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No. 35842-9-III

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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DUANE YOUNG, Petitioner,

vs.

TOYOTA MOTOR SALES, USA, Respondent.

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PETITIONER'S SUPPLEMENTAL BRIEF

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Attorneys for Petitioner

BRIAN G CAMERON, WSBA #44905  
Cameron Sutherland, PLLC  
421 W. Riverside Ave., Ste 660  
Spokane, WA 99201  
TEL. (509) 315-4507

KIRK D. MILLER, WSBA #40025  
Kirk D. Miller, P.S.  
421 W. Riverside Ave., Suite 660  
Spokane, WA 99201  
TEL. (509) 413-1494

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## I. INTRODUCTION

This case presents several issues for this Court's resolution:

- A. Must a consumer show that he or she was individually deceived to establish that false advertising is “unfair or deceptive” under Washington’s Consumer Protection Act (CPA), RCW 19.86, *et seq.*?
- B. Must a consumer show that he or she individually relied on affirmative misrepresentations to satisfy an unwritten “materiality” component of an “unfair or deceptive” act or practice under the CPA?
- C. Does an advertiser’s failure to deliver products and features as promised cause an “injury” to affected consumers, or must each individual consumer show that he or she was specifically induced by those products and features prior to ostensibly acquiring them?
- D. Can an advertiser’s affirmative misrepresentations proximately cause injury to consumers after those misrepresentations have been discovered by them?
- E. Does an unwritten “materiality” element inhere within the Legislature’s specially designated prohibitions against “false, deceptive, or misleading” advertising of motor vehicles under RCW 46.70.180(1), even when the

Legislature has not included such an element in any of the provisions of RCW 46.70, *et seq.*?

## **II. FACTS RELEVANT TO THIS PETITION**

Petitioner Duane Young incorporates his prior Statements set forth in his Petition for Review and Brief to the Court of Appeals. Simply stated, Respondent Toyota Motor Sales, USA, falsely advertised “Limited” options packages that included nonexistent products and features. (CP 74-75, 113-114). Mr. Young purchased such a “Limited” options package from Toyota for \$7,660. (CP 74). After he discovered that his new vehicle was not equipped as promised, Mr. Young attempted to negotiate a resolution with Toyota. (CP 115-116, 125). When these negotiations failed, he retained an Oregon attorney to investigate the matter before being referred to present counsel in Washington to advance his case. (CP 131-132).

Mr. Young ultimately filed a CPA claim against Toyota, alleging that Toyota engaged in unfair or deceptive acts or practices in violation of RCW 19.86, *et seq.*, based upon Toyota’s violations of Washington’s Automobile Dealer Practices Act (ADPA), RCW 46.70, *et seq.* See RCW 46.70.310 (“Any violation of this chapter is deemed to affect the public interest and constitutes a violation of chapter 19.86 RCW”).

Toyota has never disputed that the representations it affirmatively made in its advertising were false. (CP 408). Toyota also acknowledges

that it sold at least 59 falsely advertised Tacoma “Limited” vehicles in Washington. (CP 303). This number does not include countless consumers who might have been exposed to or injured by Toyota’s false advertising<sup>1</sup> without ultimately purchasing a 2014 Tacoma “Limited.” *Id.*

Following Mr. Young’s timely appeal, the Division 3 Court of Appeals published its Opinion affirming the trial court in *Young v. Toyota Motor Sales, USA*, 9 Wn. App. 2d 26 (2019). Mr. Young thereafter filed his Petition for final review by this Court.

### **III. SUPPLEMENTAL SUPPORTS**

Mr. Young submits his Supplemental Brief not in an effort to restate arguments that have already been adequately presented by his and Amicus’ previous briefings, but rather to provide this Court with relatively new or additional factors that should be considered in the final resolution of this case. Toward that end, Mr. Young first presents a survey of relevant cases that have been published since he presented his appeal, followed by a summary fundamental principles of Washington’s consumer protection jurisprudence that should be considered in any CPA analysis.

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<sup>1</sup> In cases of false advertising, out-of-pocket expenses, such as the cost of traveling to a dealership in response to false advertisements, are recoverable. *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 64 204 P.3d 885 (2009).

**A. Cases Published Since Mr. Young Presented His Appeal Strongly Support His Position on Unfair or Deceptive Acts or Practices, Causation, and Injury.**

Since the time Mr. Young argued his case before the Division 3 Court of Appeals on January 31, 2019, published authority regarding deception, causation, and injury have strongly supported Mr. Young's position under the circumstances of this case. Relevant cases are briefly addressed as follows:

**1. Peoples v. United Servs. Auto. Ass'n.**

In *Peoples v. United Servs. Auto. Ass'n*, 194 Wn.2d 771, 452 P.3d 1218 (2019), this Court considered whether an insurer's wrongful withholding of personal injury protection (PIP) benefits constituted an injury to "business or property" under the CPA. RCW 19.86.090. Finding that insureds have a property interest in PIP benefits as a component of their insurance contracts, this Court held that insureds who are wrongfully denied PIP benefits are injured in their "business or property" under the CPA. *Id.* at 780, 1222. This may be analogized to Mr. Young's property interest in products and features that were advertised as components of the "Limited" options package he purchased from Toyota.

This Court further affirmed that "we have continued to recognize that expenses incurred to investigate a deceptive act or practice," as Mr. Young did in hiring an Oregon attorney to investigate his options in his case, "are cognizable injuries and damages under the CPA." *Id.* at 782, 1223.

2. *Keodalah v. Allstate Ins. Co.*

While this court’s decision in *Keodalah v. Allstate Ins. Co.*, 194 Wn.2d 339, 350, 449 P.3d 1040, 1047 (2019), focused on whether or not an insured may bring certain CPA claims against an insurer’s employees, rather than the CPA elements at issue in Mr. Young’s case, this Court did reaffirm fundamental principles that are relevant to any CPA analysis, including:

- A. “In construing a statute, the fundamental objective is to ascertain and carry out the legislature’s intent.” *Id.* at 344, 1044. The same is true in liberally construing the CPA to promote the Legislative intent set forth in RCW 19.86.920, RCW 46.70.900, and RCW 46.70.005.
- B. “To establish a CPA claim, a plaintiff must prove *five* elements: (1) an unfair or deceptive act or practice that (2) affects trade or commerce and (3) impacts the public interest, and (4) the plaintiff sustained damage to business or property that was (5) caused by the unfair or deceptive act or practice” *Id.* at 349, 1047. (emphasis added).  
Consistent with all of its previous and contemporary decisions, this court did not recognize any more than five elements of a CPA claim, none of which articulate a “materiality” or “financial materiality” component.

During the same period of time, the Division 1 Court of Appeals also decided several cases in a manner that is generally consistent with this Court's established CPA jurisprudence and, in some instances, decidedly different than Division 3's approach in Mr. Young's case.

**3. Villegas v. Nationstar Mortg., LLC.**

In *Villegas v. Nationstar Mortg., LLC*, 8 Wn. App. 2d 878, 444 P.3d 14 (2019), the court evaluated a CPA Plaintiff's claims based on well-established standards for showing the "causation" and "injury" elements in CPA claims<sup>2</sup>:

The CPA limits compensable injuries to "injury to [the] plaintiff in his or her business or property." A claimant must show that the alleged injury would not have occurred "but for" the defendant's unlawful acts. "Because the CPA addresses 'injuries' rather than 'damages,' quantifiable monetary loss is not required." (citing cases).

*Id.* at 893, 22

Because the Plaintiff in *Villegas* alleged damage to his credit score, but did not establish what his actual score was before or after the prohibited conduct, the court found that the Plaintiff failed to prove the causation and injury elements of his CPA claim. *Id.* at 894, 22. The *Villegas* court also found that fees the Plaintiff paid for an attorney to

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<sup>2</sup> This Court has established five elements that a private CPA plaintiff must satisfy to substantiate a CPA claim, including 1) unfair or deceptive act or practice, 2) occurring in trade or commerce, 3) public interest, 4) proximate causation, and 5) injury to business or property. *Hangman Ridge Training Stables v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 719 P.2d 531 (1986).

represent him at an unsuccessful mediation session were not a compensable injury, because these fees would have been paid for attorney representation regardless of the outcome of that mediation. *Id.* The facts that led to these findings in *Villegas* are readily distinguishable from those at issue in Mr. Young's case.

Most notably, in Mr. Young's case, it has been conclusively established that Toyota falsely advertised specific and tangible products and features that it did not deliver to Mr. Young – or anyone else who bought its “Limited” options package. (CP 96-99, 113-114). This establishes both Mr. Young's property interest, being the promised products and features, as well as his injury, being deprived of the use and enjoyment of the same. As for causation, it is also undisputed that, had Toyota not misrepresented what was included with its “Limited” options package, Mr. Young would have had the use and enjoyment of those misrepresented products and features. *Id.* Furthermore, Mr. Young initially hired an Oregon attorney to investigate his options after Toyota admitted that it had misrepresented its “Limited” options package to him. (CP 113-114, 131-132). Unlike the plaintiff's unsuccessful mediation in *Villegas*, Toyota's false advertising was the *only* reason Mr. Young was compelled to pay an Oregon attorney to help him investigate his legal options. (CP 131-132). That is, but-for Toyota's admittedly false

advertising, Mr. Young would not have been compelled to hire an attorney to investigate his options.

Under well-established authorities, both types of injuries, the deprivation of property and Mr. Young's investigative expenses, are cognizable injuries under the CPA. *Panag*, 166 Wn.2d at 64, 204 P.3d at 903. "A loss of use of property which is causally related to an unfair or deceptive act or practice is sufficient injury to constitute the fourth element of a Consumer Protection Act violation. The injury element will be met if the consumer's property interest or money is diminished because of the unlawful conduct even if the expenses caused by the statutory violation are minimal." *Mason v. Mortg. Am.*, 114 Wn.2d 842, 854, 792 P.2d 142, 148 (1990); *see also Sorrel v. Eagle Healthcare*, 110 Wn. App. 290, 298-99, 38 P.3d 1024, 1029 (2002) (deprivation of property for two weeks as a result of unfair or deceptive practice constitutes an "injury" under the CPA). With regard to investigative expenses, it is only if "the investigative expense would have been incurred regardless of whether a violation existed," that "causation cannot be established." *Panag*, 166 Wn.2d at 64, 204 P.3d at 903.

To establish causation, a CPA plaintiff "must merely show that the "injury complained of ... would not have happened" if not for the defendant's violative acts. *Schnall v. AT&T Wireless Servs., Inc.*, 171 Wn.2d 260, 278, 259 P.3d 129, 137 (2011) (citing *Indoor*

*Billboard/Washington, Inc. v. Integra Telecom of Wash., Inc.*, 162 Wn.2d 59, 170 P.3d 10 (2007). In Mr. Young’s case, if Toyota had actually delivered what it promised in its advertising, then Mr. Young would have the benefit of those advertised products and features. That is, but-for Toyota’s false advertising, Mr. Young would not have been deprived of the subject property or incurred investigative expenses once that deprivation occurred.

**4. *Desranleau v. Hyland's, Inc.***

In *Desranleau v. Hyland's, Inc.*, 10 Wn. App. 2d 837, P.3d 1203 (2019), Division 1 found that a CPA plaintiff failed to show causation and damages when she admitted that “she never purchased any of [the defendant’s] products or even heard of [the defendant] before this suit,” and therefore the defendants could not have “induced” her to do anything that caused her alleged injuries. *Id.* at 849-850, 1210.

In Mr. Young’s case, Toyota successfully induced him to purchase a “Limited” options package through advertising that conveyed the net impression that this special package was full of myriad “bells and whistles,” including several products and features that, Toyota would eventually admit, did not actually exist. (CP 74-75, 113-114). Toyota’s conduct also induced, even compelled, Mr. Young to pay for an Oregon attorney to investigate his legal options. (CP 131-132). These facts clearly distinguish Mr. Young’s demonstrable injuries, none of which would have

occurred if Toyota had delivered its “Limited” options package as advertised, from the plaintiff in *Desranleau*, who never actually purchased anything from the Defendant or even knew that the Defendant existed. *Desranleau*, 10 Wn. App. 2d at 849-850, P.3d at 1210.

5. ***State v. Living Essentials, LLC.***

*State v. Living Essentials, LLC*, 8 Wn. App. 2d 1, 18, 436 P.3d 857, 866 (2019), presented a case brought by Washington’s Attorney General alleging that an energy drink maker’s allegedly unsubstantiated claims regarding its product’s health benefits constituted “deceptive” advertising under the CPA. In evaluating the State’s claims, Division 1 also reaffirmed fundamental principles of CPA jurisprudence in Washington:

- A. Consumer reliance is not required to show that an act or practice is “deceptive.” *Id.* at 15, 865.
- B. “A CPA claim ‘does not require a finding of an intent to deceive or defraud and therefore good faith on the part of the seller is immaterial.’” *Id.* (citing cases).
- C. “An act is deceptive if it is likely to mislead a reasonable consumer.” *Id.*
- D. “A plaintiff need not show that the act in question was *intended* to deceive, but that the alleged act had the *capacity* to

deceive a substantial portion of the public.” *Id.* (emphasis original).

E. An otherwise truthful statement may be deceptive by virtue of the “net impression” it conveys. *Id.*

The central issue in *State v. Living Essentials* was whether an advertiser’s claim that could *theoretically* be true was sufficiently substantiated by evidence so as not to “suggest greater scientific certainty than actually exists” regarding the supposed health benefits of certain energy drinks. *Id.* at 33, 873. Based on the lack of scientific evidence supporting the defendant’s advertising claims, Division 1 agreed with the trial court’s finding that the defendant’s advertisements were “materially misleading and in violation of the CPA.” *Id.* at 21, 867.

The circumstances of *State v. Living Essentials* are markedly different than those of Mr. Young’s case, in which it has been conclusively established that Toyota advertised a “Limited” options package that promised to deliver nonexistent parts and features. (CP 74-75, 113-114). Under such circumstances, it is not even *theoretically* possible that Toyota’s statements regarding its “Limited” options package were true, and so the court’s analysis in *State v. Living Essentials* is unnecessary in Mr. Young’s case.

What is relevant to Mr. Young’s case is that the court in *State v. Living Essentials* found the defendant’s statements to be “materially

misleading” based upon a lack of scientific evidence to substantiate its claims regarding the supposed benefits and features of its energy drinks. *Living Essentials*, 8 Wn. App. at 21, 436 P.3d at 867. Under the same standard, Toyota’s statements regarding the products and features included in its “Limited” options package would also have to be “materially misleading,” because no amount of scientific evidence can substantiate the existence of what Toyota admits were nonexistent products and features. *Id.*; CP 74-75, 113-114.

**B. Public Interest, Preventing Harm, and The Principle of the “Consumer Advocate.”**

In his Petition for Review, Mr. Young and the Attorney General of Washington as Amicus have adequately addressed the longstanding principle that whether or not a consumer is actually deceived is “irrelevant” in establishing that a deceptive act or practice has occurred. *Testo v. Russ Dunmire Oldsmobile*, 16 Wn. App. 39, 51, 554 P.2d 349, 358 (1976). “Rather, if he can show that the defendant's actions possessed a tendency or capacity to mislead, an unfair or deceptive act is proved.” *Id.*; see also *Hangman Ridge Training Stables v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 785, 719 P.2d 531, 535 (1986) (“A plaintiff need not show that the act in question was *intended* to deceive, but that the alleged act had the *capacity* to deceive a substantial portion of the public.” (emphases original)).

As a supplement to these previous arguments, which are incorporated herein, Mr. Young submits that this Court should consider the special role a private CPA plaintiff plays in CPA claims, relative to other civil actions, as this Court attempts to synthesize decades of compounded jurisprudence related to the issues presented in Mr. Young's case.

Originally, only the Attorney General was authorized to bring suit under the CPA. *Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc.*, 162 Wn.2d 59, 73, 170 P.3d 10 (2007). In 1970, the Legislature amended the statute to address “the escalating need for additional enforcement capabilities,” by allowing and encouraging private citizens to bring suit to enforce the CPA. *Hangman Ridge*, 105 Wn.2d at 784, 719 P.2d at 534. In effect, the Legislature “deputized” private individuals to file suits that specifically reflected the “public interests” of the citizens of Washington, which remains a key element of every CPA claim. *Id.* at 787, 536. In these important respects, private CPA plaintiffs must address much more than just their *individual* circumstances; they must serve as broader consumer advocates by demonstrating that their claims are representative, or at least *indicative*, of other consumers who reflect the “public interests” of this state. *Id.* at 788, 537. This context is critical to synthesizing the diverse and sometimes divergent authorities regarding private CPA claims.

With regard to the issues presented in Mr. Young’s case, the role of the private CPA plaintiff as a “consumer advocate” is reflective of the principles that 1) whether or not a consumer is actually deceived is “irrelevant” in establishing that a deceptive act or practice has occurred, *Testo*, 16 Wn. App. at 51, and that a private plaintiff “need not show that the act in question was *intended* to deceive, but that the alleged act had the *capacity* to deceive a substantial portion of the public.” *Hangman Ridge*, 105 Wn.2d at 785, 719 P.2d at 535 (emphases original). This reflects the Legislature’s intention that CPA claims, including private ones, “deter and protect against unfair or deceptive acts or practices” that affect the *public interest*, rather than just the idiosyncratic circumstances of an individual plaintiff. *Panag*, 166 Wn.2d at 60, 204 P.3d at 901. This Court recognized and emphasized this principle in establishing the “capacity-to-deceive” test over consideration for individual consumer reliance, explaining that “[t]he purpose of the capacity-to-deceive test is to deter deceptive conduct *before* injury occurs.” *Hangman Ridge*, 105 Wn.2d at 785, 719 P.2d at 535 (emphases original).

In Mr. Young’s case, Division 3’s adoption of a standard that requires *any* CPA plaintiff, whether public or private, to show that an indisputably false representation was “a matter of material importance” to him as an individual flatly contradicts and wholly undermines the foundational purposes of the CPA with respect to the protection of the

*public* interest and the “capacity-to-deceive” test that has served as the standard for at least a decade before this Court’s landmark 1986 decision in *Hangman Ridge. Testo*, 16 Wn. App. at 51, 554 P.2d at 358.

**C. Injury May Be Caused Without Consumer Reliance.**

The prophylactic function of the CPA, being “to deter deceptive conduct *before* injury occurs,” *Hangman Ridge*, 105 Wn.2d at 785, 719 P.2d at 535 (emphases original), is also reflected in this Court’s decisions regarding injury and causation in private CPA claims. While private CPA plaintiffs must show that they were injured by the defendant’s prohibited conduct, “[t]he injury involved need not be great.” *Hangman Ridge Training Stables*, 105 Wn.2d at 792, 719 P.2d at 539. This Court has established that “the injury requirement is met upon proof the plaintiff’s ‘property interest or money is diminished because of the unlawful conduct even if the expenses caused by the statutory violation are minimal [citing cases]. Pecuniary losses occasioned by inconvenience may be recoverable as actual damages [citing cases].” *Panag*, 166 Wn.2d at 57-58, 204 P.3d at 899. Moreover, costs incurred in investigating an unfair or deceptive act are sufficient to establish injury. *State Farm Fire & Cas. Co. v. Quang Huynh*, 92 Wn. App. 454, 470, 962 P.2d 854 (1998).

At the same time, “[m]onetary damages are not necessary to establish injury; a mere delay in use of property or receiving payment is an injury under the CPA. *Eagle Healthcare, Inc.*, 110 Wn. App. 290, 298, 38

P.3d 1024 (2002). “When a misrepresentation causes inconvenience that deprives the claimant of the use and enjoyment of his property, the injury element is satisfied.” *Stephens v. Omni Ins. Co.*, 138 Wn. App. 151, 180, 159 P.3d 10, 25 (2007).

The causation analysis under the CPA is the same analysis as cause-in-fact. That is, a private CPA plaintiff must show that “but for the defendant's unfair or deceptive practice, the plaintiff would not have suffered an injury.” *Indoor Billboard/Wash.*, 162 Wn.2d at 84, 170 P.3d at 22. As with this Court’s rejection of an individual “consumer reliance” standard in determining whether or not an “unfair or deceptive act or practice” has occurred, cite, this Court has also made clear that, “[t]o establish injury and causation in a CPA claim, it is not necessary to prove one was actually deceived. It is sufficient to establish the deceptive act or practice proximately caused injury to the plaintiff’s “business or property.” *Panag*, 166 Wn.2d at 63-64. An injury to property occurs when “one’s right to possess, use or enjoy a determinate thing has been affected in the slightest degree.” *Handlin v. On-Site Manager, Inc.*, 187 Wn. App. 841, 849-50 (2015) (citing *Ambach v. French*, 167 Wn.2d 167, 172 (2009)).

In Mr. Young’s case, the lower court erroneously relied on a Division 2 decision, *Mayer v. Sto Indus., Inc.*, 123 Wn. App. 443, 98 P.3d

116 (2004), which in turn relied on two pre-*Hangman Ridge* cases<sup>3</sup>, in its determination that “[t]he causation element is satisfied if the plaintiff demonstrates that a misrepresentation of fact led him to choose the defendant’s product.” *Young v. Toyota Motor Sales, U.S.A.*, 9 Wn. App. 2d 26, 38, 442 P.3d 5, 12 (2019). This individual “consumer reliance” standard, upon which Division 3’s ruling on the CPA’s “causation” element in Mr. Young’s wholly rested, flatly contradicts this Court’s ruling that, “[t]o establish injury and causation in a CPA claim, ***it is not necessary to prove one was actually deceived.***” *Panag*, 166 Wn.2d at 63-64 (emphasis added).

While it may be true that a plaintiff can satisfy the causation element of a CPA claim by showing “that a misrepresentation of fact led him to choose the defendant’s product,” *Young*, 9 Wn. App. 2d at 38, 442 P.3d at 12, this Court has made clear that this is not the *only* way for a private CPA plaintiff to establish causation. *Panag*, 166 Wn.2d at 63-64. Under the authority of this Court, and consistent with the public interest purposes of the CPA and the “consumer advocate” role of private CPA plaintiffs, all that is required is for a plaintiff to establish that the deceptive act or practice proximately caused injury to the plaintiff’s “business or property,” *Panag*, 166 Wn.2d at 63-64, by showing that, “but for the

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<sup>3</sup> See *Mayer*, 123 Wn. App. at 458, 98 P.3d at 122 (citing *Nuttall v. Dowell*, 31 Wn. App. 98, 111, 639 P.2d 832 (1982), and *Anhold v. Daniels*, 94 Wn.2d 40, 614 P.2d 184 (1980)).

defendant's unfair or deceptive practice, the plaintiff would not have suffered an injury.” *Indoor Billboard/Wash.*, 162 Wn.2d at 84, 170 P.3d at 22. In this way, the CPA strives not only to compensate consumer plaintiffs whose property interests have been diminished by unfair or deceptive acts or practices, but also to “deter deceptive conduct *before* injury occurs” to other consumer who share in the “public interest.” *Hangman Ridge*, 105 Wn.2d at 785, 719 P.2d at 535 (emphases original).

**D. Highly-Regulated Fields Warrant Special Consideration.**

In his Petition for Review, Mr. Young addressed the lower court’s approval of a highly constrictive interpretation of the Automobile Dealer Practices Act (ADPA), RCW 46.70, *et seq.*, with regard to both the statute’s scope and purposes. *Young*, 9 Wn. App. 2d at 37, 442 P.3d at 11 (finding that Toyota advertising the sale of its motor vehicles did not relate to the “sale, lease, or financing of a vehicle.”).

Specifically, Division 3 invoked the principle of *ejusdem generis* to eviscerate the otherwise expansive prohibitions of RCW 47.70.180(1), which declares it unlawful for a dealer or manufacturer:

(1) To cause or permit to be advertised, printed, displayed, published, distributed, broadcasted, televised, or disseminated in any manner whatsoever, any statement or representation with regard to the sale, lease, or financing of a vehicle which is false, deceptive, or misleading, including but not limited to the following [non-exclusive list of examples].

RCW 46.70.180(1).

While the plain language of this provision incorporates almost every conceivable “false, deceptive, or misleading statement” disseminated through virtually any communications medium, *id.*, the lower court found that Toyota’s indisputably false advertising, which was disseminated statewide through mass-market media campaigns, was not prohibited by the ADPA. *Young*, 9 Wn. App. 2d at 37, 442 P.3d at 11. According to Division 3, this finding is supported by the Legislative purposes articulated in RCW 46.70.005, which include the prevention of “frauds, impositions, and other abuses upon [Washington] citizens,” ultimately concluding that “[i]mmaterial errors are not frauds, impositions, or abuses.” *Id.* at 38, 11. In conducting its analysis and reaching its restrictive conclusion, the lower court did not address the Legislative mandate articulated in RCW 46.70.900, which states:

All provisions of this chapter ***shall be liberally construed*** to the end that deceptive practices or commission of fraud ***or misrepresentation*** in the sale, lease, barter, or disposition of vehicles in this state may be prohibited and prevented, and irresponsible, unreliable, or dishonest persons may be prevented from engaging in the business of selling, leasing, bartering, or otherwise dealing in vehicles in this state and reliable persons may be encouraged to engage in the business of selling, leasing, bartering and otherwise dealing in vehicles in this state.

RCW 46.70.900 (emphases added).

Given the plain language of the statute, as well as the Legislature’s instruction to liberally construe all provisions of the ADPA to prevent

frauds *and* misrepresentations, the lower court’s finding that the ADPA does not prohibit dealer or manufacturer from misrepresenting vehicle products and features in mass-market media campaigns is inconsistent with the expressly stated scope and purposes of the statute. RCW 46.70.180(1); RCW 46.70.900. If Washington consumers were forced to prove all of the elements of fraud when asserting a violation of the ADPA, the statute’s broad protections would all but disappear.

With regard to Division 3’s holding that “a materiality requirement inheres in [RCW 46.70.180(1)], just as it inheres in the CPA,” *Young*, 9 Wn. App. 2d at 37, 442 P.3d at 11, Mr. Young submits that a more considered approach than mere “equivalency reasoning” is warranted, especially with regard to statutory schemes covering such heavily regulated fields as motor vehicle sales.

Over the years, Washington’s Legislature has identified certain trades and industries that warrant specific statutory and regulatory controls in order to confront more prevalent abuses of consumer protection standards. *See, e.g., Stephens*, 138 Wn. App. at 172, 159 P.3d at 21 (“The area of debt collection is heavily regulated because of the ‘abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors.’”) (citing 15 USC § 1692(a)). In addition to the interests in protecting private citizens, another purpose of these specially enacted statutory schemes is “to create public confidence in

the honesty and reliability” of those who engage in covered industries.

*Panag*, 166 Wn.2d at 43, 204 P.3d at 892.

Like its counterparts covering insurance, (RCW 48.30, *et seq.*), debt collection, (RCW 19.16, *et seq.*), and other heavily regulated industries, the Legislature has established a statutory scheme to specifically regulate motor vehicle sales in this state. RCW 46.70, *et seq.* In so doing, the Legislature chose to add to the body of existing consumer protection statutes, including the CPA, because it intended to more intensively prohibit and prevent deceptive practices and other abuses in motor vehicle sales, and cultivate a greater degree of “public confidence in the honesty and reliability” in that industry. *Panag*, 166 Wn.2d at 43, 204 P.3d at 892.

Within this context, the lower court’s decision to severely circumscribe the ADPA’s scope and purpose ignores the special attention the Legislature has given toward such a carefully crafted statutory scheme directed at the motor vehicle sales. Division 3’s equivalency reasoning, that whatever applies to the CPA regarding “materiality” must also apply to the ADPA, is similarly incongruent with the scope and purposes of such a specially created statute. As this Court has aptly noted in similar analyses, “[w]hat is just and reasonable in a highly regulated industry . . . may be very different from what is just and reasonable in a different business context.” *Arco Prods. Co. v. Utils. & Transp. Comm'n*, 125

Wn.2d 805, 811, 888 P.2d 728, 732 (1995). The same reasoning should apply in Mr. Young's case with regard to this Court's analysis of his ADPA-based CPA claims.

**E. Mr. Young Is Entitled to an Award of Costs and Fees.**

Pursuant to RCW 19.86.090, Mr. Young is entitled to recovery of his costs and fees as the prevailing party in this action. Pursuant to RAP 18.1, he requests that this Court make such an award per RCW 19.86.090.

**IV. CONCLUSION**

Based upon the supplemental supports and authorities presented and incorporated herein, Mr. Young petitions this Court to accept final review of this matter.

DATED this 10th day of February, 2020, and respectfully submitted,

*s/ Brian G. Cameron*  
Brian G. Cameron, WSBA #44905  
*Attorney for Petitioner*

*s/ Kirk D. Miller*  
Kirk D. Miller, WSBA #40025  
*Attorney for Petitioner*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on the **10<sup>th</sup> day of February, 2020**, at Spokane, Washington, I caused to be served the foregoing document(s), and accompanying exhibits, on the following person(s) and/or entity(ies) in the manner indicated:

<p>Heather A. Hedeem Shook Hardy &amp; Bacon, LLP 701 5<sup>th</sup> Ave., Ste. 6800 Seattle WA 98104</p> <p>Rachel Strauss Mark D. Campbell Michael L. Mallow 2049 Century Park East, Ste. 3000 Los Angeles, CA 90067 <a href="mailto:mmallow@shb.com">mmallow@shb.com</a> <a href="mailto:rstrauss@shb.com">rstrauss@shb.com</a></p>	<p><b>x VIA REGULAR MAIL</b> <b>X VIA EMAIL</b> <input type="checkbox"/> HAND DELIVERED <input type="checkbox"/> VIA REGULAR MAIL <input type="checkbox"/> VIA EXPRESS DELIVERY</p> <p><b>x VIA REGULAR MAIL</b> <b>X VIA EMAIL</b> <input type="checkbox"/> HAND DELIVERED <input type="checkbox"/> VIA REGULAR MAIL <input type="checkbox"/> VIA EXPRESS DELIVERY</p>
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DATED this 10<sup>th</sup> day of February, 2020.

*s/Teri Bracken*  
TERI BRACKEN  
*Paralegal*

**KIRK D. MILLER, P.S.**

**February 10, 2020 - 5:03 PM**

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