322220

Case No. 88385-8

SUPREME COURT

STATE OF WASHINGTON

West One Automotive Group, Inc.
d/b/a Hertz Car Sales

Respondent/Appellee,

v.

Samuel C. Alvarez and Roberta A. Alvarez,
husband and wife, and the marital
community comprised thereof,

Appellants.

APPELLANTS' BRIEF

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I. ASSIGNMENTS OF ERROR:

A. The trial court first erred by failing to grant the Defendant customers Alvarez's pre-trial motion for CR 56 summary judgment on the Plaintiff used car dealer West One Automotive (d/b/a Hertz Car Sales; hereafter referred to as "Hertz")'s alleged Breach of Contract/Warranty claim filed against its customers, Mr. and Mrs. Alvarez, given the lack of any evidence of proximate causation or reliance, in view of Hertz's lack of any memory about all the key factual events that occurred prior to Hertz's final and unconditional acceptance of the trade-in vehicle, as needed to contest let alone refute and survive the consumer Defendants Alvarez's undisputed and fully remembered disclosure facts (at CP-46-88) consisting of three repeated and completely consistent and uncontradicted disclosures of the branded title status of the trade-in vehicle all occurring prior to Hertz's final and unconditional acceptance thereof and the promised trade-in credit thereon.

B. The trial court also erred by failing to grant the Alvarez's motion for summary judgment on the Alvarezes' permissive, consumer counterclaim for Hertz's violation of the Auto Dealer Practices Act at RCW 46.70.180(4)(b) prohibiting any car dealer from attempting to renege on or from trying to

renegotiate the trade-in credit already promised and given to a customer, based on the admitted and undisputed evidence of Hertz's violation thereof (RP-20, lines 21-24; RP-305, lines 15-22; RP-299, lines 3-21; CP-64, line 1 to CP-67, line 13 and Exhibit K thereto (at CP-84-85)) combined with Hertz's complete inability to ever establish the only available affirmative defense thereon under RCW 46.70.180(4)(b)(1) which required Hertz to clearly, cogently, and convincing establish there was NEVER ANY disclosure of the branded title status of the trade-in vehicle at any time prior to Hertz's final and unconditional acceptance thereof, to ever justify the violation of RCW 46.70.180(4)(b)/RCW 19.86.020 as well as the violation of RCW 46.70.240/RCW 19.86.140 (the violation of an active Consumer Protection Act Injunction still strictly prohibiting the known violator Hertz Car Sales from ever again engaging in any acts prohibited by RCW 46.70 as set forth at (CP-589-596; CP-1031-1032; Banuelos v. TSA Washington, Inc. (Hertz Car Sales) 134 Wash. App. 603, 141 P.3d 652 (2006)).

C. The trial court also erred by failing to at least grant the Alvarezes' CR 50(b) motion (at CP-740-3) for judgment on all the claims between the parties, given Hertz's continued failure at trial from lack of memory to ever

establish any evidence of any proximate causation or any actual reliance on anything but the Alvarezes' full and proper and multiple disclosures of branded title status on the trade-in vehicle all consistently given to Hertz without any contradiction or inconsistencies all prior to Hertz's final and unconditional acceptance of the trade-in vehicle for the agreed trade-in credit, and given that Hertz was never able to establish its alleged RCW 46.70.180(4)(b)(1) affirmative defense to Hertz's RCW 46.70.180(4)(b)/RCW 19.86.020 and RCW 46.70.240/RCW 19.86.140 violations by ever clearly, cogently, and convincingly showing that no such disclosures of the branded title status of the trade-in vehicle had ever been made prior to Hertz's final and unconditional acceptance, especially after Hertz's asserted lack of memory of all the disclosures from the customers, which had already previously left Hertz completely unable to ever contest or contradict the Alvarezes' summary judgment motion, completely unraveled at trial with the Hertz CFO's sudden confession that the Alvarez's written disclosure on a unique, three-year old photocopied vehicle registration (at PE-1.7, page 3) which Mr. Alvarez had stored and then provided to Hertz for copying three days prior to the sale, but which Hertz's dealership employees said was possible but they just couldn't remember getting it or seeing it in

their deal file, was in fact found sitting right in Hertz's deal file (RP-149, lines 1-14) exactly where customer Alvarez claimed it would be after he had provided all the pre-sale disclosures of the same for copying and placement therein (at CP-50, lines 8-16 and CP-51, line 19 to CP-52, line 24).

D. Regardless of the trial court's rulings on the Alvarezes' pre-trial CR 56 motions or the post-trial CR 50(b) motions, the trial court in any event erred by refusing, at the very least, to grant the Alvarezes' RCW 4.84.330 motion for prevailing party defense attorney's fees and costs (triggered by the unilateral fee shifting provisions of the Plaintiff Hertz's own contractual fee-shifting document at PE-1.3) for successfully defending Hertz's failed Breach of Contract/Warranty claim, which fees the trial court denied by effectively awarding a completely improper and legally unavailable offset for Hertz's own fees on the Alvarezes' own allegedly failed consumer claims brought under RCW 19.86.020 and RCW 46.70.180(4)(b), which both have one-way, consumer-only, fee-shifting provisions (RCW 19.86.090/RCW 46.70.190).

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR:

A. Does Hertz Car Sales have a legitimate Breach of Contract/Warranty

claim, where Hertz obtained without any new consideration, an after-the-fact, post-sale, Seller's Disclosure document (PE-1.3) which incorrectly asserted the trade-in vehicle was not a branded-title vehicle, even when Hertz could not remember or refute the Alvarezes' unrebutted testimony that PE-1.3 was signed AFTER the Alvarezes had already fully released their interest in the vehicle to Hertz and that Hertz had also already finally and unconditionally accepted it, and the entire transaction had already closed right after the prior clear and uncontradicted repeat disclosures of branded-title status had already been given long before PE-1.3[1], and both of Hertz's only witnesses (salesman Mr. Harris and finance manager Mr. Prunier) both asserted[2] that they could not remember the transaction well enough and therefore had no personal knowledge to say anything otherwise regarding (a) the Alvarez's repeated pre-sale disclosures of branded title status to Hertz or (b) the after-the-fact,

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1 (Mr. Alvarez at CP-57, line 6 to CP-59, CP-61, paragraph 37; and RP-242, line 22 to RP-245, line 25; RP-255, line 1 to RP-256, line 23; RP-258, lines 2-15; and Mrs. Alvarez at RP-351, line 2 to RP-355, line18).

2 (Harris at CP-81, line 4-25; and RP-207, line 4 to RP-209, line 5; and RP-217, line 16 to RP-218, line 25; and Prunier at CP-298, lines 15-16; and RP-99, line 23 to RP-101, line 4; and RP-102, line 4 to RP-103, line 11) .

post-acceptance timing of PE-1.3 (RP-82, line 10 to RP-85, line 12)?

B. Where Hertz's only affirmative defense available on the prima facie showing of Hertz's RCW 46.70.180(4)(b) violation, was for Hertz to prove by clear, cogent, and convincing evidence under RCW 46.70.180(4)(b)(1) that there was never any disclosure whatsoever of branded-title status to Hertz at any time before Hertz's final and unconditional acceptance of the trade-in vehicle, should the Court have granted the Alvarezes' motions under either CR 56 or CR 50, where the already insufficient to survive summary judgment evidence merely consisted of Hertz's utter lack of memory complete inability to refute anything the customers Alvarezes had already established (at CP-46-88) regarding the full and repeated disclosures and the complete lack of any reliance on anything to the contrary at any time prior to Hertz's final and unconditional acceptance, when the lack of memory already fatal to Hertz at the pre-trial stage was merely repeated at trial until it completely unraveled with the trial confession by Hertz's own CFO that one of the Alvarez's very unique written disclosures was actually found sitting in the Hertz deal file the whole time, exactly as Mr. Alvarez said it would be?

C. (1) For the Alvarez Motion for RCW 4.84.330 fees as the prevailing party on the Hertz dealer's failed breach of contract/warranty claim, the only claim which RCW 4.84.330 applied to, was the mere alleged failure of the Alvarezes' much smaller, distinct and severable, permissive Consumer Protection counterclaims any justification for completely denying any RCW 4.84.330 attorney fee award whatsoever, - i.e. - should trial Courts blindly follow the Division III appellate case of Hertz v. Riebe, 86 Wash. App. 102, 936 P.2d 24 (1997)(Holding that where both parties prevail on any claim, regardless of size or the actual recoverability of any fees on one of those claims, each party's successes are just automatically deemed to properly and equally offset each other without the court actually noting whether there really was any offset was really proper and without doing any real calculations on what net award each party would have really been entitled to be awarded for their respective successes and how much time was actually and reasonably spent on each respective claim), or should trial courts follow the logic of Division I by applying a fair and just, fact specific, case by case, proportionality approach to the actual recoverable and respective successes of each party's claims while also honoring the purposes of the applicable statutes thereunder as set forth under the landmark Division I cases of

International Raceway, Inc. (IRI) v. JDFJ Corporation, 97 Wash. App. 1, 970 P.2d 343 (1999); Marassi v. Lau, 71 Wash. App. 912, 869 P.2d 605 (1993).

(2) For that matter, should this Court ever allow the Division III's Hertz approach to be taken at all, when it violates sound public policy and creates a needless penalty against consumers who would have otherwise received a large RCW 4.84.330 fee award but for the mere fact that they attempted to actively enforce the CPA laws and a CPA injunction in the public interest as encouraged by our legislature and our courts, which consumer claims somehow allegedly failed but were brought in good faith against a known violator of consumer protection statutes and an active CPA injunction, where the complete denial of otherwise fully recoverable fees would have been awarded under RCW 4.84.330 had no CPA claims been asserted, and the legislature has already expressly prohibited CPA defense fee awards, phantom or otherwise, as set forth in the one-way, consumer-only, fee-shifting provisions of RCW 19.86.090 and RCW 46.70.190?

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III. STATEMENT OF THE CASE

(OVERVIEW OF BACKGROUND FACTS)

For the summary judgment motions, all the unchallenged dispositive facts were set forth in the uncontested declaration of Samuel Alvarez (CP-46-88), which facts remained solid and consistent to the very end of the case as seen in the Trial Judge's findings of fact. CP-835-841. The Alvarezes were the 5th (FIFTH) owners (see PE-1.8, pages 2-4) of a used 2003 Chevy Avalanche which they had purchased for $18,000 and used for about a year and a half before deciding to trade in to Hertz for a smaller more fuel efficient vehicle. (RP-287, lines 6-12;(RP-191, lines 21-23). The Alvarezes had financed their Chevy Avalanche through Catholic Credit Union, which held the title as security on the Avalanche (RP-287, lines 21-25). Hertz had no rebuttal declarations or trial testimony with any responsive personal knowledge on any of the key facts governing the issues, asserting a lack of memory.

Hertz then somehow convinced the judge (at CP-302-309) that Hertz's own complete lack of memory and lack of knowledge was some sort of basis for casting doubt over the Defendants' uncontested and clearly remembered dispositive facts showing multiple pre-sale disclosures to Hertz of the fully

and unconditionally accepted branded title status of trade-in vehicle on Tuesday, May 13th, 2008. (CP- 47, line 21 to CP-52, line 24). Hertz merely filed deposition transcripts of their Hertz salesman Mr. Joseph Harris, at CP-294-295, which did not contest any of Mr. Alvarez's testimony of the facts on all three of the pre-sale disclosures at all, due to Mr. Harris's alleged lack of memory and his acknowledgment that his taking a copy of the branded title registration certificate from Mr. Alvarez prior to Hertz's acceptance of the vehicle was entirely possible. CP- 81-82; RP-206, line 24 to RP-208, line 4.

The rest of Mr. Harris's deposition testimony actually confirmed that Mr. Harris's salesman's duties, habits, and routines were precisely to do exactly what Mr. Alvarez had said Mr. Harris had done - including opening the driver's door to inspect the vehicle to fill out the trade-in worksheet (exposing the branded title State Patrol sticker at the driver's door pillar into plain view (See also DE-9, a reflective sticker on the door pillar which actually "stands out at you" (RP-307, lines 19-20)) and also taking pre-sale copies of customer's unique old expired certificates of registration stored in the glove box with the branded title disclosures on each (at PE-1.7, at page 3, a registration from the prior owner Ruben Guzman, which had expired

nearly 3 years before the sale at issue, on 8/3/05; and DE-10, an Alvarez registration that had also expired 9 months previously on 8/3/07) and putting those registrations into Hertz's deal file, with each and every one of those three disclosures absolutely disclosing the vehicle's branded-title status. Harris confirmed that he gathers and puts the photocopies of the customer's registration certificates for proposed trade-in vehicles into a deal jacket (also known as a "deal file") and gives that deal file to the finance office at the same Hertz dealership. (CP-82, lines 7-19) .

The finance manager at the Yakima Hertz dealership with Mr. Harris, Mr. Prunier, got the deal file next, in order to secure the financing and put together all the final paperwork for signing, but Prunier claimed he simply could not "recall" seeing the registration in the deal file put together for him by Mr. Harris. CP-298, line 15, and again at RP-92, lines 21-23; and RP-99, line 23 to RP-101, line 4. However, just like Hertz's Mr. Harris, Prunier did not actually refute Mr. Alvarez's declaration regarding the opening of the drivers door for Mr. Harris exposing of the State Patrol pillar sticker to Mr. Harris (DE-9) or that Alvarez had provided two written registration certificate disclosures to Mr. Harris for copying into the deal file (PE-1.7, page 3 and

DE0-10). Instead, Mr. Prunier merely described his usual and customary procedures at CP-297, but did not assert any specific facts for this deal.

Mr. Prunier admitted at trial that when he gets the deal file with everything gathered and put together for him by the salesman, an agreement has already been reached between the salesman and the customer (albeit with a financing contingency to be covered by the finance manager), and then Mr. Prunier just types up all the final paperwork for signatures. RP-102, line 4 to RP-103, line 11. Mr. Prunier confirmed that the deal file he gets from the sales department in order to do his financing and closing job sometimes includes a trade-in worksheet, but should always include a trade-in vehicle's certificate of registration from the customer, gathered by the salesman. RP-102, line 17 to RP-103, line 3. In fact, all Mr. Prunier needed to finalize a car sale transaction is the agreed sales price and a copy of the registration and he could print up all the paperwork needed to complete the deal. RP-103, lines 7-11. Mr. Prunier also clarified that he can still complete all the paperwork needed to finalize the transaction without personally reviewing the registration - if the sales manager already had the registration and already loaded all the information from that registration into the computer for Mr.

Prunier. RP-103, lines12-20.

When Prunier was asked whether the Seller's disclosure document, PE-1.3 (upon which Plaintiff Hertz's entire claim against the Alvarezes was based) had come before or after all the other sales paperwork had already been signed and finalized as the Alvarezes had claimed, Mr. Prunier said he simply couldn't remember, but it was "possible" that it happened that way, although it generally didn't, unless that document was missing when he needed it. RP-103, line 21 to RP-104, line 6. As a matter of fact, that document was missing at Mr. Prunier's closing with the Alvarezes, exactly as Mr. Alvarez had already made abundantly clear before trial (CP-57, line 6 to CP-62, line 10) wherein Mr. Alvarez's declaration stated that Mr. Prunier never presented the Alvarezes with PE-1.3 until AFTER Mr. Prunier "suddenly said that he just remembered that he needed to go and get one last piece of paper for us to sign" just after they had already signed and completed all the transaction paperwork and were already getting up to leave, and that it took Mr. Prunier at least another 20 minutes post-sale, to round up that document (PE-1.3). When Mr. Prunier finally did obtain the document (PE-1.3), it looked to Mr. Alvarez like a very poor photocopy used from someone else's file. CP-57,

lines16-23; see also PE-1.3.

At trial, Mr. and Mrs. Alvarez both gave unrebutted testimony all over again about the 20 minute after the fact timing of PE-1.3 and how Mr. Prunier had completely failed to ever mention or think of it at all until after everything else had already been completed and they were leaving, and even then, Mr. Prunier was not just missing the document, he could barely find one to use once he happened to bother thinking of it at all. (RP-242, line 22 to RP-245, line 25; RP-255, line 1 to RP-256, line 23; RP-258, lines 2-15; and Mrs. Alvarez at RP-351, line 2 to RP-355, line18). When Mr. Prunier was then asked if PE-1.3 was just something that he had suddenly remembered at the last minute to ask the Alvarezes to sign after they were already walking out the door to leave, Mr. Prunier couldn't remember, but agreed it was certainly "possible" it happened that way. RP-105, line 18 to RP-106, line 2.

The May 16th, 2008 Seller's disclosure (PE-1.3), wasn't just 20 minutes after the sale had already closed, it was also three full days AFTER the State Patrol door pillar sticker had already been exposed to Hertz (at DE-9) and after Hertz had also received the copies of the two registration certificates with the

written branded-title disclosures thereon (at PE-1.7, page 3; DE-10), all of which Mr. Alvarez had said occurred during Mr. Harris' trade-in inspection back on Tuesday, May 13th, 2008 (CP-47, line 21 to CP-52, line 3), long before the final paperwork was later signed with Mr. Prunier on May 16th, 2008, and entirely before PE-1.3 ever entered the picture 20 minutes after closing. Worse yet, PE-1.3 also came a full 2 days after Hertz had already verbally "accepted" the trade-in vehicle after inspecting it and taking the registration copies into its deal file. (RP-241, line 1 to RP-245, line 25; RP-247, line 4-20; RP-251, lines 10-22) as Mr. Alvarez had said at CP-55, para 21. To be clear, Mr. Prunier was completely unable to refute any of this testimony from the Alvarezes either before or at trial, due to his admitted lack of memory and consequent lack of knowledge regarding the actual order of any of the documents. (RP-82, line 17 to RP-83, line 15).[3]

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[3] Note that Mr. Prunier once claimed in a sworn declaration that the Seller's Disclosure form had allegedly come before the Vehicle Order. (CP-298, lines 12-14). However back at that time, Mr. Prunier's declaration had no exhibit of any such alleged seller's disclosure form attached thereto, and he never stated what the alleged document he was referring to had said anyhow, even though he was always the only actual Hertz witness to all documents signed on May 16th, 2008. Prunier finally identified the actual seller's disclosure

The Honorable Judge Blaine Gibson denied both of the Defendants Alvarez's pre-trial motions for summary judgment at CP-302-304. Judge Gibson also denied Defendants Alvarez's Motion for reconsideration. CP-310. After forcing the trial, the lack of memory was again asserted by the salesman (Mr. Harris) and the finance manager (Mr. Prunier), both from the Yakima dealership. (Harris at RP-207, line 4 to RP-209, line 5; and RP-217, line 16 to RP-218, line 25; and Prunier at RP-99, line 23 to RP-101, line 4; and RP-102, line 4 to RP-103, line 11).

After Mr. Prunier finished with the deal file and getting all the paperwork signed with the Alvarezes at the finance department at Hertz's Yakima dealership, the deal file with all its contents was then sent to Hertz's headquarters in Pasco, Washington, as explained by Hertz CFO, Kathy Wigmosta, who worked at the company's headquarters in Pasco, and who testified that's where all the completed car deal files are sent to from all of Hertz's various sales dealership locations (RP-134, lines 20-21; RP-138, lines

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document at trial, but when he finally did, he was unable to establish when it was actually signed - i.e.- whether before or after the rest of the transaction had already been completed - the lynch pin needed for any actual reliance or proximate causation thereon.

6-25), including the Yakima dealership site where Mr. Prunier and Mr. Harris worked together and completed the transaction with the Alvarezes.

On the issue of memory, the fact was that Mr. Harris or Mr. Prunier had never been reminded about or informed of or shown by Hertz of the true contents of deal file that Harris and Prunier had put together and sent to the headquarters in Pasco, in order to refresh their memory on what they had actually had received from Alvarez (Harris at RP-210, line 20 to RP-211, line 4; Prunier at RP-100, lines 12-14). The highly questionable lack of memory story, already very unstable[4], finally fell completely apart at trial.

The Hertz CFO in Pasco, Ms. Kathy Wigmosta, who testified last for Hertz, finally confessed that the white photocopy of a unique, three-year old (expired in 2005) branded title Certificate of Registration (PE-1.7, page 3,

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When Salesman Harris was asked about ever seeing Alvarez's registration (DE-10) during the transaction, at first he said "yes", then "no", then "maybe possibly", and then, because Harris said the VIN number was so important to accurately gather during his trade-in inspection, Harris acknowledged "there is a possibility that I did. I just can't say yes or no for sure though." RP-206, line 24 to RP-208, line 4.

which: (1) was the 3 year-old, expired registration of the 4th (fourth) owner of the vehicle, Ruben Guzman, which registration Mr. Alvarez had stored in his glove box ever since buying the vehicle from Guzman, and which (2) Alvarez said he gave to the salesman Harris for photocopying into the deal file a full three days before Prunier used the deal file to finalize the sale (as set forth at CP-50, lines 8-16; CP-51, line19 to CP-52, line 3), and (3) that the employees who hadn't seen the file since 2008 and couldn't remember about), was in fact actually found, just like Mr. Alvarez said it would be, sitting right in the deal file when the deal file first arrived at Hertz's Pasco headquarters from the Yakima Hertz dealership. (RP-149, lines 1-14).

Any speculation that this was merely a post-sales disclosure or that the photocopy could have been simply found inside the vehicle after the sale, when Alvarez provided unrebutted testimony (RP-293, lines 1-15; RP-292, lines 9-16) that like any reasonable person, he had removed everything from the vehicle and out of the glove box of the trade-in including all the old original green registrations and all other personal property that had been stored in the glove box, taking it all for himself, just before going in to sign all the paperwork and releasing the empty trade-in vehicle to Hertz and

leaving no paperwork (and no registrations) in the car. Id. Hertz provided absolutely no evidence of where else that unique white, three-year-old, expired, prior owner registration photocopy actually came. Any original accidently left in the vehicle would have been green, not a white photocopy. To be sure, Ms. Wigmosta and Hertz also never claimed to have made any special records request to secure such a distinctive, 3 year old, expired 2005 registration from a prior owner, owner #4. All Ms. Wigmosta could do was merely state in the final analysis that ". . . I don't think the sales department looks at the registration very careful." (RP-154, lines 12-17).

On June 2nd, 2008, 17 (SEVENTEEN) days after the sale had already been completed back on May 16th, 2008 and right after Hertz had already first allowed the Alvarez family's 7-day right of exchange (as set forth in PE-4) to expire on Hertz's highly problematic Cadillac (which Hertz didn't want back (CP-65, lines 20-21; CP-66, lines 4-5)[5] and which Cadillac ironically

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[5] Hertz first silently allowed the Alvarez's 7 day exchange rights to expire despite the fact that salesman Harris admitted that regardless of when the Pasco Headquarters noticed the branded title, someone else at the Yakima dealership had already noticed the State Patrol's salvage title sticker on the door panel "within a week's time of the vehicle being in Hertz's possession."

was soon discovered by Mr. Alvarez to have significant undisclosed collision damages and defects (CP-62, line 12 to CP-64, line 10)), Hertz's headquarters then claims it finally "realized" that the Yakima dealership (Mr. Harris and Mr. Prunier) had accepted a branded title trade-in vehicle from the Alvarezes, and so CFO Ms. Wigmosta instructed the Yakima Hertz dealership to immediately pull the traded vehicle off their general sales lot. RP-134, line 20 to RP-136, line11. Ms. Wigmosta then instructed the Yakima dealership to contact Mr. Alvarez and "figure out what to do about it". RP-150, lines 18-20.

What happened two days later on June 4th, 2008 after Wigmosta gave her orders, was explained by Mr. Samuel Alvarez (at CP-64, line 12 to CP-67,

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RP-200, lines 9-25; Not a surprising or difficult thing to take instant notice of according to Mr. Prunier himself, at RP-113, lines 3-25. As a result of being stuck with the Cadillac, Mr. Alvarez ended up spending a total of $471.49 on brake repairs (DE-23; DE-24) and another $160 for a new battery (RP-609, lines 1-8), and waited in vain for Hertz to get the new parts for the undisclosed collision damage on the grill and front end which Hertz initially promised to order parts for and repair, but never did after having the Cadillac in Hertz's repair shop for 3 days. RP-599, lines 3-11.

line 12) and never challenged by Hertz or Hertz's sole witness thereto, Benjamin Esquivel, who never provided any declaration or any testimony against the Alvarezes at all. According to Mr. Alvarez, the Yakima Hertz dealership immediately sidestepped their own incompetence and immediately tried to renege on the trade-in credit in direct violation of both RCW 46.70.180(4)(b)/RCW 19.86.020 and RCW 46.70.240/RCW 19.86.140 (violation of an ongoing CPA injunction already in place against Hertz committing any RCW 46.70 violations whatsoever). Id.

Moreover, Hertz then combined Hertz's illegal, expressly barred demand with the additional threat of forcing Alvarez into litigation (as threatened in CP-CP-84-85 (July 10th, 2008 letter) if the customers would not accede to the violation, all in order to try to get the Alvarez family let Hertz keep the high full asking price on the Cadillac they sold the Alvarezes (which the Alvarezes only agreed to pay that full price on condition that they receive the agreed trade-in credit - CP-47, line 21 to CP-48, line 3) while trying to force Alvarez to give back the trade-in credit and buy back the trade-in vehicle too, all while adamantly refusing Mr. Alvarez's offer/request for rescission. CP-64, line 12 to CP-67, line 12; CP-84-85 (July 10th, 2008 letter putting the RCW

46.70.180(4)(b) violation in writing); RP-298, line 19, to RP-300, line 9.

Hertz then continued its tactics trying to get the trade-in credit back from the Alvarezes through the judicial system, actually employing the power of the Courts in an effort to get their way over the Defendants Alvarezes in spite of the provisions of RCW 46.70.180(4)(b)/RCW 19.86.020 and RCW 46.70.240/RCW 19.86.140. This forced the Alvarezes to both: (a) incur significant legal defense fees and costs, and (b) causing Mr. Alvarez to miss many hours of work, all caused by the need to successfully resist the Plaintiff car dealer's alleged breach of contract/warranty claims used as the front to Hertz's illegal RCW 46.70.180(4)(b)/RCW 19.86.020 and RCW 46.70.240/RCW 19.86.140 violations. (RP-300, lines 10 to RP- 306, line 3; RP- CP-613-714(declaration of counsel and exhibits of all fees including defense fees incurred from 2008 through 2012 only; and supplemental declaration thereon and CP-1022-1046); Defendants costs at CP-520-529.

Defendants Alvarez ultimately obtained a successful defense verdict against the Plaintiff's asserted breach of contract/warranty claim at the very end of the bifurcated trial with the Court's Memorandum Decision at CP-511-519,

followed by the Court's Judgment on the Verdict and Findings and Conclusions at CP-833-844. However, the trial Court completely denied the Alvarezes all of their anticipated award of RCW 4.84.330 defense fees and costs on Plaintiff's breach of contract/warranty claim pursuant to Hertz's unilateral fee clause (CP-826-832). This was done to the Alvarezes despite the Court finding that the Alvarezes were the prevailing party on the Plaintiff's claim, the only claim that RCW 4.84.330 applied to. CP-827, lines 8-9. Then the Court fully relieved Plaintiff Hertz of its obligation to pay any reasonable RCW 4.84.330 defense fees and costs whatsoever, by effectively crediting Hertz with a full and complete offset solely for having allegedly defeated the consumers Alvarez's consumer protection claims.

This was done to the Alvarezes even though there really was nothing to offset because consumers are encouraged to bring such claims and privately enforce the consumer protection laws and consumer protection injunction orders, in the public interest, and under the protection of one-way consumer-only fee-shifting as specifically set forth at both RCW 46.70.190 and RCW 19.86.090. No party disputes that if the Alvarezes had not tried to enforce the consumer protection statutes and the injunctive order in the public interest, their

reasonable RCW 4.84.330 defense fees and costs would have been awarded.

Defendants Alvarez's motion for reconsideration (CP-845-855) with Memorandum of law identifying the conflict in the laws between Division III and Division I, as discussed therein at CP-856-898, was denied by Court order on December 24th, 2012, at CP-917. The trial Court then entered a final judgement on December 28th, 2012 at CP-918-923. Defendants Alvarez then appealed to the Supreme Court regarding all the claims of all the parties and the denial of fees, costs, punitive damages and injunctive reliefs on January 24th, 2013. CP-924-958.

To be sure, Plaintiff Hertz was a merchant dealer in the trade and was especially aware because of its allegedly established policy against accepting branded title vehicles on trade[6], and was otherwise legally on notice of the

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Hertz's CFO, Ms. Wigmosta testified that Hertz allegedly had an established company policy against selling [and thus also against ever accepting branded title vehicles for trade-ins] (CP-32, lines 1-2), and Hertz being a professional car dealer and merchant in the trade for at least the 17 years that Wigmosta worked there (RP-134, lines 3-11), and also being presumed to know the law, knew or should have known full well the significance of the State Patrol door

applicable law at the time, at RCW 46.12.075, which stated:

> (1) Effective January 1, 1997, the department shall issue a unique certificate of ownership **AND CERTIFICATE OF LICENSE REGISTRATION**, as required by chapter 46.16 RCW, for vehicles that are rebuilt after becoming a salvage vehicle. Each certificate shall conspicuously display across its front, a word indicating that the vehicle was rebuilt.
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> (2) Beginning January 1, 1997, upon inspection of a salvage vehicle that has been rebuilt under RCW 46.12.030, the state patrol shall securely affix or inscribe a **MARKING AT THE DRIVER'S DOOR LATCH PILLAR** indicating that the vehicle has previously been destroyed or declared a total loss.
>
> (3) It is a class C felony for a person to remove the marking prescribed in subsection (2) of this section.

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pillar sticker (DE-9) fully exposed to them during Hertz's pre-sale trade-in inspections (CP-48, lines 5-23, and CP-54, line 16 to CP-55, line 2), and the branded title comment sections of the vehicle's certificates of registration provided to them (CP-50, lines 8-23 and CP-51, line 19 to CP-52, line 3; CP-71/DE-10; and PE-1.7, page 3) and yet claimed they couldn't remember or appreciate all these disclosures even despite their alleged policy on it.

(4) The department may adopt rules as necessary to implement this section [see WAC 308-56A-460].

RCW 46.12.075. (Emphasis added). This statute was enacted in 1995 and was, as a matter of fact, the law in effect at all times relevant to the trade-in vehicle's title brand and the transaction with Plaintiff Hertz at issue in this case for the trade-in of that vehicle to a merchant dealer in the trade. RCW 46.12.075 was repealed by 2010 c 161 , Section 325, effective July 1, 2011.

IV. ARGUMENT

A. THE STANDARD OF REVIEW:

1. For the trial court's denial of the Alvarez's summary judgment motions, after a trial is held, the losing party must generally appeal from the sufficiency of the evidence presented at trial and not from the denial of summary judgment. Adcox v. Children's Orthopedic Hospital, 123 Wn.2d 15, 35 footnote 9, 864 P.2d 921 (1993)(citing to Johnson v. Rothstein, 52 Wash. App. 303, 305, 759 P.2d 471 (1988)). However, this is only true if the denial was based on a correct determination that there were any disputed material facts in existence which actually needed to be resolved by the trier of fact. Washburn v. City of Federal Way, 169 Wash. App. 588 (2012)(citing to Kaplan v. Northwestern Mutual Life Insurance Co., 115 Wash. App. 791,

799-800, 65 P.3d 16 (2003)(quoting Brothers v. Public School Employees of Washington, 88 Wash. App. 398, 409, 945 P.2d 208 (1997) and citing Johnson v. Rothstein, 52 Wash. App. 303, 304, 759 P.2d 471 (1988)).

The denial of summary judgment may also be reviewed after a final judgment is entered, if summary judgment was denied on the basis of a substantive legal issue. Greenbank Club v. Bunney, 168 Wash. App. 517, 522 (2012)(Where the material facts are not in dispute and the court is just dealing with a substantive legal issue thereon, de novo review is proper) (citing to In re Custody of A.C., 124 Wash. App. 846, 852, 103 P.3d 226 (2004) remanded for reconsideration on other grounds, 155 Wn.2d 1011, reversed on remand on other grounds, 130 Wash. App. 157, 123 P.3d 121 (2005)). Here, the material facts of Hertz's admitted lack of memory and the ultimately confessed actual receipt of written disclosures from the Defendant customer into the deal file, and the Alvarezes' uncontradicted declaration and repeat testimony on the multiple repeated disclosures was never in dispute, at all. Thus, there were no factual issues in this case at all. Hence, the standard of review of the trial Court's orders granting summary judgment are reviewed de novo, and the reviewing court performs the same inquiry as the

trial court. Greenbank Club v. Bunney, supra. at 522 (citing to Aba Sheikh v. Chloe, 156 Wn.2d 441, 447, 128 P.3d 574 (2006)).

2. For the review of the trial court's denial of the Defendants Alvarez's CR 50(b) motions for judgment notwithstanding the verdict, the appellate court reviews those rulings, DE NOVO, applying the same standard as the trial court. Goodman v. Goodman, 128 Wn.2d 366, 371, 907 P.2d 290 (1995)(citing to Peterson v. Littlejohn, 56 Wash. App. 1, 8, 781 P.2d 1329 (1989); see also Chaney v. Providence Health Care, 176 Wn.2d 727 (2012).

3. Finally, the Defendants Alvarez's appeal of the trial court's outright denial the Defendants' post-verdict, RCW 4.84.330 attorney's fees request, as prevailing party on the Plaintiff's breach of contract claim calls for de novo review as well. "Whether a party is entitled to attorney fees is an issue of law which is reviewed de novo." Taliesen Corp. v. Razore Land Co., 135 Wash. App. 106, 141, 144 P.3d 1185 (2006).

B. The Analytical Framework (Argument and Authority):

The lynchpin of Hertz's contract claim and the only basis for Hertz's RCW

46.70.180(4)(b)(1) affirmative defense to the Alvarez's RCW 46.70.180(4)(b) counterclaim was the absolute requirement that Hertz prove that there was never any disclosure of branded title status before Hertz gave its final and unconditional acceptance of the trade-in vehicle. However, RCW 46.70.180(4)(b)(1) does not define the word "DISCLOSE". Nevertheless, a common statutory term which is not statutorily defined is given a common dictionary meaning absent strong evidence that the legislature intended a different meaning. Cornu-Labat v. Hospital Dist. No. 2, 177 Wn.2d 221, 231(2013)(citing State v. Watson, 146 Wn.2d 947, 954, 51 P.3d 66 (2002)); Michaels v. CH2M Hill, Inc., 171 Wn.2d 587, 601, 257 P.3d 532 (2011)(citing to City of Spokane ex rel. Wastewater Mgmt. Dept. v. Dept. of Revenue, 145 Wn.2d 445, 454, 38 P.3d 1010 (2002)(citing State v. Pacheco, 125 Wn.2d 150, 154, 882 P.2d 183 (1994)). The dictionary meanings of "DISCLOSE" are collectively "to display; to show; to bring into view; to uncover; to expose; to allow to be seen; to reveal; to lay bare; to free from secrecy; to make known." Black's Law Dictionary, Revised Fourth Edition (1968), Websters New World Dictionary of the American Language (1984), Merriam-Websters' Collegiate Dictionary, Tenth Edition (1993).

Obviously, there is no limit to the different types, methods, and manners of how something can be "disclosed", nor is there any requirement that it must come from one's mouth, or be in writing, or be performed in any specific manner at all. It is also irrelevant whether a disclosure is accidental, inadvertent, or done willfully or on purpose at all. Moreover, the fact of a disclosure having been made is not negated by anyone's failure to understand, or appreciate it. Had the customers in this case been under any gag order or confidentiality agreement against disclosing the branded title status, they would obviously have been found in violation thereof from their actions fully disclosing the same, three times over on May 13th, 2008, all three days before the sale. (See again CP- 47, line 21 to CP-52, line 24).

Furthermore, RCW 46.70.900 and RCW 19.86.920 have both mandated that their all of their terms and provisions, which clearly include RCW 46.70.180(4)(b)(1)'s use of the word "disclosure", should be liberally construed in the manner that best serves the beneficial purposes of the statute which beneficial purpose of the statute sets a very high bar to any dealer's claim of an alleged lack of "disclosure" from a lay customer to ever justify a dealer from engaging in the illegal and legislatively (and in this case also

judicially) prohibited act of attempting to renegotiate trade-in values after the fact, with customers, as strictly prohibited by RCW 46.70.180(4)(b).

The absence of any knowledgeable testimony from the plaintiff due to a Plaintiff's own lack of memory, even if combined with a Defendant's own lack of knowledge as well, leaves that Plaintiff's claim with nothing more than pure speculation and conjecture and nothing more than a mere plausible theory which is properly dismissed on summary judgment because it proves nothing to satisfy Plaintiff's burden of proof and doesn't establish that the claimant's imagined theory is the "but for" proximate cause of his injury or any more likely than an a likewise ignorant Defendant's likewise speculative theory or any other suggested theory, all of which Plaintiff's deficiencies cannot be cured with alleged evidence of alleged normal habit or routine or allegedly usual practices, or expert testimony giving opinions ultimately still based upon the same unproven assumptions. Moore v. Hagge, 158 Wash. App. 137, 148, 241 P.3d 787 (2010), review denied, 171 Wn.2d 1004, 249 P.3d 181 (2011); Williams v. Joslin, 65 Wn.2d 696, 699 (1965)(a failure to deny certain admissions is convincing proof of the same, and a failure to recollect the other party's asserted facts is not even a denial thereto, let alone

a refutation of the same).

See also, Marshall v. Bally's Pacwest, Inc., 94 Wash. App. 372, 377-380, 972 P.2d 475 (1999)(Plaintiff's admitted a lack of any memory of how she allegedly got hurt on a treadmill at a health club, and there being no other plaintiff witness or defense witnesses thereon, left the Plaintiff with at best just one of many plausible imaginable theories for her injury, but such speculation utterly has no factual basis for establishing that her theory establishes the "but for" proximate causation and so her claim is properly dismissed); Little v. Countrywood Homes, Inc., 132 Wash. App. 777, 779-783, 133 P.3d 944 (2006)(Plaintiff injured while installing rain gutters, who had no memory of the accident and had no witnesses on what actually injured him, was properly dismissed on summary judgment due to inability to provide any evidence sufficient to establish the actual proximate causation of his injury other than pure speculation one way or the other, notwithstanding expert testimony merely showing that plaintiff's employer had previously committed numerous prior safety violations, and because such a case still leaves everything to wide open speculation on whether the ladder was or wasn't properly secured or whether the ground itself was just simply and

unfortunately unstable in the particular incident at hand. However, even assuming that the employer had in fact committed any or all of the alleged breaches, the Plaintiff still had no actual evidence showing more probably than not that any one of those breaches ever actually caused his injuries [as opposed to all the equally plausible and entirely innocent explanations which could likewise be speculated for the same unfortunate resulting injury]).

However, the situation in the case at bar is even far worse for Plaintiff Hertz car sales than it was for both Moore or Marshall, whose failed memories were merely facing a Defendant's own equivalent lack of knowledge. Here, the Alvarezes did NOT lack knowledge at all and had no memory impediments on all the dispositive factual matters. Mr. Alvarez gave an uncontradicted sworn declaration (CP-46-88) based on actual unrefuted personal knowledge and a full and clear memory that upon the request of the Plaintiff's salesman for copies of original green vehicle certificates of registration stored in the glove box, Mr. Alvarez provided unrebutted testimony that he provided two unique expired registrations he had still saved in his glove box and allowed the salesman to copy them and to put those white photocopies of the same into the Plaintiff's deal file days before the sale. Id.

As such, Hertz wasn't even entitled to a trial and the court should have granted the Defendants' motions for summary judgment under CR 56, and at the very least the Alvarezes' CR 50 motions. "[T]o survive summary judgment, the Plaintiff's showing of proximate cause must be based on more than mere conjecture or speculation." Moore v. Hagge, supra. at 150 (citing to Miller v. Likins, 109 Wash. App. 140, 145, 34 P.3d 835 (2001)(citing to Ruff v. County of King, 125 Wn.2d 697, 707, 887 P.2d 886 (1995)).

Hertz's sole basis for forcing this case through the burden of litigation was to stand on the red-herring claim asserting the irrelevant technical breach of a completely after the fact seller's disclosure document at (PE-1.3) that was never relied upon at all, reasonably or otherwise, completely eliminating any proximate causation at all. Even the Moore case held "the plaintiff must establish more than that the [defendant's] breach of duty *might* have caused the injury." Moore, supra. at 150 (citing Miller v. Likins, supra. at 145 (further citations omitted)).

Worse yet for Hertz, because PE-1.3 came after party's sales contract had already completed 20 minutes earlier and the contract was already fully

integrated and completed, PE-1.3 has no contractual validity at all for the sale at issue. This is because any modification to a prior sales contract requires a new and separate consideration from that of the original contract and Hertz didn't provide any new consideration but was just trying to get itself a new promise without giving anything new to the Alvarez family. Wagner v. Wagner, 95 Wn.2d 94, 621 P.2d 1279 (1980); Barnett v. Buchan Baking Co., 45 Wash. App. 152, 724 P.2d 1077, reconsideration denied, review granted, affirmed, 108 Wn.2d 405, 738 P.2d 1056, reconsideration denied, (1986).

Moreover, getting 5th owner lay customers to make and sign additional promises after the fact, especially regarding facts and documents the dealer knows they don't have in their possession (like the title) or haven't seen in years and or relating to subjects that dealers know consumers really don't understand or have never heard of (like a "branded title"), smacks of procedural unconscionability and or being unfair and deceptive. At best, what results is a highly questionable and patently unreliable document whose enforcement creates an inequitable, unfair and deceptive situation where unscrupulous dealers could use it as sheep's clothing to take advantage of the ignorance of consumers in order to not only create an inequity, but to allow

the dealer leverage to perpetrate an illegal act and or an injunction barred sales tactic by a sophisticated, experienced dealership which never really needed or reasonably relied upon PE-1.3 to protect itself in the first place.

All of those realities obviously triggered the Trial Court's fully proper application of the powers of equity against Hertz with regard to Hertz's dubious PE-1.3 claim (at CP-517, 3rd full para.(citing to Holmes v. Harbor Water Co., Inc. v. Page, 8 Wash. App. 600, 508 P.2d 628 (1973)). See also Mendez v. Palm Harbor Homes, Inc., 111 Wash. App. 446, 453, 45 P.3d 594 (2002)("Equity includes the power to prevent the enforcement of a legal right when to do so would be inequitable under the circumstances.")(citing to Thisius v. Sealander, 26 Wn.2d 810, 818, 175 P.2d 619 (1946).

In any event, Hertz could not remember or refute any of the Defendants Alvarez's dispositive facts due to the lack of any personal knowledge for doing so. Yet, Hertz baselessly accused the Alvarezes of a non-disclosure type of misrepresentation by omission. For such allegations, claimants must show all six of the common law elements of "misrepresentation" in an statutory action wherein that party alleges there was a "non-disclosure".

Ludwig v. Mutual Real Estate, 18 Wash. App. 33, 40, 567 P.2d 658 (1977)(Party asserting "non-disclosure" under RCW 21.20.010 must meet the same applicable burden of proof for every one of the required common law elements for establishing the tort of misrepresentation). The applicable burden of proof which must be met for each and every element of such an allegation of "non-disclosure" or a misrepresentation by omission is the Clear, Cogent, and Convincing standard. Bloor v. Fritz, 143 Wash. App. 718, 734, 180 P.3d 805 (2008). See also Queen City Farms v. Central National Insurance, 124 Wn.2d 536 (1994)(Misrepresentation is an affirmative defense for which the party claiming it has the entire burden of proving it by clear, cogent, and convincing evidence). Thus, the same applies for RCW 46.70.180(4)(b)(1).

Hertz failed to prove three of the six required elements all listed as mandatory in Bloor, supra. at 734, for the Plaintiff Hertz dealership's claim of non-disclosure, the absence of any one of which was completely fatal to Plaintiff's affirmative defense of non-disclosure. Those last three elements were: 1. That the plaintiff [actually] relied on the allegedly false [or omitted] information, in this case consisting of the Seller's Disclosure [prior to

completing the transaction NOT AFTER]; 2. That the plaintiff's reliance was reasonable [in view of all the information and the sources thereof]; and 3. The false information is what proximately caused the Plaintiff's damages. Bloor, supra. at 734 (citing to Lawyers Title Ins. Corp. v. Baik, 147 Wn.2d 536, 545, 55 P.3d 619 (2002)). Hertz never proved those elements, but just their own incompetence and willingness to break the law. RCW 46.70.900 makes clear that the Auto Dealer Practices Act is aimed directly at irresponsible and unreliable dealers and irresponsible and unreliable dealer practices.

In the securities case of Stewart v. Estate of Steiner, 122 Wash. App. 258, 274, 93 P.3d 919 (2004)(citing to Jackvony v. RIGT Financial Corp., 873 F.2d 411, 416 (1st Cir. 1989), the Court identified several factors as being highly relevant to the consideration of the reasonableness of a party's alleged reliance which arguably have universal application especially to the case at bar with the experience professional merchant car dealer Plaintiff Hertz which allegedly had an actual formal policy on branded title vehicles: 1. The sophistication and expertise of the plaintiff in the matter; 2. The existence of any longstanding business or personal relationship between the plaintiff and the defendant; 3. The plaintiff's access to the relevant information; 4. The

existence of any fiduciary relationship; 5. Any actual concealment of the fraud; 6. The opportunity to detect the fraud; 7. Whether the Plaintiff initiated the transaction or sought to expedite the transaction; 8. The generality or specificity of the misrepresentation. Id. Considering these factors only brings further outrage against the Plaintiff Hertz car dealership's actions and positions taken in this case. Those were all fatal to Hertz.

RCW 46.70.180(4)(b) expressly prohibited Hertz from trying to renege on or trying to renegotiate the trade-in credit; the injunction on Hertz barred Hertz from violating RCW 46.70.180; and RCW 46.70.240 and RCW 19.86.140 barred Hertz from violating the injunction. Yet Hertz not only claimed it had the right to do this, it actually sued the customers Alvarez in order to use the Court system to try to get away with it, without any justification. However, the burden of proof for a party claiming they allegedly qualify for an exemption listed in a statute falls squarely with the party making that affirmative defense of exemption. Deaconess v. Department of Revenue, 58 Wash. App. 783, 788, 795 P.2d 146 (1990)(citing to Department of Revenue v. Schaake Packing Co., 100 Wn.2d 769, 783, 666 P.2d 367 (1983); In re Rosier, 105 Wn.2d 606, 609, 717 P.2d 1353 (1986). Furthermore and even

worse yet for Plaintiff Hertz, all alleged exemptions to consumer protection statutes are narrowly construed Sing v. John L. Scott, Inc., 83 Wash. App. 55, 69-70, 920 P.2d 589 (1996)(citing to Vogt v. Seattle-First National Bank, 117 Wn.2d 541, 552, 817 P.2d 1365 (1991)).

The facts were so fatal to Plaintiff Hertz at every turn, that Hertz was also literally unable to proceed with its rescission claim. Besides waiving the claim entirely by refusing to rescind when the Defendants promptly tried to do so, under RCW 62A.2-608 Hertz was destroyed by the facts at every turn. First, there was no non-conformity because the vehicle was exactly as offered and displayed and disclosed (with its branded title designations both on the vehicle itself and on both of its registrations provided). Second, there was no difficulty in discovering any alleged non-conformity especially since its branded title status was repeatedly placed into plain view and was openly disclosed both visually on the state patrol sticker on the vehicle and also twice in writing on both of the certificates of registration provided to Hertz.

Third, acceptance of the trade-in vehicle was not reasonably induced by any difficulty in appreciating what was shown/disclosed to Hertz because any car

dealer (such as Mr. Prunier at CP-112, line 25 to CP-113, line 13) knows that the branded title vehicle is easily and effortlessly ascertained literally within seconds the instant the driver's door is opened (revealing the obvious state patrol sticker exposed at DE-9), or looking at the registrations provided for the vehicle (PE-1.7, pg 3, and DE-10). Moreover, even if those things were all silent on the vehicle itself, Hertz could have simply asked the lienholder listed on the registration to fax a copy of the title they are holding, or easily running the VIN either through Hertz's CarFax subscription (as in PE-1.8) or through the Department of Licensing's free public records database (as in PE-1.7, page 2) before giving final and unconditional acceptance thereon.

Finally, acceptance was not reasonable at all (in view of all the disclosures already provided exactly in the locations designated by the legislature at RCW 46.12.075(1-3)), nor reasonably induced by any allegedly adequate assurances from a lay person/fifth owner of a used vehicle who didn't even possess the title or know what a branded title was and who could not account for over four years of usage by four other prior owners[7] just because a dealer

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[7] The Court will recall that RCW 46.70.900 makes clear that the Auto dealer practices act and the Consumer Protection Act at RCW 19.86.020 prohibit

has a lay consumer sign a seller's disclosure form like PE 1.3 which could never carry more weight than the official Washington State Patrol driver's door pillar sticker and the Washington State Certificates of Registration information, provided pursuant RCW 46.12.075 and ringing loud and clear and unmistakably in Hertz's face, as well as all the plenty and readily available records thereon. See also the illustrative demonstration of the situation (at CP-775) showing the figurative freight train of all the disclosures in this case barreling down on the Plaintiff dealer who then lays itself on the tracks and claims that an after-the-fact piece of paper like (PE-1.3) is going

---

and prevent "irresponsible and unreliable" dealer practices which would cover "grossly inept" activity as well as any generally unfair or deceptive business practice such as playing dumb and then playing "gotcha". In the Defendant consumer's view, the PE-1.3 document is just sham document used as a ploy to feign ignorance, play "gotcha" against ignorant lay consumers like the Alvarezes who unlike Hertz but exactly like most people, hadn't even heard of and didn't even know what a "branded title" was or how to spot it (RP-299, lines 9-12; RP-340, lines 6-13; and RP-349 line 21 to RP-350 line 3), all in order to perpetrate illegal and injunction barred activity against vulnerable lay consumers who mostly don't have the knowledge, money, or bravery and persistence to stand up for themselves.

to magically allow them to sidestep their own incompetence[8] and somehow try to blame the customer and then justify subjecting the customer to illegal, prohibited car dealer tactics. Even Judge Lawrence-Berrey could only describe the Plaintiff dealer's actions as "grossly inept". (CP-517, para. 2). As such, Defendants Alvarez should have prevailed on all the claims between the parties and been awarded fees (a) on Plaintiff's properly failed claim pursuant to RCW 4.84.330 and (b) on Defendants counterclaims pursuant to

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8

Yet Hertz strenuously made the highly analogous argument that a person who signs a plain and unambiguous instrument without reading it is bound by its terms if he had "ample opportunity to examine the contract in as great a detail as he cared, and he failed to do so for his own personal reason." CP-394, line 19 to CP-395, line 3 (citing to National Bank of Washington v. Equity Investors, 81 Wn.2d 886, 913, 506 P.2d 20 (1973). Here, CFO Wigmosta's claim that her employees at the Yakima dealership didn't look at the registration very well, is no excuse. Notice to an employee or agent at the corporation within the scope of their duties is still notice to the entire corporation as if it had been shown or given directly to CFO Wigmosta herself since Harris's duties were to conduct the visual trade-in inspection of the vehicle and to take copies the vehicle registrations provided by the Alvarezes. Schwabacher Bros. & Co., Inc. v. Murphine, 74 Wash. 388, 133 Pac. 598 (1913); see also Plywood Marketing Associates v. Astoria Plywood Corp., 16 Wash. App 566, 558 P.2d 283 (1976).

RCW 46.70.190 and RCW 19.86.090.

RCW 4.84.330 actually required that reasonable attorney fees be awarded to the prevailing party on the Plaintiff's contract claim with its unilateral fee provision. The Court may not deny the fee request outright and the court has no discretion to decide whether fees should be allowed at all or not. Rather, the Court only has discretion only in setting the proper AMOUNT to be allowed and shifted to the other side for that award. Kofmehl v. Steelman, 80 Wn. App. 279, 286, 908 P.2d 391 (Division III, 1996) citing to Farm Credit Bank v. Tucker, 62 Wn. App. 196, 207, 813 P.2d 619 (indicating no discretion is allowed as to whether fees are permissible, but only as to the amount to be allowed), review denied, 118 Wn.2d 1001 (Division III, 1991) (citing to Singleton v. Frost, 108 Wn.2d 723, 729-730, 742 P.2d 1224 (1987)("An interpretation [of RCW 4.84.330] allowing the trial court to deny recovery of reasonable attorney's fees at its discretion or whim would render the statute meaningless").

Division I has thoroughly analyzed, compared, critiqued both Division III and Division I's approaches, and they concluded by soundly criticizing and

rejecting Hertz v. Riebe, supra., as set forth in International Raceway, Inc. (IRI) v. JDFJ Corporation, 97 Wash. App. 1, 970 P.2d 343 (1999). The key consideration for using the proportionality approach, is whether the claims at issue between the parties, were "distinct and severable." Unfortunately for Plaintiff Hertz, the Defendants Alverez's assertion of rights and claims under the consumer protection statutes (RCW 19.86 and RCW 46.70) was absolutely a completely permissive, distinct, and severable matter. This is because "it is well established that the right to recover damages under the Consumer Protection Act is completely independent of underlying contract rights". Strother v. Capitol Bankers Life, 68 Wash. App. 224, fn 59 at page 245, 842 P.2d 504 (Division I, 1992) (relying on Keyes v. Bollinger, 31 Wash. App. 286, 293, 640 P.2d 1077 (1982)(allowing Consumer Protection Act claim although plaintiff was found to have waived breach of contract claim)). See also, Cornish College v. LTD Partnership, 158 Wash. App. 203, 231-235 (Division I, 2010).

Punishing the Alvarezes for bringing CPA claims that failed (for the time being) by denying all RCW 4.84.330 entitlements conflicts with the important public policy of encouraging active attempts to enforce the CPA.

This Court itself has proclaimed this important public policy in Bowers v. Transamerica Title Ins. Co., 100 Wn.2d 595, 675 P.2d 193 (1983)(The legislature intended the provisions of the Consumer Protection Act (the CPA) to encourage private parties to actively try to enforce the consumer protection laws by attempting claims brought in the public interest). See also Eagle Point Condominium Owners Association v. Coy, 102 Wash. App. 697, 712-14, 9 P.3 898 (2000)(It is inappropriate and contrary to the important public policies of statutes with important consumer protection elements to apply any proportionality approach for offsetting or negating any fees to a consumer just because a consumer victim wins on one claim but fails to prove other consumer protection act related claims, EVEN WHERE the consumer protection related statutes have RECIPROCAL FEE-SHIFTING).

The much smaller CPA part of the case that the Plaintiff car dealer prevailed upon (for the time being) and then used to somehow convince the trial court to shield the dealer from an extremely large RCW 4.84.330 fee award on the Plaintiff's completely separate breach of contract claim, was no ordinary claim either. It was a consumer protection act counterclaim under RCW 46.70.180(4)(b) and RCW 19.86.020 for which the Plaintiff dealer had

absolutely no reciprocal or recovery rights and absolutely no off-set rights. This key fact changes the way any court should ever look at any allegedly failed claim, for purposes of any offset - even under the completely fair and accurate proportionality approach of Marassi, supra.

No party should be penalized and completely denied fees they would have otherwise been fully entitled to recover under a mandatory fee award under RCW 4.84.330, all just because that same successful party also unsuccessfully tried to invoke the consumer protection act in the public interest by taking a stand against an expressly banned practice by a known violator already under the compulsion of a CPA injunction, all of which has been legislatively declared to vitally affect the public interest at RCW 46.70.005. It would have actually been a mockery of justice for the consumer defendants to have ever stood idly and silently by such a clear violation of both the law and the injunction, and to ignore the same while the dealer actually used the Court system as a means of perpetrating the very act prohibited both by the statute and the injunction barring any violation of that statute. The only time there should be any true and accurate, specific monetary amount applied as offset against an RCW 4.84.330 fee award is

when there really was something specific that the other party was entitled to recover any certain amount of fees on and thus entitled to seek any offset for.

V. ATTORNEY'S FEES

A. Since the contract document (Plaintiff's Exhibit 1.3) for the Plaintiff's failed breach of contract claim contained a unilateral provision for the recovery of reasonable attorney's fees and costs, RCW 4.84.330 makes it automatically apply reciprocally for that breach of contract claim and thus actually REQUIRES that reasonable attorney fees be awarded to the prevailing party, even for a defendant who also successfully proves the plaintiff's contract which the defendant was sued upon, was invalid and unenforceable. Herzog Aluminum, Inc. v. Gen. Am. Window Corp., 39 Wash. App. 188, 191, 692 P.2d 867 (1984). However, the Court may not deny the fee request outright.

The court has no discretion to decide WHETHER fees should be allowed at all or not; Rather, it has discretion only in setting the proper AMOUNT to be allowed and shifted to the other side for that award. Kofmehl v. Steelman, 80 Wn. App. 279, 286, 908 P.2d 391 (1996); Farm Credit Bank v. Tucker, 62 Wn. App. 196, 207, 813 P.2d 619, review denied, 118 Wn.2d 1001 (1991)

(indicating no discretion is allowed as to whether fees are permissible, but only as to the amount to be allowed). The Defendant consumers Alvarez should also recover their costs as the ultimately prevailing party as provided by the unilateral terms of the contract, pursuant to both RCW 4.84.010 and RCW 4.84.330.

B. If the Defendants Alvarez also prevail on their appeal of the trial court's ruling on the Defendants' CR 56 and or CR 50(b) motions for judgement, and if the trial court's decisions thereon are reversed and Defendants Alvarez are also found to have prevailed on the Defendants' RCW 19.86.020 and RCW 46.70.180(4)(b) claims against the Plaintiff car dealer, then the Defendants Alvarez's requests for damages[9], treble damages, injunctive relief, reasonable fees and costs, and multipliers and enhancements thereon, for pursuing the

---

[9] To be sure, Defendants Alvarez presented ample and abundant evidence of being damaged from missing work (a damage fully recognized by Sign-O-Lite Signs, Inc. v. DeLaurenti Florists, Inc., 64 Wash. App. 553, 825 P.2d 714, reconsideration denied, review denied, 120 Wn.2d 1002, 838 P.2d 1143 (1992); and (b) incurring obvious and enormous legal fees and costs all as a direct and proximate result of the Plaintiff's illegal actions. Panag v. Farmers Ins. Co., 166 Wn.2d 27, 204 P.2d 885 (2009).

RCW 46.70.180(4)(b) and RCW 19.86.020 claims at both the trial level and for this appeal, should all be granted and awarded to the Defendant consumers against the Plaintiff car dealer pursuant to RCW 19.86.090 and RCW 46.70.190, and the Defendants will comply with RAP 18.1 and 14.4.

VI. CONCLUSION

The Alvarezes' CR 56 and CR 50 motions should have been granted because Hertz had no facts to support either Hertz's contract claim or its affirmative defense of non-disclosure on the Alvarez's counterclaims. As such, the Alvarezes should have been awarded all their reasonable fees and costs under RCW 4.84.330 (on Plaintiff's contract claim) and under RCW 46.70.190 and RCW 19.86.090 on Defendants counterclaims. To be sure, even if the CPA counterclaims failed, Hertz had absolutely no right to ever recover or offset any legal fees, even if successful in defending the claim, due to the express, one-way, consumer-only, fee-shifting provisions of RCW 46.70.190 and RCW 19.86.090.

Respectfully submitted this 27th day of June, 2013.

David Trujillo

DAVID B. TRUJILLO, WSBA #25580,

Attorney for Appellants Alvarez

Appendix A

(PE-1.7, pg. 3)

STATE OF WASHINGTON

DEPARTMENT OF LICENSING

A51838V

VEHICLE TITLE APPLICATION/REGISTRATION CERTIFICATE

08/03/2004 0421639130355193

LIC/PLT	ISSUE-DATE	TAB-NO	REG-EXP	VALUE-CODE/YR	DEPRE	MO-REG	MO-GWT
A51838V	08/2004	5372800	08/03/2005	34394/2003	1	12	12

POWER	USE	MOD-YR	MAKE	SERIES/BODY	VIN OR SERIAL-NO	RES-CO
G	TRK	2003	CHEV	AVALPU	3GNEK13T53G125644	39

SCLWT	SEATS	GWT	GWT-STRT	GWT-EXP	FLEET	EQUIP	PREVPLT	PREV-TITLE-NO	ST
5652		8000	08/03/2004	08/03/2005			+306983	0413350801	WA

COMMENT:
— DISPLAY TAB ON BACK LICENSE PLATE ONLY - FRONT PLATE IS STILL REQUIRED. —

BRANDS-OR/SALVAGE
MILEAGE 6876 N

THIS IS YOUR REGISTRATION SIGN, KEEP IN YOUR VEHICLE
CASCADE LICENSE AGENCY
UNION GAP, WA 98903
453-2649

REGISTERED OWNER

LEGAL OWNER

GUZMAN,RUBEN
808 S 50TH AVE
YAKIMA WA 98908

I CERTIFY THAT THE INFORMATION CONTAINED HEREON IS ACCURATE AND COMI

X Ruben Guzman
SIGNATURE OF REGISTERED OWNER(S)

X _____
SIGNATURE OF REGISTERE

SUBSCRIBED AND SWORN TO BEFORE

_____ THIS _____ DAY OF _____, _____

DEALER NO 1588 01

FILING	$ 7.00	MONORAIL TAX	$		CHECK	$	
SUBAGENT	$ 8.50	RTA EXCISE	$		CASH	$	
LOCAL FEE	$	USE TAX	$		TOTAL FEES	$	53.50
LICENSE SRVC	$	OTHER	$	38.00			
		DONOR AWARENESS	$				

VALIDATION CODE 1739130304216080304004 2035519 TRANSFER

STATE OF WASHINGTON VEHICLE TITLE APPLICATION/REGISTRATION CERTIFICATE
RPT ID: ATITPR-1 THIS DOCUMENT IS NOT PROOF OF OWNERSHIP
CUSTOMER'S COPY

Appendix B

(DE-10)

STATE OF WASHINGTON
DEPARTMENT OF LICENSING
PO Box 9038 • Olympia, Washington 98507-9038

VEHICLE TITLE APPLICATION/REGISTRATION CERTIFICATE

10/20/2006 0629339010643735 A51838V

Lic/Plt	Issue-Date	Tab-No	Reg-Exp	Value-Code/Yr	Depre	Mo-Reg	Mo-Gwt
A51838V	08/2004	K238073	08/03/2007	34394/2003	1	12	12

Power	Use	Mod-Yr	Make	Ser/Body	Model/BT	VIN or Serial No	Res-Co	Prev-Plt
G	TRK	2003	CHEV	AVALPU	KAV/CW	3GNEK13T53G125644	39	+306983

Sclwt	Seats	Gwt	Gwt-Strt	Gwt-Exp	Fleet	Equip	Prev Title	Prev St
5652		6000	08/04/2006	08/03/2007			0532151317	WA

BRANDS:
OR 08/03/2004 SLVG DMGD WA 08/03/2004 NOT ACTUAL

COMMENT:
- DISPLAY TAB ON BACK LICENSE PLATE ONLY - FRONT PLATE IS STILL REQUIRED.

MILEAGE 17936 N

REGISTERED OWNER

ALVAREZ,SAM C
ALVAREZ,ROBERTA
5064 PEAR BUTTE DR
YAKIMA WA 98901

LEGAL OWNER

CATHOLIC CREDIT UNION
P O BOX 2690
YAKIMA WA 98907

I certify that the information contained hereon is accurate and complete.

X _____ X _____

Signature of Registered Owner(s) Signature of Registered Owner(s)

Subscribed and sworn to before _____ This _____ Day of _____, _____.

BATCH NO 7210

FILING	$ 4.00	MONORAIL TAX	$	CHECK	$		
SUBAGENT	$	RTA EXCISE	$	CASH	$		
LOCAL FEE	$	USE TAX 3960	$ 948.00	TOTAL FEES	$	963.50	
LICENSE SRVC	$	OTHER	$ 11.50				
GWT/VWT FEE	$	DONOR AWARENESS	$				

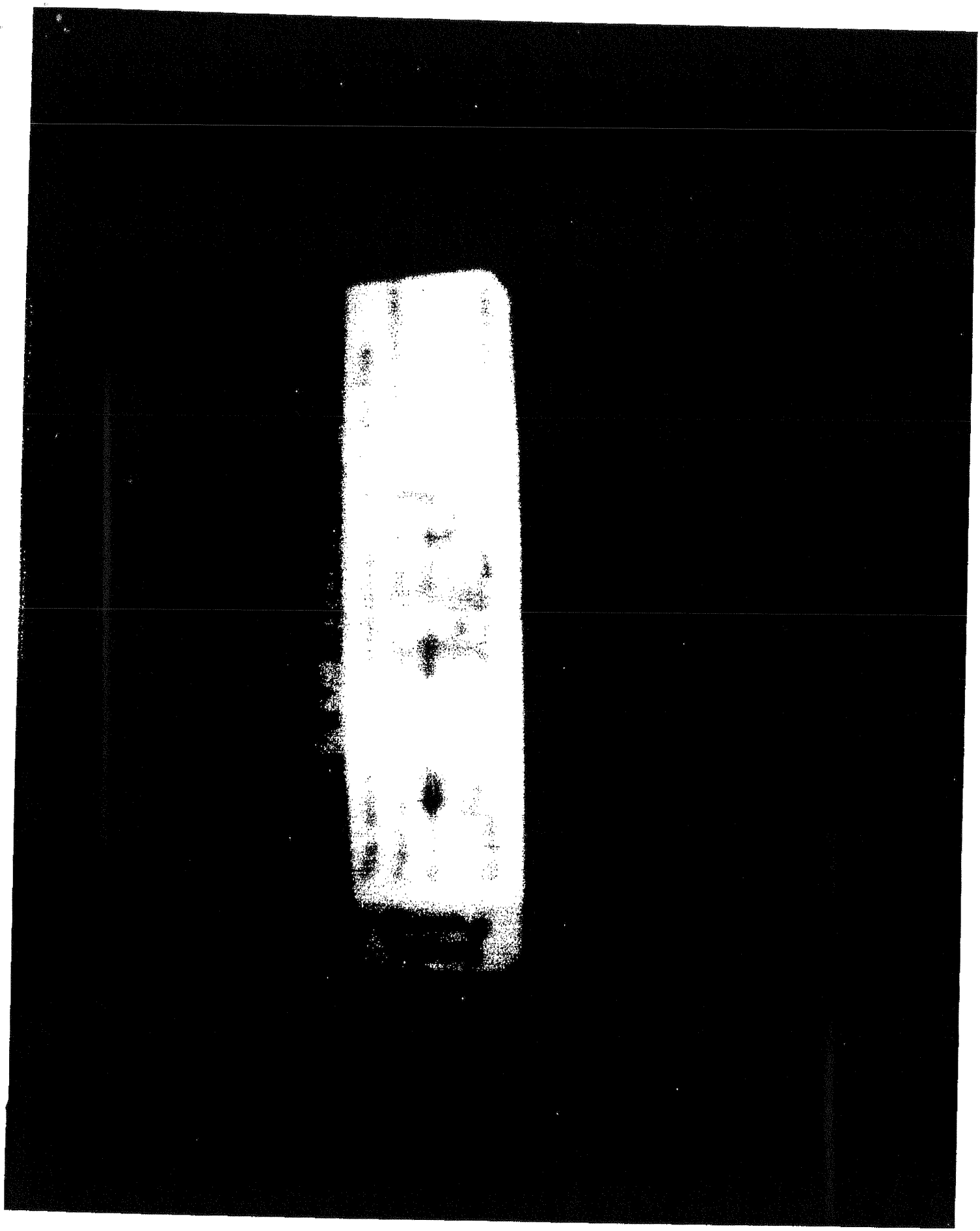
VALIDATION CODE 013901060629310200600047064373 TRANSFER

RPT ID: ATITPR-1 THIS DOCUMENT IS NOT PROOF OF OWNERSHIP

FPD: ATITPR:2005/8/8.00001(2)

Appendix C

(DE-9)



STATE OF WASHINGTON

State Patrol

This vehicle has been inspected by the Washington State Patrol as a rebuilt salvage vehicle/no safety inspection pursuant to a national criteria. Chapter 26 Laws of 1996 CLASS "C" FELONY FOR REMOVAL

5-7-4

Inspection Date:

Appendix D

(CP-1039-1046)

D

FILED

2005 AUG 26 AM 11 56

KIM M. EATON
EX OFFICIO CLERK OF
SUPERIOR COURT
YAKIMA, WASHINGTON

Judge James P. Hutton

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF YAKIMA

RAYMOND BANUELOS and LISA BANUELOS, husband and wife, Plaintiff, vs. TSA WASHINGTON, INC., a Washington Corporation d/b/a HERTZ CAR SALES, and UNIVERSAL UNDERWRITERS INSURANCE COMPANY, a foreign corporation, Defendants.	No. 04-2-03472-7 **STIPULATED ORDER FOR INJUNCTIVE RELIEF**

THIS MATTER having been noted for hearing on August 26, 2005 before the Honorable James P. Hutton of the Yakima County Superior Court upon plaintiffs' motion for injunctive relief, and the parties, through their respective counsel, in which the plaintiffs were represented by David B. Trujillo of the Law Offices of David B. Trujillo,

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P.S., the defendants were represented by Brian M. King of Davies Pearson, P.C., the State of Washington was represented by Jack G. Zurlini of the Office of the Attorney General, and the parties having agreed to the following stipulation and order for injunctive relief:

STIPULATION

1. The plaintiffs, Raymond and Lisa Banuelos, are consumers in Yakima County. The plaintiffs filed a lawsuit in Yakima County Superior Court alleging TSA Washington, Inc. d/b/a Hertz Car Sales ("Hertz Car Sales") violated RCW 46.70.180, including RCW 46.70.180(4)(b);

2. Hertz Car Sales is engaged in the business of selling previously owned vehicles in the State of Washington;

3. Hertz Car Sales is a licensed vehicle dealer in the State of Washington and is subject to Washington's statutes and regulations governing vehicle dealers in the State of Washington;

4. Pursuant to RCW 46.70.180(4)(b)(i) and (ii), the act of "bushing" is an unlawful act or practice in the State of Washington. "Bushing" is defined as the following:

> (4) To commit, allow, or ratify any act of "bushing" which is defined as follows: Taking from a prospective buyer or lessee of a vehicle a written order or offer to purchase or lease, or a contract document signed by the buyer or lessee, which:
>
> (a) Is subject to the dealer's, or his or her authorized representative's future acceptance, and the dealer fails or refuses within three calendar days, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotiations with said buyer or lessee, either (i) to deliver to the buyer or lessee the dealer's signed acceptance, or (ii) to void the order, offer, or contract document and tender the return of any initial payment

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or security made or given by the buyer or lessee, including but not limited to money, check, promissory note, vehicle keys, a trade-in, or certificate of title to a trade-in; or

(b) Permits the dealer to renegotiate a dollar amount specified as trade-in allowance on a vehicle delivered or to be delivered by the buyer or lessee as part of the purchase price or lease, for any reason except:

(i) Failure to disclose that the vehicle's certificate of ownership has been branded for any reason, including, but not limited to, status as a rebuilt vehicle as provided in RCW 46.12.050 and RCW 46.12.075; or

(ii) Substantial physical damage or latent mechanical defect occurring before the dealer took possession of the vehicle and which could not have been reasonably discoverable at the time of the taking of the order, offer, or contract; or

(iii) Excessive additional miles or a discrepancy in the mileage. "Excessive additional miles" means the addition of five hundred miles or more, as reflected on the vehicle's odometer, between the time the vehicle was first valued by the dealer for purposes of determining its trade-in value and the time of actual delivery of the vehicle to the dealer. "A discrepancy in the mileage" means (A) a discrepancy between the mileage reflected on the vehicle's odometer and the stated mileage on the signed odometer statement; or (B) a discrepancy between the mileage stated on the signed odometer statement and the actual mileage on the vehicle; or

(c) Fails to comply with the obligation of any written warranty or guarantee given by the dealer requiring the furnishing of services or repairs within a reasonable time.

5. On July 15, 2005, the Yakima County Superior Court, per Judge James P. Hutton, entered an order granting summary judgment in favor of plaintiffs on their "bushing" claim. The Court concluded that Hertz Car Sales violated RCW 46.70.180(4) on or around March 3, 2004 by failing to return Mr. and Ms. Banuelos' down payment check, or equivalent funds, in the amount of $1,000.00 within three business days of taking from the plaintiffs a written offer to purchase a motor vehicle. The Court also

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concluded that the "bushing" violation was a violation of Washington's Consumer Protection Act.

6. Following the entry of the Court's order on summary judgment, the Attorney General intervened in this matter for purposes of fashioning and implementing appropriate injunctive relief;

7. The plaintiffs, Hertz Car Sales and the Attorney General acknowledge the following constitute unlawful acts or practices by a vehicle dealership in violation of RCW 46.70.180(4);

a) Taking from a prospective buyer a written order subject to the dealers or the dealer's representatives signed acceptance and failing to, within three calendar days, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotiations with said buyer or lessee, either (i) to deliver to the buyer or lessee the dealer's signed acceptance or (ii) to void the order, offer, or contract document and tender the return of any initial payment or security made or given by the buyer or lessee, including but not limited to money, check, promissory note, vehicle keys, a trade-in, or certificate of title to a trade-in.

b) Failing to comply with any other provision in RCW 46.70.180(4).

8. Hertz Car Sales agrees to not engage in any of the above-identified unlawful acts or practices and to fully comply with Washington law pertaining to vehicle dealers and consumer protection.

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9. Hertz Car Sales agrees to discontinue any acts or practices which may be violations of any of the provisions set forth above.

10. Hertz Car Sales must resolve all contingencies within three business days of accepting a buyer's offer of purchase. If not, the entire deal must be unwound and any customer trade-ins and deposits/down payments must be tendered within that time frame.

11. Customer vehicle trade-ins cannot be offered for sale unless all contingencies have been resolved and the sale completed.

12. Customer deposits/down payments must be held in a separate trust account or company safe and cannot be transferred or deposited into the dealer's general account unless all contingencies have been resolved and the sale completed. This paragraph shall not be interpreted to authorize non-compliance with RCW 46.70.180(9).

13. Hertz Car Sales shall prepare and provide a report to the Attorney General's Office that identifies every written offer from a customer that was rejected due to the failure of a financing contingency and all completed lease or sales transactions for a new or used motor vehicle in which any provision, term, condition, or contingency of the original purchase offer accepted by Hertz Car Sales was modified or changed in any way or where a second or subsequent contract was entered by the parties for the same or a different motor vehicle. The report shall cover every three-month period beginning September 1, 2005 and ending August 31, 2006. Hertz Car Sales shall submit the report within thirty (30) days of the end of each three month period. The report shall also include a copy of the entire transaction file for each identified transaction.

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14. Hertz Car Sales shall pay the reasonable fees and costs the Attorney General's Office incurred in this matter in an amount not to exceed $5,000.00.

15. This Stipulation and Order shall not be considered a waiver of any of Hertz Car Sales', claims, defenses, or appeal rights as they relate to any aspect of this cause number or the plaintiffs' claims excluding any issues related to this Stipulation and Order.

16. Hertz Car Sales and/or the Attorney General may apply to this Court for an Order Amending the terms and conditions of this Order for any reason, including but not limited to subsequent amendments to the statutory provisions set forth herein. In addition, the Attorney General agrees to meet with Hertz Car Sales after this injunction has been in effect for one year to review and discuss Hertz Car Sales' compliance with the injunction, the operation of the injunction and any need for modification of the injunction.

DATED this 26 day of August, 2005.

DAVIES PEARSON, P.C.

BRIAN M. KING, WSB #29197
Attorneys for Defendant

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ROB MCKENNA
Attorney General

JACK G. ZURLINI, JR., WSBA #30621
Assistant Attorney General
Attorneys for State of Washington

ORDER

Based on the foregoing, it is hereby,

ORDERED, ADJUDGED AND DECREED that the plaintiffs' motion for injunctive relief is GRANTED under the terms of the Stipulation set forth herein; it is further,

ORDERED, ADJUDGED AND DECREED that the parties' Stipulation shall become effective on September 1, 2005.

DONE IN OPEN COURT this 26 day of AUGUST, 2005.

JUDGE JAMES P. HUTTON

DAVIES PEARSON, P.C.

BRIAN M. KING, WSB #29197

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Attorneys for Defendants

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Assistant Attorney General
Attorneys for State of Washington

Approved as to form:
LAW OFFICES OF DAVID B. TRUJILLO

DAVID B. TRUJILLO, WSB #25580
Attorney for Plaintiffs

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OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, June 27, 2013 2:19 PM
To: 'David Trujillo'; Brian King; Christopher J. Marston; MaryL@atg.wa.gov
Subject: RE: Alvarez Appellate Brief Case Number88385-8

Rec'd 6-27-13

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: David Trujillo [mailto:tdtrujillo@yahoo.com]
Sent: Thursday, June 27, 2013 2:16 PM
To: OFFICE RECEPTIONIST, CLERK; Brian King; Christopher J. Marston; MaryL@atg.wa.gov
Subject: Alvarez Appellate Brief Case Number88385-8

Dear Clerk of the Court:

Please find attached hereto for filing, the Appellants Alvarez's Appellate Brief and Certificate of Service for the same, sent to you in sections.

1. Appellate brief through page 25
2. Appellate brief pages 26-50
3. Appendices A, B, C, and D
4. Appellants' Certificate of Service.

Thank you and please advise if there are any problems with any of the documents.

Sincerely,

David B. Trujillo
Attorney for Appellants Alvarez
WSBA #25580