

Cherokee Nation Code Annotated
Title 12: Civil Procedure
Chapter 2: Unfair and Deceptive Practices
§ 29. Remedies and procedures
Cite as: 12 CNCA § 29

In addition to the specific remedies above, the below remedies shall also govern:

A. Any person who engages, has engaged, or proposes to engage in violations of this Act shall be liable for each violation, which shall be assessed and recovered in a civil action. The number of violations shall be computed based upon each item sold, each marketing material distributed and each prescription filled in violation of this Act. A single act may result in multiple violations of the CNUDPA. Penalties shall be cumulative for violations of each section of the CNUDPA;

B. The Cherokee Nation may bring an action for any violation of this Act on behalf of itself and tribal citizens for the recovery of damages, civil penalties, injunction and all other remedies available by law or in equity.

C. Whenever the Attorney General has reason to believe that any person is using or is about to use any act or practice declared to be unlawful, he may bring an action in the name of the Cherokee Nation against such person to restrain by temporary restraining order or preliminary or permanent injunction the use of such method, act or practice. The court may issue temporary restraining orders or preliminary or permanent injunctions and make such other orders or judgments as may be necessary to restore to the Cherokee Nation or any person who has suffered any loss by reason of the use or employment of such unlawful method, act or practice.

D. If the court finds any act or practice unlawful with regard to any security or any contract of sale of a commodity for future delivery, the court may issue such orders or judgments as may be necessary to restore any person who has suffered any loss up to three but not less than two times that amount if the court finds that the use of the act or practice was a reckless violation, a civil penalty to be paid to the Cherokee Nation of ten thousand dollars (\$10,000) for each such violation, and also may require said person to pay the reasonable costs of investigation and litigation of such violation, including reasonable attorney fees;

E.

F. The court shall impose a civil penalty for each violation of this Act. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the

following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth;

G. In determining whether to impose a civil penalty and the amount thereof, the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:

1. Whether the defendant knew or should have known that his or her conduct was directed to one or more Senior Citizens or Disabled Persons;
2. Whether the defendant's conduct caused one or more Senior Citizens or Disabled Persons to suffer: physical impairment or injury, loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the Senior Citizen or Disabled Person;
3. Whether one or more Senior Citizens or Disabled Persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

H. Any court of competent jurisdiction hearing an action pursuant to this Act may make orders and judgments as may be necessary to restore to any person, Senior Citizen or Disabled Person any money or property, real or personal, which may have been acquired by means of a violation of this chapter. Restitution ordered pursuant to this subdivision shall be given priority over recovery of any civil penalty designated by the court. If the court determines that full restitution cannot be made to those disabled persons, either at the time of judgment or by a future date determined by the court, then restitution under this subdivision shall be made on a *pro rata* basis depending on the amount of loss;

I. Any person who intentionally violates any injunction shall be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of that conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of that conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person,

whether corporate or individual, and any corrective action taken by the defendant. For the purposes of this section, the court issuing such an injunction or order shall retain jurisdiction, and the cause shall be continued, and in such case the Attorney General acting in the name of the Cherokee Nation may immediately petition for recovery of such civil penalty;

J. Any person entitled to bring an action may bring an action against that person who used or employed any method, act, or practice declared to be unlawful, to recover or obtain any or all of the following, as appropriate and ordered by the Court:

1. Three times actual damages, or \$10,000, whichever is higher;
2. An order enjoining the methods, acts, or practices;
3. Restitution of property;
4. Civil penalty;
5. Punitive damages;
6. Equitable relief; and
7. Any other relief that the Court deems proper.

K. Any consumer who is a Senior Citizen or a Disabled Person may seek and be awarded, in addition to the remedies specified therein, up to twenty-five thousand dollars (\$25,000) where the trier of fact finds all of the following:

1. That the consumer has suffered physical, emotional, or economic damage resulting from the defendant's conduct; and
2. That an additional award is appropriate.

L. In any action under this Act, it is not necessary to allege or prove actual damages or the threat thereof, or actual injury or the threat thereof, to the plaintiff. But, in no case shall the total award of damages in a class action be less than ten thousand dollars (\$10,000) for each violation;

M. Aggregate data and evidence shall be admissible if found by the court to be relevant.

Historical Data

LA 16-16, eff. April 21, 2016. Amended LA 07-18, eff. May 18, 2018. Renumbered from 12 CNCA § 28.