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STATE OF WASHINGTON  
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No. 101236-5

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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SKYLER WALDAL,

Petitioner,

v.

KEYSTONE RV COMPANY, a foreign corporation,

Respondent.

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**RESPONDENT'S ANSWER TO  
PETITION FOR REVIEW**

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## **I. INTRODUCTION**

On August 4, 2016, Petitioner Skylar Waldal (“Waldal”) purchased a Keystone Fuzion Recreational Vehicle (“the Trailer”) from Curtis Trailers, Inc. (“Curtis”), an independent authorized Keystone dealership in Portland, Oregon. Respondent Keystone RV Company (“Keystone”) does not dispute Waldal experienced issues with the Trailer within a few weeks of purchase; namely, he complained that the tires rubbed together when he towed the Trailer over a speed bump or pulled into a parking lot. While Keystone ultimately determined the issue was a result of Waldal’s decision to tow the Trailer with a truck that had grossly inadequate towing capacity, Keystone nonetheless attempted to help Waldal obtain warranty service.

In so doing, Keystone on multiple occasions instructed Waldal to simply take the Trailer to an authorized Keystone dealer and provided him a list of authorized dealers in his area. Keystone’s instruction was consistent with the plain language of Keystone’s Owner’s Manual and the One-Year Limited Warranty (the “Limited Warranty”) which requires consumers give Keystone a “reasonable opportunity to repair” a unit. Waldal refused. When Keystone ultimately offered to incur the cost of transporting the Trailer from its location in Mukilteo, Washington, to Keystone’s manufacturing plant in Pendleton, Oregon, to provide Keystone an opportunity to inspect the

Trailer, Waldal ignored the offer entirely and instead filed this lawsuit twenty days later.

Both the trial court and Court of Appeals agreed that Waldal, on summary judgment, lacked evidence Keystone breached its express warranty or violated the Consumer Protection Act. Now, Waldal contends both courts erred in reaching this conclusion. Rather than cite to evidence in the record to support his position, he instead relies on allegations in the Complaint, makes unsupported assertions of fact without citing to the record at all, and contends that causes of action he never alleged in his Complaint can be asserted for the first time on a petition for review to this Court. Having established no basis for review, this Court should deny Waldal's Petition.

## **II. COURT OF APPEALS DECISION**

Waldal filed his Complaint on December 6, 2017.<sup>1</sup> On October 19, 2018, Keystone moved for Summary Judgment on each of Waldal's claims. The trial court granted Keystone's Motion on November 26, 2018, concluding, in part, that Waldal "provided no factual or legal basis to support his requests for relief" under the Consumer Protection Act ("CPA") and Auto Dealers Protection Act ("ADPA"), and "failed to permit Keystone a reasonable opportunity to repair the defect."<sup>2</sup> Waldal

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<sup>1</sup> CP 142.

<sup>2</sup> CP 990-995.

filed two motions for reconsideration, both of which the trial court denied.<sup>3</sup> Waldal appealed the trial court's ruling but limited its request for review to the trial court's dismissal of Waldal's claims for breach of express warranty, violation of the CPA, and violation of the ADPA. The Court of Appeals affirmed the trial court's decision.

As to Waldal's breach of express warranty claim, the Court of Appeals concluded that "Keystone attempted to fulfill [its] promises" under the warranty, but that Waldal delayed providing Keystone necessary information to timely address Waldal's claim and ultimately rejected Keystone's offer. The Court of Appeals also rejected Waldal's argument that Keystone's offer to transport the Trailer to Pendleton for repair was an inadmissible settlement offer under ER 408, and further rejected Waldal's contention that Keystone's Limited Warranty failed of its essential purpose.<sup>4</sup>

The Court of Appeals also affirmed the trial court's dismissal of Waldal's purported Auto Dealer's Practices Act claim, concluding that by merely including the title of the statute in the Complaint caption, Waldal failed to meet the notice pleading standard of CR 8.

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<sup>3</sup> CP 289-292.

<sup>4</sup> COA Opinion at 6-8.

Finally, the Court of Appeals affirmed the trial court's summary dismissal of Waldal's CPA claim. It concluded: "It is undisputed that Waldal did not accept Keystone's offered performance of its warranty obligations. He fails to demonstrate that the warranty's terms themselves violate the CPA or that Keystone engaged in an unfair or deceptive act or practice by offering to fulfill the warranty's terms."<sup>5</sup> Waldal now seeks review of this decision by this Court.

### **III. ISSUES PRESENTED FOR REVIEW**

Keystone first objects to Waldal's purported "Issues Presented for Review." Waldal fails to establish what, if any, law or legal standard places at issue before the Court the question of whether Keystone acted "reasonably" in requiring consumers take their RV to an authorized dealer for repairs. Waldal's "Issues" also assume facts that are incorrect and have no evidentiary support (*i.e.*, the Trailer was "unsafe" as manufactured or Keystone *required* Waldal to transport an unsafe vehicle).

Indeed, the issues to be reviewed by this Court arise out of the causes of action at issue in this litigation and the elements Waldal has the burden of establishing. Namely:

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<sup>5</sup> COA Opinion at 10-11.



1. Whether the Court of Appeals correctly affirmed the trial court's dismissal of Waldal's breach of express warranty claim where Waldal did not meet the conditions of the warranty and Keystone offered to transport and repair the Trailer at its own expense.

2. Whether the Court of Appeals correctly affirmed the trial court's dismissal of Waldal's ADPA claim when Waldal did not meet the notice pleading standard of CR 8.

3. Whether the Court of Appeals correctly affirmed the trial court's dismissal of Waldal's CPA claim where Waldal failed to present evidence that Keystone engaged in any deceptive or unfair conduct.

4. Whether Waldal can assert a claim for violation of the Magnuson-Moss Warranty Act for the first time in his Petition for Review.

#### **IV. STATEMENT OF THE CASE**

##### **A. Both Keystone and Curtis Perform a Quality Assurance Inspection Prior to Sale.**

Keystone manufactured the Trailer at its manufacturing facility in Goshen, Indiana. Keystone then sold the Trailer to Curtis. Before the Trailer was transported to Curtis's dealership in Portland, Oregon, Keystone subjected it to a complete quality

assurance inspection. That inspection found that the tires, wheels, and axles were all installed properly.<sup>6</sup>

Upon arriving at the Curtis dealership in Portland, Oregon, representatives of Curtis conducted another inspection of the Trailer before putting it up for sale to potential consumers on its lot.<sup>7</sup> Curtis did not observe any issues with the suspension or the tires rubbing together while towing the Trailer on its lot.<sup>8</sup>

**B. Waldal Purchases the Trailer, Which Comes With a Limited Warranty.**

Waldal, who resides in Mukilteo, Washington, purchased the Trailer from Curtis in Portland, Oregon. Keystone had no involvement with the purchase and sale of the Trailer.<sup>9</sup> There were no issues or concerns raised during the sale of the Trailer.<sup>10</sup> As it does with all customers, Curtis offered to assist Waldal with installing the appropriate hitching, brake control, wiring and safety equipment to Waldal's tow vehicle and new Trailer upon delivery. Waldal declined as, according to Waldal, his tow vehicle was already equipped.<sup>11</sup> Waldal was able to tow the

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<sup>6</sup> CP 1866-1869.

<sup>7</sup> CP 1942-1943.

<sup>8</sup> CP 1943.

<sup>9</sup> CP 1943.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

vehicle from Curtis in Portland, Oregon back to the Seattle area on I-5 “without incident.”<sup>12</sup>

Waldal’s Trailer came with a Limited Warranty, which is printed in Chapter 2 of Keystone’s Owner’s Manual.<sup>13</sup> The Limited Warranty covers defects in materials and workmanship for one year and establishes Keystone’s “sole and exclusive” obligation to repair the defect.<sup>14</sup> In the event the RV is deemed unrepairable after Keystone has had a reasonable opportunity to repair, Keystone may either pay the diminution in value or replace the RV.<sup>15</sup>

The Owner’s Manual is replete with instructions for consumers on how to obtain warranty service, including the recommendation that consumers first contact their selling dealer for warranty service.<sup>16</sup> Keystone then provides contact information for Keystone’s Customer Service Department in the event the consumer has any issues obtaining warranty services.<sup>17</sup>

Indeed, the Owner’s Manual provides numerous references to obtaining warranty service through an authorized Keystone dealer. It further states that “in almost every situation”

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<sup>12</sup> CP 1878.

<sup>13</sup> CP 1898

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> CP 1895

<sup>17</sup> CP 1898.

the customer will need to make an appointment with the dealer and informs consumers that “Keystone may, at its option, request that the recreational vehicle be returned to one of its Customer Service facilities in Goshen, Indiana or Pendleton, Oregon” for repairs.<sup>18</sup>

C. **Warranty Claims Are Processed Through Keystone’s Service Department When Consumers Take Their RVs to Authorized Dealers.**

Despite Waldal’s allegation that there is something intentionally confusing about Keystone’s warranty process, it is actually very straightforward. If a consumer encounters a problem with their RV, Keystone’s Owner’s Manual instructs the consumer to contact an authorized Keystone service dealer and make an appointment. Keystone suggests calling the selling dealership first, but any dealership within Keystone’s extensive dealer network can conduct warranty repairs.<sup>19</sup> Once the consumer takes their RV in for inspection, the dealer submits a “pre-authorization” to Keystone’s service department, which determines whether the repairs are covered by the Limited Warranty.<sup>20</sup> If they are, Keystone authorizes the repairs and then pays the dealer directly for the warranty service.

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<sup>18</sup> CP 1896.

<sup>19</sup> CP 1898.

<sup>20</sup> *See* CP 1902-1903.

Keystone's customer support line is available to help consumers locate authorized dealers in their area. Although Keystone "Retail Advisors" answer phone calls from consumers, they do not receive consumer "warranty claims", as Waldal contends.<sup>21</sup> Such a process would be nonsensical. An individual sitting in a call center in Goshen, Indiana is not in a position to inspect a consumer's RV and make a determination about warranty coverage. Instead, a service department at a dealership must first inspect the RV and then submit a pre-authorization to Keystone's dealer service department, which sets forth the customer's complaints, the service advisor's observations, and possible repairs.<sup>22</sup>

This process is not hidden from consumers but is laid out plainly in Keystone's Owner's Manual.<sup>23</sup> Contrary to Waldal's allegations, Retail Advisors are not instructed to make this process difficult, they are not "prohibited" from saying anything, nor are they provided a "script."<sup>24</sup>

**D. Waldal Reports a Potential Issue With the Trailer.**

The first record Keystone had regarding any potential issue with the Trailer was on September 16, 2016, when Waldal

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<sup>21</sup> CP 702-704.

<sup>22</sup> See CP 1902-1903.

<sup>23</sup> CP 1985-1900.

<sup>24</sup> CP 303-304.

called Keystone's customer support line and suggested the Trailer's tires rubbed against each other when going over speed bumps or when he pulled into a parking lot.<sup>25</sup> Consistent with the process described above, Keystone Retail Advisors correctly directed Waldal to authorized dealers in his area who could inspect the Trailer and perform any necessary repairs.<sup>26</sup> Keystone did not hear anything further from Waldal until three months later, on December 7, 2016, when Waldal again called Keystone's customer support department and suggested the "axles are not looking as they should."<sup>27</sup> In response, Keystone again provided Waldal with the contact information for two dealers in his area. Keystone also explained the dealer would need to submit a pre-authorization for Keystone to approve any warranty repairs on the Trailer.<sup>28</sup> Keystone asked that Waldal inform Keystone when he made an appointment with a dealer. Waldal never provided this information.<sup>29</sup>

**E. Keystone Repeatedly Attempts to Obtain Information to Facilitate Warranty Repairs.**

The record establishes Keystone made every effort to help Waldal obtain warranty service, but he repeatedly either refused

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<sup>25</sup> CP 1903.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

to speak with Keystone Retail Advisors or frustrated those efforts. On February 8, 2017, Waldal wrote a letter to Keystone for the purpose of putting Keystone “on Notice”—apparently laying the groundwork for a subsequent legal claim.<sup>30</sup> The next day, February 9, 2017, Keystone Retail Advisor Misty Martin called Waldal and “left a detailed message” asking what exactly was going on and how Keystone could assist.<sup>31</sup> On February 10, 2017, Waldal called and spoke with Ms. Martin. Ms. Martin’s notes from that call state, in part:

- Customer called escalated stating that he wants his issues addressed.
- Customer states that *he wants to take legal action.*
- Customer states that he sent an email to Sacha and David with his demands.
- Checked with Sacha.
- Sacha advised she did not receive an email.
- *Advised that I could try to assist him he refused* stating that he will send his list of demands to KRV to someone who is capable of making a decision.<sup>32</sup>

On February 15, Ms. Martin touched base with a representative at Curtis. Curtis had not heard anything from Waldal.<sup>33</sup> That

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<sup>30</sup> CP 1905.

<sup>31</sup> CP 656.

<sup>32</sup> *Id.* (Emphasis added).

<sup>33</sup> *Id.*

same day, Ms. Martin wrote another email to Waldal in which she again requested information regarding the condition of the Trailer, its location, whether it was safe to move and how Waldal wanted to proceed.<sup>34</sup>

On February 16, 2017, Waldal responded by stating that he sent a letter to Keystone’s General Counsel—again suggesting Waldal was committed to filing a lawsuit rather than resolving the issue. Notably, however, Waldal did not provide Ms. Martin any of the information she requested.<sup>35</sup> Ms. Martin responded that day, *again* asking for the information she needed to provide Waldal assistance.<sup>36</sup>

By February 22, 2017, Ms. Martin had not heard back from Waldal. She reached out to Curtis again, and they also had had no contact with Waldal.<sup>37</sup> On February 28, 2017, Ms. Martin entered a note in the Keystone system stating: “Customer has refused to speak or work with me and I do not know how to proceed with this case.”<sup>38</sup>

Finally, on March 1, 2017, Waldal sent an email to Ms. Martin.<sup>39</sup> Again, Waldal did not provide Keystone with the

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<sup>34</sup> CP 1907.

<sup>35</sup> CP 656.

<sup>36</sup> CP 408.

<sup>37</sup> CP 656.

<sup>38</sup> CP 657.

<sup>39</sup> CP 412.



information it had requested. Instead, he insisted Keystone “had plenty of information” related to the Trailer.<sup>40</sup> Waldal also sent a letter on March 1 which claimed he attempted in December 2016 to have the Trailer seen by an authorized dealer in his area, Apache, but they “refused.”<sup>41</sup> Waldal’s March 1, 2017 letter does not identify any additional attempts Waldal made to have the Trailer seen by an authorized dealer after this single communication with Apache months prior. Indeed, the record is devoid of any evidence Waldal made further efforts.

On March 2, 2017, Keystone Retail Advisor Shelley Zartman communicated with Waldal. Waldal stated that he had the Trailer in his possession but was now refusing to take it to an authorized dealership because it was unsafe to move.<sup>42</sup> That same day, Ms. Zartman spoke with Curtis and entered the following notes regarding the call:

- Aaron at Curtis tried to get [Waldal] in to Tacoma [dealership]; customer stated not safe to travel.
- Customer had not called Aaron in 2 months and then called and stated he was fed up with unit.
- Aaron stated he had not been given the opportunity to assist with issues; dealership and KRV were not aware of the issue.

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<sup>40</sup> *Id.*

<sup>41</sup> CP 410-411.

<sup>42</sup> CP 657.

- Customer stated he was putting dealership on notice and KRV for legal action.
- Customer stated he cannot tow unit; but was able to tow to take to non authorized [sic] facility.
- If not able to tow; Aaron stated the unit could be VIA flatbed.
- If not able to tow, we could flatbed to Tacoma to resolve issue.<sup>43</sup>

On March 3, 2017, Ms. Martin spoke with an individual named Chuck at a company called Glen's Welding (not a Keystone authorized dealer or repair facility) after Keystone learned that Glen's Welding had done some work on the Trailer.<sup>44</sup> Chuck stated they replaced broken bolts on the MORryde system and checked the leveling system. He also confirmed that "the unit was obviously movable [since] the consumer took it off the lot."<sup>45</sup>

On March 16, 2017, Keystone received an email from Chris Ingraham at a company called Truck Trails NW (another company that is not a Keystone authorized dealer or repair facility), who suggested Truck Trails NW had also done work on the Trailer and repaired a broken MORryde equalizer "a few months" earlier.<sup>46</sup> Because neither company was an authorized

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<sup>43</sup> *Id.*

<sup>44</sup> CP 658.

<sup>45</sup> *Id.*

<sup>46</sup> CP 1911.

Keystone repair facility, Keystone had no information regarding what service had been performed, if any, and whether they were successful in resolving any issues.

Keystone continued to try and determine whether any issues with his Trailer had been resolved. On March 16, 2017, Keystone again wrote to Waldal, notifying him that Keystone had been unable to determine his course of action with the Trailer or whether the issues had been resolved. Keystone again asked for the current status and location of the Trailer so Keystone could assist.<sup>47</sup> The record shows a March 20, 2017 email drafted by Waldal stating: “Good afternoon, I just got back into town the location of the RV is in Mukilteo WA.”<sup>48</sup> This email, however, was sent from Skyler Waldal to a separate Skyler Waldal email address—not to Keystone.<sup>49</sup> It was not until three weeks later, on April 7, 2017, that Waldal responded to Keystone, demanding a replacement trailer or a full refund and fees.<sup>50</sup> Again, Waldal did not provide the location of the Trailer to Keystone.

After a series of phone calls with Waldal, on April 21, 2017, Retail Advisor, Jasmine Carter, wrote an email listing the information she needed “to move forward,” including the

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<sup>47</sup> CP 1913.

<sup>48</sup> CP 407.

<sup>49</sup> *Id.*

<sup>50</sup> CP 405.

physical location of the Trailer and asking whether Waldal had reached out to any Keystone authorized dealers to make a service appointment.<sup>51</sup> On April 27, 2017, Waldal responded, and for the first time provided the physical address where the Trailer was stored.<sup>52</sup> At the same time, Waldal admitted he had not reached out to any other Keystone authorized dealers—or non-authorized dealers for that matter—for assistance.<sup>53</sup>

**F. Keystone Offers to Transport and Repair the Trailer at No Cost to Plaintiff.**

By the summer of 2017, Waldal had engaged an attorney and communications continued between counsel for Waldal and counsel for Keystone. Through counsel, Keystone continued its effort to obtain access to the Trailer so that it could diagnose and repair any warranty issues. Accordingly, Keystone offered to fly its Customer Service Products Manager, Matt Gaines, out from Goshen, Indiana to Washington to personally inspect the Trailer.<sup>54</sup> The inspection occurred on September 7, 2017.<sup>55</sup> Notably, this was the first opportunity that Keystone—or one of

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<sup>51</sup> CP 404.

<sup>52</sup> CP 403.

<sup>53</sup> *Id.*

<sup>54</sup> CP 1933-1934.

<sup>55</sup> *Id.*

its authorized dealers— had to inspect the Trailer and attempt to diagnose the issue.<sup>56</sup>

Mr. Gaines wrote a letter to Waldal on November 16, 2017, in which he requested the opportunity to diagnose and repair any issues with the Trailer pursuant to Keystone’s Limited Warranty. Mr. Gaines asked Waldal to contact him directly to schedule a time for Keystone to pick up and transport the Trailer to Pendleton, Oregon for repairs, at Keystone’s sole expense.<sup>57</sup>

In the letter, Mr. Gaines also communicated his important observation regarding Waldal’s tow vehicle, stating:

***[Y]our Ford Super Duty F-350 SRW doesn’t have the proper trailer weight rating to handle the Gross Vehicle Weight Rating (GVWR) of your Fuzion. This could be the reason you are experiencing the issues with the suspension.*** With the size and weight of the Fuzion, you should be using a dual rear wheel as your tow vehicle. If you continue to use a single rear wheel tow vehicle, this may not only be unsafe for towing purposes, but you take the risk of causing further harm or damage to your pick-up truck and your Fuzion.<sup>58</sup>

Even though Mr. Gaines believed the suspension issue was the result of Waldal’s decision to tow the Trailer with an inadequate

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<sup>56</sup> CP 1934.

<sup>57</sup> CP 1938. In responses to Keystone’s Requests for Admission, Waldal admitted he received the November 16, 2017 letter. CP 1915-1919.

<sup>58</sup> CP 1938. (Emphasis added).

tow vehicle, Keystone was nonetheless willing to transport the Trailer and conduct repairs.

Mr. Gaines waited for Waldal to contact him to schedule the transport of the Trailer to Pendleton, Oregon.<sup>59</sup> As Waldal testified in his deposition, he never responded or tried to contact Mr. Gaines, or anyone at Keystone, to arrange for a pickup date.<sup>60, 61</sup> Instead, Waldal filed this lawsuit *twenty days* after receiving the letter from Mr. Gaines.<sup>62</sup>

## **II. LEGAL ARGUMENT**

### **A. Summary Judgment Standard.**

Civil Rule 56(c) provides that summary judgment should be granted when the pleadings and other evidence presented “show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56(c). An appeals court reviews a trial court’s decision on summary judgment *de novo*. *McCaulley v. Dep’t of Labor & Indus. of Washington*, 5 Wn. App. 2d 304, 424 P.3d 221, 225 (2018).

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<sup>59</sup> CP 1934.

<sup>60</sup> *Id.*

<sup>61</sup> CP 1218-1224.

<sup>62</sup> CP 1016-1030.

**B. Waldal Makes Numerous Allegations Against Keystone Without Citing to Admissible Evidence.**

CR 56 requires the party opposing summary judgment to submit *admissible* evidence. Waldal instead relies on the self-serving and unsupported allegations in his Complaint—in direct contradiction to CR 56(e)—or levies serious allegations against Keystone without a single supportive citation to the record. Some of the more egregious examples of Waldal’s unsupported allegations include Waldal’s claims that:

- “[T]he RV was structurally defective on delivery. Two of the three axles on the RV were installed too close to each other.”
- “Keystone does not deny that . . . Keystone caused the defect when the RV was manufactured.”

Waldal cites to no evidence in the record that the Trailer had any defect on delivery or that the axles were installed too close to each other and, certainly, cites to no evidence in the record that Keystone has admitted this much. To the contrary, the only evidence in the record as to the cause of Waldal’s issues comes from Keystone’s expert who determined the defect resulted from Waldal’s decision to tow the Trailer with a truck with inadequate towing capacity after he took possession of the Trailer.

Waldal further claims that:

- “Keystone could have authorized Truck Trails, to replace the suspension, as its own expert recommended. But Keystone refused to do so.”

Waldal does not cite to any evidence suggesting (1) Truck Trails sought to replace the suspension, (2) Truck Trails contacted Keystone for authorization to do so, or (3) Keystone refused any such recommendation.

Despite providing this Court with no admissible evidence to support his position, Waldal nonetheless contends that the trial court and Court of Appeals erred in dismissing his claims for breach of express warranty, violation of the ADPA, and violation of the CPA. Waldal also contends he is entitled, in his Petition for Review, to assert a new cause of action for violation of the Magnuson-Moss Warranty Act (“MMWA”). Keystone addresses each issue in turn.

**C. Waldal Fails to Establish Keystone Violated the Terms of the Express Warranty.**

It is axiomatic that the terms of the warranty define the scope of the manufacturer’s obligations on a claim for breach of express warranty. *E.g., Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 525 (1992). The only express warranty at issue here is Keystone’s Limited Warranty which provides that, under certain specified circumstances, when a defect in materials or



workmanship is found to exist that is not excluded from coverage, Keystone's sole and exclusive obligation shall be to repair the same, provided the RV is used for its intended purposes of recreational camping.<sup>63</sup>

The Limited Warranty also provides a limited back-up remedy that "in the event the RV cannot be repaired, *after receiving a reasonable opportunity to repair*, Keystone may, at its option, either (i) pay you the diminution in value damages, or (ii) provide a similar replacement recreational vehicle, less a reasonable allowance for the owner's use of the original RV."<sup>64</sup> This repair-or-replace remedy is the sole remedy available under the Limited Warranty.

Here, there is no genuine issue of material fact as to whether Keystone breached its Limited Warranty when: (1) it was not provided an opportunity to repair the Trailer given Waldal's failure to take it to an authorized dealer; and (2) when its offer to transport and repair the Trailer at its own expense was ignored.

(a) *Keystone Was Never Given an Opportunity to Repair the Trailer.*

Waldal fails to present evidence that Keystone ever *refused* to repair the Trailer or provide warranty coverage.

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<sup>63</sup> CP 1898.

<sup>64</sup> CP 1898-1899.

Indeed, the record establishes the opposite is true. Waldal admits he did not allow Keystone or one of its authorized dealers to attempt any repairs. The record in this regard is clear. When Waldal first called Keystone regarding the alleged defect, Keystone provided him the contact information and locations for authorized dealers in his area.<sup>65</sup> When he called back again three months later, after not taking the Trailer into an authorized dealer, Keystone again provided the location of authorized dealers in his area, one of which was only 4.5 miles from him.<sup>66</sup> When this authorized dealer, according to Waldal, “refused” to help him, he did not contact any other authorized dealers, and instead continued to contact Keystone’s customer support line demanding a refund and threatening legal action.<sup>67</sup>

*(b) Keystone Offered to Transport the Trailer and Provide Warranty Service.*

Waldal attempts to excuse his failure to take the Trailer to an authorized dealer by claiming it was unsafe to tow—despite evidence in the record that he did tow the Trailer without incident to Greg’s Welding—and alleging the authorized Keystone dealers he contacted “refused” to help him. These allegations, however, are rendered moot by Keystone’s November 16, 2017

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<sup>65</sup> CP 655.

<sup>66</sup> *Id.*

<sup>67</sup> CP 403.

offer to tow the Trailer at its expense to its manufacturing plant in Pendleton, Oregon for repairs. Waldal ignored this offer.

**D. Waldal Fails to Adequately Plead Violation of the ADPA.**

Waldal assigns error to the dismissal of his claim for violation of the ADPA. Waldal contends he presented sufficient evidence to establish Keystone violated RCW 46.70.180. The basis for the Court of Appeals' decision to dismiss Waldal's ADPA claim, however, was Waldal's failure to meet the notice pleading standards of CR 8. In his Complaint, Waldal's sole references to the ADPA were in his caption and in his prayer for relief. He did not include the ADPA as a separate claim or identify with any specificity what provision(s) of the ADPA allegedly Keystone violated. Waldal does not address this issue in his Petition and makes no effort to explain why the Court of Appeals erred in concluding he did not meet the notice pleading standard of CR 8. In other words, even if Waldal presented sufficient evidence to establish his ADPA claim, which he did not, the claim was never sufficiently pled in the first place.

**E. Waldal's Claim for Violation of the CPA Fails For Lack of Evidence.**

Because Waldal has failed to plead a claim for violation of the ADPA, Waldal cannot use the ADPA to establish a *per se* violation of the CPA. Nor can Waldal establish a direct violation

of the CPA. While Waldal does not address this direct claim in his Petition, Keystone nonetheless addresses Waldal's contention that Keystone violated the CPA.

To recover for violation of the CPA, a plaintiff must establish that: (1) the defendant has engaged in an unfair or deceptive act or practice; (2) in trade or commerce; (3) that impacts the public interest; (4) the plaintiff has suffered injury in her or his business or property; and (5) a causal link exists between the unfair or deceptive act and the injury suffered. Failure to establish *any* element of a CPA claim is fatal. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780, 719 P.2d 531 (1986). Waldal is unable to establish at least two of the five elements of the *Hangman Ridge* analysis: that (1) Keystone engaged in an unfair or deceptive act or practice; and (2) that any unfair or deceptive act or practice was the “but for” cause of his alleged injuries.

An unfair or deceptive act is established by showing “either that an act or practice ‘has a capacity to deceive a substantial portion of the public,’ or that ‘the alleged act constitutes a per se unfair trade practice.’” *Saunders v. Lloyd's of London*, 113 Wn.2d 330, 344, 779 P.2d 249 (1989).

Waldal makes two allegations of deceptive conduct. The first pertains to Keystone's customer support line and warranty claim process generally. As the Court of Appeals agreed,

Keystone's warranty process is "plain" and clearly laid out in Keystone's Owner's Manual. A customer who calls the Customer Service Line is provided the same instructions—to call an authorized dealer to make a service appointment—as are provided in the Owner's Manual. Second, Waldal contends that it is deceptive and unfair for a manufacturer to require a consumer transport a dangerously defective vehicle to an authorized dealer. Waldal fails to address the fact that Keystone did not require Waldal to tow the Trailer to an authorized dealer in order to obtain warranty services. After Waldal claimed he could not tow the Trailer safely—despite evidence in the record that he did—Keystone not only flew a representative to Washington from Indiana to inspect the Trailer, but then also offered to tow the Trailer to Pendleton, Oregon for repairs at Keystone's expense. Waldal simply ignored the offer.

Lastly, Waldal fails to produce any evidence that suggests a causal link between unfair or deceptive acts and the alleged injury. Rather, Waldal's complaint that the Trailer remained defective is a result of his own refusal to provide Keystone the opportunity to make any necessary repairs, not because he was deceived by the warranty process or otherwise impacted by Keystone's actions.

**F. Waldal Argues Violation of the MMWA for the First Time in his Petition.**

Waldal devotes a significant portion of his Petition to discussing the MMWA, asking the Court to evaluate the “reasonableness” of Keystone’s policies and actions. Waldal, however, did not plead the MMWA in his Complaint or mention the MMWA in his appellate brief to the COA. Waldal acknowledges this much, but nonetheless contends, without citation to any authority, that such an omission is “immaterial.” Waldal is not entitled to raise a new cause of action for the first time on appeal.<sup>68</sup> The Court should disregard Waldal’s argument pertaining to the MMWA.

**V. CONCLUSION**

Keystone asks this Court to deny Appellant’s Petition for Review.

*I certify that this document contains 4,998 words, excluding the parts of the document exempted from the word count by RAP 18.17.*

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<sup>68</sup> See CR 8; see also RPC 2.5(a).

RESPECTFULLY SUBMITTED this 14th day of October,  
2022.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on October 14, 2022, I caused to be served a copy of the foregoing on the following person(s) by electronic mail:

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October 14, 2022 - 12:20 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 101,236-5  
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