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STATE OF WASHINGTON
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No. 97576-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

DUANE YOUNG, Petitioner,

vs.

TOYOTA MOTOR SALES, U.S.A., Inc., Respondent.

ANSWER TO AMICUS CURIAE BRIEF OF NORTHWEST
JUSTICE PROJECT

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ANSWER TO AMICUS CURIAE BRIEF

Like Petitioner, the Northwest Justice Project (“NJP”) complains that the Court of Appeal “inserts a new element into the Consumer Protection Act . . ., namely: that a consumer must prove that prohibited unfair or deceptive practices must be of ‘material importance’ to lead to a recoverable injury.” Amicus Curiae Brief of Northwest Justice Project (“NJP AB”) at 1. NJP finds “[p]articulary concerning [] the lower courts [sic] finding that an injury must also be ‘financially material’.” *Id.* Neither of these complaints are well founded.

First, the Court of Appeals did not “insert a new element” into a CPA claim. Rather, it confirmed, as many courts before it have, that implicit in the first element of a CPA claim (*i.e.*, a deceptive act or practice) is the understanding that the actor misrepresented something “of material importance.” *Young v. Toyota Motor Sales, U.S.A.*, 442 P.3d 5, 9 (Wash. Ct. App. 2019). In fact, the Attorney General of this state agrees that “in cases where this Court has found deception under the CPA, it has looked for information that could be *of importance to a reasonable consumer – and hence material* – without focusing on any evidence of actual consumer reliance.” *See* October 21, 2020 Amicus Brief of the Attorney General for the State of Washington at p. 4 (emphasis added).

Second, the Court of Appeal did not write into the law a “financial materiality” element, but rather noted that Mr. Young failed to present evidence to support his theory of the case that a \$10 part that he was not charged for and did not pay for was somehow material (financially or otherwise) to him or anyone else. *Young*, 442 P.3d 5, 9-10. As noted by the Court of Appeals, the trial court made an unchallenged finding that “Mr. Young did not do anything about the missing temperature gauge until he received the December 2013 letter from Toyota notifying him of its mistake and offering a \$100 cash reimbursement.” *Id.* at 12. The trial court made the further unchallenged finding that Petitioner’s conduct “[was] much more consistent with someone who learned that Toyota had made a mistake and wanted to take advantage of it, than someone who relied upon that item in good faith.” *Id.*, citing CP at 415.

Evaluating Petitioner’s claim through this lens, the Court of Appeal correctly held that it “will not presume that a \$10 part *for which the consumer was not charged* was material to purchase of the \$7,525 model 2014 limited package. The trial court found that Mr. Young presented no credible evidence that the temperature gauge error was material to him, and no evidence whatsoever that it was material to other consumers.” *Young*, 442 P.3d 5, 12 (emphasis added). The Court of Appeal did not write into the law a “financial materiality” element as argued by NJP, but rather noted that Petitioner failed to present evidence that the \$10 part was financially material to

him, or “material for *any nonfinancial reason.*” *Id.* at 10 (emphasis added.) Had Petitioner been improperly charged \$10 for the part he did not receive, there is little question the Court of Appeal and the trial court for that matter, would have found such \$10 charge financially material.

In short, nothing in the Court of Appeal’s decision changes the law of the State of Washington.

DATED this 11th day of May, 2020.

Respectfully Submitted,

By: /s/ Heather A. Hedeem
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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of California that on May 11, 2020, at Los Angeles, California, I caused to be served the foregoing document:

ANSWER TO AMICUS CURIAE BRIEF OF NORTHWEST

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