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Summary of letter sent to Chairman David Clarke regarding recommendations for streamlining consumer protection under the Department of Consumer and regulatory Affairs (DCRA)

This letter represents the recommendations of a task force put together under the auspices of the Consumer Affairs Committee of the Section on Antitrust, Trade Regulation, and Consumer Affairs. It is the third in a series of letters to David Clarke and the D.C. City Council, the first two of which proposed the formation of a task force to develop strategies for streamlining consumer protection enforcement by the Department of Consumer and Regulatory Affairs. The Council was very receptive to this idea, and encouraged the task force to propose recommendations for the Council's consideration. (The D.C. City Council suspended enforcement of DCRA's Consumer Protection and Procedures Act until 1998; the task force examined ways that "core functions" of DCRA could be reinvigorated, particularly those that brought *in* revenue to the District, or that allowed DCRA to use resources that would not effect their budget.)

Among the recommendations contained in the letter is that the Council clarify certain rights of consumers to seek remedies outside of DCRA (e.g., now that the DCRA Board that heard lemon law cases is disbanded, it should be made clear that consumers are free to file lemon cases directly in court; it is impossible for them to go through DCRA first before filing suit, as there is no mechanism available to hear their cases). Another recommendation includes clarifying the fact that under DC law, the Director of DCRA may designate outside counsel to handle consumer complaints.

1250 H Street, NW, Sixth Floor, Washington DC 20005-3908 202/626-3463 Sections EventLine 202/626-3455 FAX 202/626-3453

The Honorable David Clarke, Chairman
Council of the District of Columbia
The Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Chairman Clarke and Councilmembers:[1]

By letter dated March 21, 1995, Chairman Clarke invited the Consumer Affairs Committee to provide the Council with its recommendations for streamlining consumer protection under the Department of Consumer and Regulatory Affairs (DCRA) in the current era of fiscal constraints. We are writing to provide the Council with the recommendations of a task force that has been evaluating these matters.

The task force appreciates and accepts DCRA's need to operate within severe budget constraints. Within those constraints, the task force believes that certain matters of law should be clarified with regard to the suspension of DCRA enforcement of the Consumer Protection Procedures Act and the Automobile Consumer Protection Act of 1984 by provisions of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994, effective December 29, 1994 (D.C. Act 10-389; 42 DCR 197).

With regard to DCRA enforcement of the Consumer Protection Procedures Act, D.C. Code § 28-3901 et seq., we suggest that D.C. Act 10-389 be amended to include the following:

> The Department of Consumer and Regulatory Affairs retains authority to enforce consent decrees or other settlement agreements reached prior to the effective date of this Act.

This would permit DCRA, in its discretion, to enforce outstanding consent decrees affecting hundreds of consumers and involving potentially hundreds of thousands of dollars in consumer redress. Because DCRA typically obtains payment for its costs in obtaining and enforcing such consent decrees, enforcement might be obtained with little or no drain on DCRA resources. The task force has evidence that in the absence of such a provision, merchants have disregarded agreements reached prior to the implementation of D.C. Act 10-389, to the significant detriment of District citizens and other consumers as well as legitimate District businesses.

With regard to DCRA enforcement of the Automobile Consumer Protection Act of 1984,

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[1]The views expressed herein represent only those of the Antitrust, Trade Regulation and Consumer Affairs Section of the District of Columbia Bar and not those of the D.C. Bar or its Board of Governors.

D.C. Code § 40-1301 et seq., we suggest that D.C. Act 10-389 be amended to include the following:

> Pending the suspension of DCRA enforcement of this Act, a consumer may file an action in court seeking the refund or replacement remedies available under the law without first filing a complaint with the D.C. Board of Consumer Claims Arbitration.

This would make it clear that consumers will not be denied the benefits of the law in the absence of Board arbitration.

The task force also recommends clarification of D.C. Act 10-389 to permit DCRA to retain its authority to refer consumer cases to private counsel as provided by District of Columbia Municipal Regulations Title 16, Consumers, Commercial Practices, & Civil Infractions, section 1520.4, which states:

> The Director may designate non-agency counsel to bring action and serve as counsel for the complainant.

16 DCMR § 1520.4 (March 1993). Although that section appears in the context of procedural rules for administrative hearings by the DCRA Office of Adjudication, its application in the absence of that forum pending suspension of DCRA enforcement could provide a means of consumer complaint redress for District citizens at minimal or no cost to the District. If the Council is interested in further development of this idea, we will be happy to assist.

Finally, the task force recommends that the Council consider restoring certain core consumer protection functions to the Department by allowing it to selectively pursue cases that have a demonstrable impact on the public interest. We suggest that the Council establish criteria for selection of such cases or a mechanism to review proposed consumer protection enforcement initiatives identified by the Department's Office of Compliance as critically needed. We are willing to work with the Council and DCRA if there is interest in further development of this idea.

The task force appreciates the Council's consideration of these recommendations and is available to provide assistance in the event that the Council wishes to pursue these matters further.

Sincerely,

Co-Chairs, Consumer Affairs Committee

(Will have signature lines for Lisa Jose Fales and Margaret Leonard.)