RECORD NO. 14-2160

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

**LAVERNE JONES; STACEY JONES, f/k/a Stacey Ness;
KERRY NESS, Individually and on behalf of the Certified Class,**
Plaintiffs-Appellants,

v.

BERNALDO DANCEL; AMERIX CORPORATION; 3C INCORPORATED; CAREONE SERVICES, INCORPORATED; ASCEND ONE CORPORATION,
Defendants-Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND AT BALTIMORE**

MOTION OF CIVIL JUSTICE, INC., PUBLIC JUSTICE CENTER, INC. AND MARYLAND CONSUMER RIGHTS COALITION, INC. FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANTS AND IN SUPPORT OF REVERSAL

JOSEPH S. MACK
CIVIL JUSTICE, INC.
520 W. FAYETTE ST., SUITE 410
BALTIMORE, MARYLAND 21201
(410) 706-7985

Counsel for Proposed Amici

Pursuant to FED. R. APP. P. 27 and 29(b), Civil Justice, Inc. ("Civil Justice"), Public Justice Center, Inc. (the "PJC") and Maryland Consumer Rights Coalition, Inc. ("MCRC") respectfully move this Court for leave to file a brief as *amicus curiae* in support of the Plaintiffs-Appellants and in support of reversal. The proposed brief accompanies this Motion. Pursuant to FOURTH CIR. R. 27(a), counsel to all parties to this appeal were contacted regarding this Motion. Plaintiffs-Appellants have consented to the filing of this Motion. Defendants-Appellees do not consent to the filing of this Motion.

FED. R. APP. P. 29(b) requires a motion for leave to file to explain the movant's interest in the appeal and "the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case." As now-Justice Samuel Alito wrote while an appellate judge, "I think that our court would be well advised to grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet Rule 29's criteria as broadly interpreted. I believe that this is consistent with the predominant practice in the courts of appeals." *Neonatology Assocs., P.A. v. Commissioner of Internal Revenue*, 293 F.3d 128, 133 (3rd Cir. 2002). Then-Judge Alito noted that "[e]ven when a party is well represented, an amicus may provide important assistance to the court." *Id*. at 132. As explained below, the proposed *amici* have a strong interest in this matter and offer a desirable and relevant discussion of the issues presented in this matter.

Civil Justice is a non-profit public interest legal association founded in 1998 for the purpose of increasing the delivery of legal services to clients of low and moderate income while supporting a statewide network of solo, small-firm and community-based lawyers who share a commitment to increasing access to justice. Civil Justice has represented hundreds of Maryland consumers individually, and thousands in public interest litigation, who have been victimized by predatory practices. Civil Justice has been accepted as *amicus curiae* in numerous cases in the Maryland Court of Appeals and the Fourth Circuit. *See, e.g.*, *Wells Fargo Home Mortgage Inc. v. Neal*, 398 Md. 705 (2007); *Poku v. Friedman*, 403 Md. 47 (2008); *Monmouth Meadows Homeowners Ass'n., Inc. v. Hamilton*, 416 Md. 325 (2010); *Capital Mortg. Bankers, Inc. v. Cuomo*, 222 F.3d 151 (4th Cir. 2000). Civil Justice and members of its network of attorneys regularly advise and represent consumers regarding credit counseling organizations such as the Defendants-Appellees in this case.

This litigation implicates the interests of Civil Justice in several respects. First, because Civil Justice and its members regularly advise consumers in connection with disputes with businesses that are subject to arbitration, Civil Justice has a great interest in maintaining meaningful review by courts of arbitrators' manifest disregard of the law. Second, as the arbitrator found, the Defendants-Appellees, all based in Maryland, made hundreds of millions of dollars from the Plaintiffs-Appellants providing services in violation of the Credit Repair Organizations Act ("CROA"). As supporters and advocates of the rights of Maryland consumers, Civil Justice and its members have a great interest in seeing that when Congress provides consumers with an unambiguous remedy to deter violations, as it did here, then that remedy is enforced when defendants are found to have violated the law. Finally, as members of the consumer rights community in Maryland, Civil Justice is familiar with the specific Defendants-Appellees in this case (which, as the arbitrator found, together acted as the largest credit counseling business in the nation). This familiarity includes details of Maryland's own attempts to curb the Defendants-Appellees' business practices via legislation in 2003. As explained in more detail in the attached brief, members of the Maryland General Assembly specifically noted the "outrageous" business practices of the Defendants-Appellees as the motivation for the legislation prohibiting the very "voluntary contributions" that the arbitrator allowed the Defendants-Appellees to retain in contradiction of CROA.

The PJC, a non-profit civil rights and anti-poverty legal services organization founded in 1985, has a longstanding commitment to protecting the rights of Maryland consumers. The PJC has fought to protect consumer rights through legislative advocacy and through its Appellate Advocacy Project, which seeks to improve the representation of indigent and disadvantaged persons and their interests before state and federal appellate courts. The Appellate Advocacy Project has submitted or joined in briefs of *amicus curiae* in recent cases involving consumer credit and protection of the rights of consumers more generally. *See, e.g.*, *Monmouth Meadows Homeowners Ass'n, Inc., v. Hamilton*, 416 Md. 325 (2010); *Sweeney v. Savings First Mortg., LLC*, 388 Md. 319 (2005); *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 805 A.2d 1061 (2002); *Bell Atl. of Maryland, Inc. v. Intercom Sys. Corp.*, 366 Md. 1, 782 A.2d 791 (2001); *SunTrust Bank v. Goldman*, 201 Md. App. 390 (2011). In addition, the PJC has long pursued access to effective remedies for violations of consumer protection and other remedial legislation, including filing *amicus* briefs in *Friolo v. Frankel*, 438 Md. 304 (2014); *Anne Arundel Co. Bd. of Euc. v. Norville*, 390 Md. 93 (2005); *Edwards Systems Tech. v. Corbin*, 379 Md. 278 (2004). The PJC has an interest in this case because it threatens the ability of consumers to obtain meaningful relief on their claims and, in light of the attorney's fee award, it jeopardizes their ability to attract counsel to the pursuit of their claims at all.

MCRC is a non-profit organization founded in 2000 by a group of consumer advocates to advance and protect the interests of Maryland consumers through research, education and advocacy. MCRC's members include individuals and organizations that support the interests of consumers. MCRC promotes policy reforms that protect Maryland consumers in numerous aspects, including curbing abuses by credit repair organizations. MCRC has an interest in this case because of the unjust consequences that would result from allowing the arbitrator's decision to stand despite the arbitrator's disregard of the remedy mandated by Congress in CROA.

The District Court accepted Civil Justice and the PJC as *amici* in this matter (MCRC did not seek to file an *amicus* brief in the District Court). Civil Justice, the PJC and MCRC offer a valuable perspective on the issues before the Court in this case. The proposed brief discusses the development of the manifest disregard standard as a meaningful check on arbitration awards that was necessary to permit arbitration agreements in contexts like this to be enforceable at all. Further, the attached brief explores the legislative history of MD. CODE, FIN. INST. § 12-918 (f) - Maryland's specific attempt to prohibit the exact business model employed by the Defendants-Appellees in this case. These topics are not explored in detail in the Plaintiffs-Appellants' briefing.

Civil Justice, the PJC and MCRC have no financial interest in this matter and are not being compensated for their participation in this matter. No party's counsel authored the brief in whole or in part. Thus, Civil Justice, the PJC and MCRC respectfully request that this motion for leave to file the accompanying brief as *amici curiae* in support of the Plaintiffs-Appellants and in support of reversal.

Date: December 29, 2014

Respectfully submitted,

/s/ Joseph Mack
Joseph Mack
CIVIL JUSTICE, INC.
520 W. Fayette Street
Suite 410
Baltimore, MD 21201
410-706-7985
jmack@civiljusticenetwork.org

CERTIFICATE OF SERVICE

This is to certify that on the 29th day of December, 2014, copies of this Motion of Civil Justice, Inc., Public Justice Center, Inc. and Maryland Consumer Rights Coalition, Inc. for Leave to File Brief as Amicus Curiae in Support of Plaintiffs-Appellants and in Support of Reversal, the Disclosure of Corporate Affiliations Statements and the proposed Brief were served via the Court's Electronic Filing System (ECF) and e-mail upon the following counsel of record:

Lawrence S. Greenwald
Catherine A. Bledsoe
Brian L. Moffet
GORDON, FEINBLATT LLC
223 East Redwood Street
Baltimore, MD 21202
lgreenwald@gfrlaw.com
cbledsoe@gfrlaw.com
bmoffet@gfrlaw.com

Attorneys for Defendants-Appellees

Peter A. Holland
THE HOLLAND LAW FIRM, P.C.
910 Town Centre Blvd., Ste 250
P.O. Box 6268
Annapolis, Maryland 21401
peter@hollandlaw.com

G. Oliver Koppell
John F. Duane
Daniel F. Schreck
THE LAW OFFICES OF G. OLIVER KOPPELL
& ASSOCIATES
99 Park Avenue, Ste. 330
New York, New York 10016

Joseph S. Tusa
TUSA P.C.
P.O. Box 566
53345 Main Road, Ste. 10-1
Southold, New York 11971

Gregory S. Duncan
GREGORY S. DUNCAN, ESQ.
412 Jefferson Street
Charlottesville, Virginia 22902

Attorneys for Plaintiffs-Appellants

/s/ Joseph Mack
Joseph S. Mack

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BRIEF OF *AMICI CURIAE* CIVIL JUSTICE, INC., PUBLIC JUSTICE CENTER, INC. AND MARYLAND CONSUMER RIGHTS COALITION, INC. IN SUPPORT OF PLAINTIFFS-APPELLANTS AND IN SUPPORT OF REVERSAL

JOSEPH S. MACK
CIVIL JUSTICE, INC.
520 W. FAYETTE ST., SUITE 410
BALTIMORE, MARYLAND 21201
(410) 706-7985

Counsel for Amici Curiae

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-2160 Caption: Jones v. Dancel

Pursuant to FRAP 26.1 and Local Rule 26.1,

Civil Justice, Inc.
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☐ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Joseph Mack Date: 12/29/2014

Counsel for: Civil Justice, Inc.

CERTIFICATE OF SERVICE

****

I certify that on December 29, 2014 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Joseph Mack
(signature)

December 29, 2014
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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No. 14-2160 Caption: Jones v. Dancel

Pursuant to FRAP 26.1 and Local Rule 26.1,

Public Justice Center, Inc.
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

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6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s Anna Jagelewski Date: December 19, 2014

Counsel for: Public Justice Center

CERTIFICATE OF SERVICE

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No. 14-2160 Caption: Jones v. Dancel

Pursuant to FRAP 26.1 and Local Rule 26.1,

Maryland Consumer Rights Coalition, Inc.
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

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If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Marceline White Date: 12/29/2014

Counsel for: MCRC

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/s/ Joseph Mack
(signature)

December 29, 2014
(date)

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A. STATEMENT OF INTEREST OF *AMICI*.

Civil Justice, Inc. ("Civil Justice") is a non-profit public interest legal association founded in 1998 for the purpose of increasing the delivery of legal services to clients of low and moderate income while supporting a statewide network of solo, small-firm and community-based lawyers who share a commitment to increasing access to justice. Civil Justice has represented hundreds of Maryland consumers individually, and thousands in public interest litigation, who have been victimized by predatory practices. Civil Justice has been accepted as *amicus curiae* in numerous cases in the Maryland Court of Appeals and the Fourth Circuit. *See, e.g.*, *Wells Fargo Home Mortgage Inc. v. Neal*, 398 Md. 705 (2007); *Poku v. Friedman*, 403 Md. 47 (2008); *Monmouth Meadows Homeowners Ass'n., Inc. v. Hamilton*, 416 Md. 325 (2010); *Capital Mortg. Bankers, Inc. v. Cuomo*, 222 F.3d 151 (4th Cir. 2000). Civil Justice and members of its network of attorneys regularly advise and represent consumers regarding credit counseling organizations such as the Defendants-Appellees (the "Defendants") in this case.

This litigation implicates the interests of Civil Justice in several respects. First, because Civil Justice and its members regularly advise consumers in connection with disputes with businesses that are subject to arbitration, Civil Justice has a great interest in maintaining meaningful review by courts of arbitrators' manifest disregard of the law. Second, as the arbitrator found, the

Defendants, all based in Maryland, made hundreds of millions of dollars from the Plaintiffs-Appellants (the "Plaintiffs") providing services in violation of the Credit Repair Organizations Act ("CROA"). As supporters and advocates of the rights of Maryland consumers, Civil Justice and its members have a great interest in seeing that when Congress provides consumers with an unambiguous remedy to deter violations, as it did here, then that remedy is enforced when defendants are found to have violated the law. Finally, as members of the consumer rights community in Maryland, Civil Justice is familiar with the specific Defendants in this case (which, as the arbitrator found, together acted as the largest credit counseling business in the nation). This familiarity includes details of Maryland's own attempts to curb the Defendants' business practices via legislation in 2003, discussed in detail below.

Public Justice Center, Inc. (the "PJC"), a non-profit civil rights and anti-poverty legal services organization founded in 1985, has a longstanding commitment to protecting the rights of Maryland consumers. The PJC has fought to protect consumer rights through legislative advocacy and through its Appellate Advocacy Project, which seeks to improve the representation of indigent and disadvantaged persons and their interests before state and federal appellate courts. The Appellate Advocacy Project has submitted or joined in briefs of *amicus curiae* in recent cases involving consumer credit and protection of the rights of consumers more generally. *See, e.g.*, *Monmouth Meadows Homeowners Ass'n, Inc., v. Hamilton*, 416 Md. 325 (2010); *Sweeney v. Savings First Mortg., LLC*, 388 Md. 319 (2005); *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 805 A.2d 1061 (2002); *Bell Atl. of Maryland, Inc. v. Intercom Sys. Corp.*, 366 Md. 1, 782 A.2d 791 (2001); *SunTrust Bank v. Goldman*, 201 Md. App. 390 (2011). In addition, the PJC has long pursued access to effective remedies for violations of consumer protection and other remedial legislation, including filing *amicus* briefs in *Friolo v. Frankel*, 438 Md. 304 (2014); *Anne Arundel Co. Bd. of Euc. v. Norville*, 390 Md. 93 (2005); *Edwards Systems Tech. v. Corbin*, 379 Md. 278 (2004). The PJC has an interest in this case because it threatens the ability of consumers to obtain meaningful relief on their claims and, in light of the attorney's fee award, it jeopardizes their ability to attract counsel to the pursuit of their claims at all.

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Civil Justice, the PJC and MCRC have no financial interest in this matter and are not being compensated for their participation in this matter. No party's counsel authored this brief in whole or in part.

B. INTRODUCTION.

The Defendants in this case, who together formed the largest credit repair organization in the nation, made hundreds of millions of dollars from the Plaintiffs by providing credit repair services that violated federal law specifically requiring certain disclosures to be made to consumers of those services. Congress, in establishing the law requiring the disclosures, included a remedy that requires the return of any amounts paid by consumers of the credit repair services that did not receive the required disclosures. Yet the arbitrator in this case, without citing any authority whatsoever, decided that because the payments from the Plaintiffs to the Defendants (although highly coerced) were styled as "voluntary," the payments could not be considered an "amount paid." To state the proposition is to refute it, as a "voluntary payment" is still an amount that is paid. Accordingly, the arbitrator's decision to disregard the clear language and intent of Congress meets the "manifest disregard" standard that will permit a court to vacate an arbitrator's award.

C. LEGAL AND FACTUAL OVERVIEW.

a. THE CREDIT REPAIR ORGANIZATIONS ACT.

The Credit Repair Organizations Act ("CROA"), 15 U.S.C. §§ 1679-1679j, was passed in 1996 to, among other things, "protect the public from unfair or deceptive advertising and business practices by credit repair organizations." 15 U.S.C. § 1679 (b)(2). Along with prohibitions on false or misleading statements and various other business practices, *see* 15 U.S.C. § 1679b, CROA requires credit repair organizations ("CROs") to provide a written statement to a consumer regarding various rights. 15 U.S.C. § 1679c. The text of the required written statement is set forth in the statute. *Id.*

CROA provides for a private cause of action against "[a]ny person who fails to comply with any provision of this subchapter with respect to any other person." 15 U.S.C. § 1679g (a). The damages, which the statute labels "actual damages," are the greater of:

> (A) the amount of any actual damage sustained by such person as a result of such failure; or
>
> (B) any amount paid by the person to the credit repair organization.

15 U.S.C. § 1679g (a)(1). The statute also provides for punitive damages (15 U.S.C. § 1679g (a)(2)), as well the payment of the costs and reasonable attorneys'

fees in a successful action to enforce the private cause of action (15 U.S.C. § 1679g (a)(3)).

CROA was initially introduced as H.R. 458, 100th Cong. (1987) by Rep. Frank Annunzio. As Rep. Annunzio stated, "H.R. 458 forces credit repair clinics to tell consumers the truth about their services up front." *Credit Repair Organizations Act: Hearing Before the Subcomm. on Consumer Affairs and Coinage of the Comm. on Banking, Fin., and Urban Affairs*, 100th Cong. 2 (1988) (statement of Rep. Annunzio). In a letter supporting H.R. 458, the Federal Trade Commission ("FTC") explained, regarding language in that bill providing damages for a private cause of action that was substantively identical to what is now 15 U.S.C. § 1679g (a)(1), that "[b]y providing consumers with a mechanism for recovering, at a minimum, the fees paid to a violative organization, this right of private action should help to make the statute self-enforcing." Letter from Daniel Oliver, Chairman of the FTC, to Rep. Annunzio (May 11, 1987) at p. 8, reproduced in *Credit Repair Organizations Act: Hearing Before the Subcomm. on Consumer Affairs and Coinage of the Comm. on Banking, Fin., and Urban Affairs*, 100th Cong. 178 (1988).

b. DEFENDANTS' BUSINESS MODEL.

As the arbitrator found, the companies at issue in this case together formed the largest credit repair organization in the nation. (JA 45, at ¶ 71). Defendants

Amerix Corporation ("Amerix"), 3C Incorporated ("3CI") and Careone Services, Inc. (together with Amerix and 3CI, the "For-Profit Companies") are part of an interconnected network of non-profit and for-profit companies organized by Defendant Dancel ("Dancel"). (JA 35, at ¶ 27). This complicated structure was necessitated because, like many other jurisdictions, Maryland law at the time prohibited "debt adjusting" unless performed by a narrow category of entities, including "[a] nonprofit… that offers debt management service exclusively for members, if a charge is not made and a fee is not imposed." MD. CODE, COMM. L. § 14-1316 (d) (2000 Replacement Volume and 2002 Supplement). *See also* PERMANENT SUBCOMM. ON INVESTIGATIONS, COMM. ON GOV'T AFFAIRS, UNITED STATES SENATE, PROFITEERING IN A NON-PROFIT INDUSTRY: ABUSIVE PRACTICES IN CREDIT COUNSELING 3 (March 24, 2004) ("most states require corporations to be non-profit in order to perform credit counseling services"). (DE 27-3).

The structure involved the For-Profit Companies marketing the credit repair services of several non-profit companies (collectively, the "Non-Profit Companies") – including Genus Credit Management Corporation ("Genus") and American Financial Services ("AFS")[1] – to consumers pursuant to Service Agreements that required the Non-Profit Companies to pay the For-Profit Companies a large percentage of any amounts received by the Non-Profit

[1] Plaintiffs settled their claims against the Non-Profit Companies in 2010 and 2011.

Companies from the consumers. (JA 40-41, at ¶¶ 47-55; JA 69-70, at ¶ 195). The consumers were brought to the Non-Profit Companies by the For-Profit Companies through advertising. (JA 45, at ¶ 68). Prior to 2002, Defendant Amerix, one of the For-Profit Companies, took out various print, television and internet advertisements for debt management services. (JA 45, at ¶ 23; JA 45, at ¶ 68). When the consumers called Amerix in response to the ads, Amerix employees would ask them detailed questions pursuant to a script about their financial condition and then, if the consumer was deemed an appropriate candidate for a debt management program, would create a debt management program contract between the consumer and one of the Non-Profit Companies. (JA 45, at ¶ 68). Many parts of the written scripts had to be strictly followed. (JA 46, at ¶ 72). Pursuant to the debt management program contracts, the consumer would agree to stop using their credit cards and would send a monthly payment to the Non-Profit Company. (JA 45, at ¶ 69). Amerix would then contact the consumer's creditors and seek agreements to reduce debt, reduce interest, or waive penalties, in exchange for which the Non-Profit Company would pay the creditor some of the money from the monthly payments being made by the consumer. *Id*.

In 2002, as a result of a corporate restructuring, the remaining For-Profit Companies took over various aspects of the role of Amerix in this structure. (JA 34-35, at ¶¶ 20-26). As noted in the arbitration award, for a substantial part of the relevant time period, all of these companies, including the Non-Profit Companies, operated out of the same building in Maryland. (JA 34-35, at ¶ 22).

As noted above, the For-Profit Companies made their money through Service Agreements with the Non-Profit Companies requiring the Non-Profit Companies to pay the For-Profit Companies a large percentage of the amounts received from or on behalf of the consumers. (JA 40-41, at ¶¶ 47-55; JA 69-70, at ¶ 195). There were two sources for such payments. First, the For-Profit Companies, during their contact with the consumers, "solicited so-called 'voluntary contributions' from the consumers." (JA 45, at ¶ 69). These were monthly payments of a set amount by the consumer that would be included in the monthly payments pursuant to the debt management program agreement with the Non-Profit Company. (JA 46, at ¶ 74). The arbitrator made the following findings regarding the script used by the For-Profit Companies in connection with this solicitation:

> The terminology and syntax are aggressive and appear to assume contributions would be made…. Amerix's employees were expected to try to collect contributions from the enrolling consumers. Voluntary contributions were not to be removed or lowered without negotiations. And the scripts stated that: "Eliminating or recusing the voluntary contributions should only be used as a last resort unless it is suggested by the client." And there were additional, similar exhortations to the employees to bring in the contributions.

(JA 69, at ¶ 192). The script was very successful; the arbitrator found that the "voluntary contributions" from Plaintiffs added up to between one and two hundred million dollars during the class period. (JA 46, at ¶ 74).

The second way the For-Profit Companies were paid was through "fair share" payments. (JA 69, at ¶ 195). The arbitrator found that these were incentive payments made by some creditors to encourage the debtor to enter into the debt management program, a portion of which would be retained by the Non-Profit Company and then largely forwarded on to the For-Profit Companies pursuant to the Service Agreements. *Id*. The arbitrator found that as high as 90% of the fair share payments retained by the Non-Profit Companies would be paid to the For-Profit Companies pursuant to the Service Agreements. *Id*. As the arbitrator noted, Defendant Amerix received $159,629,784.00 in fair share payments during the class period. (JA 56, at ¶ 124).

c. MARYLAND'S PROHIBITION OF DEFENDANTS' BUSINESS MODEL.

As noted in Plaintiffs' Brief, Maryland specifically addressed the solicitation of "voluntary payments" by credit repair organizations in 2003. MD. CODE, FIN. INST. § 12-918 (f). That legislation was passed in response to the discovery of the business practices of these Defendants by the Maryland General Assembly.

The legislation that produced MD. CODE, FIN. INST. § 12-918 (f) was cross-filed in the Maryland House of Delegates as HB 640 and in the Maryland State Senate as SB 339 in 2003. Delegate Elizabeth Bobo, one of the co-sponsors of HB 640, explained in her Statement on Debt Management regarding HB 640, which is included in the bill file in the Maryland Department of Legislative Services Library for HB 640, that she learned during a hearing the previous year that "many of these so-called nonprofit credit counseling services were nothing more than 'phone-booth' operations" where customers were passed on to "a profit-making organization." *See* Statement by Delegate Bobo on Debt Management – HB 640. (DE 27-4). She wrote that "[i]n testimony from some of the victims of this highly profitable scam, we found that outrageous 'voluntary' fees were demanded and often drove consumers further in debt than when they started." *Id*. As a result, Delegate Bobo proposed strengthening the bill to "prohibit soliciting or receiving voluntary contributions from consumers." *Id*. Delegate Bobo's Statement included an October 29, 2001 BusinessWeek article on credit repair organizations that highlighted the relationship between the non-profit companies and the for-profit companies, as well as the coercive and deceptive nature of the "voluntary payments" collected from consumers. *Id*. The article specifically mentions Defendants Dancel and Amerix, as well as Genus, by name. *Id*.

Accordingly, Plaintiffs are correct that Maryland specifically prohibited Defendants from requiring "voluntary payments" during a portion of the Class Period. *See* Plaintiffs' Brief at 37-38.

d. THE ARBITRATOR'S AWARD.

Over years of litigation, Plaintiffs were successful in proving that the Defendants were CROs under CROA and that they had violated CROA by failing to provide the mandatory disclosures to Plaintiffs. (JA 49, at ¶¶ 87, 91; JA 50, at ¶¶ 93, 95; JA 70-71, at ¶ 199). The arbitrator found that the Defendants' failures to provide the mandatory disclosures under CROA "denied hundreds and thousands of consumers the information and options that should have been given to them under the disclosure requirements of CROA." (JA 70, at ¶ 199). Nevertheless, the arbitrator refused to award any damages other than a modest (when compared to the hundreds of millions of dollars paid by Plaintiffs in the form of voluntary contributions and fair share payments) punitive damages award under 15 U.S.C. § 1679g (a)(2) of just under two million dollars. (JA 79-85)

In denying damages under 15 U.S.C. § 1679g (a)(1), the arbitrator first rejected Plaintiffs' argument that the "voluntary payments" were not, in fact, voluntary, concluding that because 8.55% of the Class never made a "voluntary payment" at all and 37.52% of the Class included "voluntary payments" in only some, but not all, of their monthly payments under the debt management programs, those payments were voluntary. (JA 69, at ¶ 193). Then, the arbitrator stated that because the payments were "not required," "they are not 'payments' under 15 U.S.C. § 1679a (3) nor under 15 U.S.C. § 1679g (a)(1), and are not damages." (JA 69, at ¶ 194). The arbitrator offered no additional analysis for how an amount paid as a "voluntary payment" could be excluded from "any amount paid" under 15 U.S.C. § 1679g (a)(1)(B).

Turning to fair share payments, the arbitrator ruled that the fair share payments, despite not being paid directly by the consumer, still constituted "payments" under 15 U.S.C. § 1679a (3). (JA 56, at ¶ 125). Nevertheless, the arbitrator refused to award the fair share payments as damages, concluding that, in contrast to the "voluntary contributions," the fair share payments could not be quantified on a debtor-by-debtor basis. (JA 70, at ¶ 197). Accordingly, the arbitrator found a failure of proof on this issue and denied using the fair share payments as a basis for a damages award. *Id*.

After the arbitrator made his awards, Plaintiffs petitioned for their attorneys' fees pursuant to 15 U.S.C. § 1679g (a)(3), which requires an award of costs and reasonable attorneys' fees in "any successful action to enforce any liability" under either of the damages provisions in 15 U.S.C. § 1679g (a). Plaintiffs sought $4,817,962.00 in attorneys' fees, representing $7,484,628.00 in total attorneys' fees, minus $2,666,666.00 that were awarded to Plaintiffs' counsel as part of a previous settlement with Genus and AFS in 2010 and 2011. (JA 87-88, at ¶ 1). The Plaintiffs further sought $338,172.48 in costs. *Id*. The arbitrator criticized the fee petition in several respects, including that "the amount obtained for the Class was far below what Class Counsel sought," (JA 91, at ¶ 9), and ultimately concluded that "a fair and equitable result" would be to reduce the requested legal fees by two-thirds. (JA 104, at ¶ 36). Accordingly, the arbitrator decided to award no attorneys' fees, concluding that two-thirds of the $7,484,628.00 in total attorneys' fees ($2,501,410.00) was less than the $2,666,666.00 that had been awarded in the 2010 and 2011 settlements as reasonable attorneys' fees. *Id*. Similarly, the arbitrator reduced the $338,172.48 in costs by two-thirds, leaving $112,724.16. (JA 91-92, at ¶ 37). The arbitrator then credited the amount left over from the $2,666,666.00 awarded as reasonable attorneys' fees in the 2010 and 2011 settlements after the $2,501,410.00 he found reasonable in the Fee Award (leaving $171,970.00) against the $112,724.16 in costs, and consequently awarded no costs. *Id*.

D. ARGUMENT.

a. THE HISTORY OF THE MANIFEST DISREGARD STANDARD.

Pursuant to the Federal Arbitration Act (the "FAA"), a U.S. District Court may vacate an arbitration award under several grounds, including "where the arbitrators exceeded their powers." 9 U.S.C. § 10. In addition to the grounds presented in that statute, there is a "common law ground for vacatur" when the arbitrator has engaged in "manifest disregard" of the law. *Wachovia Securities, LLC v. Brand*, 671 F.3d 472, 480-81 (4th Cir. 2012). "Manifest disregard" is present where "'(1) the applicable legal principle is clearly defined and not subject to reasonable debate; and (2) the arbitrator[ ] refused to heed that legal principle.'" *Id*. at 481 (quoting *Long John Silver's Rests., Inc. v. Cole*, 514 F.3d 345, 349-50 (4th Cir. 2008); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Jaros*, 70 F.3d 418, 421 (6th Cir. 1995)).

As recently explained by this Court, the origins of the manifest disregard standard "likely lie in dicta from the Supreme Court's decision in *Wilko v. Swan*, 346 U.S. 427 [ ] (1953)." *Brand*, 671 F.3d at 480. *Wilko*, which has since been overruled, presented the question of whether an arbitration provision in a margin agreement between a securities broker and its client could be enforced when the client alleged violations of the Securities Act of 1933 (the "Securities Act") against the broker. *Wilko*, 346 U.S. at 428. In ruling that such an arbitration provision was not enforceable, the majority opinion relied on language in the Securities Act prohibiting and voiding any agreement waiving compliance with any provision of the Securities Act. *Id*. at 434-35. The Court reasoned:

> Even though the provisions of the Securities Act, advantageous to the buyer, apply [in arbitration], their effectiveness in application is lessened in arbitration as compared to judicial proceedings. Determination of the quality of a commodity or the amount of money due under a contract is not the type of issue here involved. This case requires subjective findings on the purpose and knowledge of an alleged violator of the Act. They must be not only determined but applied by the arbitrators without judicial instruction on the law. As their award may be made without explanation of their reasons and without a complete record of their proceedings, the arbitrators' conception of the legal meaning of such statutory requirements as 'burden of proof,' 'reasonable care' or 'material fact' cannot be examined. Power to vacate an award is limited. While it may be true, as the Court of Appeals thought, that a failure of the arbitrators to decide in accordance with the provisions of the Securities Act would 'constitute grounds for vacating the award pursuant to section 10 of the Federal Arbitration Act,' that failure would need to be made clearly to appear. In unrestricted submission, such as the present margin agreements envisage, *the interpretations of the law by the arbitrators in contrast to manifest disregard are not subject, in the federal courts, to judicial review for error in interpretation*…. As the protective provisions of the Securities Act require the exercise of judicial direction to fairly assure their effectiveness, it seems to us that Congress must have intended [the relevant section of the Securities Act] to apply to waiver of judicial trial and review.

Id. at 435-37 (emphasis added and citations omitted). In other words, the *Wilko* majority refused to enforce an arbitration clause because judicial review for errors of law was only available where the arbitrator engaged in manifest disregard of the law. Indeed, the dissenting opinion argued that that the arbitration agreement in question would be enforceable on the basis that there would be even stronger judicial review, arguing that the failure of an arbitrator to follow the law would constitute a ground for vacating the award pursuant to the FAA and that "appropriate means for judicial scrutiny must be implied." *Id*. at 440 (Frankfurter, J., dissenting).

The Supreme Court's acceptance of arbitration has obviously changed significantly since 1953, but the Court has consistently identified the power of a court to vacate an arbitration award if the arbitrator engaged in manifest disregard of the law as a reason to allow an arbitration agreement to be enforced. *See 14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 269, n. 10 (2009) (rejecting the argument that an arbitration clause should not be enforced because judicial review is too limited by countering that "'[a]lthough judicial scrutiny of arbitration awards necessarily is limited, such review is sufficient to ensure that arbitrators comply with the requirements of the statute [at issue]'" (quoting *Shearson/American Express Inc. v. McMahon*, 482 U.S. 220, 232 (1987)); *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 32, n. 4 (1991) (same).

Thus, the U.S. Court of Appeals for the D.C. Circuit has specifically linked the "manifest disregard" standard to the Supreme Court's repeated insistence that meaningful review of an arbitrator's compliance with a statute is required, ruling that "the 'manifest disregard of law' standard must be defined in light of the bases underlying the Court's decisions" allowing arbitration of statutory causes of action.

Cole v. Burns Intern. Sec. Services, 105 F.3d 1465, 1487 (D.C. Cir. 1997). The D.C. Circuit reasoned:

> Two assumptions have been central to the [Supreme] Court's decisions in this area. First, the Court has insisted that, "'[b]y agreeing to arbitrate a statutory claim, a party does not forego the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum.'" *Gilmer*, 500 U.S. at 26 (alteration in original); see also *McMahon*, 482 U.S. at 229-30. Second, the Court has stated repeatedly that, "'although judicial scrutiny of arbitration awards necessarily is limited, such review is sufficient to ensure that arbitrators comply with the requirements of the statute' at issue." *Gilmer*, 500 U.S. at 32 n. 4 (quoting *McMahon*, 482 U.S. at 232). These twin assumptions regarding the arbitration of statutory claims are valid only if judicial review under the "manifest disregard of the law" standard is sufficiently rigorous to ensure that arbitrators have properly interpreted and applied statutory law.

Id. (some citations omitted and some citations altered to short-citation form). In summary, "manifest disregard" is a meaningful review of an arbitrator's decision, necessary to permit the enforceability of arbitration provisions regarding statutory claims in the first place.

Indeed, the Supreme Court has found "manifest disregard" in an arbitration panel's failure to apply the proper choice-of-law rules in interpreting an agreement. *Stolt-Nielsen SA v. AnimalFeeds Int'l Corp.*, 559 U.S. 662 (2010). In *Stolt-Nielsen*, an arbitration panel allowed a class arbitration to go forward in a maritime case where the arbitration agreement was silent on the issue of class arbitration.

Id. In making its decision, the arbitration panel refused to consider the customs and usage in the maritime trade in interpreting the arbitration agreement, in contradiction of choice-of-law rules. *Id*. at 673. The petitioners in the arbitration in that case had argued, among other things, that class arbitration should be permitted as a matter of public policy. *Id*. at 672. The Court determined that:

> Because the parties agreed their agreement was "silent" in the sense that they had not reached any agreement on the issue of class arbitration, the arbitrators' proper task was to identify the rule of law that governs in that situation. Had they engaged in that undertaking, they presumably would have looked either to the FAA itself or to one of the two bodies of law that the parties claimed were governing, *i.e.*, either federal maritime law or New York law. But the panel did not consider whether the FAA provides the rule of decision in such a situation; nor did the panel attempt to determine what rule would govern under either maritime or New York law in the case of a "silent" contract. Instead, the panel based its decision on post-[*Green Tree Financial Corp. v. Bazzle*, 539 U.S. 444 (2003)] arbitral decisions that "construed a wide variety of clauses in a wide variety of settings as allowing for class arbitration."

Id. at 673 (quoting the arbitrators' decision). The Court then highlighted how the arbitration panel disregarded evidence that the arbitration agreement in question had never been held to permit class arbitration before and ignored expert testimony that "sophisticated, multinational commercial parties of the type that are sought to be included in the class would never intend that the arbitration clauses would permit a class arbitration." *Id*. at 674. The Court vacated the arbitrators' decision, concluding that "instead of applying a rule or decision derived from the FAA or either maritime or New York law, the arbitration panel imposed its own policy choice and thus exceeded its powers." *Id*. at 676-77. The Court also ruled, "[a]ssuming, *arguendo*, that the ['manifest disregard'] standard applies, we find it satisfied for the [same reasons.]" *Id*. at 672, n. 3.

Similarly, this Court found manifest disregard by an arbitrator in *Patten v. Signator Ins. Agency, Inc.*, 441 F.3d 230 (4th Cir. 2006). There, an arbitrator, when faced with a more recent arbitration agreement that provided no time limitation on requesting arbitration, imposed a one-year limitations period that was contained in a previous arbitration agreement between the parties. *Id*. at 233. The previous agreement had been superseded by the more recent arbitration agreement, however. *Id*. When confronted with the lack of a time limit in the more recent arbitration agreement, the arbitrator ruled that it "necessarily contain[ed] an implied term limit" and looked to the superseded arbitration agreement for "guidance." *Id*. (quoting the arbitrator's decision). Consequently, the arbitrator adopted the superseded agreement's one-year limitations period and dismissed the petitioner's complaint, which was filed fourteen months after the dispute arose. *Id*. The petitioner filed an action in the U.S. District Court for the District of Maryland requesting that the arbitration award be vacated, which was denied. *Patten v. Signator Insurance*, No. 02-1745 (D. Md. Jan. 4, 2005). This Court reversed, finding that:

> the arbitrator disregarded the plain and unambiguous language of the governing arbitration agreement when he concluded that it included an implied one-year limitations period. In so doing, the arbitrator acted in manifest disregard of the law and failed to draw his award from the essence of the agreement.

Patten, 441 F.3d at 235.

This Court also found manifest disregard in *Dewan v. Walia*, 544 Fed. Appx. 240 (4th Cir. 2013). That case involved an arbitrator's decision that a release, which "release[d] and discharge[d]" an employer from claims relating to the employee's job, only applied to tort and contractual claims filed in court and not claims made in arbitration. *Id*. at 247. This Court concluded that, because the release did not impose any qualifications concerning the forum where the released claims were being presented, "neither linguistic gymnastics, nor a selective reading of Maryland contract law, could support [the arbitrator's] conclusion that the Release was enforceable but that [the employee's] claims were arbitrable anyway." *Id*. at 248. This Court stated that "[o]bjectively viewed, the language of the Release could not be more expansive, clear, or unambiguous." *Id*. Accordingly, the court held that the arbitrator manifestly disregarded the law by allowing the employee to pursue the released claims in arbitration. *Id*.

b. THE ARBITRATOR'S REFUSAL TO AWARD ANYTHING OTHER THAN PUNITIVE DAMAGES IN THIS CASE CONSTITUTED MANIFEST DISREGARD OF CROA.

As can be seen in *Stolt-Nielsen*, *Patten* and *Dewan*, the "manifest disregard" standard provides meaningful review of arbitration. The arbitrator's decision in this case is far more egregious than those determinations ruled to be "manifest disregard" in *Stolt-Nielsen* and *Patten*, and equals the arbitrator's decision that was vacated in *Dewan* for its disregard of unambiguous language. In contrast to the attempts to form reasonable rules in the absence of clear controlling authority that were vacated in *Stolt-Nielsen* and *Patten*, the arbitrator in this case disregarded the unambiguous language of CROA's damages remedy. The arbitrator was fully aware of the applicable law, even mentioning his "concern of a disproportionate award." *See* Final Hearing Tr. at 4912:10-12, attached hereto in relevant part as Exhibit 3. Nevertheless, like the arbitrator's decision that was vacated in *Dewan*, the arbitrator in this case took language that was clear and unambiguous and imposed additional qualifications not found in the language of the statute. Accordingly, the arbitrator's award regarding actual damages under CROA should be vacated.

i. THE APPLICABLE LEGAL PRINCIPLE IS CLEARLY DEFINED AND NOT SUBJECT TO REASONABLE DEBATE.

Congress could not have been clearer about the damages remedy in 15 U.S.C. § 1679g (a)(1)(B). The damages, which the statute labels "actual damages," are the greater of:

> (A) the amount of any actual damage sustained by such person as a result of such failure; or
>
> (B) any amount paid by the person to the credit repair organization.

15 U.S.C. § 1679g (a)(1). There is no qualification regarding "any amount paid" that suggests that voluntary contributions could be excluded. As noted in *F.T.C. v. Gill*, 265 F.3d 944, 958 (9th Cir. 2001), 15 U.S.C. § 1679g (a)(1)(B) applies once it is determined that the defendant is a CRO and that "the CRO violated any provision of the CRO Act." Accordingly, that court confirmed that "[i]n the absence of proof of 'actual damages,' the court properly used the amounts consumers paid as the basis for the amount Defendants should be ordered to pay for their wrongdoing." *Id*.

The arbitrator here concluded that the Defendants were CROs and violated CROA. As is made clear by its plain language, 15 U.S.C. § 1679g (a)(1)(B) requires that "any amounts paid" be awarded for Defendants' wrongdoing, regardless of whether those amounts paid can be characterized as "voluntary" or not.

ii. THE ARBITRATOR WAS AWARE OF THE APPLICABLE LAW AND FAILED TO HEED IT.

There can be no question that the arbitrator was aware of the remedy required by 15 U.S.C. § 1679g (a)(1)(B). First, he explicitly mentioned the statute in his strained interpretation in his award. (JA 68-699, at ¶¶ 191-94). Second, the transcript of the arbitration hearing confirms that he was clearly aware of the statute, as well as the potential "disproportionate award" that its remedy would require if he found that the Defendants violated CROA. The arbitrator's "linguistic gymnastics," see *Dewan*, 544 Fed. Appx. at 248, in adding qualifications to the plain language of the statute constituted manifest disregard of the law.

During the Hearing, the arbitrator engaged in a discussion with counsel for the Defendants regarding the potential for what the arbitrator labeled to be the "concern of a disproportionate award" if he found the Defendants to have violated CROA and that the "members are entitled to reimbursement for the amounts that they paid to the CROAs -- the CROs." (DE 27-5 at 4912:1-12). Defendants' counsel responded to the arbitrator's concern as follows:

> [W]here you have 475,000-some-odd people and you have an amount attributable to each, which is what we put on hold for what we think is going to be in the range of $150 million and

> which even they have said is going to cause us to go insolvent, I think the concern comes very much into play.

(DE 27-5 at 4913:8-14).

The arbitrator renewed his concern of a "disproportionate" award in a later colloquy with Plaintiffs' counsel, at which point Plaintiffs' counsel stated: "[t]he remedy is alternatively a dollar-for-dollar return of monies paid for a violation of any provision in the statute or actual damages, whichever is greater." (DE 27-5 at 4954:14-18). The arbitrator and Plaintiffs' counsel then discussed CROA's remedy for some time, including, at one point, Plaintiffs' counsel specifically reading 15 U.S.C. § 1679g (a)(1) into the record. (DE 27-5 at 4953-63). A little later, the following colloquy regarding the damages measure occurred between the arbitrator and Mr. Koppell, one of Plaintiffs' attorneys:

> THE ARBITRATOR: Well, it's monies paid for services under the statute.
>
> MR. KOPPELL: No. Your Honor, may I read from the statute?
>
> THE ARBITRATOR: Sure.
>
> MR. KOPPELL: Just one sentence. It says here, The actual damages, the greater of -- and the first is actual damages -- and then it says, Any amount paid by the person to the credit repair organization.
>
> THE ARBITRATOR: That doesn't answer my question.
>
> MR. KOPPELL: Yes, amount paid. It doesn't say whether it's voluntarily paid or involuntarily paid. It says any amount paid. That's Mr. Tusa's [another of Plaintiffs' counsel] point.
>
> THE ARBITRATOR: It doesn't -- it says, Receive money or other value of consideration for the performance of any service

> which the organization has agreed to perform. So it's not just any money coming in. It's got to be more of a causal connection. One, it has to be a payment; and, two, it has to be for service rendered under CROA, doesn't it?
>
> [DEFENDANTS' COUNSEL]: Which section?
>
> THE ARBITRATOR: I'm reading prohibited practices.
>
> MR. GREENWALD: Wait, wait, please. What did you say?
>
> THE ARBITRATOR: Prohibited practices.
>
> MR. TUSA: We're reading from two different sections, I believe.
>
> THE ARBITRATOR: That's right.
>
> MR. KOPPELL: What it says is that there has to be a payment of money or other valuable consideration, but the damage provision says any amount paid, whether it's paid voluntarily or not.
>
> THE ARBITRATOR: I'm talking about jurisdiction under CROA rather than damages. I'm just trying to find out what your view is.

(DE 27-5 at 4971:9-4973:5).

Accordingly, there is no question that the arbitrator was fully aware of the law and understood that the damages remedy under CROA was broader than the definitional section for determining when CROA applied. Even though he was concerned with the "disproportionate award" such a conclusion would require, the arbitrator could not add requirements to the plain language of the statute to avoid it. As was made entirely clear to the arbitrator during the hearing, a "voluntary payment" is still "an amount paid," and thus is still damages under 15 U.S.C. § 1679g (a)(1)(B). (DE 27-5 at 4970:17-18 ("[a] payment of money is a payment of money")). Accordingly, the arbitrator's refusal to heed the plain and unambiguous language of 15 U.S.C. § 1679g (a)(1)(B), of which he was fully aware, constituted manifest disregard.[2]

c. THE ARBITRATOR'S RULING REGARDING ATTORNEYS' FEES SHOULD ALSO BE VACATED.

For the reasons stated more fully in Plaintiffs' Brief, the arbitrator's ruling regarding attorneys' fees and costs should also be vacated. 15 U.S.C. § 1679g (a)(3) provides that costs and reasonable attorneys' fees "shall" be awarded in "any successful action to enforce any liability" under either of the damages provisions in 15 U.S.C. § 1679g (a). As the Supreme Court has stated, such fee-shifting statutes reflect Congress's decision to "rely heavily on private enforcement to implement public policy and to allow counsel fees so as to encourage private litigation." *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 263 (1975). *See also Roger E. Herst Revocable Trust v. Blinds to Go (U.S.) Inc.*, No. ELH–10–3226, 2011 WL 6444980 at *10 (D. Md. Dec. 20, 2011) ("the very purpose of statutory fee-shifting provisions is to advance the public interest served by the

[2] For the reasons explained more fully in Plaintiffs' Brief, the arbitrator's refusal to award fair share payments as damages under 15 U.S.C. § 1679g (a)(1)(B) also constituted manifest disregard of the law. As noted there, the arbitrator seized on the failure to identify fair share payments on a debtor-by-debtor basis as the reason the fair share payments could not form the basis for an award. However, the arbitrator had specifically noted that he would allow additional evidence to be provided on damages after his final ruling, and denied Plaintiffs the opportunity to develop the relevant facts.

statutes in question, by providing incentives to attorneys to take on cases that otherwise would not generate income”).

The arbitrator’s failure to award Plaintiffs any attorneys’ fees for the years of litigation against Defendants after the 2010 and 2011 settlements and after Plaintiffs’ success in establishing that Defendants violated CROA constituted manifest disregard of the fee-shifting required by 15 U.S.C. § 1679g (a)(3). At a minimum, because the arbitrator’s manifest disregard regarding damages played a large role in his decision to severely reduce the attorneys’ fees requested by Plaintiffs, his attorneys’ fees award was also a product of that manifest disregard. Further, as explained in more detail by Plaintiffs, the arbitrator’s decision to credit the previously awarded attorneys’ fees from the 2010 and 2011 settlements (fees that were deemed reasonable fees incurred litigating against Genus and AFS as of the dates of those settlements) against the attorneys’ fees and costs incurred by Plaintiffs in continuing the arbitration against Defendants in the years after that settlement, constituted manifest disregard of the applicable legal principles.

E. CONCLUSION.

For the forgoing reasons, *Amici Curiae* respectfully request that the District Court’s decision in this matter be reversed and that the arbitrator’s ruling be vacated.

Date: December 29, 2014

Respectfully submitted,

/s/ Joseph Mack

Joseph Mack
Civil Justice, Inc.
520 W. Fayette Street
Suite 410
Baltimore, MD 21201
410-706-7985
jmack@civiljusticenetwork.org

Counsel for Amici Curiae

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 14-2160 **Caption:** Jones v. Dancel

CERTIFICATE OF COMPLIANCE WITH RULE 28.1(e) or 32(a)

Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. **Type-Volume Limitation:** Appellant's Opening Brief, Appellee's Response Brief, and Appellant's Response/Reply Brief may not exceed 14,000 words or 1,300 lines. Appellee's Opening/Response Brief may not exceed 16,500 words or 1,500 lines. Any Reply or Amicus Brief may not exceed 7,000 words or 650 lines. Counsel may rely on the word or line count of the word processing program used to prepare the document. The word-processing program must be set to include footnotes in the count. Line count is used only with monospaced type.

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(s) Joseph Mack

Attorney for Amici Curiae

Dated: December 29, 2014

CERTIFICATE OF SERVICE

This is to certify that on the 29th day of December, 2014, a copy of this Brief of *Amici Curiae* Civil Justice Inc., Public Justice Center, Inc. and Maryland Consumer Rights Coalition, Inc. in Support of Plaintiffs-Appellants and in Support of Reversal was served via the Court's Electronic Filing System (ECF) and e-mail upon the following counsel of record:

Lawrence S. Greenwald
Catherine A. Bledsoe
Brian L. Moffet
GORDON, FEINBLATT LLC
223 East Redwood Street
Baltimore, MD 21202
lgreenwald@gfrlaw.com
cbledsoe@gfrlaw.com
bmoffet@gfrlaw.com

Attorneys for Defendants-Appellees

Peter A. Holland
THE HOLLAND LAW FIRM, P.C.
910 Town Centre Blvd., Ste 250
P.O. Box 6268
Annapolis, Maryland 21401
peter@hollandlaw.com

G. Oliver Koppell
John F. Duane
Daniel F. Schreck
THE LAW OFFICES OF G. OLIVER KOPPELL
& ASSOCIATES
99 Park Avenue, Ste. 330
New York, New York 10016

Joseph S. Tusa
TUSA P.C.
P.O. Box 566
53345 Main Road, Ste. 10-1
Southold, New York 11971

Gregory S. Duncan
GREGORY S. DUNCAN, ESQ.
412 Jefferson Street
Charlottesville, Virginia 22902

Attorneys for Plaintiffs-Appellants

/s/ Joseph Mack
Joseph S. Mack

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

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No. 14-2160 Caption: Jones v. Dancel

Pursuant to FRAP 26.1 and Local Rule 26.1,

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1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☐NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Joseph Mack Date: 12/29/2014

Counsel for: Civil Justice, Inc.

CERTIFICATE OF SERVICE

****

I certify that on December 29, 2014 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Joseph Mack
(signature)

December 29, 2014
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-2160 Caption: Jones v. Dancel

Pursuant to FRAP 26.1 and Local Rule 26.1,

Public Justice Center, Inc.
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☐ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s Anna Jagelewski Date: December 19, 2014

Counsel for: Public Justice Center

CERTIFICATE OF SERVICE

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I certify that on December 29, 2014 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Joseph Mack
(signature)

December 29, 2014
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 14-2160 Caption: Jones v. Dancel

Pursuant to FRAP 26.1 and Local Rule 26.1,

Maryland Consumer Rights Coalition, Inc.
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☐ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Marceline White Date: 12/29/2014

Counsel for: MCRC

CERTIFICATE OF SERVICE

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I certify that on December 29, 2014 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Joseph Mack
(signature)

December 29, 2014
(date)