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COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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DARRELL R. AXON and TERESA E. MAHONEY-AXON,  
husband and wife and the marital community composed  
thereof,

Petitioners,

vs.

KEYSTONE RV COMPANY, a foreign corporation,

Respondent.

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PETITION FOR REVIEW

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**I. INTRODUCTION, IDENTITY OF  
PETITIONER, AND COURT OF APPEALS  
DECISION WARRANTING REVIEW**

**A. Introduction**

This case arises from the sale of a Keystone recreational vehicle (“RV”) to the Petitioners, Daryl Axon and Theresa Mahoney-Axon (“Axons”), who purchased it to live in and travel. The Respondent is Keystone RV Company (“Keystone”), one of the largest RV manufacturers in the United States. The virtually-new RV was sold to the Axons by a Keystone authorized dealer, who told them that the RV was still covered by Keystone’s manufacturer’s warranty. Neither Keystone nor its dealer disclosed to the Axons several substantial health hazards and limitations in the *ordinary* use of the RV. Those undisclosed hazards included the likely development of mold and mildew in the RV; that it was constructed of materials containing formaldehyde; and that “prolonged occupancy” in the RV resulted in “prolonged exposure” to

these hazardous substances. Similarly, no one told the Axons that Keystone would terminate its warranty if the Axons were discovered to be using their RV for “residential” purposes.

All of these facts substantially affected the safety, utility, and value of the RV. The Axons would not have purchased the RV if they had known of the manufacturing defects in the RV and warranty limitations. All of these undisclosed defects were material to the Petitioners’ decision to purchase the RV.

Keystone seeks to disclaim all liability to consumers relating to the manufacturing defects by merely *referencing* disclaimers in its Owner’s Manual with vague and ambiguous language that literally defies comprehension by ordinary consumers. The Manual refers to “health hazards” but does not disclose what they are. The Manual also prohibits “prolonged occupancy” of its RVs, but does not define the term. The provision which terminates warranty

coverage if an owner is found to be using their RV for “residential” purposes, is found buried in the manual. Even if Keystone’s purported disclaimers were intelligible, they are provided to consumers in a way that is calculated to have zero impact on sales. This is because many consumers never read owner’s manuals for any product, and much less before buying the product.

This appeal involves an unpublished decision. However, the decision directly conflicts with all three divisions of the Court of Appeals and the Supreme Court, regarding the long-outdated defenses of “buyers beware” and *caveat emptor*. Further, all of the facts upon which this petition is predicated regarding the discredited defenses of *caveat emptor* and “buyer beware” are not meaningfully contested by Keystone. The issue is therefore appropriate for review by the Supreme Court.

It is immaterial to the outcome of this petition that the Axons did not submit declarations in opposition to

Keystone's motion for summary judgment. The verified Complaint enabled the Court of Appeals to rule on the merits and the Axons respectfully request that the Supreme Court do the same.

The disclaimers are not warnings against the abuse or neglect of the product, like those typically found in personal injury and product liability actions. The disclaimers in this case concern toxic and carcinogenic substances----mold mildew and formaldehyde---which are harmful to humans. The harm is compounded here because the Axons purchased their RV to live in full-time. That means they were exposed around the clock to such substances, in very close proximity.

This is borne out by Keystone's "caution" to consumers about "prolonged occupancy"----which really translates to "prolonged exposure" to hazardous substances. Still, Keystone does not explicitly warn consumers of the real cause of the risks associated with

"prolonged occupancy." Nor does Keystone share any information with consumers about the nature and extent of the risk----only that a vague risk exists. This is not only unreasonable; it is deceptive and unfair conduct under the Auto Dealers Act, RCW 46.70.180, and the Consumer Protection Act, RCW 19.86., *et seq.*

Finally, other cases which deal with the adequacy of warnings and disclaimers derive almost entirely from product liability and personal actions. The Axons' claims, on the other hand, are brought under the Auto Dealers Act (RCW 46.70.180) and the Consumer Protection Act (RCW 19.86, *et seq.*). These are remedial statutory schemes which must be liberally construed to achieve their legislative intent.

For all of these reasons, the Axons respectfully request that the Supreme Court accept review.

**B. Identity of the Petitioners**

The Petitioners Daryl Axon and Theresa Mahoney-Axon (“Axons”) seek review.

**C. The Court of Appeals Decision Warranting Review**

Division III filed its opinion on May 3, 2022. See Appendix A-1 to A-20. The trial court’s decision is reproduced at A-21 to A-24. The trial court’s letter transmitting its decision is reproduced at A-25 to A-27.

**II. ISSUES PRESENTED FOR REVIEW**

The sole issue presented for review in this Petition is: Did the Court of Appeals err by relying on Keystone’s “buyer beware” defense, discredited by all Washington courts, thereby resulting in dismissal of the Petitioners’ Complaint by summary judgment?

**III. STATEMENT OF THE CASE**

**A. Substantially Uncontroverted Facts Relevant to the Axons’ Claims**

The Plaintiffs filed a detailed and verified 26-page Complaint on June 7, 2019, from which the following facts are taken. (CP 1 - 26).

In the summer of 2018, the Axons were interested in buying a safe and reliable RV which they could occupy full-time with their school-aged daughter. (CP 6, par. 3.1). They purchased a 2018 Keystone “Fusion” fifth-wheel RV from a Keystone authorized dealer in Spokane in June of that year. (CP 9, par. 3.12). The RV was “virtually brand new” (CP 8, par. 3.8) and the Axons paid a total of \$77,488.62 to buy the RV. The Axons were also told that the RV was still “covered” by Keystone’s warranty. (CP 8, par. 3.8).

Unbeknownst to the Axons, the 100-page Owner’s Manual for the RV contained a “caution” to consumers regarding “prolonged occupancy” in the RV, but did not describe or define that term. (CP 8, par. 3.9 - 3.20). The Manual also refers to “health hazards” resulting from the

occupancy of Keystone RVs, but does not identify them. (CP 8-9, pars. 3.10 and 3.11). The Owner's Manual also includes a provision informing consumers that the Company will terminate its warranty for the RV if it learns that a customer is using their RV for "residential" purposes. (CP 100). Keystone's failure to disclose facts material to the purchase of the Keystone RV, caused the Plaintiffs to purchase an RV they did not want. (CP 15, par. 3.35). The Axons wanted an RV they could live in full-time, that was safe. This is not what the Axons got. The Axons therefore filed a Complaint against Keystone and its authorized dealer, seeking damages for loss of use, diminished value, and other economic damages.

Except for boilerplate denials in their Answer (CP 27-40), Keystone did not meaningfully deny any of the Axon's allegations set forth in their Complaint, except one: Keystone denied that the dealer that the Axons named as a defendant, was an authorized dealer of the Keystone

*Fuzion* RV. (See Keystone's Response Brief at pg. 5). Keystone does not deny that it was an authorized Keystone dealer for all other Keystone RVs—only the *Fuzion* model.

**B. Expert Testimony Supporting the Axons' Claims**

The Plaintiffs provided the trial court with testimony of Joellen Gill, a qualified forensic human factors expert, to testify about the effectiveness, if any, of Keystone's purported disclaimers in its Owner's Manual. She executed a declaration in which she testified about all of the reasons why the disclaimers in Keystone's Owner's Manual were ineffective. (CP 259 - 287), She testified that: "Research has shown that users do not reliably read owner's manuals and/or if they do consult owner's manuals it is for specific information rather than a comprehensive review." In support of this conclusion, she cited Brad Mehlenbacher, Michael S. Wogalter, and Kenneth R. Laughery; *On the Reading of Product Owner's*

*Manuals: Perceptions and Product Complexity*, Proceedings of the Human Factors and Ergonomics Society 46<sup>th</sup> Annual Meeting, (2002). (CP 273). She also testified that:

- a. It was, or should have been, foreseeable to Keystone that purchasers of their RVs would “reside” in these RVs for extended periods.
- b. It was, or should have been, foreseeable to Keystone that purchasers of their RVs would not read the Owner’s Manual before purchasing a Keystone RV.
- c. It was, or should have been, foreseeable to Keystone that the warnings contained in the Owner’s Manual were insufficient and inconsistent with basic principles regarding warning effectiveness.
- d. It was, or should have been, foreseeable to Keystone that purchasers of their RVs may never read the Owner’s Manual in its entirety.
- e. Keystone failed to effectively mitigate the hazards of extended occupancy in their RVs.
- f. Every consumer who has purchased a Keystone RV is at risk for avoidable health hazards, because Keystone failed to effectively mitigate those hazards.

(CP 260).

Ms. Gill's testimony can lead a fact-finder to only one conclusion: Keystone knowingly calculated a way to disclaim liability for consumer lawsuits, such as this, without impacting sales at all. In other words, Keystone wants to have its cake and eat it, too. This is not only wrong, but it does not comport with well-settled law regarding consumer protection claims under our CPA.

The Plaintiffs also provided the trial court with the testimony of John Walker, an expert in the appraisal of vehicles including RVs. (CP 295 - 303). Mr. Walker testified that the value of Keystone RVs is less than the purchase price because of their loss of value, or diminished value, once the undisclosed health hazards and limitations on their use become known. (CP297 - 301).

The Plaintiffs also presented the expert testimony of Dr. John Buscher, a physician with substantial experience in occupational medicine. (CP 289 - 293). Dr. Buscher

testified that mold varieties found in Keystone RVs are toxic to humans and can result in illness from which a patient may never recover. (*Id.*) Keystone does not deny that formaldehyde is a human carcinogenic.

### **C. Keystone's Purported Disclaimers**

Keystone claims that consumers must satisfy ridiculous requirements to overcome disclaimers in its Owner's Manual to survive summary judgment. For example:

*Keystone claims that "[h]ad Appellants actually read Keystone's Owner's Manual in 2018 or visited Keystone's website, they would have noticed that Keystone dedicated an entire chapter in its Owner's Manual to prolonged occupancy." (Keystone's Response Brief @ pg. 2).*

Even if consumers did read Keystone's Owner's Manual, Keystone has never presented any evidence to support their claim that consumers have a duty to do so, *before purchasing a product.*

*Keystone claims that the disclaimers contained in the Owner's Manual are "readily available" and publicly disseminated and that the Axons "simply chose not to look for it." (Keystone's Response Brief pg. 2).*

This is another example of Keystone's "buyer beware" defense strategy. Keystone again has never provided any evidence or authority to show that consumers have a duty to investigate a product before purchasing it, to learn of health hazards and limitations on the use of a product which are known to the manufacturer. Consumers should not have to research websites simply to determine if the product they are purchasing is safe to use, or that it cannot be used as consumers reasonably expect that it could be used, or that the warranty coverage will be terminated when the product is used as intended.

*Keystone argues that it "was never in a position to 'provide' Plaintiffs with information about its limited manufacturer's warranty" (CP 56) since "Plaintiffs never contacted Keystone regarding the purchase of the trailer." Id.*

Again, Keystone has never presented any evidence or authority to support an argument that a manufacturer can avoid its duty to provide material information to consumers regarding the safety, utility and value of its products, in the course of their ordinary use, by forcing the Plaintiffs to do so, instead.

*“Plaintiff’s never contacted Keystone regarding the purchase of their trailer.” (CP 56).*

This argument implies that consumers must contact a manufacturer before the purchase of their RV, to inquire of its safety, utility and value. There is no evidence or authority to support such an argument.

*Keystone argues that consumers need to understand “prolonged occupancy” because if they are staying in their RV for a prolonged period it “can lead to premature component failure and create conditions that could lead to poor indoor air quality if not managed properly.” (CP 60).*

This is a ludicrous argument, given Keystone's deliberate use of ambiguous and confusing language in its Owner's Manual. Keystone deliberately employs the most obscure and ambiguous way to communicate with consumers about the safety, utility or limitations on the use of its RVs.

*If a consumer has asthma, allergies, chronic lung disease such as bronchitis and emphysema, pre-existing heart disease, they are children or elderly they are somehow expected by Keystone to know before they purchase an RV that they are most at risk for poor air quality within the RV. (CP 60).*

Consumers have a basic right to know about any limitations on the time that they can occupy a Keystone RV. This perhaps one of the most shocking aspects of Keystone's conduct as a major manufacturer—it does not disclose the "health hazards" of using its products, even to those who are "most at risk," including children.

**IV. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

**A. “Buyer Beware” is Not The Law in Washington: *Young v. Tacoma Motor Sales*, 196 Wn.2d 310, 313 (2020).**

The trial court in this case granted summary judgment to Keystone RV *after* the Court of Appeals ruled in *Young* in 2019 (9 Wn.App. 2d 26, 442 P.3rd 5 (2019)) but before the Supreme Court issued its ruling in 2020. Still, there is a mountain of authority in Washington case law which has consistently criticized “buyer beware” and “*caveat emptor*” defenses. In fact, the Axons are unable to find a single published appellate decision which upholds the defense in any consumer transaction. The Axons therefore assert that the trial court should have followed Washington law and denied Keystone’s motion for summary judgment on that basis. There are no claims asserted by the Axons against Keystone which should

have been dismissed, if the trial court had followed the holding of *Young* and its predecessor cases.

*Young v. Toyota* simply affirmed again, a very long line of cases too numerous to cite, which have held that “buyer beware” and “*caveat emptor*” defenses are dead in Washington. At least 23 Washington cases since 1901, have expressed their disfavor for “buyer beware” and “*caveat emptor*” defenses. The earliest of those cases is the 1901 Supreme Court case of *Gove v. Tacoma*, 26 Wash. 474, 67 P. 261, where the Court held:

The rule of *caveat emptor* urged by respondent can have no application in a case of this kind, for the reason that *the purchaser need take no notice of the record to learn whether the certificate is regularly and legally issued, and is therefore of value.*

In other words, a buyer has no duty to investigate and learn facts already known to the seller.

Division III of the Court of Appeals is included in the courts which have criticized “buyer beware” and “*caveat*

*emptor.*” See, *Montgomery v. Engelhard*, 188 Wn. App. 66, 352 P.3d 218 (Div. III 2013); *Allegiance Props., LLC v. Richart*, 2020 Wash. App. LEXIS 2850, 2020 WL 6445021.

Complying with the requirements of Young is not a burden for Keystone. All the company must do is place a permanent label on its RVs, conspicuously advising consumers about the dangers of mold, mildew, formaldehyde, “prolonged occupancy” in its RVs, and the instant termination of warranties when Keystone discovers that a consumer is living in their RV. All of its RVs placed with the stream of commerce should have such a label. This would provide Keystone with a cheap and easy affirmative defense to all suits, such as this one. Why doesn’t Keystone do this? It is more interested in volume sales than the health and safety of their own consumers.

**B. Both New and Used Products Must be Merchantable.**

RCW 62A.2-314 does not distinguish between new and used products for purposes of determining whether a product is “merchantable.” This provision of the UCC means that the seller promises that the product will be fit for ordinary purposes, reasonably safe, without major defects, and of the average quality of similar products available for sale in the same price range. Clearly, the Keystone RV that the Axons purchased was not merchantable. Merchantability is a question of fact. *Spirit Aerosystems, Inc. v. SPS Techs., LLC*, 2013 U.S. Dist. LEXIS 168696 (U.S.D.C. Kansas).

**C. Disclaimers Are Disfavored by Washington Courts**

“Disclaimers of warranty are disfavored in the law and ineffectual unless explicitly negotiated between the buyer and seller, and set forth with particularity showing the particular qualities and characteristics of fitness which are

being disclaimed.” *Dobias v. W. Farmers Asso*, 6 Wn. App. 194, 200 (Div. III, 1971). A disclaimer to be effective must be bargained for. RCW 62A.2-316.

In *Berg v. Stromme*, 79 Wn.2d 184, 196, 484 P.2d 380 (1971), the Court held that “[w]aivers of such warranties, being disfavored in law, are ineffectual unless explicitly negotiated between buyer and seller and set forth with particularity showing the particular qualities and characteristics of fitness which are being waived.”). *Testo v. Russ Dunmire*, 16 Wn. App. 39, 554 P.2d 349 (1976) held that: “A disclaimer is not effective unless it can be shown that the so-called disclaimer is explicitly negotiated between buyer and seller and set forth with particularity showing the particular qualities and characteristics of fitness which are being waived.”

The construction and legal effect of a disclaimer is a question of law. *Swanson v. Liquid Air Corp.*, 118 Wn.2d 512, 543 (1992). *Swanson* involved purported disclaimers

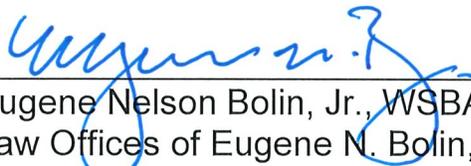
in an employee manual asserted by the employer against its employees. The Supreme Court held that “reasonable notice” must be provided to the employees, and that an employer's inconsistent representations and conduct could negate or override the disclaimer. *Id.* at 519-520.

## V. CONCLUSION

Based on all of the foregoing, the Axons respectfully request that the Court accept review.

*I certify that this memorandum contains 3012 words, in compliance with the RAP 18.17.*

RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of June, 2022.



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# APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

DARRELL R. AXON and TERESA E.	)	No. 38068-8-III
MAHONEY-AXON, husband and wife,	)	
and the marital community composed	)	
thereof,	)	
	)	
Appellants,	)	
	)	
v.	)	
	)	
FREEDOM R.V., INC., a Washington	)	
corporation; BARRY DANZIG and JANE	)	
DOE DANZIG, wife and husband and the	)	
marital community comprised thereof;	)	
AMERICAN GUARDIAN WARRANTY	)	UNPUBLISHED OPINION
SERVICES, INC., a foreign corporation;	)	
TSR PRODUCTS, INC., a foreign	)	
corporation; INSPIRUS CREDIT UNION,	)	
a Washington Credit Union; WESTERN	)	
SURETY COMPANY, a foreign	)	
corporation,	)	
	)	
Defendants,	)	
	)	
KEYSTONE RV COMPANY, a foreign	)	
corporation,	)	
	)	
Respondent.	)	

LAWRENCE-BERREY, J. — Darrell Axon and Teresa Mahoney-Axon appeal the trial court’s summary judgment dismissal of their Consumer Protection Act (CPA), chapter 19.86 RCW, claim against Keystone RV Company. On appeal, the Axons raise

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two arguments. They first argue that Keystone's marketing brochure creates a deceptive net impression that their recreational vehicle (RV) is designed for and suitable for full-time living. They also argue that the warnings contained in the owner's manual produced by Keystone are deceptive because they minimize the true risks associated with living in the RV full time.

We conclude that Keystone's brochure is not deceptive because it is unlikely to mislead a reasonable consumer to think the RV is intended for full-time residential use. We also conclude that the brochure and the warnings contained in the owner's manual could not have misled the Axons because there is no evidence they saw them. We affirm the trial court's summary judgment dismissal of the Axons' CPA claim and deny the parties' requests for reasonable attorney fees.

#### FACTS

The Axons, themselves, did not submit a declaration in opposition to Keystone's summary judgment motion. Rather, they submitted a few declarations from a federal action involving different plaintiffs and Keystone. The only way to provide context to the Axons' CPA claim is to discuss the allegations in their complaint.

A. ALLEGATION IN COMPLAINT<sup>1</sup>

The Axons' complaint asserts numerous causes of action against several entities. We limit our discussion to the only cause of action on appeal—the Axons' CPA claim against Keystone.

In June 2018, the Axons purchased a used RV, intending to use it to live in full time with their daughter. They had found online that Freedom RV in Liberty Lake, Washington, was selling a slightly used 2018 Fuzion fifth-wheel RV, manufactured by Keystone RV Company. They telephoned sales staff at Freedom RV and told them of their intent to buy a safe, reliable RV to live in full time. Freedom RV's sales staff confirmed they had a used 2018 Fuzion in stock and assured the Axons it was safe and reliable. The Axons ultimately purchased it.

While living in their RV, the Axons developed cold and flu symptoms that they believe were a result of mold growth caused by living in a moist and humid environment for prolonged periods.<sup>2</sup> Keystone's owner's manual cautions consumers against

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<sup>1</sup> The Axons describe their complaint as “verified.” The so-called verification language states: “The facts contained in this complaint are true and accurate to the best of [our] knowledge.” Clerk's Papers (CP) at 26. The Axons' allegations, not being sworn to under oath, are not “facts” for purposes of a summary judgment motion. *See* CR 56(e) (only admissible evidence is competent to support or oppose summary judgment).

<sup>2</sup> Despite making allegations of physical injuries, the Axons' complaint states they are not seeking damages for personal injuries, but only for economic damages.

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*Axon v. Freedom R.V., Inc.*

prolonged occupancy. The Axons never read the owner's manual, which they contend is too long to read, and they therefore assert that Keystone failed to warn them that RVs are not designed for residential use. They assert they would not have purchased the RV if they had known they would be at risk for various health hazards by living in the RV.

B. SUMMARY JUDGMENT

1. *Keystone's summary judgment motion*

In its motion, Keystone argued the Axons lacked evidence that it engaged in unfair or deceptive practices or its alleged unfair or deceptive practices caused the Axons' damages.

Keystone noted that while the Axons alleged Keystone deceptively marketed its RVs as designed for prolonged occupancy, they failed to identify or produce any such deceptive marketing during discovery. Nor could the Axons show the owner's manual's warnings about prolonged occupancy were deceptive because they failed to show it had the capacity to deceive a substantial portion of the public.

Keystone argued that the Axons' CPA claim also failed because they failed to establish any causal link between the allegedly unfair or deceptive practices and their damages. Keystone asserted that the Axons admitted in their complaint that they had not read the owner's manual or the allegedly deceptive cautions. Keystone also asserted the

Axons also had refused to identify in their discovery answers any marketing materials on which they had relied in purchasing their RV.

In support of its motion, Keystone included the Axons' responses to the interrogatories and requests for production. When asked to identify and produce testimonials and marketing material they had reviewed before purchase and Keystone's allegedly deceptive acts and omissions, the Axons had responded only with a lengthy objection about contention interrogatories, citing federal authorities.

2. *The Axons' response*

The Axons argued that the court should take judicial notice of a then-pending putative class action filed by RV owners against Keystone in the United States District Court for the Western District of Washington, *Cole v. Keystone RV Company*.<sup>3</sup> They argued that because the same causes of action were asserted in the federal suit and because the court denied Keystone's motion to dismiss under Federal Rule of Civil Procedure (FRCP) 12, the superior court would effectively overrule the District Court's order if it granted Keystone's motion for summary judgment.

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<sup>3</sup> No. 3:18-CV-05182 RLB. The Axons' attorney represented the named plaintiffs in *Cole*. Class certification was denied, and the case was later dismissed in its entirety following Keystone's motion for summary judgment; an appeal is pending in the Ninth Circuit. *Cole*, 2021 WL 3111452 (W.D. Wash. July 22, 2021) (court order).

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The Axons supported their response with a number of exhibits. Two exhibits were materials produced by Keystone: a marketing brochure advertising the Fuzion RV model purchased by the Axons, and chapter 3 of the owner’s manual, entitled “Effects of Prolonged Occupancy and Indoor Air Quality.” Clerk’s Papers (CP) at 134 (boldface omitted). Seven exhibits were filings from the federal *Cole* case, including three expert declarations.

*a. The marketing brochure*

The brochure advertises the Fuzion as a “Fifth Wheel Toy Hauler.” CP at 117 (some formatting omitted). Included floor plans show the various models feature living space in the front of the trailer with a garage area in the rear. One page shows a group sitting around a campfire on a rocky beach next to the RV; around them are a boat on a trailer, a small off-road vehicle, and a dirt bike. Photographs of the Fuzion’s interior show rolling hills or forests outside the windows; there are no people featured in the interior pictures.

Another page in the manual tells the reader: “Don’t limit yourself to highways and freeways[.] Venture off the beaten path to where your ultimate playground awaits. Whether it’s the mountains, the desert, the lake or even wine country. . . . Go where you want to go and do what you want to do.” CP at 121 (some formatting omitted). Under

large block text stating “Fuzion Flexibility,” the same page states: “Let’s [sic] you leave it all behind, without leaving it all behind.” CP at 121 (some formatting omitted).

On a page detailing 90 of the Fuzion’s standard options, 8 features are advertised as residential: a “30” residential convection microwave[;] residential cabinet hardware[;] residential furniture w/heated seats[;] 60” x 80” residential size queen bed[;] residential one piece fiberglass shower w/seat[;] residential, adjustable, hand-held massaging shower fixture[;] 40” x 80” residential size loft mattress[; and] residential glass pass through door[.]” CP at 129 (some formatting omitted). The top of the page also directs readers to the Fuzion webpage on Keystone’s website.

On a page listing Fuzion “innovation,” the brochure states: “Fuzion sets the standard in toy hauler construction.” CP at 130 (some formatting omitted). One innovation is “residential in-floor heat-duct system just like in your home.” CP at 130 (some formatting omitted). Another is the “exclusive Fuzion adjust-a-track frame welded tie down system,” which is billed as “the most rugged, toughest tie-down you can find in any toy hauler. . . . Because your toys are important, be sure your new toy hauler is a Fuzion with the Adjust-A-Track.” CP at 131 (some formatting omitted). The other innovations are color coded wiring, a high-powered air conditioner, a six-layer paint job, reinforced sliding rooms, a suspension with increased axle travel, a ramp door that can

transform into a patio, a four-stage inspection process, and a three-year limited structural warranty.

*b. The owner's manual*

Chapter 3 of the owner's manual is titled, "Effects of Prolonged Occupancy and Indoor Air Quality." CP at 134 (boldface omitted). The chapter includes six subheadings: "Effects of Prolonged Occupancy[,] Improving Indoor Air Quality[,] Tips to Avoiding Condensation[,] Where There Is Moisture, There May Be Mold[,] Formaldehyde & Recreation Vehicles[, and] Web Sites of Interest[.]" CP at 134-37 (boldface omitted).

On the first page of the chapter in the "Effects of Prolonged Occupancy and Indoor Air Quality" section, there is a bold "CAUTION" warning with an exclamation point in a triangle. CP at 134. The warning states:

Your recreational vehicle was designed primarily for recreational use and short-term occupancy. Prolonged Occupancy can lead to premature component wear/failure and create conditions, which if not managed properly, may be hazardous to your health and/or cause significant damage to your recreational vehicle. These types of "Damage" are NOT covered under the Limited Warranty.

CP at 134. The section explains that due to the small size and tight construction of recreational vehicles, "the normal living activities of even a few occupants (or animals) will lead to rapid moisture saturation of the air contained in the RV. . . . Unless the water

vapor is carried outside by ventilation or condensed by a dehumidifier, it will condense on the inside [of] the unit.” CP at 134. It goes on to describe how the condensation may happen out of sight and may damage the RV and personal belongings. It further describes the importance of ventilating the RV, keeping it clean, and managing indoor air pollutants, including a list of common indoor air pollutants. It concludes by identifying “people most at risk for poor indoor air quality” comprising people with asthma, allergies, chronic lung diseases, and heart disease, children, and the elderly. CP at 134.

The next section, “Improving Indoor Air Quality,” lists recommendations from the Centers for Disease Control and Prevention (CDC) and the Environmental Protection Agency (EPA). CP at 135 (boldface omitted). They both include tactics such as increasing ventilation and removing the sources of pollution. The section includes the address of the EPA’s webpage on indoor air quality.

In “Tips to Avoiding Condensation,” the manual describes ways to reduce indoor moisture and the temperature differences that lead to condensation. CP at 136 (boldface omitted). It states that the RV user may need “to invest in a dehumidifier to reduce the health risk to you or your family as well as prevent damage to your RV.” CP at 136. The section “Where There Is Moisture, There May Be Mold” describes molds as pollutants that can be inhibited by controlling the moisture in the air. CP at 136 (boldface omitted).

No. 38068-8-III  
*Axon v. Freedom R.V., Inc.*

It again gives advice on lowering indoor humidity, recommends preventing and killing mold growth, and states that “[i]n extreme conditions, a dehumidifier may be necessary.” CP at 136.

The fifth section, “Formaldehyde & Recreational Vehicles,” describes formaldehyde as both a naturally occurring substance and “an industrial chemical used in the manufacture of some of the components used in the construction of recreational vehicles . . . .” CP at 137 (boldface omitted). It states that the gas “can cause watery eyes, burning sensations in the eyes and throat, nausea, and difficulty breathing.” CP at 137. It cites the CDC and EPA recommendations on improving indoor air quality through ventilation and running the air conditioner and again notes that due to an RV’s small size, there is less air exchange than in a home. It recommends that RV users take any questions about the health effects of formaldehyde and other air pollutants to their doctor or health department. It also states that Keystone’s RVs comply with the California Air Resource Board’s emission standards.

Finally, the last section on “Web Sites of Interest” points the reader to websites “which maintain information about indoor air pollutants, including molds and formaldehyde, along with ways to improve indoor air quality[.]” CP at 137 (boldface

omitted). The websites belong to the EPA, the CDC, the Formaldehyde Council, and the Recreational Vehicle Industry Association.

*c. Documents from the Cole case*

The Axons included three expert declarations that were filed in support of class certification in *Cole*. The first was from Joellen Gill, an expert in human factors engineering, who testified that the warning provided by Keystone in its owner's manual was inadequate to alert consumers to air quality dangers. The second was from Dr. David Buscher, M.D., who testified that mold and formaldehyde are toxic to humans. The third was from John Walker, an expert in loss of use and diminished value of motor vehicles, who testified that the presence of mold and formaldehyde diminished the value of Keystone's RVs.

*3. Keystone's reply*

In its reply, Keystone argued that the Axons' evidence went toward a failure to warn under a products liability claim, not a deceptive act under the CPA. They argued there was no evidence that the Axons had read either the marketing brochure of the owner's manual before their purchase nor was there evidence the documents had the capacity to deceive the public into thinking Keystone RVs were intended to be used as a full-time residence. The manual specifically advises consumers against prolonged

occupancy and cannot deceive a substantial portion of the public that the RV was meant to be used as a full-time residence. The brochure contains no representations that suggest the Fuzion RV is suitable for anything other than short-term occupancy while on vacation. Keystone also argued there was no evidence of causation, which, contrary to the Axons' assertions, is required for a CPA claim. Finally, Keystone argued that the court's order on Keystone's FRCP 12(b)(6) motion to dismiss in *Cole* was irrelevant due to the lack of analysis and different legal standards.

4. *Rulings on Keystone's summary judgment and reconsideration motions*

The superior court granted Keystone's summary judgment motion. It thereafter denied the Axons' reconsideration motion. The remaining defendants in the case were all dismissed or settled, and the court entered final judgment on March 9, 2021.

The Axons timely appealed the trial court's summary judgment dismissal of their CPA claim against Keystone and its denial of their reconsideration motion.

ANALYSIS

A. SUMMARY JUDGMENT STANDARD

A party moving for summary judgment must show there is no genuine issue of material fact and that they are entitled to judgment as a matter of law. CR 56(c). A material fact is one on which the outcome of the litigation depends. *Clements v.*

No. 38068-8-III  
*Axon v. Freedom R.V., Inc.*

*Travelers Indem. Co.*, 121 Wn.2d 243, 249, 850 P.2d 1298 (1993). In deciding a motion for summary judgment, the trial court views all facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. *Id.*

A defendant moving for summary judgment may meet its initial burden by showing there is an absence of evidence to support the plaintiff's case. *Friends of Moon Creek v. Diamond Lake Improvement Ass'n*, 2 Wn. App. 2d 484, 494, 409 P.3d 1084 (2018). If the defendant meets this burden, the burden then shifts to the plaintiff to set forth specific facts demonstrating a genuine issue for trial. *Id.* If the nonmoving party fails to make a showing sufficient to establish an element essential to their claim and on which that party bears the burden of proof at trial, then the trial court should grant the defendant's motion. *Burton v. Twin Commander Aircraft, LLC*, 171 Wn.2d 204, 223, 254 P.3d 778 (2011).

B. CPA CLAIM

The Axons contend summary judgment on their CPA claim was improper. We disagree.

Washington's CPA was enacted by the legislature "in order to protect the public and foster fair and honest competition." RCW 19.86.920. It should "not be construed to

No. 38068-8-III  
*Axon v. Freedom R.V., Inc.*

prohibit acts or practices which are reasonable in relation to the development and preservation of business . . . .” *Id.*

A private party bringing a claim under the CPA must prove (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) affecting the public interest, (4) injury to a person’s business or property, and (5) causation. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 784-85, 719 P.2d 531 (1986).

The Axons assert two arguments why the trial court erred in granting Keystone’s motion for summary judgment: (1) Keystone’s marketing brochure creates a deceptive net impression that it is designed for and suitable for full-time living, and (2) the warnings contained in the owner’s manual produced by Keystone are deceptive because they minimize the true risks associated with living in the RV full time. We address each argument in turn.

*1. Whether the advertising brochure is deceptive*

When “the relevant operative facts are undisputed, whether [an] act or practice is ‘unfair or deceptive’ is a question of law.” *Young v. Toyota Motor Sales, U.S.A.*, 196 Wn.2d 310, 317, 472 P.3d 990 (2020). Here, the contents of the advertising brochure are undisputed. Whether the brochure is deceptive therefore is a question of law.

No. 38068-8-III  
*Axon v. Freedom R.V., Inc.*

A plaintiff need only show that the act or practice had the capacity to deceive a substantial portion of the public, not that it was intended to deceive the public. *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 47, 204 P.3d 885 (2009). “Deception exists ‘if there is a representation, omission or practice that is likely to mislead’ a reasonable consumer.” *Id.* at 50 (quoting *Sw. Sunsites, Inc. v. Fed. Trade Comm’n*, 785 F.2d 1431, 1435 (9th Cir. 1986)). A communication can be accurate but still deceptive if it conveys a deceptive net impression. *Id.* (citing *Fed. Trade Comm’n v. Cyberspace.Com LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006)).

The Axons point to a number of Fuzion features that are advertised as residential and comparable to what one would find in a home. This is not sufficient to create a net impression that the Fuzion is suitable for full-time living.

Inherent in the phrase “recreational vehicle” is the concept that an RV is for recreational living, not residential living. The Fuzion’s recreational character is even more blatant: it is specifically described as a “toy hauler” on the cover of and throughout the brochure. The imagery in the brochure shows people using the Fuzion to camp on a beach with their “toys”—a boat, a small off-road vehicle, and a dirt bike. The imagery in the brochure is focused on the outdoors: it shows people sitting around a campfire.

This is consistent with the brochure's invitation to potential owners to "leave it all behind, without leaving it all behind." Residential features are a selling point, but not to the extent that it suggests the RV is a "condominium or apartment on wheels." Br. of Appellant at 5. On the page listing the Fuzion's "standards and options," only 8 of the 90 features are noted as residential, such as cabinet hardware, mattresses, microwave, and showerhead. The only "residential" feature that is prominently featured is the air-conditioning system, which "achieves 15% greater airflow" thanks to its residential-style design. CP at 128 (some formatting omitted). These minor "residential" luxuries do not create the net impression that the Fuzion toy hauler is intended for residential living instead of a comfortable way to enjoy the outdoors.

We conclude that the Fuzion marketing brochure is not deceptive because it is not likely to mislead a reasonable consumer to think the RV is intended for full-time residential use.<sup>4</sup>

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<sup>4</sup> There also is no admissible evidence the Axons reviewed the brochure prior to purchasing their RV. As explained in the first footnote, the unsworn allegations in the complaint are not "facts" for the purpose of summary judgment. So even if we concluded that the brochure was deceptive, the Axons could not establish causation; that is, that the purportedly deceptive brochure caused them to purchase the RV for full-time residential use.

2. *Whether the owner's manual is deceptive by minimizing the risks of full-time residential use*

The Axons acknowledge the owner's manual discloses information about the risks of prolonged occupancy. They argue that these disclosures are insufficient, however, and that more obvious and detailed disclosures are necessary.

The Axons rely on the declaration of Joellen Gill, filed in the *Cole* case in federal court. Her declaration states that the warnings in the owner's manual are insufficient because RV owners are unlikely to read the owner's manual in its entirety. A warning that is merely insufficient is not the type of conduct the CPA is intended to address: "Implicit in the definition of 'deceptive' under the CPA is the understanding that the practice misleads or misrepresents something of material importance." *Holiday Resort Cmty. Ass'n v. Echo Lake Assocs., LLC*, 134 Wn. App. 210, 226, 135 P.3d 499 (2006).

The owner's manual discusses the ease with which mold can develop in an RV and the risks posed by mold and formaldehyde. It encourages RV owners to properly vent their RV and use dehumidifiers. It further encourages RV owners to consult with their doctor and directs them to specialized resources. It does not minimize or try to hide the possible negative consequences of living in an RV. We conclude that the owner's manual is not deceptive because it does not mislead or misrepresent the dangers of mold and formaldehyde.

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*Axon v. Freedom R.V., Inc.*

But even were we to conclude otherwise, the Axons cannot prevail on this, their second argument, because they failed to present facts sufficient to establish causation, an element on which they bear the burden of proof at trial.

Because of the difficulty of proving a negative, Washington courts recognize a rebuttable presumption that a plaintiff has relied on omitted material facts<sup>5</sup> to establish causation in a CPA claim. *See Deegan v. Windermere Real Estate/Center-Isle, Inc.*, 197 Wn. App. 875, 886, 391 P.3d 582 (2017). The presumption of reliance may be overcome by a showing “that the plaintiff’s decision would have been unaffected even if the omitted fact had been disclosed.” *Morris v. Int’l Yogurt Co.*, 107 Wn.2d 314, 329, 729 P.2d 33 (1986).

Here, the Axons claim the Fuzion owner’s manual omitted material information about the health hazards of mold and formaldehyde. If true, this claim is entitled to a presumption of reliance, which Keystone may rebut by showing the Axons’ decision would not have changed had the manual disclosed additional details about the risks of mold and formaldehyde. Keystone has done so here.

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<sup>5</sup> The Gill declaration, filed by the Axons, does not conclude that Keystone omitted material facts. Rather, the declaration asserts there was so much information in the owner’s manual that a consumer would not likely read it.

The Axons have repeatedly indicated they did not read the Fuzion owner's manual before purchasing their RV. Therefore, their decision to purchase the Fuzion would not have changed had the owner's manual provided more detail about the risk of mold and formaldehyde.

We conclude that the Axons failed to present evidence of causation on their claim of deceptive omission, and their CPA claim fails on that ground as well.<sup>6</sup>

C. ATTORNEY FEES

Both parties request attorney fees on appeal. We decline each party's request.

The Axons request attorney fees under RCW 19.86.090, which allows attorney fees for a prevailing plaintiff in a CPA claim. Because the Axons did not prevail, we do not award them attorney fees.

Keystone requests attorney fees under RAP 18.1(a), which permits recovery of reasonable attorney fees or expenses "[i]f applicable law grants to a party the right to recover reasonable attorney fees . . . ." Keystone fails to specify what applicable law supports its fee request, so we deny it. *See Wilson Court Ltd. P'ship v. Tony Maroni's,*

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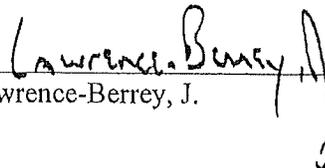
<sup>6</sup> The Axons discuss the dealers and manufacturers statute, chapter 46.70 RCW, in their briefing. They argue the first three elements of their CPA claim are established because Keystone violated chapter 46.70 RCW. We need not address this argument, given our conclusion that the Axons cannot establish the fourth CPA element, causation.

No. 38068-8-III  
*Axon v. Freedom R.V., Inc.*

*Inc.*, 134 Wn.2d 692, 710 n.4, 952 P.2d 590 (1998) (request for attorney fees on appeal must be supported by some basis or reasoning).

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

  
\_\_\_\_\_  
Lawrence-Berrey, J.

WE CONCUR:

  
\_\_\_\_\_  
Siddoway, C.J.

  
\_\_\_\_\_  
Pennell, J.

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The Honorable Michelle Szambelan  
Hearing Date: May 8, 2020  
Without Oral Argument

CN: 1920254932  
SN: 58  
PC: 4

FILED

JUL 09 2020

Timothy W. Fitzgerald  
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF WASHINGTON  
IN AND FOR SPOKANE COUNTY

DARRELL R. AXON and TERESA E.  
MAHONEY-AXON, husband and wife, and  
the marital community composed thereof,

No. 19-2-02549-32

Plaintiffs,

~~PROPOSED~~

v.

ORDER GRANTING DEFENDANT  
KEYSTONE RV COMPANY'S  
MOTION FOR SUMMARY  
JUDGMENT

FREEDOM R.V., INC., a Washington  
corporation; BARRY DANZIG and JANE  
DOE DANZIG, wife and husband and the  
marital community comprised thereof;  
KEYSTONE RV COMPANY, a foreign  
corporation; AMERICAN GUARDIAN  
WARRANTY SERVICES, INC., a foreign  
corporation; TSR PRODUCTS, INC., a foreign  
corporation; INSPIRUS CREDIT UNION, a  
Washington Credit Union; WESTERN  
SURETY, a foreign corporation,

(Clerk's Action Required)

Defendants.

THIS MATTER came on for hearing before the Court on Defendant Keystone RV  
Company's Motion for Summary Judgment. All parties were given notice and an opportunity  
to respond, and the Court reviewed all submissions filed by the parties, including:

1. Defendant Keystone RV Company's Motion for Summary Judgment;
2. Declaration of Joseph P. Corr in Support of Defendant Keystone RV Company's  
Motion for Summary Judgment, including the exhibits attached thereto;
3. Declaration of Garrett Carolus in Support of Defendant Keystone RV Company's  
Motion for Summary Judgment, including the exhibits attached thereto;

ORDER GRANTING DEFENDANT KEYSTONE RV COMPANY'S  
MOTION FOR SUMMARY JUDGMENT - 1  
No. 19-2-02549-32

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- 4. Plaintiffs' Response to Defendant Keystone RV Company's Motion for Summary Judgment;
- 5. Subjoined Declaration of Eugene N. Bolin, including the exhibits attached thereto;
- 6. Declaration of Joellen Gill, M.S. CHFP, CXLT, CSP;
- 7. Declaration of David Buscher, M.D.;
- 8. Declaration of John Walker; and
- 9. Defendant Keystone RV Company's Reply in Support of Motion for Summary Judgment.

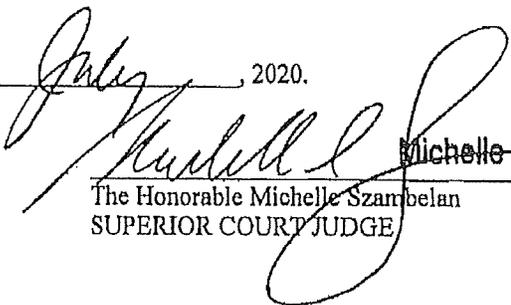
The Court being fully advised in these matters, now, therefor, pursuant to this Court's decision of April 1, 2020, it is hereby

ORDERED, ADJUDGED AND DECREED that

- 1. Reviewing all materials submitted in the light most favorable to Plaintiffs, there is a lack of competent evidence supporting the essential elements of Plaintiffs' claims against Keystone RV Company;
- 2. Defendant Keystone RV Company's Motion for Summary Judgment is GRANTED; and
- 3. Plaintiffs' claims against Defendant Keystone RV Company are DISMISSED in their entirety with prejudice.

IT IS SO ORDERED.

DATED this 9 day of July, 2020.

  
 Michelle D. Szambelan  
 The Honorable Michelle Szambelan  
 SUPERIOR COURT JUDGE

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Presented by:

CORR/DOWNS PLLC

By 

Joseph P. Corr, WSBA No. 36584

Gretchen J. Hoog, WSBA No. 43248

Attorneys for Defendant Keystone RV Company

ORDER GRANTING DEFENDANT KEYSTONE RV COMPANY'S  
MOTION FOR SUMMARY JUDGMENT - 3  
No. 19-2-02549-32

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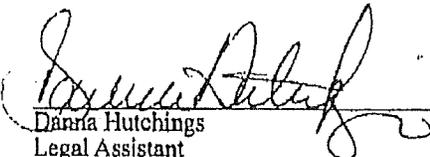
CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on April 27, 2020, I caused to be served a copy of the foregoing [PROPOSED] ORDER GRANTING DEFENDANT KEYSTONE RV COMPANY'S MOTION FOR SUMMARY JUDGMENT on the following person(s) in the manner indicated below at the following address(es):

Eugene N. Bolin, Jr.  by CM/ECF  
Law Offices of Eugene N. Bolin, Jr., P.S.  by Electronic Mail  
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[eugenebolin@gmail.com](mailto:eugenebolin@gmail.com)  by Overnight Delivery  
Attorneys for Plaintiffs

Aaron D. Goforth, WSBA No. 28366  by CM/ECF  
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ORDER GRANTING DEFENDANT KEYSTONE RV COMPANY'S  
MOTION FOR SUMMARY JUDGMENT - 4  
No. 19-2-02549-32

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SPOKANE COUNTY COURTHOUSE

SPOKANE COUNTY SUPERIOR COURT

Michelle "Shelley" Szambelan

JUDGE  
DEPARTMENT 10

Jessica M. Roberts  
Judicial Assistant

Terri Rosadovelazquez  
Court Reporter

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April 1, 2020

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Colleen Ashley Lovejoy  
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Eugene Nelson Bolin Jr  
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Edmonds, WA 98020-4100

**AXON, DARRELL R et al vs FREEDOM RV INC et al**  
No. 19-2-02549-32

Dear Counsel:

Defendant Keystone RV Company ("Keystone") filed a motion for summary judgment under CR 56, seeking a dismissal of the Plaintiffs' (collectively "Axons") claims against it. Following oral argument, the Court took this matter under advisement. This letter serves as the Court's decision on the motion.

In deciding Keystone's motion, the Court reviewed all of the materials filed and submitted in support and in opposition to the motion, including:

1. Keystone's Motion for Summary Judgment;
2. Dec. of Joseph P. Carr supporting Keystone's motion, with exhibits specifically –
  - a. Keystone's original 6.27.17 invoice to Bretz RV & Marine;
  - b. Keystone's 1<sup>st</sup> set of interrogatories to Axons, with responses;
  - c. Keystone's Limited One-Year Warranty (Ch. 2);
3. Dec. of Garett Carolouse, with exhibit, supporting Keystone's motion;
  - a. Keystone's warranty registration showing different purchaser;

4. Axons' Response Brief in opposition, with exhibits that included –
  - a. Keystone's January 2018 brochure;
  - b. Ch. 3 of Keystone's owner's manual, "Effects of Prolonged Occupancy & Indoor Air Quality";
  - c. Amended Federal Complaint in US Dist. Ct., Western Dist. @ Tacoma involving different people;
  - d. Complaint in this matter;
  - e. Keystone's motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b) & misjoinder under Fed. R. Civ. P. 20;
  - f. Axons' response to Keystone's motion to dismiss federal case involving different people;
  - g. J. Leighton's 8/24/18 order in federal case involving different people;
  - h. Dec. of J. Gill, M.S. CHFP, CXL, CSP, in federal case involving different people;
  - i. Dec. of D. Buscher, M.D., in federal case involving different people; and
  - j. Dec. of John Walker in federal case involving different people.
5. Keystone's Reply

The applicable analysis is succinctly set forth below:

In a summary judgment motion, the moving party bears the initial burden of showing the absence of an issue of material fact. If the moving party is a defendant and meets this initial showing, then the inquiry shifts to the party with the burden of proof at trial, the plaintiff. If, at this point, the plaintiff "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial," then the trial court should grant the motion. . . .

In making this responsive showing, the nonmoving party cannot rely on the allegations made in its pleadings. CR 56(e) states that the response, "by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." At that point, the evidence and all reasonable inferences therefrom is considered in the light most favorable to the plaintiff, the nonmoving party.

*Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225-26, 770 P.2d 182 (1989) (internal citations omitted).

A "material fact" which precludes grant of summary judgment is one upon which outcome of litigation depends. *Clements v. Travelers Indem. Co.*, 121 Wn.2d 243, 850 P.2d 1298 (1993). The Court does not try issues of fact; it only determines whether or not factual issues are present that should be tried. *Graves v. P. J. Taggares Co.*, 94 Wn.2d 298, 616 P.2d 1223 (1980).

All trial court rulings made in conjunction with a summary judgment motion are reviewed de novo on appeal. *Keck v. Collins*, 184 Wn.2d 358, 368, 357 P.3d 1080 (2015). As such, trial courts are not called upon to make findings of fact.

Keystone argues that the Axons failed to present any proof of essential elements of the myriad of causes of action they assert. Many of the allegations involve different defendants.

- Negligence (§ A, ¶¶ 4.1-4.3);
- Breach of contract (§ B, ¶¶ 4.8-4.11);
- Violation of Auto Dealer's Act (ADA)(§ C, ¶¶ 4.12-18);
- Violation of Consumer Protection Act (CPA)(§ E, ¶¶ 4.21-4.28);
- Rescission (§ K, ¶¶ 4.41-4.43); and
- Breach of manufacturer's express warranties (§ I, ¶ 4.38).

The Axons seem to concede that their claims against Keystone were "primarily grounded" in the violations of the CPA and ADA. See, p. 4 of Plaintiff's response. The Plaintiffs failed to substantively respond to any of the other claims. Keystone established that Freedom RV is not an authorized dealer for its products. It is undisputed that Keystone had no knowledge or involvement in Freedom RV's sale to the Axons. Keystone never directly communicated or had any interaction with the Axons prior to this litigation. Keystone never provided the Axons with any documentation relating to the purchase of their trailer from Freedom RV. Keystone did not sell the RV to the Plaintiffs.

Keystone asserts that they are entitled to dismissal as a matter of law, noting the lack of competent evidence supporting the essential elements of Axons' claims. After reviewing the materials submitted by the Plaintiffs in a light most favorable to them, this Court agrees that Keystone is entitled to summary judgment.

For the foregoing reasons, Keystone's motion to dismiss is granted.

Counsel for Keystone is directed to prepare an order comporting with this letter decision. Given the emergency closure orders, you may direct the order electronically to Ms. Roberts. If there is not an agreed order, the other party may submit their proposed order and the Court will consider the matter on the pleadings without oral argument.

Very truly yours,



Michelle D. Szambelan  
Superior Court Judge

msd/jr  
Enclosure  
cc: Legal File

## DECLARATION OF SERVICE

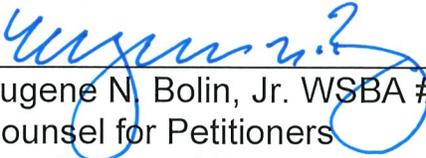
On said day below, I electronically served a true and accurate copy of the *Petition for Review* in Court of Appeals, Division III Cause No. 38068-8 – III to the following:

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Copy electronically served via appellate portal to:  
Court of Appeals, Division III  
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED this 2<sup>nd</sup> day of June, 2022, at Edmonds, WA.

  
\_\_\_\_\_  
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**LAW OFFICES OF EUGENE N. BOLIN, JR.**

**June 02, 2022 - 3:58 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 38068-8  
**Appellate Court Case Title:** Darrell Axon, et al v. Freedom RV, Inc., et al  
**Superior Court Case Number:** 19-2-02549-7

**The following documents have been uploaded:**

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**Comments:**

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