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No. 97576-1

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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DUANE YOUNG, Petitioner,

vs.

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

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SUPPLEMENTAL BRIEF OF RESPONDENT  
TOYOTA MOTOR SALES, U.S.A., INC.

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## **INTRODUCTION AND SUMMARY**

Plaintiff Duane Young is seeking to reverse the trial court's factual finding, and the appellate court's affirmance of that finding, that Mr. Young failed to prove he saw an inadvertent transcription error on a window sticker prior to purchasing his Tacoma vehicle; that the error was or could be material to his or any other potential customer's purchasing decision; that a substantial portion of the public would likely be deceived by the error; or that he incurred any financial injury related to the error. As the trial court found, the error upon which Mr. Young tries to build his consumer fraud case against Toyota was not known to him until it was brought to his attention by Toyota months after Mr. Young's purchase. What Mr. Young is asking this Court to do is turn any and every mistake a company makes in sales or promotional materials, regardless of how minor or immaterial, into an actionable claim under the Consumer Protection Act ("CPA"). Neither the Legislature nor the courts have ever allowed such a broad, unwieldy approach to the CPA. The Court should reject Mr. Young's invitation to turn the CPA into a statute used for generating liability and fees over immaterial errors that cause no financial injury, as is sought here.

The purpose of the CPA is to protect consumers from wrongful acts that could impair "fair and honest competition," not to penalize and create windfall awards over innocent and inadvertent mistakes.

RCW 19.86.920. Consumers do not need the protection of the CPA from mistakes on minor or technical issues that do not influence their purchasing decisions. Accordingly, for more than 30 years this Court has required an error to be of the type that has “the capacity to deceive a substantial portion of the public.” *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d 778, 785, 719 P.2d 531 (1986). The trial court properly applied this standard in dismissing Mr. Young’s claims.

Further, for more than twenty years, it has been well-settled law in the Washington Court of Appeals that a mistake must be “something of material importance” to meet the *Hangman Ridge* standard. *Hiner v. Bridgestone/ Firestone Inc.*, 91 Wash. App. 722, 730 (1998) (citing *Potter v. Wilbur-Ellis Co.*, 62 Wash. App. 318, 814 P.2d 670 (1991) (“Implicit in the definition of ‘deceptive’ is the understanding that the actor misrepresented something of material importance.”)). The Court of Appeals, in affirming the trial court’s dismissal of Mr. Young’s claims, properly applied this materiality standard.

Both of these standards—capacity to deceive and “of material importance”—in addition to being well-settled, are fully consistent with the Legislature’s stated intent that “in construing this act, the courts [should] be guided by final decisions of the federal courts and final orders of the federal trade commission.” RCW 19.86.920. As federal courts have held, “The basic question [under the Federal Trade

Commission Act] is whether the act or practice is likely to affect the consumer's conduct or decision with regard to a product or service. If so, the practice is material . . . because consumers are likely to have chosen differently but for the deception." *Cliffdale Associates, Inc.*, 103 F.T.C. 110, app. 174-84 (1984). The longevity of the state courts' rulings and their harmony with decisions under the FTC Act suggest that if the Legislature intended any other interpretation, as this Court pointed out in *Hangman Ridge*, it would have corrected the law. *See* 719 P.2d at 537 ("Legislative inaction in this instance indicates legislative approval."). It has not, and these cases remain good law. They properly state the Legislature's intention in enacting the CPA.

These minimal thresholds for the CPA have worked well and should not be disturbed. They provide legitimately aggrieved consumers the ability to seek redress regarding material matters while protecting against those who would use—or even seek out—any minor, immaterial discrepancy to generate windfall awards and attorney fees. Here, the trial court went to extraordinary lengths to point out that Mr. Young's conduct was "consistent with someone who learned that Toyota had made a mistake and wanted to take advantage of it." *Young v. Toyota Motor Sales, U.S.A.*, 9 Wash.App.2d 26, 39, 442 P.3d 5 (2019). As discussed in detail in Respondent's Answer to the Petition for Review, when Toyota learned of its mistake, it took full responsibility: it fixed the error, proactively notified potentially affected consumers, and offered

compensation. Mr. Young, though, eschewed every offer, as Toyota repeatedly sought to meet his shifting demands—including cash and the mirror he said he wanted—all in favor of pursuing litigation in hopes of generating a windfall.

Toyota respectfully requests that this Court affirm the trial court's and Court of Appeal's findings that Mr. Young failed to state a claim under the CPA. He did not present sufficient, credible evidence that he or anyone else, let alone a substantial portion of the general public, was likely to be deceived by Toyota's mistake in temporarily listing the outside temperature gauge as a rearview mirror feature on the Tacoma Limited or that it was of material importance.

#### **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

1. Whether the appellate court's decision is harmonious with appellate precedent from both state and federal courts when it found Toyota's mistake did not satisfy the first element of Mr. Young's CPA claim because it was not material, and therefore, did not have the capacity to deceive a substantial portion of the public?

2. Was the appellate court's finding that Mr. Young failed to establish that either he or any other consumer was exposed to and made decisions based on Toyota's mistaken description of the rearview mirror—which was required under the circumstances of this case—consistent with appellant precedent, the liability theory Mr. Young presented at trial, and the trial court's factual findings.

3. Whether the appellate court's decision is harmonious with prior Washington appellate and Supreme Court precedent that a per se unfair or deceptive trade practice satisfies only the first two elements of a CPA claim?

### **STATEMENT OF THE CASE**

This Supplemental brief incorporates the underlying facts and procedural history of this case as described in Respondent's Answer to Petition for Review, *see* Answer at 4-10, and in both the trial court's Memorandum Decision and the Court of Appeals' opinion, *Young v. Toyota Motor Sales, U.S.A.*, 9 Wash.App.2d 26, 442 P.3d 5 (2019). For judicial efficiency, this Supplemental Brief does not restate the facts and procedural history here.

### **ARGUMENT WHY THE RULINGS BELOW SHOULD BE AFFIRMED**

**I. The Trial Court Properly Applied *Hangman Ridge* and Found that Toyota's Inadvertent Transcription Error Did Not Have the Capacity to Deceive a Substantial Portion of the Public**

It is clear from the history of the CPA and this Court's rulings on the statute that the mere existence of an error in describing a product is not alone an unfair or deceptive act or practice. *See Lyons v. U.S. Bank Nat'l Ass'n*, 181 Wn.2d 775, 786 (2014) (stating whether an "undisputed conduct is unfair or deceptive is a question of law, not a question of fact"). A trial court must make a determination that the

factual error complained of has legal importance under the CPA. In *Hangman Ridge*, this Court set forth the standard for making this determination; only errors with the “capacity to deceive a substantial portion of the public” into purchasing a product are legally actionable. 105 Wash.2d at 785. Here the trial court thoroughly assessed the facts and issued a detailed 44-page Memorandum Decision (“Order”) properly applying *Hangman Ridge* and found Toyota’s error did not have the capacity to deceive a substantial portion of the public in purchasing the Tacoma or the Limited Options Package.

First, the trial court assessed the nature of the error. It was an inadvertent transcription error on Monroney labels (window stickers on the vehicle) of a very limited number of MY 2014 Tacoma trucks (3 in Washington), and on the website for a very limited time from the date that Tacomas first became available for purchase. Order at 21-22, 26. The 2013 model year included an outside temperature gauge on the auto-dimming mirror, but the 2014 model, which became available in September 2013, did not. Record of Proceedings (“ROP”) 253:16-21. There were many other features included in the \$7,525 Limited Option Package. These items are detailed in Toyota’s Answer and include heated front sport seats with a 4-way adjustable driver seat, chrome clad alloy wheels with P2565/60R18 tires, numerous chrome accessories, leather-trimmed steering wheel with audio controls and shifter, remote keyless entry, cruise control, Entune

premium JBL Audio with navigation and app suite, and much more.  
Answer 4-5.

The trial court found that some options may “induc[e] customers to purchase a new vehicle.” Order at 34. “Certainly, a manufacturer’s reputation, a vehicle’s resale value, its reliability and reputation in the community, along with its major amenities, like four-wheel drive, or automatic or manual transmission would be a major inducement for a purchase of such an expensive item.” *Id.* But, “[a]s you get to smaller and smaller amenities that may or may not be offered from one year to another, the capacity to deceive a substantial portion of the public for those smaller items becomes much more speculative.” *Id.*

The trial court also explained that Toyota identified the error under its quality control system and the error existed for only a few weeks. Order at 16-18. On October 22, 2013, Toyota proactively alerted its regional representatives of the error, informed them that new Monroney labels would be available to print the next morning, and requested they forward the revised Monroney labels to the dealers. (ROP 255:18-256:21). Toyota also updated all digital brochures and its website to ensure information related to the 2014 Tacoma trucks with the Limited Options Package was accurate. (ROP 301:4-25).

The trial court observed that although the outside temperature gauge may have been listed on the Monroney label, no customer—

including Mr. Young—was ever charged for the part. (ROP 351:4-25); Order at 32 (“Mr. Young did not pay for the outside temperature gauge on his rearview mirror.”). The temperature gauge was never included in the Limited Option Package or factored into its price. Order at 32. This was solely an inadvertent transcription error. The trial court also assessed the \$10 price for the outside temperature gauge and concluded: “In a broad sense, it’s hard to fathom that a part valued at \$10 by Toyota, using a thorough and complicated pricing scheme, would be an important factor in a \$35,000 plus purchase.” *Id.* at 34.

Second, the trial court evaluated whether the error had the capacity to deceive a substantial portion of the public. The trial court noted that Mr. Young provided testimony only about his own purchasing decisions, but the trial court had “some reasons to question Mr. Young’s credibility.” *Id.* at 33. It concluded, “I cannot find that Mr. Young has proved to me, more likely than not, that Toyota’s error . . . induced him to buy the Tacoma Limited.” *Id.* at 40. The trial court then looked at “whether the act or practice complained of had the capacity to deceive a substantial portion of the public.” *Id.* at 33. It stated that Mr. Young provided “no evidence to suggest that any other purchaser or prospective purchaser in the United States decided or was induced to purchase a 2014 Tacoma Limited Package because of inaccurate representation of the outside temperature gauge.” *Id.* at 33. As the appellate court put it, the trial court’s findings support its

conclusion that Mr. Young failed to prove Toyota's inadvertent error was of material importance, and thereby failed to prove it was deceptive. 442 P.3d at 11.

Thus, the trial court properly applied this Court's standards for determining when an error is actionable under the CPA and found that the error related to the outside temperature gauge was not actionable. The short-term error of listing the outside temperature gauge as a feature in the Limited Option Package did not deceive plaintiff because the trial court found he did not see it prior to purchase, but more importantly, did not have the capacity to deceive, or even influence, a substantial portion the public when considering whether to buy the 2014 Tacoma and Limited Options Package. Thus, the trial court's Order must be upheld because Mr. Young failed to prove the inadvertent transcription error had the capacity to deceive a substantial portion of the public, let alone that it deceived him.

**II. The Court of Appeals Properly Determined that the Inadvertent Transcription Error Was Not Material to Consumer Decisions Such That It Had the Capacity to Deceive a Substantial Portion of the Consuming Public**

The issue of materiality, which is the centerpiece of Mr. Young's appeal, first arose in the Court of Appeals' opinion affirming the trial court's ruling. The Court of Appeals concluded that Toyota's error related to the outside temperature gauge was not important enough—or material—to deceive consumers in purchasing the

Tacoma or Limited Options Package. “Mr. Young failed to demonstrate that Toyota’s mistake was a matter of material importance and therefore deceptive, or that it had the capacity to deceive a substantial portion of the public.” 442 P.3d at 10. In reaching this conclusion, the Court of Appeals assessed both financial and nonfinancial factors of materiality, and subjective and objective measures as to whether the error did or could deceive consumers.

Courts in Washington have long held that a factual error must be material to the purchasing decisions of the public when evaluating whether it has the capacity to deceive them such that it illegally infringes on honest competition. *See, e.g., Hiner*, 91 Wash. App. at 730. The Attorney General acknowledges this point several times in its brief, stating the CPA requires a court to determine “what a reasonable consumer could find important.” Brief at 5. And, “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.” *Id.* at 4 (emphasis in original).

Judge Fearing, in his concurrence, agrees that Toyota should not be liable. His disagreement rests solely with the assertion that “[t]he words ‘unfair’ or ‘deceptive’ . . . connote importance, relevant, or material[ity].” 442 P.3d at 13. He would prefer a factual, not legal determination that any error is per se deceptive. He appreciates, though, that this view is contrary to prevailing opinion and federal law, and likely “lacks any practical importance.” *Id.* at 14. Just

because something is wrong does not mean it is deceptive. To be “deceptive,” the error must have the power to influence consumer decisions for that product or service. Only errors that are material have that power; otherwise they are inconsequential and not actionable under the CPA. *See Cliffdale Associates*, 103 F.T.C. at 174-84.

In *Hangman Ridge*, the Court fully incorporated the concept of materiality into the “capacity” to deceive standard. The term capacity means “legal competency.” *See Capacity*, Merriam-Webster at <https://www.merriam-webster.com/dictionary/capacity> (last visited Jan. 30, 2000). This standard requires a court to make a legal determination that a factual error is actionable under the CPA because it has the power to influence purchasing decisions. Immaterial errors like the one here do not have the capacity or legal competency to deceive a substantial portion of the public. Thus, regardless of whether the Court determines materiality is inherent to “deception” or “capacity,” materiality is required to satisfy the CPA’s first element.

When applying this materiality standard, the Court of Appeals did not, as the Attorney General suggests, rest its conclusion solely on financial immateriality. Brief at 8 (suggesting the court’s analysis “would limit the reach of the CPA in cases where misrepresentations have been made but only in small dollar amounts”). The court said, in the absence of evidence, it could not “presume” that the \$10 outside temperature gauge was material to the purchase of a \$28,000 truck and \$7,525 options package. 442 P.3d at 12. Unlike the AG’s

hypothetical example where a business wrongfully charges consumers a small fee, which Toyota acknowledges would constitute an actionable financial injury, here the trial and appellate courts emphasized that Mr. Young was never charged for the product and “presented no credible evidence” that the error was otherwise financially material. *Id.* Also, the court had already concluded that “Mr. Young did not present credible evidence that Toyota’s error was material for any nonfinancial reason.” *Id.* at 10. It is possible in another case that a low dollar feature, in an otherwise expensive product may be material in motivating consumers to purchase a product; but there was no proof that was the situation here. Thus, companies would not be encouraged, as the Attorney General cautions, “to fill their marketing with ‘financially immaterial’ misrepresentations.” Brief at 9. Such errors would be actionable if individually, or when aggregated, they have the capacity to deceive a substantial portion of the public into purchasing the product. Again, that did not occur, nor did Mr. Young submit any proof that it could happen here.

Finally, materiality is inherent to other elements of the CPA. Immaterial errors do not rise to the level of being in the public interest and do not cause consumer injuries by leading consumers to purchase a product. Therefore, the materiality threshold must be crossed when assessing the first, third, fourth and fifth elements of the CPA. Indeed, Judge Fearing said that he “cannot fathom any occasion” where

immateriality will not preclude a CPA claim. 442 P.3d at 12. But, volumes have been written about the potential for litigation abuse and windfall awards for uninjured plaintiffs if CPA claims could be brought without requiring any material act, injury or causation. *See, e.g.,* Victor E. Schwartz & Cary Silverman, *Common-Sense Construction of Consumer Protection Acts*, 54 Kan. L. Rev. 1 (2006); Joanna Shepherd, *An Empirical Survey of No-Injury Class Actions*, Emory Legal Studies Paper No. 16-402 (Feb. 1, 2016).

The Court should not remove the time-honored, widely accepted standard of materiality. Only those errors that are material have the capacity to influence or deceive a substantial portion of the public with respect to their purchasing decisions. This requirement also protects against abstract or abusive claims, and there is no clear countervailing benefit.

### **III. The Court Should Reject Mr. Young's Attempt to Create Strict Liability Under the CPA**

Because Mr. Young failed to meet several CPA elements, he is now arguing the Court should conclude that any error, no matter how minor or technical, gives rise to liability under the CPA for attorney fees, as sought here, and in other cases, for class-wide damages. His liability theory, though, is based entirely on circular logic and, if implemented, would improperly impose strict liability here and in many other cases, seemingly without the need to put forth any evidence, credible or otherwise.

*A. The CPA Should Remain a Statute with Meaningful Elements and Standards*

Mr. Young is seeking to effectively eliminate the burden of proving the elements of a CPA claim. First, he argues that any inaccuracy is, by definition, deceptive because the product would not be as described. Petition at 9-10. Satisfying the first element of the CPA would become a factual, not legal determination, which is contrary to Washington law. It also would not require the error to have the capacity to deceive consumers into doing *anything* or even that they were aware of or would have cared about the error. Its mere existence, he suggests, satisfies the first CPA element. Second, under Mr. Young's theory, the injury element would be satisfied merely by not receiving the product exactly as described. *Id.* at 11. Incidentally, he posits that not receiving the item as described deprives him "the use of his property." *Id.* To be clear, the trial court found Mr. Young did know about the outside temperature gauge representation before purchase, did not pay for a temperature gauge and had no right to possess an outside temperature gauge. Order at 30-32, 35. It was never his property.

Third, Mr. Young argues that the causation element of the CPA would be satisfied automatically: the error in describing the features of the rearview mirror *caused* consumers not to receive the mirror as described. *Id.* at 12. However, as Judge Fearing made clear in his concurring decision, Toyota should prevail, at the very least, because

it “did not cause Young any damage.” 442 P.3d at 14. Further, Mr. Young attempts to shift the burden of proof under the CPA to defendants, arguing that the burden of proof here is upon “vehicle dealers and manufacturers.” Petition at 17.

The result, if the appeal is granted, would be to impose strict liability based on innocent, immaterial mistakes without requiring consumers to show any real, non-theoretical deception or harm.

*B. Sufficient Evidence Satisfying Each Element of the CPA Must Be Established to Impose CPA Liability*

Mr. Young’s attempt to create strict liability here is nothing more than an attempt to obscure the fact that he did not present any credible evidence that he or any reasonable consumer was, or could be, deceived by Toyota’s short-term error of listing an outside temperature gauge as a feature on the rearview mirror. There simply was no evidence that the error had the capacity to deceive a substantial portion of the public, injured anyone, or caused any injury.

At trial, Mr. Young focused his testimony solely on his own subjective decision-making in purchasing the Tacoma with the Limited Option Package. Specifically, the trial judge determined that Mr. Young did not prove that he was aware of the advertising error and that, even if he had, the mirror feature would not have factored into his decision to purchase the Tacoma or Limited Options Package. Rather, Mr. Young testified that he wanted a truck big enough for duck hunting items and that would fit in his garage. Order at 2-6. He

also believed the Toyota Tacoma would maintain significant re-sale value. *Id.* at 7. Mr. Young paid \$35,686.50 for the car and sold it after driving it for 2.5 years for \$30,500. *Id.* at 15. Thus, according to his testimony, he achieved his reasons for buying the Tacoma Limited.

Further, the trial court detailed seven specific concerns it had with the veracity of Mr. Young's testimony, finding that "a close review of the testimony does cause me some reasons to question Mr. Young's credibility" about the importance he is now placing on the outside temperature gauge. Order at 33. For example, the trial court pointed out that plaintiff "didn't notice his rearview mirror had no outside temperature gauge" when buying or initially driving the truck, and "did not call the dealership [where] he purchased the vehicle to complain about the missing part. He [also] didn't ask them to remedy his missing item and did not ask for a refund, or to return the car and revoke the deal unless he was provided what he bargained for." *Id.* at 37-39. "It was only when Mr. Young received a letter from Toyota, that he began" to complain. *Id.* at 39. The trial court found these behaviors, among others, "inconsistent with someone who felt that a rearview mirror with an outside temperature gauge was an important factor in their purchase." *Id.* at 38.

Now, Mr. Young is arguing the trial court's conclusions about his credibility and lack of injury are *proof* of the trial court's faulty reasoning, *i.e.*, it should not have considered his individual situation (despite not offering any evidence, or even mentioning any other

purchaser), but that of an objective, reasonable consumer. Petition at 10. This argument, ironically, makes his entire testimony and evidence submitted at trial wholly irrelevant. Further, the court did not, as Mr. Young suggests, limit its analysis to just him. As is typical in CPA cases, the trial court sought to use the plaintiff in the courtroom as an example whose experiences could be extrapolated to a reasonable consumer. The court explained that his “credibility is critical when I have to assess whether the act or practice had the capacity to deceive a substantial portion of the public.” Order at 33.

The truth, the trial court found, is that Mr. Young provided “no evidence to suggest that any other purchaser or prospective purchaser in the United States decided or was induced to purchase a 2014 Tacoma Limited Package because of the inaccurate representation of the outside temperature gauge.” Order at 33. Also, Mr. Young only theorized about “consumers who might have been exposed to or injured by Toyota’s [error] without purchasing a 2014 Tacoma Limited.” Petition at 7. He offered no evidence to substantiate this assertion. To the contrary, all of the evidence pointed to the opposite conclusion. For instance, the trial court noted, the website stated, “For details on vehicle specifications, standard features and available equipment in your area, contact your Toyota dealer.” Order at 3. Also, only three Tacoma Limited vehicles were sold in Washington, and 147 nationally, before Toyota proactively corrected the error; and the evidence presented could only establish that one Tacoma, Plaintiffs’,

was actually sold with an incorrect Monroney Label. In light of all of these circumstances—both subjective and objective—the trial court said it “cannot find that more likely than not [this error] had the capacity to deceive a substantial portion of the public.” Order at 40.

C. *The Automobile Dealers Practices Act Does Not Create the Absolute Liability Mr. Young Seeks*

Mr. Young is also seeking to create absolute liability under the CPA through the Automobile Dealers Practices Act. He alleges that the transcription error here triggers the statute and negates his need to meet any of the elements, standards, or proof the CPA requires. *See* Petition at 18 (asserting a violation of this Act “creates an equivalency, not merely a partial satisfaction of CPA elements”). The trial court, Court of Appeals, and Judge Fearing all explained why this Act does not create absolute liability, particularly in this case.

First, the trial court found that “the statute of limitations has run on any claim under RCW 46.70.” Order at 42. Therefore, there is no viable claim under the Act, and an alleged violation of the Act “cannot be a basis to support a Consumer Protection Act claim.” *Id.*

Second, the Act does not govern the type of error at issue here. Rather, as the Court of Appeals found, its provisions seek to govern the financial terms of the sale, lease, or financing of automobiles in an effort to prevent frauds, impositions, and other abuses upon its citizens. *See* 442 P.3d at 11. The Court of Appeals further found that, even still, “immaterial errors are not frauds, impositions, or abuses”

for which this Act was enacted. *Id.* at 12; *cf. Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 43, 204 P.3d 885, 892 (2009) (finding the legislature enacted the Act to “create public confidence in the honesty and reliability” of the car industry).

Third, even if this error were covered under the Act, it would not relieve Mr. Young of having to prove injury and causation, which he cannot do. As explained by this Court in *Hangman Ridge*, “a legislatively declared per se unfair trade practice . . . establishes only the first two elements of a CPA action.” 105 Wash.2d at 792.

Mr. Young simply cannot win this case if any evidence measuring actual or potential deception, injury or causation is required. There was nothing contradictory about the Court of Appeal’s application of the law related to per se unfair or deceptive practices. It not only followed its own precedent, but that of this Court.

#### **IV. Absolute Liability Under the CPA Would Undermine Consumer Protection in Washington**

The Court should reject this attempt to turn CPA claims in Washington into abstract exercises divorced from any real deception, capacity to deceive, injury or causation. Here, the absolute liability Mr. Young seeks is especially inequitable, as Toyota sought to remedy any confusion or disappointment its error may have caused the 147 consumers, including three in Washington, who purchased a 2014 Tacoma Limited before the error was corrected. Even though no

customer raised the discrepancy with Toyota, the company proactively alerted customers of the error and offered them \$100 for any confusion or disappointment the error may have caused.

When Toyota offered Mr. Young \$100, he said he wanted \$200. Order at 24. When Toyota offered his attorney \$500, that was not enough. *Id.* at 26. When Toyota offered to install a new mirror with an outside temperature gauge, he also refused. *Id.* Toyota repeatedly sought to do right by its customers, including Mr. Young, but he wanted more. As the trial court observed, this lawsuit “is 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.* at 39.

The incentive created by the absolute liability Mr. Young seeks is for businesses not to alert consumers of any potential error or offer them anything of value, but to hope nobody notices. As seen here, that is not how Toyota does business. Otherwise, CPA claims would be reflexively filed any time a company reports a problem or undertakes a repair program. The lawsuit would become leverage for settlements focused more on attorney fees than benefits to any consumers. Such actions undermine respect for the judicial system by reinforcing the view that CPA litigation is driven by financial interests of lawyers rather than injuries to consumers.

## CONCLUSION

Mr. Young has not, and cannot, demonstrate his claim satisfies the elements and standards of the CPA. The trial court properly found the error here did not have the capacity to deceive a substantial portion of the public. In affirming that ruling, the Court of Appeals properly applied a “materiality” standard to this element of the CPA and further found that Mr. Young did not sustain any injury and Toyota did not cause him any injury. He did not prove his case and did not put on credible evidence supporting his liability theories. The Court should not now take Mr. Young’s invitation to undercut the longstanding standards for CPA liability to create strict liability here. Toyota respectfully urges the Court to affirm the trial court’s verdict in favor of Toyota and the Court of Appeal’s ruling to affirm that verdict.

DATED this 7th day of February 2020.

Respectfully Submitted,

By: /s/ Michael L. Mallow  
Michael L. Mallow (admitted *Pro Hac*  
*Vice*)  
Attorney for Defendant/Respondent

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies under penalty of perjury under the laws of the State of California that on February 7, 2020, at Los Angeles, California, I caused to be served the foregoing document: **SUPPLEMENTAL BRIEF OF RESPONDENT TOYOTA MOTOR SALES, U.S.A., INC.** on the following persons or entities in the matter indicated:

Brian G. Cameron  
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