass'n, Inc. v. Fort Lincoln New Town Corporation*, 944 A.2d 1055, 1073 (D.C. 2008); *Saucier v. Countrywide Home Loans*, 64 A.3d 428, 442 (D.C. 2013).

purchased by the consumer and that they were either unable or unwilling to provide offered services.

Moreover, Defendants have unconscionably accepted insurance proceeds when they knew that they were prohibited from doing so, and likely knew that they would not return the excess funds to the consumer. As Defendants Royster and ARFH well know, ARFH is facing impending eviction from its premises located at 502 Kennedy St., N.W. See Exhibit 13, attached to this memorandum. Order dated November 8, 2017, entered in D.C. Superior Court, Landlord and Tenant Branch in *Solena Properties, L.L.C. v. Charles J. Royster & Janelle Conley t/a Austin Royster Funeral Home*, Docket No. 2017 LTB 12551. As recently as November 1, 2017, Defendant Royster even gave the District's Office of Tax and Revenue a bad check in order to regain ARFH's license. Complaint, Exhibit 2. Defendant Royster has clearly engaged in a pattern of deceitful financial dealings.

The facts that Defendants have misrepresented and omitted are material to consumers seeking funeral services. A fact is material if a reasonable person would find the information important in determining a course of action, or if the speaker knows that the particular recipient is likely to find the information important to that recipient's course of action. *Saucier*, 64 A.3d at 442 (citations omitted). Furthermore, Defendants' omissions have a tendency to mislead. As set forth above, consumers have, in fact, been misled into believing that ARFH was authorized to fulfill its contractual obligations and to obtain death certificates for the deceased.

**b) Defendants Royster and Agee are individually liable**

The District seeks to enjoin Defendants Royster and Agee because they are the individuals who, directly and through their control over ARFH, through which they conduct their business, control the funeral activities at issue in this case. An injunction against ARFH alone would be ineffective to stop Defendants' unlawful conduct because Defendants could continue operating their business through new businesses.

### (1) The Standard for Individual Liability

A person or entity is subject to the CPPA if they engage in a trade practice from the merchant side of a consumer transaction in the ordinary course of business. *Adler v. Vision Lab Telecommunications, Inc.*, 393 F.Supp.2d 35, 39 (D.D.C. 2005); D.C. Code §§ 28-3904, 28-3901(a)(1), (a)(3). The CPPA is construed and applied liberally to promote its purposes; including remedying and deterring “all improper trade practices.” D.C. Code §§ 28-3901(b)-(c); *Howard v. Riggs Nat'l Bank*, 432 A.2d 701, 709 (D.C.1981); *accord Ihebereme v. Capital One, N.A.*, 730 F.Supp.2d 40 (D.D.C. 2010).

The District’s enforcement authority under §§ 28-3909(a) and 28-3904 is analogous to the Federal Trade Commission’s enforcement authority to prosecute “unfair or deceptive acts or practices in or affecting commerce” under the FTC Act. *See* 15 U.S.C. 45(a)(1). Under the FTC Act, individuals may be liable for unfair or deceptive acts committed by a corporate entity if the individual participated directly in the deceptive practices or acts, or had authority to control them and knowledge of them. *POM Wonderful, LLC v. F.T.C.*, 777 F.3d 478, 498 (2015).<sup>4</sup> Actual knowledge is not required, not even to establish individual liability for restitution.<sup>5</sup> The same analysis applies to individual liability for restitution under the CPPA: it is sufficient for the District to show that an individual defendant had authority to control and either knowledge of misrepresentations or reckless indifference to truth or falsity.<sup>6</sup>

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<sup>4</sup> *Accord FTC v. IAB Mktg. Assocs., LP*, 746 F.3d 1228, 1233 (11th Cir.2014); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573 (7th Cir.1989).

<sup>5</sup> *F.T.C. v. Network Servs. Depot, Inc.*, 617 F.3d 1127, 1138-39 (9th Cir. 2010) (“The FTC may establish knowledge by showing that the individual defendant “had actual knowledge of material misrepresentations, [was] recklessly indifferent to the truth or falsity of a misrepresentation, \*1139 or had an awareness of a high probability of fraud along with an intentional avoidance of the truth.” *Id.* (quoting *FTC v. Am. Standard Credit Syst., Inc.*, 874 F.Supp. 1080, 1089 (C.D.Cal.1994)). The FTC is not required to show that the defendant actually intended to defraud consumers. *Id.*”)

<sup>6</sup> Individual liability can be found when authority to control is shown and a defendant either (1) had actual knowledge of the wrongful acts or practices, (2) was recklessly indifferent to whether or not the corporate acts or practices were fraudulent; or (3) had an awareness of high probability

Authority to control looks to the individual's *ability* to control the acts of the corporate entity, and does not require a specific title or "final say" over all aspects of the business operation. See *F.T.C. v. Think Achievement Corp.*, 144 F.Supp.2d 993, 1011 (N.D. Indiana 2000) (holding that an individual may be liable for deceptive practices of a corporation when he "had the ability to control such practices").<sup>7</sup> Indeed, even minority members of a "family" corporation have been held individually liable for violations of Section 5 of the FTC Act.<sup>8</sup>

An individual's ability to control a company, and satisfy the authority to control test, can be demonstrated by factors such as a claim to profits from the company,<sup>9</sup> ability to control finances, obtain financing for the business, or status as signatory on bank accounts.<sup>10</sup>

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that the corporation was engaged in fraudulent practices along with an intentional avoidance of the truth." *FTC v. Publishing Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir.1997).

<sup>7</sup> *F.T.C. v. Ross*, 897 F.Supp.2d 369, 382-83 (D. Md. 2012) (discussing that ability to control certain functions of the business show authority to control); *F.T.C. v. J.K. Publications, Inc.*, 99 F.Supp.2d 1176 (C.D. Cal. 2000) (ability to directly or indirectly control accounts); *F.T.C. v. Medicor LLC*, 217 F.Supp.2d 1048, 1054-56 (C.D. Cal. 2002) (no authority exists to support claim that two separate people cannot have the ability to control an entity or that defendant's title was determinative of, or even relevant to control); *POM Wonderful, LLC*, 777 F.3d at 498 (defendant need not have "final say" over deceptive acts or practices to have authority to control); *In the Matter of Jerk, LLC*, 2015 WL 1518891, \*23 (F.T.C. 2015) (personal involvement in "every aspect of the business" is not required to establish authority to control). Nor does authority to control a company rely on holding a majority interest. *Cf., Toor v. Westover*, 94 F.Supp. 860, 864 (S.D. Cal. 1950) (mere fact that a partner is a limited liability partner does not cease his voice in the management or disposition of the property of the partnership).

<sup>8</sup> *Fred Meyer, Inc. v. FTC*, 359 F.2d 351, 367-68 (9th Cir. 1966), *rev'd in part on other grounds*, 390 U.S. 341 (1968) (individuals and their families holding 38% and 14% of the corporation's stock were held individually liable).

<sup>9</sup> *Ross*, 897 F.Supp.2d at 384-85 (stating that the fact that defendant was one of four people who received profits from the business supported finding that Defendant had authority to control).

<sup>10</sup> *Id.* at 382-383 (the ability "to personally finance or pay for corporate expenses" and "approve corporate expenses" is relevant to showing authority to control); *accord J.K. Publications, Inc.*, 99 F.Supp.2d at 1206 (defendant's use of her credit to obtain merchant bank accounts and the bank's reliance on her credit history was crucial to the continued success of the business); *FTV v. Tax Club, Inc.*, 994 F. Supp.2d 461, 473 (S.D.N.Y. 2014) (fact that individual defendants were signatories on merchant and commercial bank accounts supported finding that defendants had authority to control).

**(2) Defendants Royster and Agee are individually liable**

As set forth herein, Agee is the Managing Funeral Director of ARFH. He holds overall responsibility for the conduct of funeral services at ARFH and yet has permitted Defendant Royster to perform these services despite her lack of the required license. His misconduct has continued despite the fact that DCRA's Board of Funeral Directors disciplined him for this very conduct in 2016 by suspending his license as a funeral director and imposing a fine. There can be no question that he has had control over ARFH's provision of funeral services.

Defendant Royster is the Chief Operating Officer of ARFH. As detailed herein, she has exercised control over ARFH's finances and has provided the full range of funeral services despite her lack of the necessary license to do so. She has similarly been confronted with her misconduct by DCRA's Board of Funeral Directors and nevertheless continued to engage in the very misconduct that the Board prohibited in its prior Order. Here, too, there can be no doubt that she has controlled all aspects of ARFH's operations.

**C. The Balancing of the Equities Supports the Temporary Restraining Order the District Seeks**

After considering the likelihood of success on the merits, the Court must balance the following three equitable factors in order to enter the requested Temporary Restraining Order under the CPPA: (i) whether the movant is in danger of being irreparably harmed during the pendency of the action, absent injunctive relief; (ii) whether the movant will suffer greater harm than the non-movant if the relief is not granted; and (iii) whether the public interest favors granting the injunctive relief. *See Group Ins. Admin.*, 633 A.2d at 42, 21-24. To enjoin Defendants' illegal provision of funeral services, the Court must only balance the public interest in entry of the requested Temporary Restraining Order against any resulting harm to Defendants.

## **1. The Public Will Be Irreparably Harmed If A Temporary Restraining Order Is Not Entered**

The Attorney General is authorized to bring this action under the CPPA, and seek a preliminary injunction, “in the public interest.” D.C. Code § 28-3909(a). The CPPA is intended, in relevant part, to “assure that a just mechanism exists to remedy all improper trade practices and deter the continuing use of such practices,” and “shall be construed and applied liberally to promote its purpose.” D.C. Code §§ 28-3901(b). The District’s enforcement authority under § 28-3909(a) is analogous to the enforcement authority of federal agencies to seek injunctions against statutory violations, authority that is premised on a presumption of public harm. *See Cruz-Foster v. Foster*, 597 A.2d 927, 931 (D.C. 1991) (“[t]he injunctive processes are a means of effecting general compliance with [public] policy”) (quotation omitted).<sup>11</sup> The CPPA codifies the District’s public policy of remedying, preventing, and deterring improper business practices and requires merchants to provide truthful information in transactions with DC consumers. D.C. Code § 28-3901(b)-(c). Because the District brings this enforcement action pursuant to the Attorney General’s statutory enforcement authority, the Court may presume that a Temporary Restraining Order will prevent irreparable injury to the public’s interest in furthering these public policies.

Furthermore, the District has established that the Defendants show no sign of changing their deceptive business practices, but instead continued them in violation of their settlement agreements with DCRA’s Board of Funeral Directors. The Court’s analysis of the harms in a request for preliminary injunctive relief should take into account any effects on interested

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<sup>11</sup> *FTC v. Mallett*, 818 F.Supp.2d 142, 150 (D.D.C. 2011) (where the FTC demonstrates a likelihood of success on the merits, the district court may “presume ... that the public interest will be served by interim relief”) (citation omitted); *SEC v. Levine*, 517 F.Supp.2d 121, 147 (D.D.C. 2007) (“There is no requirement that the Commission demonstrate irreparable injury or lack of any adequate remedy at law.”); *SEC v. Friendly Power Co. LLC*, 49 F. Supp. 2d 1363, 1372 (S.D. Fla. 1999) (“The passage of the statute is in a sense an implied finding that violations will harm the public and ought to, if necessary, be restrained.”) (quotation omitted); *Management Dynamics, Inc.*, 515 F.2d at 808-09 (2d Cir. 1975).

persons not parties to the litigation. *Group Ins. Admin.*, 633 A.2d at 42 (citing *Amalgamated Transit Union v. Donovan*, 554 F. Supp. 589, 599 (D.D.C. 1982), *overruled on other grounds by Amalgamated Transit Union v. Brock*, 809 F.2d 909 (D.C. Cir. 1987)). District consumers are interested persons here. Unless Defendants' conduct is preliminarily enjoined, consumers may continue to be irreparably injured by purchasing Defendants' funeral services. Defendants have continued to take excess payments from consumers in violation of the Board's prior orders and have are unable to repay such amounts. Moreover, Defendants' lack of licensure has rendered them unable to provide the funeral services that consumers need to take care of their deceased loved ones. Absent an order from this court enjoining the Defendants, consumers will continue to be irreparably harmed.

Finally, one of the purposes of considering irreparable injury in a motion for provisional relief is "to preserve the court's ability to render a meaningful decision on the merits." *Wieck*, 350 A.2d at 387-388 (*quoting Canal Authority v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974)). The status quo should be maintained so that this court can, ultimately, determine how best to address consumers' needs for funeral services and to determine an appropriate remedy against the Defendants.

## **2. Issuance of a Temporary Restraining Order Will Not Harm Defendants**

The potential harm to the District and its consumers outweighs any potential harm to Defendants resulting from entry of the requested temporary restraining order. Defendants have no legitimate interest in continuing to engage in unlawful trade practices or illegal funeral service activities, and will not suffer any injury from being enjoined from doing so. Put simply, the requested relief simply orders Defendants to do what the law requires, but which Defendants have refused to do. Compliance with the law is hardly an unreasonable burden. *See Mallett*, 818 F. Supp.2d at 150. Defendants' history of flouting the law makes it necessary to ensure Defendants' compliance through the requested preliminary relief.

### 3. The Public Interest Favors Entering the Temporary Restraining Order

As stated above, the Attorney General's enforcement of the CPPA through a Temporary Restraining Order is presumed to be "in the public interest." D.C. Code § 28-3909(a). The public has a strong interest in the District's enforcement of the CPPA to accomplish the statute's purposes, and to police those who engage in unlawful and deceptive trade practices under the CPPA.

### IV. CONCLUSION

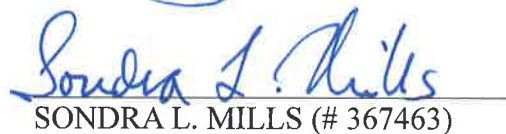
For the foregoing reasons, the District's motion for a Temporary Restraining Order pursuant to D.C. Code § 28-3909(a) should be granted.

Respectfully submitted,

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Dated: November 20, 2017

Attorneys for the District of Columbia



# EXHIBIT 13

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION  
LANDLORD AND TENANT BRANCH**



Solena Properties, L.L.C.

V.

Charles J. Royster & Janelle Conley  
t/a Austin Royster Funeral Home

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)  
) 2017 LTB 12551  
) Judge Johnson  
) Status Hearing: 11/8/17  
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**ORDER**

This matter having come before the Court on Plaintiff's post judgment status hearing request and any opposition thereto, and good cause having been shown therefore, it is by the Court this 8<sup>th</sup> day of November, 2017.

ORDERED THAT, the Writ of Restitution that has been filed in this case for 502 Kennedy Street, N.W., Washington, D.C. 20011 shall be executed by the U.S. Marshals Office, and it is

FURTHER ORDERED, that the District of Columbia Office of the Chief Medical Examiner provide the necessary staff and equipment in conjunction with execution of the Writ of Restitution to the U.S. Marshals Office on the day of execution of the Writ of Restitution to properly complete the

DOCKETED NOV 08 2017

eviction and execute the Writ of Restitution in compliance with all District of Columbia laws and municipal regulations. And it is,

FURTHER ORDERED, that the District of Columbia Office of the Chief Medical Examiner retain any and all human remains and/or cremains until such time as they can be reunited with the next of kin. However, in no event must the District of Columbia Office of the Chief Medical Examiner retain the human remains/cremains after 30 days of reception of the remains/cremains. In the event that any remains/cremains cannot be reunited with next of kin after 30 days, any such remains/cremains may be subject to public disposition. And it is,

FURTHER ORDERED, that the Plaintiff, United States Marshals Office and the Office of the Chief Medical Examiner coordinate an agreed upon date and time to execute the Writ of Restitution in this case pursuant to this Order.

  
JUDGE JOHNSON

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

**DISTRICT OF COLUMBIA**

Plaintiff,

v.

**AUSTIN ROYSTER FUNERAL HOME,  
INC., JAMELLE ROYSTER, and  
JAMES AGEE,**

Defendants.

Civil Action No. \_\_\_\_\_

Judge: \_\_\_\_\_

**TEMPORARY RESTRAINING ORDER**

This matter is before the Court on Plaintiff District of Columbia's ("District") Motion for a Temporary Restraining Order ("Motion"). Having considered that Motion, along with its attached memorandum, declarations, and exhibits, any opposition thereto, and the entire record herein, and having held a hearing on the Motion on November \_\_\_\_\_, 2017, at which hearing \_\_\_\_\_ appeared, the Court makes the following findings:

1. That there is good cause to believe that Defendants Austin Royster Funeral Home, Inc. ("ARFH"), Jamelle Royster, and James Agee (collectively "Defendants") have violated, and continue to violate, the District's Consumer Protection Procedures Act by offering and selling funeral services in the District of Columbia to consumers (i) while misrepresenting that AFRH has an approval status or certification that it does not have; (ii) representing that Defendant Royster has an approval status or certification that she does not have, (iii) misrepresenting that Defendants would perform purchased funeral services, (iv) failing to

inform consumers that Defendants were operating without required licenses; (v) failing to inform consumers that Defendants were barred from accepting assignments of insurance process, or holding any amount of funds on behalf of a consumer which exceeded the total price of funeral services in the contract between ARFH and the consumer, and (vi) while unconscionably failing to return insurance proceeds in excess of the total price of the funeral services contracted for between ARFH and the consumer. The District therefore is likely to prevail on the merits of its claims that Defendants have violated, and are violating, D.C. Code §§ 28-3904(b), (e), (f), and (r)(5);

2. That there is good cause to believe that immediate and irreparable injury will occur to the general public, including harm to consumers purchasing funeral services from Defendants, unless the Court grants the District's requested temporary restraining order to halt Defendants' deceptive and unlawful trade practices and illegal funeral services activity;

3. That, weighing the equities, including the public interest and the potential harm to Defendants, it appears that a temporary restraining order is both appropriate and necessary; and

4. That, pursuant to SCR-Civil R. 65(c) and D.C. Code § 28-3909(a), no security is required of the District of Columbia for issuance of this preliminary injunction order.

Based on the foregoing findings, it is this \_\_\_\_ day of November, 2017, hereby:

**ORDERED** that the Motion is **GRANTED**; and it is

**FURTHER ORDERED**, pursuant to D.C. Code § 28-3909(a) and, that Defendants Jamelle Royster and James Agee, and all others acting in concert or participation with either of them, whether acting directly or indirectly, or through a corporation or other entity, are temporarily restrained and enjoined, until further Order of the Court, from:

1. Entering into any contract or agreement for funeral services in the District of Columbia;
2. Advertising, marketing or soliciting for the provision of funeral services in the District of Columbia;
3. Accepting any funds, or assignment of funds, from consumers for the provision of funeral services in the District of Columbia;
4. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any assets, or any interest therein, wherever located, including outside the United States, that are:
  - a. owned or controlled, directly or indirectly, by any Defendants, in whole or in part, or held, in whole or in part, for the benefit of Defendants;
  - b. in the actual or constructive possession of any Defendants;
  - c. owned by, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with any Defendants; or
  - d. held by, for, or under the name of any Defendants at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, payment processing company, or other financial institution or depository of any kind;
5. Incurring charges or cash advances on any credit card, debit card, or checking card issued in the name, singly or jointly, of any Defendant;

**PROVIDED**, however, that the individual Defendants Jamelle Royster and James

Agee may withdraw funds for their necessary personal living expenses, so long as they document the amounts and purposes for which such funds are used, pending further Order of this Court; and it is

**FURTHER ORDERED** that Defendants shall provide a list of all bank, credit card, escrow accounts, or any other account of any kind, held by or on behalf of any Defendant; and it is

**FURTHER ORDERED** that, no later than \_\_\_\_\_, Defendants shall provide the District with a list containing the following information concerning each consumer with whom Defendants have a pending agreement to provide any funeral services:

- Consumer Name(s);
- Consumer Address(es);
- Consumer Phone Number(s);
- Consumer Email Address(s);
- Name of Decedent;
- Outstanding Funeral Services to be Performed; and
- Total of Payments Defendants Have Received for Services to be Performed.

**FURTHER ORDERED** pursuant to Superior Court Rule 65(b) that

Defendants shall appear on the \_\_\_\_ day of \_\_\_\_\_, 2017, at 9:30 a.m., at the District of Columbia Superior Court, 500 Indiana Avenue, NW, Washington DC 20001 before the Honorable \_\_\_\_\_, to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the complaint, against Defendants, enjoining

them from further violations of the CPPA, and imposing such additional relief as may be appropriate.

**SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge

***Copies to:***  
Phil Ziperman, Esq.  
Wendy J. Weinberg, Esq.  
Sondra L. Mills, Esq.