NO. 101389-2
Court of Appeals No. 82529-1-I

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent/Plaintiff,

v.

CLA USA INC. and CLA ESTATE SERVICES, INC,

Petitioner/Defendants.

RESPONDENT STATE OF WASHINGTON'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This case involves the straightforward application of Washington's Estate Distribution Documents Act (EDDA) and Consumer Protection Act (CPA). The trial court and the Court of Appeals applied the plain language of these consumer protection statutes to determine that CLA Estate Services, Inc. and CLA USA, Inc. (collectively, CLA) violated each statute repeatedly as it financially exploited Washington senior citizens through a deceptive scheme designed to manipulate them into purchasing expensive estate-planning packages and annuities.

CLA lured retirees to "free-lunch" estate-planning seminars, at which it misrepresented Washington's probate process to convince attendees that their families would be left financially vulnerable unless they purchased CLA's Lifetime Estate Plan and set up revocable living trusts (RLTs). Once these were in place, CLA had an excuse to send its agents into consumers' homes under the guise of helping to fund their RLTs and update their estate-planning documents. CLA's agents

regularly visited customers at home and gained access to their personal financial information.

But CLA did not disclose, and consumers typically did not understand, that CLA's agents were not estate-planning experts, but licensed insurance agents working on commission. CLA trained its agents to attempt to sell complex, high-commission annuities whenever assets were discovered during a "review" of the customer's estate plan. Without financial advisors or family members present, consumers in their homes were vulnerable to CLA's sales tactics. CLA's scheme was lucrative, providing the company $2,565,626 from the sale of Lifetime Estate Plans and $3,597,287.93 in commissions from annuity sales in Washington.

But CLA's scheme is illegal in Washington. The CPA protects consumers from unfair and deceptive business practices, and the EDDA prohibits the "unscrupulous practice of marketing legal documents as a means of targeting senior citizens for financial exploitation." RCW 19.295.005. Indeed, CLA's

scheme is precisely the type of business practice the Legislature envisioned when it found the practice of using living trusts as a marketing tool by nonlawyers was a "deceptive means of obtaining personal asset information and of developing and generating leads for sales to senior citizens." *Id.*

The Court of Appeals correctly determined that the plain language of the EDDA prohibited CLA's conduct. CLA's argument that it did not have fair notice that its conduct violated Washington law is inconsistent with relevant facts and law, as the Court of Appeals found. The remedies awarded by the trial court, including restitution and civil penalties, were well grounded in relevant statutes and case law, and well supported by the court's extensive findings regarding CLA's illegal conduct.

The straightforward application of the EDDA and CPA to CLA's conduct in this case does not involve an issue of substantial public interest or a significant question of constitutional law, and this Court should decline review.

II. RESTATEMENT OF THE ISSUES

1. Whether the EDDA, enacted to prevent nonlawyers from using RLTs as a marketing tool to deceptively obtain personal asset information and generate leads for sales to senior citizens, prohibits CLA from offering to gather, and gathering, information for the preparation of estate distribution documents.

2. Whether CLA had fair notice of the EDDA's requirements where the statute is unambiguous and the Attorney General's Office never advised CLA that its conduct was lawful.

3. Whether the trial court's restitution and civil penalty awards, which were based on the CPA and well-settled case law, were proper.

III. COUNTERSTATEMENT OF THE CASE

In 2008, CLA began offering free-lunch estate-planning seminars to Washington consumers at retirement age and older. Pet. App. at 37 (¶ 3).[1] CLA sales representatives, who were not

[1] Because unchallenged findings of fact are verities on appeal, *e.g.*, *Young v. Toyota Motor Sales, U.S.A.*, 196 Wn.2d 310, 317, 472 P.3d 990 (2020), the State cites unchallenged

attorneys, presented the seminars. *Id.* (¶ 4). Following scripts provided by CLA, the presenters discussed purported dangers of probate that CLA claimed would be avoided with a RLT. *Id.* at 38 (¶ 7); Ex. 421 (seminar workbook).

But CLA did not accurately portray the relative benefits of probate and RLTs at its seminars. *Id.* at 38-46 (¶¶ 11-12). Washington has one of the simplest, most efficient probate processes in the country, but CLA depicted probate as slow, expensive, public, difficult, leaving loved ones "vulnerable," and cause for "worry." Ex. 421 at CESI30-33, 43, 49. In contrast, CLA described RLTs as private, "eliminat[ing] court control," making "assets available immediately," providing "protection for heirs" and resulting in "peace of mind." *Id.* at CESI29, 41-43.

Alarming attendees with these misrepresentations allowed CLA to market and sell its Lifetime Estate Plan, which CLA

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findings by the trial court in this counterstatement of the case. Cites are to the Appendix to CLA's Petition for Review.

promoted as a full-service estate-planning package, and to persuade attendees to set up RLTs. Ex. 421 at 23, 45-47. Once these were in place, CLA could send its agents into customers' homes under the guise of helping them fund their RLTs and keeping estate-planning documents current. Pet. App. at 57-63 (¶¶ 43-68).

Although CLA told seminar attendees that financial planners would conduct the promised in-home meetings, CLA instead sent licensed insurance agents without expertise in estate planning, securities, or financial planning to the meetings. *Id.* at 57 (¶ 44); 81 (¶ 34). CLA did not disclose that these insurance agents, working on commission, would use in-home consultations to learn about the customers' assets, and use that information to market annuities to them. *Id.* at 50-51 (¶ 27). Consumers were left with the deceptive net impression that they were purchasing robust estate-planning services, not in-home visits from commission-motivated insurance agents. *Id.* at 77 (¶ 20).

At its estate-planning seminars, CLA offered to gather information for the preparation of estate distribution documents as part of its promised "coordination" of non-legal services with attorneys. *Id.* at 47-48 (¶¶ 13, 15, 18). CLA gathered such information at its seminars and at in-home meetings. *Id.* at 48-49, 57-59 (¶¶ 20, 46-51).

When a consumer purchased a Lifetime Estate Plan, CLA referred the consumer to an attorney to prepare an RLT and other documents. *Id.* at 57 (¶ 43). When the documents were ready, a CLA insurance agent set up a delivery meeting at the consumer's home, ostensibly to review and notarize the documents and help transfer assets into the trust. *Id.* At the delivery meetings, CLA's agent asked the customer questions to determine if changes were needed, and notarized the documents. *Id.* at 57-58 (¶ 47).

Ninety days later, and annually thereafter, the CLA agent visited the customer's home, purportedly to ensure the RLT was properly funded and determine whether any changes to estate documents were needed. *Id.* at 61 (¶¶ 61-63). The agent would

ask the customer questions about their estate plan and assets, including whether the customer had acquired or liquidated assets since the last meeting. *Id.* at 61-62 (¶¶ 64-65). If changes to estate distribution documents were needed, the agent phoned the referral attorney to provide the information needed for the change, or collected the information on a form that was submitted to the attorney. *Id*. at 62 (¶ 66).

By offering to gather, and gathering, information for the preparation of estate distribution documents, CLA created opportunities for its agents to learn about consumers' assets and persuade them to purchase annuities with those assets. At delivery meetings, CLA agents asked clients to identify all assets comprising their estates, representing that they needed this information to assist with funding the RLT. *Id.* at 57-58 (¶ 47). CLA agents entered this information into CLA's proprietary Road of Retirement software, which produced a detailed profile of the consumer's financial circumstances and assets. *Id.* at 58-59 (¶¶ 50-51). Although CLA agents represented to consumers

that the software gathered information for estate-planning purposes, CLA expected its agents to use the Road of Retirement as a sales tool to identify assets that could be converted into annuity products. *Id.* at 59 (¶ 51). As a former CLA agent testified, assisting with and delivering estate documents caused consumers to place their trust in CLA's agents, which in turn allowed them to sell annuities to the consumers. *Id.* at 59 (¶ 52).

CLA and its agents received commissions for every annuity they sold, with CLA retaining 65% to 70% of the commission, and its agents receiving the remainder. *Id.* at 67 (¶ 86). A financial economist testified that the annuities CLA marketed were "extraordinarily complex," illiquid, and expensive, with an undisclosed "very high commission" that is "extraordinary" compared to other financial products. *Id.* at 63-65 (¶¶ 70-80). He concluded that "there is zero chance that a fully informed investor would ever purchase [these annuities]." *Id.* at 67 (¶ 85).

CLA agents were highly motivated to sell annuities because CLA paid them only $25 to conduct a delivery meeting, and $10 to conduct a review meeting; agents covered their own travel costs, and sometimes drove hours to a customer's home. *Id.* at 60-61 (¶ 59), 63 (¶ 68). Any additional compensation was through commissions earned by selling annuities. *Id.* at 60-61 (¶ 59).

As CLA incentivized its agents to aggressively market insurance products, it took few steps to ensure its customers were not financially exploited. *Id.* at 68-69 (¶¶ 91-95). CLA received a disproportionately large number of complaints about its Washington agents, but took no steps to investigate these complaints. *Id.* at 68-70 (¶ 94-96). Customers testified that CLA's agents marketed unsuitable annuities; failed to disclose material terms of annuities; misrepresented interest rates; used high-pressure sales tactics; added products to annuities without consumer consent; included incorrect income information in annuity applications to ensure consumers would meet

qualifications; and forged consumers' signatures on applications. *Id.* at 71-72 (¶ 99(a)-(e)).

CLA received $2,565,626 from the sale of its Lifetime Estate Plans to Washington consumers, *id.* at 86 (¶ 48), and sold them hundreds of financial products, with commissions to CLA of $3,597,287.93 and to its agents of $1,826,163.16, *id.* at 67 (¶ 87).

The Washington Attorney General brought this action against CLA in 2018 for violations of the CPA and EDDA. CP 56-93. The trial court, after deciding several partial summary judgment motions and holding a bench trial, issued detailed findings of fact and conclusions of law concluding that CLA repeatedly violated the CPA by misrepresenting the relative benefits of RLTs and probate in Washington and by failing to disclose that the agents who conducted CLA's in-home meetings were licensed insurance agents who would market annuity products during the meetings. Pet. App. at 74-79 (¶¶ 3-25).

The trial court also determined that CLA repeatedly violated the EDDA by offering to gather information for the preparation of estate distribution documents at its seminars, and gathering such information both at its seminars and at in-home meetings with customers. *Id.* at 79-83 (¶¶ 26-40).

The trial court awarded injunctive relief, restitution, penalties, and fees and costs in favor of the State. As restitution, the court ordered CLA to return all revenue it received from sales of its Lifetime Estate Plan ($2,565,626) and sales of annuities ($3,597,287.93) to Washington consumers. *Id.* at 84-87 (¶¶ 42-53). After carefully analyzing the factors relevant to a civil penalty award under the CPA, the court imposed a total penalty award of $6,546,000. *Id.* at 87-95 (¶¶ 54-82).

CLA appealed, claiming that the trial court made numerous factual and legal errors. The Court of Appeals affirmed. CLA timely filed a petition for review.

IV. ARGUMENT

The Court of Appeals applied unambiguous statutory language to affirm the trial court's ruling that CLA violated the CPA and the EDDA. The straightforward application of statutes and legal standards to the facts of this case does not merit this Court's review under any of the considerations set forth in RAP 13.4(b).

CLA's contention that the Court of Appeals misinterpreted the EDDA distorts the plain language of the statute and misapprehends the plain meaning rule. In light of the statute's plain language, CLA's claim that it did not have fair notice that its conduct violated the EDDA is meritless. The remedies awarded were appropriate given CLA's financial exploitation of Washington's seniors. As none of these arguments involves an issue of substantial public importance or significant question of constitutional law, none warrants review.[2]

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[2] CLA does not contend that the Court of Appeals' decision is in conflict with any decision of this Court or the Court of Appeals. RAP 13.4(b)(1)-(2).

A. The Court of Appeals Applied Settled Principles of Statutory Construction to Determine that CLA Violated the EDDA

The Court of Appeals, applying well-established principles of statutory construction, concluded that "the plain language of the EDDA supports the [trial] court's conclusion that CLA's practices violated the EDDA." Pet. App. at 22. CLA invokes an invented version of the EDDA that CLA may prefer but the Legislature did not enact, and then complains that the Court of Appeals did not adopt CLA's preferred interpretation. According to CLA, the EDDA makes it a *per se* violation of the CPA "for a nonlawyer to engage in the unauthorized practice of law … by offering individualized advice regarding estate distribution documents, preparing such documents, or, as relevant here, gathering information for the purpose of *themself* offering such advice or preparing such documents." Pet. at 12 (emphasis in original). But the statute does not mention the unauthorized practice of law, or define violations only as

nonlawyers themselves offering individualized advice or preparing estate distribution documents.

Rather, the EDDA makes it "unlawful for a person to market estate distribution documents, directly or indirectly, in or from this state unless the person is authorized to practice law in this state" with broad exemptions for nonlawyer professionals who have legitimate reasons to be involved in the preparation of consumers' estate documents, including financial institutions, accountants, and tax agents. RCW 19.295.020(1), (4)-(6). The statute defines "marketing" to include "every offer, contract or agreement to prepare or gather information for the preparation of, or to provide, individualized advice about an estate distribution document." RCW 19.295.010(4). "'Gathering information for the preparation of an estate distribution document' means "collecting data, facts, figures, records, and other particulars about a specific person or persons for the preparation of an estate distribution document." RCW 19.295.010(3).

Demonstrating that the Legislature intended the EDDA to be a consumer protection statute rather than a statute regulating the unlicensed practice of law or preventing family members from assisting with estate planning as CLA contends, the statute makes violations *per se* violations of the CPA, which prohibits unfair and deceptive acts in "trade or commerce." RCW 19.295.030.

The Court of Appeals properly determined that the trial court's unchallenged findings establish that CLA gathered information that it represented was for use in the preparation of estate distribution documents throughout its relationship with its clients. Pet. App. at 23. Because the CLA agents who offered to gather, or gathered, this information were nonlawyers, their conduct violated the EDDA under the plain language of the statute. *Id.*

CLA's various attempts to contort the EDDA to argue that it doesn't apply to CLA are inconsistent with the Legislature's express intent, which makes clear that the EDDA is meant to

prohibit precisely the type of scheme that CLA conducted in Washington. The Legislature enacted the EDDA "to prohibit the unscrupulous practice of marketing legal documents as a means of targeting senior citizens for financial exploitation." RCW 19.295.005. The Legislature explained that it "finds the practice of using 'living trusts' as a marketing tool by persons who are not authorized to practice law … to be a deceptive means of obtaining personal asset information and of developing and generating leads for sales to senior citizens." *Id.* CLA did exactly this, using RLTs as a marketing tool at its estate-planning seminars, alarming seniors about the consequences of not having an RLT, convincing them to allow CLA agents into their homes under the guise of funding the trust and keeping it up to date, and deceptively using insurance agents to obtain their personal asset information and sell them annuities. See Pet. App. at 83 (¶ 39).

CLA seeks to add language to the EDDA, contending that the statute prohibits gathering information for the preparation of an estate distribution document only where a nonlawyer gathers

information "relevant to a legal document *which the nonlawyer prepares or intends to prepare.*" Pet. at 14 (emphasis in original). Under this self-serving revision of the statute, a nonlawyer could gather a consumer's information for the preparation of estate distribution documents, and unscrupulously use the gathered asset information to financially exploit the consumer (precisely as CLA did here) but escape liability simply by referring the consumer to an attorney for the actual preparation of estate documents. This tortured construction not only requires the inappropriate insertion of language not found in the statute, but would also frustrate the Legislature's express intention. RCW 19.295.005. *See*, *e.g.*, *Rest. Dev., Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003) (stating that courts "must not add words where the legislature has chosen not to include them.").

CLA's argument that the Court of Appeal's interpretation makes the EDDA's applicability depend on the intention of a third party (presumably an attorney) to use the documents is

particularly disingenuous given that, as the Court of Appeals observed, "unchallenged findings and the record as a whole clearly establish that CLA represented, and its clients understood, that it was gathering information for the preparation of estate distribution documents." Pet. App. at 23. The EDDA says nothing about third-party intentions and CLA's liability does not depend on what the attorneys to whom it sent the information intended to do with the information.

Nor does the EDDA prohibit family members from gathering information for the preparation of a loved one's estate documents. That the EDDA prohibits only the commercial gathering of, or offering to gather, information for the preparation of estate distribution documents is evident from the language of the statute, which prohibits the *marketing* of estate distribution documents. RCW 19.295.020(1). Violations of the EDDA are *per se* violations of the CPA, which demonstrates that such violations necessarily occur in "trade or commerce." RCW 19.86.020. And the legislative intent section of the EDDA

makes clear that its purpose is to stop the use of living trusts *as a marketing tool* to deceptively obtain personal asset information and generate leads for sales to senior citizens, not to prevent family members from engaging in non-commercial estate-planning discussions. *See* RCW 19.295.005.

Because the EDDA's plain language is unambiguous, CLA's argument that the Court of Appeals should have considered legislative history and even unrelated testimony after EDDA's enactment, Pet. at 16-22, must fail. Courts consider legislative history only when interpreting ambiguous statutes. *Lockner v. Pierce County*, 190 Wn.2d 526, 531, 415 P.3d 246 (2018) ("Our starting point is the statute's plain language and ordinary meaning. If the statute's plain language is unambiguous, our review is at an end."). CLA's arguments that the EDDA is ambiguous are grounded in CLA's rewriting of the statute rather than in any ambiguity in the language of the actual statute.

The need to review legislative history is further diminished in this case, where the EDDA's text includes a clear statement of legislative intent. *G-P Gypsum Corp. v. Dep't of Revenue*, 169 Wn.2d 304, 310, 237 P.3d 256 (2010) (stating that courts consider an enacted statement of legislative purpose, such as a preamble, in their plain language analysis). The EDDA's intent section establishes that the Legislature enacted the EDDA to prevent consumer deception and financial exploitation, not to regulate the unauthorized practice of law. Rather than focusing on harms associated with the unauthorized practice of law, such as the consequences of the selection of an improper estate distribution document, the EDDA's intent section confirms that the statute was intended to protect seniors from financial exploitation by those who would gather their asset information to target them for the sale of financial products under the pretense of assisting with their estate planning. That the EDDA is not an unauthorized practice of law statute is also evident by its express exclusion of certain categories of nonlawyer professionals, such

as financial institutions and tax agents, from its prohibitions. *See* RCW 19.295.020(4)-(6).

Finally, because the Court of Appeals correctly concluded that the plain language of the EDDA was unambiguous, it properly declined to address CLA's argument that the constitutional avoidance canon of statutory construction should be applied, *see* Pet. at 23-24. *State v. Wolvelaere*, 195 Wn.2d 597 n.8, 461 P.3d 1173 (2020) (noting that "the doctrine of constitutional avoidance is limited to those situations in which a statute is subject to more than one reasonable interpretation"). CLA makes a conclusory statement that the Court of Appeals' "overbroad construction" of the EDDA causes it "to sweep in substantial amounts of speech that the government has no interest in banning, in violation of the First Amendment," Pet. at 23, but makes no claim that its constitutional rights have been violated. Even if CLA had made such a claim, the Court of Appeals was not required to consider an allegation of a constitutional violation unsupported by "considered argument." *State Health Ins. Pool v.*

Health Care Auth., 129 Wn.2d 504, 511, 919 P.2d 62 (1996) ("Parties raising constitutional issues must present considered arguments to this court. . . . [N]aked castings into the constitutional sea are not sufficient to command judicial consideration and discussion." (internal citations and quotation marks omitted)).

The EDDA unambiguously prohibits the marketing of estate distribution documents by nonlawyers such as CLA's agents. That CLA would prefer a differently worded statute does not mean that the Court of Appeals erred in interpreting the plain language of the existing statute, or that CLA's interpretation warrants review by this Court.

B. Where the EDDA is Unambiguous and the State Never Advised CLA That Its Conduct Was Lawful, CLA Had Fair Notice of the EDDA's Prohibitions

CLA espouses several theories that attempt to shift blame for its EDDA violations to the State. CLA does not allege, of course, that the State directed it to provide misleading information to seniors at its estate-planning seminars. Nor does

CLA allege that the State directed it to send its representatives to clients' homes, under the guise of assisting with preparation of estate planning documents, to gather financial information for the purpose of selling insurance products. CLA does not dispute that it voluntarily chose to engage in this misconduct. Instead, CLA's argument can be generally summed up as an argument that civil penalties are inappropriate because the State did not expressly advise CLA that its conduct was illegal.[3] *See* Pet. at 24-27. This meritless argument does not warrant review.

Even setting aside the obvious impropriety of the State offering legal advice to its enforcement targets, the Court of Appeals correctly determined that CLA's characterization of the relevant facts and law was misleading. Pet. App. at 30-32. The Court of Appeals determined that the facts "do not include any

[3] CLA does not acknowledge the trial court's finding that CLA was put on notice that its practices could violate Washington law by an attorney who declined to receive referrals from CLA after concluding its business model could violate Washington law. *Id.* at 50 (¶ 25).

explicit or tacit indication from the [Attorney General's Office] that it had concluded CLA's business model was lawful," and the case law CLA cites refers to situations in which statutory text and relevant court and agency guidance allowed for more than one reasonable interpretation. *See Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 70 n.20, 127 S. Ct. 2201, 167 L. Ed. 2d 1045 (2007) (finding defendants' reading of Fair Credit Reporting Act reasonable); *Christopher v. SmithKline Beecham Corp*., 567 U.S. 142, 155-156, 132 S. Ct. 2156 (2012) (recognizing that deference to an agency's interpretation of its regulations is only appropriate when the agency's interpretation is reasonable).

Here, in contrast, "neither statutory guidance, court guidance, nor agency guidance indicate that CLA's interpretation of the law was reasonable." Pet. App. at 31. Moreover, the CPA and EDDA are not enforced by a regulatory agency; the Attorney General is not a regulator with rulemaking authority.

Because the EDDA is unambiguous and the State never tacitly or expressly indicated to CLA that its conduct was lawful, the Court of Appeals properly rejected CLA's argument that it had no fair notice of the EDDA's prohibitions as inconsistent with the law and the facts. As this issue involves neither an issue of substantial public interest nor a significant question of constitutional law, it does not warrant review.

C. The Remedies Awarded Are Well-Grounded in the CPA and Case Law

The restitution and civil penalties awarded by the trial court are well-grounded in relevant statutory and case law, and properly awarded in this case. CLA's argument that these remedies were excessive and duplicative misperceives the CPA.

1. Disgorgement is the proper measure of restitution in this CPA enforcement action

The CPA provides courts with broad powers to fashion appropriate equitable remedies, including restitution "to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any act herein

prohibited or declared to be unlawful." RCW 19.86.080(2). CLA's argument that total disgorgement is inappropriate because consumers will receive a "windfall" ignores the plain language of the statute as well as the harm its conduct caused to consumers.

As the Court of Appeals properly observed, in contrast to RCW 19.86.090's provision that a private plaintiff may seek only "actual damages sustained," RCW 19.86.080(2) permits the court to restore any moneys the defendant acquired by a CPA violation when the Attorney General brings a CPA enforcement action. CLA ignores this language and instead cites only federal cases interpreting different statutes. *See* Pet. at 28-29. One of these cases undermines CLA's contention. In *FTC v. Figgie International, Inc*., 994 F.2d 595, 606 (9th Cir. 1993), the Ninth Circuit held that when defendants' misrepresentations taint consumers' purchasing decisions, consumers are entitled to full restitution, even if the product sold had some value.

Under the CPA, "'[r]estitution measures the remedy by the defendant's gain and seeks to force disgorgement of that gain.'" *State v. LG Elecs., Inc*., 185 Wn. App. 123, 144 n.33, 340 P.3d 915 (2014) (quoting 1 Dan B. Dobbs, *Dobbs Law of Remedies* § 4.1(1), at 555 (2d ed. 1993)). The Court of Appeals properly applied established Washington law in affirming the trial courts' restitution award.

2. The civil penalty award is proper.

Finally, CLA's contention that the trial court's civil penalty award duplicated its restitution award and over-counted violations of the CPA and the EDDA misreads the CPA, which expressly authorizes courts to award both restitution and civil penalties in CPA enforcement cases. *See* RCW 19.86.080(2); RCW 19.86.140. Nowhere does the CPA or case law interpreting it suggest that restitution awards should be added to penalty awards to determine if the resulting sum exceeds the statutory maximum civil penalty, and CLA unsurprisingly cites no authority for this proposition.

Nor does the award of three penalties per attendee at CLA's estate-planning seminars represent an "overcount" of violations. The CPA does not limit the possible number of violations to the number of aggrieved consumers; to the contrary, each unfair or deceptive act is a separate violation, as this Court has long recognized, *State v. Ralph Williams' N. W. Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 317, 553 P.2d 423 (1976) ("We decline to follow the one-violation-per-consumer rule."), and as CLA concedes, Pet. at 29 (citing *State v. LA Investors*, 2 Wn. App. 2d 524, 545-46, 410 P.3d 1183 (2018)).

The trial court properly awarded a civil penalty for each of CLA's independent violations at its estate-planning seminars including (1) CLA's misrepresentations about trusts and probate ($667 penalty per attendee); (2) CLA's deceptive marketing of the Lifetime Estate Plan as a robust estate-planning package and failure to disclose that in-home meetings promised the Plan would be conducted by commission-motivated insurance agents ($667 penalty per attendee); and (3) CLA's offering to gather,

and gathering of information for the preparation of estate distribution documents in violation of the EDDA ($666 penalty per attendee). These were distinct acts by CLA at its estate-planning seminars, and each separately violated the CPA.[4]

CLA's citation of *State Farm Mutual Auto Insurance Co. v. Campbell*, 538 U.S. 408, 426, 123 S. Ct. 1513, 155 L. Ed. 2d 585 (2003), Pet. at 27, hints at, but does not explain or develop, a constitutional due process argument that was not preserved below regarding the amount of restitution and penalties awarded by the trial court. *See* Pet. at 27. But CLA did not raise this argument in the Court of Appeals, and even if it had been preserved, it does not warrant review because CLA has not supported it by considered argument here. *State Health Ins. Pool*, 129 Wn.2d at 511.

[4] Even if these were not separate CPA violations, the total penalty per attendee for violations at the seminars does not exceed the then-existing statutory maximum penalty per CPA violation of $2,000.

The penalties awarded were neither unreasonable nor disproportionate. Rather, they were based on detailed unchallenged factual findings that CLA engaged in repeated and sustained CPA and EDDA violations, did not act in good faith, and caused grave public injury. Pet. App. at 87-95 (¶¶ 54-82). The Court of Appeals properly affirmed the trial court's penalty awards.

D. The State Requests Attorneys' Fees on Appeal Pursuant to RAP 18.1 and RCW 19.86.080(1)

Under the CPA, the prevailing party is entitled to an award of attorneys' fees and costs. RCW 19.86.080(1). The Court of Appeals awarded fees and costs to the State when it prevailed on appeal. Pet. App. at 99-100 (¶¶ 87-89). If CLA's petition for review is denied, the State requests attorneys' fees and costs in accordance with RAP 18.1(a), (b) and (j), the sum of which will be made certain in an affidavit by the State's counsel upon order by the Court in accordance with RAP 18.1(d).

V. CONCLUSION

CLA has not established that any of the considerations warranting review by this Court are applicable, and this Court should deny the petition for review.

This document contains 4,997 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 21st day of November, 2022.

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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that the foregoing was electronically filed in the Washington State Supreme Court and electronically served on the following parties, according to the Court's protocols for electronic filing and service:

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DATED this 21st day of November 2022, at Seattle, Washington.

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