

NO. 17-CI-005454

JEFFERSON COUNTY CIRCUIT COURT  
DIVISION TWELVE (12)

SCOTT O'LOUGHLIN and  
STEFAN GEARHART, Individually  
and on behalf of all others similarly situated,

PLAINTIFFS

v.

**ELECTRONICALLY FILED**

DAVE'S TOWING SERVICE, INC.,

DEFENDANT

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**FIRST AMENDED CLASS ACTION COMPLAINT**

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Come the Plaintiffs, Scott O'Loughlin and Stephan Gearhart, individually and on behalf themselves and all others similarly situated, and for their First Amended Class Action Complaint against the Defendant, Dave's Towing Service, Inc., state as follows:

**INTRODUCTION**

1. This is a class action filed pursuant to Ky. R. Civ. 23 seeking monetary damages, injunctive relief, reasonable attorney's fees, and all other relief available pursuant to the Kentucky Consumer Protection Act KRS § 367.110, *et. seq.*, and Louisville Metro's Private Tow Operator Ordinance, Louisville Code § 115.450, *et. seq.*

2. Plaintiffs bring this action on behalf of themselves and all similarly situated individuals who paid vehicle impound fees to the Defendant and under circumstances which Defendant either: (1) failed to contact the Louisville Metro Police Department prior to towing the vehicle in accordance with Louisville Code Section 115.455 (A); (2) failed to contact the Jefferson County Clerk's Office in accordance with Louisville Code Section 115.455 (B); or (3)

failed to notify such person that his vehicle had been towed in accordance with Louisville Code Section 114.455 (C).

### **JURISDICTION AND VENUE**

3. Plaintiffs, and all other similarly situated, seek actual damages from Defendant pursuant to Louisville Code Sections 115.453 and 459, and KRS 367.220 (hereinafter the “KCPA”). As Louisville, Jefferson County, Kentucky is the residence of the Defendant to this action and location of all acts pertinent to this suit, venue is proper in this Court.

### **NATURE OF DEFENDANT’S CONDUCT COMMON TO ALL CLASS MEMBERS**

4. Louisville/Jefferson County Metro has the power to govern itself through the enactment of codes and resolutions. Ky. Const. 156b and KRS 83.420. One such set of codes concerns the operations of private tow operators. Lou. Metro Ord. Sections 115.450 *et seq.* Taken together, these codes set forth the conditions under which private tow operators can lawfully seize, transport, store, and release a vehicle. These codes also provide that a vehicle owner may recover damages from a private tow operator for any violation. In this case, Plaintiffs and Class members had their vehicles towed, stored, and released in violation of these ordinances and are therefore entitled to recover damages as stated therein.

5. Upon information and belief, Defendant’s failure to notify the various governmental entities and individuals are required by Louisville’ Private Tow Operator Ordinance has regularly occurred and continues to occur and there are hundreds of members of this class. There are questions of law and fact in this case that are common to all members of this class. Plaintiffs’ claims are typical of those of the respective class, and they will fairly and adequately protect the interests of the class.

6. Upon information and belief, the Defendant and stored at a storage yard owned or operated by Defendant (or its agents) under circumstances which Defendant either: (1) refused to maintain an attendant, a telephone contact, or release the vehicle within the time period specified in Lou. Met. Ord. § 115.457 (A); or (2) refused to accept commercially reasonable tender for the costs of towing and storage, including credit cards, in accordance with Lou. Met. Ord. § 115.457 (B). Further, the Defendant consistently (1) failed to contact the Louisville Metro Police Department prior to towing the vehicle in accordance with Louisville Code Section 115.455 (A); (2) failed to contact the Jefferson County Clerk's Office in accordance with Louisville Code Section 115.455 (B); or (3) failed to notify such person that his vehicle had been towed in accordance with Louisville Code Section 114.455 (C).

7. Defendant engaged in the conduct described above with full knowledge of the applicable Louisville Code Sections. The offenses described below resulted from the intentional violation of these Code Sections. Defendant's conduct was intentional or grossly negligent, or indicated active malice toward Plaintiffs and the class or at least a total and reckless disregard for and indifference to their rights, justifying an award of punitive damages in addition to the actual damages which Plaintiffs and the class are entitled to recover. In addition, because Defendant's conduct violated the KCPA, Plaintiffs and class members may recover punitive damages and an award of reasonable attorney's fees from Defendant.

#### **FACTUAL BASIS OF PLAINTIFFS' CLAIMS**

8. On or about June 11, 2017, Plaintiff, Scott O'Loughlin, was parked in the parking lot of his condominium complex located at 3320 Bardstown Road, Louisville, Jefferson County, Kentucky. At approximately 9:00 a.m. Mr. O'Loughlin was notified that Defendant was in the process of towing his vehicle. Mr. O'Loughlin approached Defendant's employee while his

vehicle was still in the parking lot and requested that said employee not tow his vehicle. Defendant's employee stated that it would cost \$75.00 to "drop" his vehicle, but that he accepted cash only. Mr. O'Loughlin didn't have \$75.00 cash, so Defendant's employee towed the vehicle to Defendant's storage yard on Poplar Level Road, Jefferson County, Kentucky. Upon information and belief, Defendant did not contact the Louisville Metro Police Department via telephone prior to towing Mr. O'Loughlin's vehicle. Mr. O'Loughlin contacted Defendant's storage yard and advised that he would retrieve his vehicle that afternoon. At approximately 2:30 p.m., Mr. O'Loughlin arrived at Defendant's storage yard but no one was present. Mr. O'Loughlin contacted Defendant via telephone, and was told that he must wait until the following day to retrieve his vehicle. The next day, Mr. O'Loughlin again attempted to retrieve his vehicle but was told that Defendant did not accept credit cards. Finally, on June 13, 2017 Plaintiff's vehicle was released after payment of \$213.00 cash.

9. On or about Saturday, August 19, 2017 Plaintiff, Stefan Gearhart, was parked in the parking lot at Sergio's World of Beers on Frankfort Avenue. After approximately 30 minutes, Plaintiff saw that his vehicle was being towed by one of Defendant's employees. Plaintiff contacted Defendant via telephone and requested that the tow driver stop and bring his vehicle back and he would pay the charge. Defendant rudely denied the request. Plaintiff thus advised that he would need to get a ride to Defendant's storage yard and would be there as soon as possible. Approximately two hours later, Plaintiff arrived at Defendant's storage yard on Poplar Level Road, but no one was present. Plaintiff called Defendant and stated that he was at the storage yard and needed his vehicle released. After yet another unpleasant conversation, and approximately one-half hour later, one of Defendant's employees arrived. When Plaintiff attempted to pay for the charges via credit card, Defendant's employee refused to accept it,

stating that Defendant's policy was to accept cash only. Ultimately, Plaintiff was taken to an ATM to get cash and his vehicle was released upon cash payment.

### CLASS ACTION ALLEGATIONS

10. Plaintiffs bring this action as a class action pursuant to Kentucky Civil Rule of Civil Procedure 23 upon the following class of similarly situated persons:

**All individuals who paid impound fees to the Defendant for the release of vehicles that were towed and/or impounded by Defendant in Jefferson County, Kentucky from June 11, 2012 to November 16, 2021.**

11. Plaintiffs will fairly and adequately protect the interests of all class members. Plaintiffs were damaged financially by Defendant's unlawful conduct and they will aggressively pursue the interests of the entire class. Plaintiffs' interest in obtaining actual and punitive damages for Defendant's violations of the Louisville Codes are consistent with and not antagonistic of those of any other person within the class.

12. They are members of the class and their claims are typical of the claims of all class members because liability their liability arises from improper impound fees they paid to the Defendant.

13. The Defendant impounded hundreds, if not thousands, of vehicles during the class period making the number of Class Members so numerous that joinder into a single action is impossible.

14. Given the circumstances of their treatment, as detailed below, Plaintiffs allege, on information and belief, that Defendants have regularly and routinely violated the Louisville Code Sections as heretofore set forth in this Class Action Complaint. The only question that remains to

be resolved is whether Plaintiffs and the members of the class are entitled to an award of compensatory and punitive damages and, if so, the extent of such an award.

15. A myriad of questions are common to Plaintiffs and class members including, but not limited to:

- a. Whether the Defendant's ability to impound fees is contingent upon compliance with Lou. Metro Ord. Sections 115.450 *et seq.*;
- b. Whether the Defendant reported each vehicle impound it conducted to the Jefferson County Clerk's Office during the class period;
- c. Whether there was an attendant present on the Defendant's property to accept impound fees at all times during the class period and;
- d. What methods of payment the Defendant accepted for impound fees during the class period.

16. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because:

- a. A multiplicity of suits with consequent burden on the Courts and Defendant should be avoided;
- b. It would be virtually impossible for all class members to intervene as parties-plaintiffs in this action;
- c. Upon adjudication of Defendant's liability, claims of the class members can be determined by this Court.

17. Plaintiffs and Class members had their vehicles towed within the boundaries of Louisville, Jefferson County, Kentucky.

18. The Defendant was, at all times mentioned herein, responsible for adhering to the Louisville Code Sections applicable to towing, impounding, and releasing motor vehicles. Because of this, the claims of Plaintiffs and Class Members are derived from a common nucleus of operative facts and common questions of law and fact will predominate over individual questions as trial.

**CAUSES OF ACTION****A. Count I****Violations of Louisville Code Sections**

19. Paragraphs 1-18 above are incorporated herein by reference and made this Paragraph 19.

20. Defendant's conduct, described above, violated one or more of the following Louisville Code Sections:

**A. Section 115.455. NOTIFICATION TO POLICE, JEFFERSON COUNTY CLERK'S OFFICE AND REGISTERED OWNER REQUIRED**

(A) Prior to towing any vehicle from a private parking lot, a private tow operator shall contact Louisville Metro Police Department via telephone at (502) 574-5673 and provide the information as set forth in subsections (A)(1) through (A)(5), below. Louisville Metro Police Department will advise the private tow operator to either proceed with the tow or to leave the vehicle for the Louisville Metro Police Department to investigate. Private tow operators towing a vehicle located in a suburban city within Jefferson County that operates its own police department should also notify the suburban city police authority. This notification shall include:

- (1) The make, model and vehicle identification number of the vehicle to be towed;
- (2) The license number and state of issuance of the license plate;
- (3) The location where the tow is to occur;
- (4) The location of the private tow company storage yard where the towed vehicle will be taken; and
- (5) The telephone number of the private tow operator.

(B) Within one hour of the towing of any vehicle by a private tow operator from a private parking lot, the private tow operator shall notify the Jefferson County Clerk's Office with similar information as set out in subsections (A)(1) through (A)(5), above, except, in subsections (A)(3) and (A)(4), the private tow operator shall set forth the time and location from where the vehicle was towed, and the location of the private tow company storage yard where the vehicle was taken. After receiving the notification as set forth in subsection (A)(1), above, the Jefferson County Clerk's Office will, in turn, notify the private tow operator of the name and address of the registered owner of the towed motor vehicle as soon as reasonably practicable. The private tow operator shall be responsible to pay such fees for the aforementioned information in subsection (A)(1), above, to the Jefferson County Clerk's Office pursuant to its agreement with Metro Government. If the Jefferson County Clerk is unable to provide the information as set forth in subsection (A)(1), above, then the

private tow operator shall contact the Commonwealth of Kentucky Transportation Cabinet to obtain such information in accordance with KRS 376.275.

(C) Private tow operator shall notify the registered owner of the motor vehicle by registered mail to the name and address obtained from the Jefferson County Clerk's Office. Private tow operators must also comply with state notification requirements under KRS 376.275.

#### B. Section 115.456. OWNER'S AUTHORIZATION FOR TOWING REQUIRED

(A) No private tow operator shall remove a vehicle from a private parking lot unless the owner of the private parking lot, or said owner's authorized agent, signs a contemporaneous specific written authorization for such removal. The said written authorization shall include the following:

- (1) The make and model of the vehicle to be towed;
- (2) The license number and state of issuance of the license plate of the vehicle to be towed;
- (3) The location of the private parking lot from which the vehicle is to be towed;
- (4) The signature and printed name of the person authorizing the towing;
- (5) A written statement indicating the date and time of the authorization, that the person authorizing the tow is the owner of the private parking lot, or his or her authorized agent, and that said owner or authorized agent is not the employee of any tow operator; and
- (6) A written statement indicating why the motor vehicle was parked in a manner inconsistent with posted instructions and subject to tow.

#### C. Section 115.457. STORAGE YARD REQUIREMENTS

Any private tow operator that removes a vehicle pursuant to §§ 115.450 through 115.457 shall:

(A) Provide at the storage yard either an attendant who is on site 24 hours per day, seven days per week, to return vehicles to the owner, operator, driver or authorized designee thereof, upon the payment of towing and storage charges, or provide a conspicuously located and well lighted sign at the storage yard which gives the telephone number where the owner, manager, or attendant of the storage yard may be reached at any time 24 hours per day, seven days per week, so that a towed vehicle may be reclaimed in a minimum amount of time, not to exceed one hour; and

(B) Release a towed vehicle to the owner, operator, driver, or authorized designee thereof, upon the presentation of commercially reasonable tender sufficient to cover the costs of towing and storage authorized by this subchapter. Commercially reasonable tender shall include, without limitation, cash and credit cards.

21. As a result of the foregoing, Plaintiffs and their class are entitled to damages against Defendant as stated in Louisville Code Section 115.453.

**B. Count II**

**Violations of Kentucky's Consumer Protection Act**

22. Paragraphs 1-21 above are incorporated herein by reference and made this Paragraph 22.

23. Plaintiffs and their class purchased "services," from Defendant, *i.e.* the towing, storage and release of their respective vehicles.

24. Plaintiffs were compelled to purchase these "services" notwithstanding Defendant's violations of the Louisville Code Sections as described in this Class Action Complaint.

25. As a result of Defendant's knowing violations of the Louisville Code Sections described in this Class Action Complaint, Plaintiffs suffered actual money damages, including, but not limited to the cost of the tow, storage, and release of their respective vehicles.

26. Defendant's conduct described herein violated the KCPA.

27. Plaintiffs are entitled to recover damages, including punitive damages, from Defendant as a result of its violation of the KCPA.

**WHEREFORE,** Plaintiffs and the class they represent request (a) that this action proceed as a class action under Kentucky Rule of Civil Procedure 23 and (b) a trial by jury, and further request that they and all members of the class (c) be awarded actual and punitive damages, and (d) be awarded their costs, attorney fees, pre- and post-judgment interest and all other relief to which they are entitled under law or in equity.

Respectfully submitted,

**SATTERLY & KELLEY, PLLC**

/s/ Sean A. McCarty (w/permission)

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CASE NO. 17-CI-005454

JEFFERSON CIRCUIT COURT  
DIVISION TWELVE (12)  
JUDGE SUSAN SCHULTZ GIBSON

SCOTT O’LOUGHLIN, et.al., Individually  
And on behalf of all others similarly situated

PLAINTIFFS

v.

ORDER

DAVE’S TOWING SERVICE, INC.

DEFENDANT

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Motion having been made, the parties having been heard and the Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Plaintiff shall have leave to file the attached First Amended Complaint.

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JUDGE DATE  
JEFFERSON CIRCUIT COURT

Distributed to:

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