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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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CERTIFICATION FROM THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

IN

SANDRA C. THORNELL, on behalf of herself and all others
similarly situated,

Plaintiff,

v.

SEATTLE SERV. BUREAU, INC. d/b/a NATIONAL SERV. BUREAU,
INC. and STATE FARM MUT. AUTO INS. CO.,

Defendants.

PLAINTIFF'S RESPONSIVE BRIEF

Beth E. Terrell, WSBA #26759
Email: bterrell@tmdwlaw.com
936 North 34th Street, Suite 300
TERRELL MARSHALL
DAUDT & WILLIE PLLC
Seattle, Washington 98103-8869
Telephone: (206) 816-6603
Facsimile: (206) 350-3528

Michael L. Murphy, WSBA #37481
Email: mmurphy@baileyglasser.com
James L. Kauffman
Email: jkauffman@baileyglasser.com
BAILEY GLASSER LLP
910 17th Street, NW, Suite 800
Washington, DC 20006
Telephone: (202) 463-2101
Facsimile: (202) 463-2103

Attorneys for Plaintiff

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I. INTRODUCTION

This case involves a Washington Corporation, Seattle Service Bureau, Inc. (“Seattle Service”), working with an insurance company, State Farm Mutual Auto Insurance Company (“State Farm”), to engage in the very conduct this Court held violates Washington’s Consumer Protection Act in *Panag v. Farmer’s Insurance Company of Washington*, 166 Wn.2d 27, 204 P.3d 885 (2009). State Farm deputized Seattle Service, as an agent, to recover, on a contingent basis, from Plaintiff Sandra Thornell amounts State Farm paid to its insured on a claim arising from an automobile accident involving the insured and Ms. Thornell’s adult son. Although the amount Defendants sought to recover from Ms. Thornell or her son was not reduced to judgment, Seattle Service prepared three form letters deceptively styled as “AMOUNT DUE” collection notices and sent them to Ms. Thornell. The letters falsely claim Ms. Thornell owes State Farm a “balance due” of over \$9,000 and demand Ms. Thornell remit payment immediately to Seattle Service’s office in Bothell, Washington even though there was no judgment and no debt was ever liquidated. Defendants have admitted that they sent 26,273 such letters,

all attempting to collect unliquidated debts over the past four years, including 702 letters sent to Washington residents.¹

Ms. Thornell, a Texas resident, filed a class action lawsuit in Washington alleging Defendants violated Washington's Consumer Protection Act ("CPA"). Defendants have moved to dismiss on the ground, *inter alia*, that the CPA does not create a cause of action for a non-resident plaintiff against an out-of-state insurance company who engages in unfair and deceptive practices through a Washington agent.

In connection with Defendants' motion, the United States District Court for the Western District of Washington certified two legal questions to this Court, both of which should be answered in the affirmative. The plain language of the CPA considered in the context of the Act as a whole establishes (1) the legislature intended to create a private cause of action for non-Washington residents against Washington businesses that violate the CPA, and (2) the legislature intended to create a private cause of action

¹ On May 4, 2015, Plaintiffs filed a motion to supplement the record with the Declaration of John Fuchs (Dkt. No. 3), which was originally filed with State Farm's Notice of Removal. The information concerning the precise number of letters sent to Washington residents was contained in this declaration. However, the district court only certified a supplemental declaration submitted by Mr. Fuchs (Dkt. No. 26) as part of the record here. The supplemental declaration does not include information regarding the number of letters sent to Washington residents. By letter on May 4, 2015, the Clerk stated that Plaintiff's motion has been set for initial consideration on the Deputy Clerk's May 14, 2015 Motion Calendar.

for non-Washington residents to sue non-Washington businesses that engage in unfair and deceptive practices through a Washington agent.

Such an outcome is consistent with choice-of-law principles long established by this Court in *Johnson v. Spider Staging*, 87 Wn.2d 577, 555 P.2d 997 (1976), and comports with the principles of due process.

Washington has a strong public interest favoring this outcome because it will both ensure that Washington businesses cannot insulate themselves from liability for unscrupulous conduct by directing that conduct at out-of-state consumers and deter out-of-state businesses from conducting unlawful conduct through unscrupulous Washington agents. As this Court held in *FutureSelect Portfolio Mgt., Inc. v. Tremont Group*, 180 Wn.2d 954, 966, 331 P.3d 29 (2014), barring Washington courts from “enforc[ing] our statutes and regulations against nonresident companies” would “undermine the efficacy” of Washington’s regulatory regime and “create a perverse incentive for principals to insulate themselves from liability by operating exclusively through agents.” *Id.*

II. CERTIFIED QUESTIONS

The district court certified the following questions to this Court (Dkt. 42):

1. Does the Washington Consumer Protection Act create a cause of action for a plaintiff residing outside Washington to sue a Washington defendant for allegedly deceptive acts?

2. Does the Washington Consumer Protection Act create a cause of action for an out-of-state plaintiff to sue an out-of-state defendant for the allegedly deceptive acts of its in-state agent?

III. STANDARD OF REVIEW

This Court reviews certified questions of law de novo. *Frias v. Asset Foreclosure Servs., Inc.*, 181 Wn.2d 412, 334 P.3d 529, 533 (2014) (citing *Carlsen v. Global Client Solutions, LLC*, 171 Wn.2d 486, 493, 256 P.3d 321 (2011)). The Court considers the questions presented “in light of the record certified by the federal court.” *Id.* “Because the federal court certified these questions in connection with a motion for dismissal for failure to state a claim on which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(6), all facts alleged in the complaint are accepted as true.” *Id.*

IV. STATEMENT OF THE CASE

A. Background

Ms. Thornell’s son Andrew Thornell was involved in a two-vehicle car accident in San Antonio, Texas. Dkt. No. 1-1 (Compl.) ¶ 6. Both cars

were damaged in the accident. *Id.* State Farm insured the other automobile and allegedly paid some amount to its insured. *Id.* ¶¶ 7–8.

Approximately one year after the accident, Seattle Service sent Ms. Thornell and her son a demand letter. *Id.* ¶ 9. At top center the letter states:

NOTICE OF INSURANCE CLAIM, YOU
OWE \$9126.18

IMMEDIATE ATTENTION REQUIRED

Id. The letter informed Ms. Thornell that State Farm “has assigned this claim to our office to pursue collections against you.” *Id.* The letter identified “our office” as National Service Bureau, Inc. Bonded Collection Service, Inc., located in Bothell, Washington. *Id.* The letter also contained the following “detach and return” payment slip:

PLEASE DETACH AND RETURN LOWER PORTION IN THE ENCLOSED ENVELOPE

P. O. Box 1259, Dept. 94367
Oaks, PA 15456



IF PAYING BY VISA, MASTERCARD OR AMERICAN EXPRESS, FILL OUT BELOW			
<input type="checkbox"/> VISA	<input type="checkbox"/> MASTERCARD	<input type="checkbox"/> AMEX	<input type="checkbox"/> DISCOVER
ACCOUNT NO.	EXP. DATE	CARD NO.	EXPIRY
SIGNATURE		NEED SIGNATURE ON FRONT REGULATORY REQUIREMENT (PRINT NAME ON BACK OF CARD)	

Pay online at <http://payments.nsbj.net>

NSB ID #: 2199206

Total Amount Due: \$9126.18



THORNELL, SANDRA
THORNELL, ANDREW
12115 BURNES ST
SAN ANTONIO TX 78291-2411

04360-0

National Service Bureau, Inc.

P.O. Box 747
Bothell, WA 98041-0747



04360-SF1-R

Id.

When Ms. Thornell did not respond, Seattle Service sent her increasingly urgent and threatening follow-up letters. *Id.* ¶¶ 10–12. The second letter was self-styled as a “**5-DAY NOTICE**” and again claimed a “**BALANCE DUE: \$9,126.18.**” *Id.* ¶ 10 (bold, capitalized text, and underline in original). One month later Seattle Service sent Ms. Thornell a third letter self-described in the caption as a “**FINAL NOTICE** **AMOUNT DUE OF \$9,126.18 MUST BE PAID BY 07/29/13.**” *Id.* ¶ 11 (bold, capitalized text, and underline in original). The letter stated: “In order to prevent additional collection activity from our office, please send your payment directly to National Service Bureau, Inc. Claim#:53-164L-427 or you may pay the claim online at <http://payments.nsbj.net>. *Id.* Payment should be for \$9,126.18.” *Id.*

As in the previous letters, this “FINAL NOTICE” letter said it was from a debt collector attempting to collect a debt, was “signed” by “JUDY NELSON, Collection Specialist”, and identified the “creditor” as State Farm Insurance Co. *Id.* ¶ 12 (bold and capitalization in original). The “FINAL NOTICE” letter also contained a “detach and return” payment slip, in which Ms. Thornell was instructed to submit payment to Bothell, Washington:

----- PLEASE DETACH AND RETURN LOWER PORTION IN THE ENCLOSED ENVELOPE -----

<p>P. O. Box 1257, Dept. 74367 Oaks, PA 19456</p> 	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="4" style="text-align: center; font-size: small;">IF PAYING BY VISA, MASTERCARD OR AMERICAN EXPRESS, FILL OUT BELOW</th> </tr> <tr> <td style="font-size: x-small;"> <input type="checkbox"/> VISA <small>GUARANTEE</small> </td> <td style="font-size: x-small;"> <input checked="" type="checkbox"/> MASTERCARD <small>CO-OP</small> </td> <td style="font-size: x-small;"> <input type="checkbox"/> AMERICAN EXPRESS <small>AMOUNT</small> </td> <td style="font-size: x-small;"> <small>EXP. DATE</small> </td> </tr> <tr> <td colspan="2" style="font-size: x-small;">SIGNATURE</td> <td colspan="2" style="font-size: x-small;"> <small>DATE PAID (SEE BOTTOM OF CHECK)</small> <small>AMOUNT PAID (SEE BOTTOM OF CHECK)</small> <small>AMOUNT PAID BY (SEE BOTTOM OF CHECK)</small> </td> </tr> </table> <p>Pay online at http://payments.nsbli.net NSB ID #: 2199205 Total Amount Due: \$9126.18</p>	IF PAYING BY VISA, MASTERCARD OR AMERICAN EXPRESS, FILL OUT BELOW				<input type="checkbox"/> VISA <small>GUARANTEE</small>	<input checked="" type="checkbox"/> MASTERCARD <small>CO-OP</small>	<input type="checkbox"/> AMERICAN EXPRESS <small>AMOUNT</small>	<small>EXP. DATE</small>	SIGNATURE		<small>DATE PAID (SEE BOTTOM OF CHECK)</small> <small>AMOUNT PAID (SEE BOTTOM OF CHECK)</small> <small>AMOUNT PAID BY (SEE BOTTOM OF CHECK)</small>	
IF PAYING BY VISA, MASTERCARD OR AMERICAN EXPRESS, FILL OUT BELOW													
<input type="checkbox"/> VISA <small>GUARANTEE</small>	<input checked="" type="checkbox"/> MASTERCARD <small>CO-OP</small>	<input type="checkbox"/> AMERICAN EXPRESS <small>AMOUNT</small>	<small>EXP. DATE</small>										
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  <p>THORNELL, ANDRES THORNELL, SANDRA 12115 DURNES ST SAN ANTONIO TX 78231-2411</p>	<p style="text-align: center;">04350-7</p> <p>National Service Bureau, Inc. P.O. Box 747 Bothell, WA 98041-0747</p> 
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04350-8FN-7

All of the collection letters also threatened Ms. Thornell with the revocation her driver’s license and vehicle tag, stating “any request for claim verification may not prevent possible suspension of your driver’s license and removal of your vehicle license plate registration . . . legal action and/or license suspension . . . if payment or other arrangements”

were not made before the date of the “AMOUNT DUE” in the letter. *Id.* ¶ 19.

As a result of Defendants’ collection letters, Ms. Thornell became concerned about her credit rating and obtained credit reports, at her expense, to determine whether Defendants were reporting the alleged debt on her credit file. *Id.* ¶ 20. Ms. Thornell also enrolled in a credit monitoring program, at her expense, to notify her of changes to her credit report, including the reporting of any debt by Seattle Service or State Farm. *Id.* As a further result of Seattle Service and State Farm’s collection letters and at additional expense, Ms. Thornell sought and retained counsel experienced in debt collection and consumer protection laws. *Id.* ¶ 21.

The alleged \$9,126.14 debt that State Farm and Seattle Service assert as the “**AMOUNT DUE**” was, by Defendants’ admission, merely an unliquidated claim based on a subrogated interest from its insured. *Id.* ¶ 18 (bold and capitalization in original). At the time of the collection notices referenced above, no claim of State Farm, or its insured, had been reduced to a judgment. *Id.* ¶ 14. Ms. Thornell was not indebted to State Farm for any amount of money whatsoever. *Id.* ¶ 15. Seattle Service and

State Farm knew the claimed “Amount Due” was not a liquidated debt subject to collection. *Id.* ¶ 17.

State Farm admits that within the last four years Seattle Service “has collected and remitted at least \$6,352,194 to State Farm in connection with approximately 26,273 uninsured claims assigned throughout the 50 states.” Dkt. No. 1 at 4 (citing Dkt. No. 3 (“Fuchs Decl.”) ¶ 3). Of those 26,273 claims, approximately 702 claims involved State Farm policies issued in Washington. *Id.* (citing Dkt. No. 3 ¶ 4).

B. Procedural History

Ms. Thornell filed this class action lawsuit on September 14, 2014, in the Superior Court for the State of Washington for King County. Dkt. No. 1 ¶ 1. Ms. Thornell named two defendants: Seattle Service and State Farm. *See generally* Dkt. No. 1-1. Seattle Service is a Washington corporation with its headquarters located in Bothell, Washington. *Id.* ¶ 3. State Farm is an Illinois corporation, with operations in all 50 states including Washington. *Id.* ¶ 4.

Ms. Thornell alleges Defendants violated the Washington Consumer Protection Act, RCW § 19.86.010 *et seq.*, and were unjustly enriched. *Id.* ¶¶ 35–50. After Defendants were served, State Farm filed a

Notice of Removal, asserting diversity jurisdiction. Dkt. No. 1 ¶ 6. In the removal notice, State Farm requested that the district court “assume full jurisdiction over this case as provided by law.” *Id.* ¶ 25.

In support of removal, State Farm submitted a Declaration of John Fuchs, who admitted that State Farm retained Seattle Service to collect and remit funds to State Farm “in connection with approximately 26,273 uninsured claims assigned throughout the 50 states.” Dkt. No. 3 (“Fuchs Decl.”) ¶ 3. Of these claims, 702 involved State Farm policies in Washington. *Id.* ¶ 4. Mr. Fuchs supplemented his declaration to confirm that “[n]one of the 26,273 claims referenced in Paragraph 3 had been reduced to a judgment at the time they were referred to [Seattle Service Bureau].” Dkt. No. 26 ¶ 4.

State Farm moved to dismiss, asserting that (1) State Farm is not directly or vicariously liable for Ms. Thornell’s injury; (2) Ms. Thornell cannot assert a CPA claim because the conduct and injuries did not take place in Washington; (3) Ms. Thornell had not stated a claim for unjust enrichment; (4) any claim for injunctive relief should be dismissed; and (4) Ms. Thornell’s class allegations should be stricken. Dkt. No. 9.

The district court denied State Farm’s motion in part and granted it in part, finding that Ms. Thornell had “plausibly alleged” an agency relationship between State Farm and Seattle Service and that dismissing Ms. Thornell’s class allegations would be premature. *See* Dkt. No. 41 at 10. The district court further declined to dismiss Ms. Thornell’s request for injunctive relief. *Id.* The district court granted State Farm’s request to dismiss Ms. Thornell’s unjust enrichment claim. *Id.* The district court further certified the two questions stated above to this Court for determination as a matter of law. Dkt. No. 42.

V. AUTHORITY AND ARGUMENT

A. **An out-of-state plaintiff may sue a Washington defendant for violating the Washington CPA**

1. The legislature intended to create a cause of action for an out-of-state plaintiff against a Washington defendant

Determining whether the CPA creates a cause of action for an out-of-state plaintiff against a Washington defendant is a matter of statutory construction. “When construing statutes, the court’s goal is to ascertain and carry out the legislature’s intent.” *In re Wieber*, --- P.3d ---, No. 90331-0, 2015 WL 1510453, at *3 (Apr. 2, 2015) (citation omitted).

Courts engaging in statutory construction “first examine the plain meaning

of the statute.” *Id.* The plain meaning of a statute is discerned “from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.” *State Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002).

Washington’s CPA provides that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” RCW 19.86.020. The purpose of the CPA is to “complement the body of federal law governing restraints of trade, unfair competition and unfair, deceptive and fraudulent acts and practices in order to protect the public and foster fair and honest competition.” RCW 19.86.920; *Panag*, 166 Wn.2d at 37. The CPA is to be “liberally construed that its beneficial purposes may be served.” RCW 19.86.920.

The CPA broadly permits, without geographical limitation, “[a]ny person who is injured in his business or property” by a violation of the CPA to bring a civil suit for injunctive relief, damages, attorney fees and costs, and treble damages. RCW 19.86.090. “Person” is a defined term under the CPA and includes, again without geographic limitation, “natural persons, corporations, trusts, unincorporated associations and

partnerships.” RCW 19.86.010(1). Thus, based on the plain language of the statute, a non-Washington plaintiff may bring an action under the CPA.

A private CPA plaintiff must allege a “violation” of the CPA, which includes “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” RCW 19.86.020. The CPA broadly defines “trade or commerce” to include “the sale of assets or services, and any commerce directly or indirectly affecting the people of the state of Washington.” RCW 19.86.010(2).

A commercial transaction involving a Washington corporation directly affects the “people” of the state of Washington. A Washington business—itsself a “person” under the statute—employs Washington residents, pays Washington business taxes, and avails itself of Washington laws. Thus, “the commerce and trade that [an abusive company] brings into Washington, and the alleged unfair and dishonest method by which it does so, affects the state economy and thus affects the Washington public at large.” *Schnall v. AT&T Wireless, Inc.*, 171 Wn.2d 260, 288–89, 259 P.3d 129 (2011) (Sanders, J. dissenting); *see also Kelley v. Microsoft, Inc.*, 251 F.R.D. 544, 553 (W.D. Wash. 2008) (noting “the CPA targets all

unfair trade practices either originating from Washington businesses or harming Washington citizens” and concluding that application of the CPA to non-residents’ claims effectuates the CPA’s “deterrent purpose”).

Unfair or deceptive acts or practices by Washington businesses also *indirectly* affect the people of the state of Washington. A central purpose of the CPA is to “foster fair and honest competition.” RCW 19.86.920. Washington debt collectors, like Seattle Service, who engage in abusive debt collection practices place law abiding debt collectors in Washington at a competitive disadvantage. *See Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1060 (9th Cir. 2011) (noting the federal Fair Debt Collection Act was enacted in part “to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged” by abusive debt collectors) (quoting 15 U.S.C. § 1692(e)). The abusive debt collection practices at issue here adversely affect other Washington businesses.

Panag is instructive. *Panag* involved two plaintiffs who were involved in car accidents. *Panag*, 166 Wn.2d at 34. The drivers of the other cars claimed underinsured motorist benefits from their respective insurance providers, which, in *Panag*’s case was Farmer’s Insurance. *Id.*

A Farmer's adjuster determined that Panag was 40 percent at fault and its insured was 60 percent at fault. *Id.* The adjuster contacted Panag's insurance provider but was informed her policy had been cancelled. *Id.* Panag retained an attorney to dispute the cancellation and to pursue a personal injury claim against the other driver. *Id.* Farmer's retained a collection agency to recover the full amount it had paid on the claim. *Id.* at 35. The collection agency sent "amount due" letters almost identical to those that Seattle Service sent to Ms. Thornell in this case. *Id.* Panag sued both Farmer's and the collection agency.

This Court found that the letters the collection agency sent in Panag violated the CPA. In reaching its decision, the Court emphasized the strong public interest that Washington has in regulating debt collection practices. *Panag*, 166 Wn.2d at 53–54 (noting "the business of debt collection affects the public interest, and collection agencies are subject to strict regulation to ensure they deal fairly and honestly with alleged debtors"). Indeed, a violation of Washington's debt collection laws constitutes a per se violation of the CPA. *Id.* at 63.

The conduct at issue in this case both directly and indirectly affects the people of Washington. The connection of this case to Washington is

not, as State Farm argues, “happenstance.” State Farm retained a Washington corporation to send thousands of deceptive collection letters, including 702 directed to Washington residents, falsely stating that the recipients owed money to State Farm. Washington employees prepared the deceptive letters and sent the letters from Washington. The collection letters contained “detach and submit” billing slips to be mailed to Washington, conferring on the collection effort an air of legitimacy by association with Washington. Every letter contained the Seattle Service phone number with a Washington area code (206). Every letter demanded the recipient to remit payment to Seattle Service’s office located in Bothell, Washington.

As in *Panag*, Defendants should be held accountable for their unfair and deceptive conduct—conduct that originates in and emanates from Washington. Defendants should not be able to escape liability simply because they directed the conduct at both non-Washington and Washington residents.

State Farm wrongly asserts that the CPA’s “trade or commerce” definition limits CPA claims to Washington residents and precludes this action. SF Br. at 9. State Farm’s assertion is contrary to the language of

the statute, which broadly extends CPA claims to any person injured by an unfair method of competition or unfair or deceptive practice that directly or indirectly impacts the people of Washington. In accordance with the Act's plain language, courts have not hesitated to apply the CPA to deceptive acts and practices affecting non-Washington residents. Nearly forty years ago, for example, the Court of Appeals ruled that Illinois residents could pursue CPA claims against a Washington defendant that had engaged in a deceptive national advertising campaign regarding hunting trips in British Columbia. *Fisher v. World-Wide Trophy Outfitters, Ltd.*, 15 Wn. App. 742, 748, 551 P.2d 1398 (1976). More recently, the Court of Appeals ruled that a class action could proceed despite the fact that the class included both Washington and non-Washington residents. *Pickett v. Holland Am. Line-Westours, Inc.*, 101 Wn. App. 901, 906, 909–12, 6 P.3d 63 (2000), *rev'd on other grounds*, 145 Wn.2d 178, 35 P.3d 351 (2001) (reversing denial of motion to certify a nationwide litigation class and holding that the CPA governed the claims of New York and Florida residents on behalf of a “nationwide class of cruise passengers who were deceived about port charges and taxes” against a Washington defendant). State Farm—an Illinois resident—*itself*

asserted CPA claims in a lawsuit filed against a Washington defendant, obtaining a jury verdict that was upheld on appeal. *See State Farm Fire & Cas. Co. v. Huynh*, 92 Wn. App. 454, 962 P.2d 854 (1998).

Other courts have reached the same conclusion. *See, e.g., Rajagopalan v. NoteWorld, LLC*, No. C11-05574BHS, 2012 WL 727075, at *5 (W.D. Wash. Mar. 6, 2012) (denying motion to dismiss and/or compel arbitration and permitting North Carolina resident to assert CPA claims regarding false representations that induced the plaintiff to enter into a contract with a Washington defendant, noting Washington has a strong interest in enforcing its laws against Washington businesses); *Peterson v. Graoch Assoc. No. 111 Ltd. P'ship*, No. C11-5069BHS, 2012 WL 254264, at *2 (W.D. Wash. Jan. 26, 2012) (denying motion to dismiss CPA claims regarding failure of Washington defendant to pay returns guaranteed under subscription agreements to New Mexico plaintiffs, finding that the CPA targets all unfair trade practices either originating from Washington businesses or harming Washington citizens); *Keithly v. Intelius Inc.*, No. C09-1485RSL, 2011 WL 2790471, at *1 (W.D. Wash. May 17, 2011) (on reconsideration after *Schnall II*, denying motion for judgment on the pleadings as to Ohio resident's CPA claim regarding

deceptive marketing practices and holding that permitting application of the CPA to an out-of-state plaintiff's claim is "consistent with both the purpose of the CPA and the statutory language"); *Kelley v. Microsoft Corp.*, 251 F.R.D. 544, 552-53 (W.D. Wash. 2008) (certifying a nationwide litigation class and holding that both Illinois and Washington plaintiffs could bring CPA claims based on deceptive advertising against Washington defendant).

State Farm also wrongly contends that a private right of action under the CPA "was and is no broader than the attorney general's right," erroneously concluding that private litigants, like the attorney general, can only bring actions on behalf of persons residing in Washington. SF Br. at 12. RCW 19.86.080 provides that the attorney general may bring an action "in the name of the state, or as *parens patriae* on behalf of persons residing in the state, against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful." RCW 19.86.080. By contrast, RCW 19.86.090 permits "any person" without limitation to bring a private cause of action under the CPA. The legislature could have included the same geographical limitation in RCW 19.86.090 that it did in RCW 19.86.080 but it chose not to do so. Under well-established

principles of statutory construction, such an omission is further evidence that the legislature intended the CPA to extend a private cause of action to non-Washington plaintiffs. See *State v. Roggenkamp*, 153 Wn.2d 614, 625–26, 106 P.3d 196, 201–02 (2005) (“When the legislature uses different words within the same statute, we recognize that a different meaning is intended.”); *Simpson Inv. Co. v. Dep’t of Rev.*, 141 Wn.2d 139, 160, 3 P.3d 741 (2000) (It is “well established that when ‘different words are used in the same statute, it is presumed that a different meaning was intended to attach to each word.’”).

Defendants rely on *Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*, 162 Wn.2d 59, 74, 170 P.3d 10 (2007), but the case is inapposite. In *Indoor Billboard*, this Court noted that the legislature instituted a private right of action “to enlist the aid of private individuals in enforcing the CPA.” *Id.* (citing *Lightfoot v. MacDonald*, 86 Wn.2d 331, 335–36, 544 P.2d 88 (1976)). The Court did not hold that a private cause of action is co-extensive with the attorney general’s enforcement power.

Finally, defendants wrongly rely on *In re Wieber*, --- P.3d ---, 2015 WL 1510453 (Apr. 2, 2015). *Wieber* addressed whether the Washington

homestead exemption law, RCW 6.13.010–.240, applies extra-territorially to real property located in other states. *Id.* at *1. In holding that the exemption law does not, this Court analyzed the entire homestead exemption chapter and concluded that the legislature could not have intended to extend the homestead exemption to property located in other states because such an outcome was impossible to harmonize with other provisions in the statute. *Id.* at *4.

Based on plain language and taken as a whole, the CPA’s statutory scheme establishes the legislature intended to create a CPA cause of action for a non-Washington plaintiff against a Washington defendant.

2. Choice of law principles confirm that a non-Washington plaintiff may sue a Washington defendant under the CPA

Relying on *Wieber*, State Farm asserts that the legislature could not have intended to create a cause of action for an out-of-state plaintiff because to do so would infringe on the rights of other states to enact and enforce their own consumer protection laws. SF Br. at 17–22. Taken to its logical conclusion, State Farm’s argument boils down to an assertion that when applying state consumer protection law, the law of the state in which the consumer resides always governs. State Farm is wrong.

“Provided it is constitutional to do so, the court will apply a local statute *in the manner intended by the legislature* even when the local law of another state would be applicable under usual choice-of-law principles.” Restatement (Second) Conflict of Laws § 6, cmt. b (1971) (emphasis added); *see also id.* cmt. a (“A court, subject to constitutional limitations, must follow the directions of its legislature.”); cmt. b (Because a court “will rarely be directed by statute to apply the local law of one state, rather than the local law of another state,” the court “should give a local statute the range of application intended by the legislature when these intentions can be ascertained and can constitutionally be given effect”).

Here, the legislature’s intentions can be ascertained by analyzing the plain language of the CPA in its entirety. The legislature intended to create a cause of action for “all persons” regardless of their geographic location so long as the conduct that injured them affects the people of Washington, even if indirectly. This Court must apply the CPA as the legislature intended, regardless of whether another state’s laws might apply. No need exists to examine choice-of-law factors to determine applicable law.

Although a choice-of-law analysis is not necessary because the legislature intended the CPA to apply to non-Washington consumers injured by a Washington business, choice-of-law principles confirm that Washington law applies to a non-Washington resident's CPA claims.

“As a preliminary matter, when choice of law is disputed, ‘there must be an actual conflict between the laws or interests of Washington and the laws or interests of another state before Washington courts will engage in a conflict of laws analysis.’” *FutureSelect Portfolio Mgmt., Inc. v. Tremont Group Holdings, Inc.*, 180 Wn.2d 954, 967, 331 P.3d 29 (2014) (quoting *Seizer v. Sessions*, 132 Wn.2d 642, 648, 940 P.2d 261 (1997)). Here, an actual conflict exists between Washington's CPA, which provides a private cause of action for a person in a non-consumer transaction, and Texas's consumer protection act, which does not. SF Br. at 19–20.

The next step is to determine the appropriate governing choice of law. Washington courts apply the “most significant relationship” test and consider which contacts are most significant and where those contacts took place. *Spider Staging*, 87 Wn.2d at 580–81. When significant contacts are evenly balanced, courts will next evaluate “the interests and

public policies of the concerned states, to determine which state has the greater interest in determination of the particular issue.” *Zenaida-Garcia v. Recovery Sys. Tech., Inc.*, 128 Wn. App. 256, 260-61, 115 P.3d 1017, 1020 (2005) (citing *Myers v. Boeing Co.*, 115 Wn.2d 123, 133, 794 P.2d 1272, 1278 (1990)). Although the Court need not reach the respective public policies of Washington and Texas because Washington has the most significant contacts with the issues in this case, any test favors application of Washington law.

To settle choice of law questions, Washington courts default to section 145 of the Restatement (Second) Conflict of Law unless a more specific Restatement applies. *FutureSelect*, 180 Wn.2d at 967. For example, *FutureSelect* involved claims for common law fraud and misrepresentation as well as a Washington state securities act (WSSA) claim. *Id.* at 959. Therefore, this Court applied section 148 of the Restatement, “which refines the § 145 factors for the fraud and misrepresentation context.” *Id.* at 967.

Unlike *FutureSelect*, this case involves CPA claims which differ materially from common law fraud and misrepresentation. For example, unlike a common law misrepresentation or fraud claim (or even a WSSA

claim), proof of reliance is not necessary under the CPA. *See Schnall*, 171 Wn.2d at 277 (noting that this Court has “firmly rejected the principle that reliance is necessarily an element of plaintiff’s case”) (citing *Indoor Billboard*, 162 Wn.2d at 82). Applying section 148, which requires the court to consider “the place where plaintiff acted in reliance on the representation,” is not appropriate. Thus, the default section 145 factors apply instead.

The section 145 factors include (a) the place where the injury occurred, (b) the place where the conduct causing the injury occurred, (c) the domicile, residence, nationality, place of incorporation and place of business of the parties, and (d) the place where the relationship, if any, between the parties is centered. *Spider Staging*, 87 Wn.2d at 581 (citations omitted). This Court’s decision in *Spider Staging* provides a good example of how these factors are to be applied.

Spider Staging involved a plaintiff who owned an exterior building cleaning business in Topeka, Kansas. The plaintiff purchased a scaffold for his business from Spider Staging, a Washington corporation that designed and manufactured the scaffold in Washington. The plaintiff was killed in Kansas when he fell from the scaffold. His estate sued Spider

Staging in King County, Washington for wrongful death, claiming the company defectively designed the scaffold so that it could not withstand stress. *Spider Staging*, 87 Wn.2d at 579–80.

The superior court dismissed the plaintiff’s claim on summary judgment, declaring Kansas law to be the applicable forum because the injury occurred in Kansas. This Court reversed, rejecting the choice-of-law rule that requires courts to apply the law of the place of wrong. *Id.* Instead, the significant relationship test applies. *Id.*

After analyzing the contacts and determining that both states had a relationship with the cause, the Court assessed the interests and public policies of the potentially concerned states. *Id.* at 582. Because Kansas limits the damages that a wrongful death plaintiff can obtain at trial, the Court determined that Washington, which has no limitations on damages, had the greater interest in the case. *Id.* at 583 (finding “the application of Kansas wrongful death limitation will not protect Kansas residents” but “will merely limit the damages of its own residents”). The court also concluded that Washington’s “deterrent policy of full compensation is clearly advanced by the application of its own law.” *Id.* Finally, applying

Washington law would “encourage [Spider Staging] to make safe products for its customers.” *Id.* Thus, Washington law governed.

Applying the principles in *Spider Staging* to this case, Washington has the most significant contacts. Seattle Service prepared the letters in Washington, designed their form and language in Washington, and sent them from Washington. Thus, Washington is the place where the conduct causing the injury occurred (factor b). Seattle Service demanded that Ms. Thornell remit payment to its office in Washington and provided a Washington telephone number and address for her to direct inquiries. Thus, the relationship between Ms. Thornell and Seattle Service is centered in Washington (factor d). As for the other factors, the residence of the parties (factor c) is neutral. The only factor arguably favoring application of Texas law is factor “a” because Ms. Thornell received the letter in Texas.

Even if this Court applies section 148, Washington still has the most significant contacts. Two of the six factors in section 148 are irrelevant to Ms. Thornell’s CPA claim—namely, the place where plaintiff acted in reliance on the representation and the place where a tangible thing, which is the subject of the transaction between the parties, was

situated at the time. Reliance is not an element of the claim. *See Schnall*, 171 Wn.2d at 277 (noting that this Court has “firmly rejected the principle that reliance is necessarily an element of plaintiff’s case”) (citing *Indoor Billboard*, 162 Wn.2d at 82). And there is no “tangible thing” at issue in this case. Thus, these two factors are neutral.

A third factor—the domicile, residence, nationality, place of incorporation, and place of business of the parties—is neutral since Seattle Service is incorporated in Washington and Ms. Thornell resides in Texas. Two of the remaining factors—the place where the defendant made the representation and the place where the plaintiff is to render performance under a contract—favor Washington because the letters were sent from Bothell, Washington and Ms. Thornell was to remit payment to Bothell, Washington. Only one factor—the place where Ms. Thornell received the representations—favors applying Texas law. No matter which test is applied, Washington law governs.

Even if the Court concludes that the contacts are evenly balanced, “the interests and public policies of [the] potentially concerned states” favor applying Washington law. *See Spider Staging*, 87 Wn.2d at 582. Washington has “strong policy interests” in deterring misconduct by its

corporate citizens. *Zenaida-Garcia*, 128 Wn. App. at 266. Washington has a particularly strong interest in regulating unfair and deceptive practices of debt collectors that are engaging in unfair and deceptive acts and practices within Washington's borders. *See Panag*, 166 Wn.2d at 49–53 (describing the strong public policy interest that Washington has in deterring and punishing unfair and deceptive subrogation collection practices).

Texas has no comparable interest in applying Texas law. For example, State Farm asserts that Texas has a “right to protect its consumers in the manner it seems fit” but admits that Texas law provides no remedy for a consumer with Ms. Thornell’s injuries. In this context, applying Washington law furthers Texas’s interest in protecting Texas consumers far more effectively than applying nonexistent Texas law protections. *See Spider Staging*, 87 Wn.2d at 583 (holding Washington law applied in a case involving Washington defendants and a Kansas plaintiff because Kansas law limited the damages a plaintiff could recover and Kansas has no interest in “limit[ing] the damages of its own residents”); *Zenaida-Garcia*, 128 Wn. App. at 266 (holding Washington law applied in a case involving an Oregon plaintiff suing a Washington

business and recognizing “Oregon has no strong interest in [the] application of its statute” where that statute “would merely limit [an Oregon resident’s] ability to recover damage”).

Texas also does not have an interest in applying Texas law to further “economic competition.” *See* SF Br. at 21. None of the defendants in this case are Texas residents and State Farm has not asserted that any business residing in Texas would be placed at a competitive disadvantage by permitting Plaintiff to sue in Washington. Even if a Texas business were implicated, because Texas law fails to provide a remedy for the conduct at issue in this case applying Texas law would not redress any anticompetitive behavior affecting that Texas business.

State Farm asserts that “courts around the nation have held that state consumer protection laws do not apply to claims by out-of-state plaintiffs arising from out-of-state harms.” SF Br. at 28. State Farm’s characterization of the four cited cases is misleading at best, as all four cases acknowledge that out-of-state plaintiffs may properly bring claims under the relevant state statutes under certain circumstances. *See, e.g., Goshen v. Mut. Life Ins. Co. of N.Y.*, 746 N.Y.S.2d 858, 774 N.E.2d 1190, 1196 (N.Y. 2002) (noting that the “analysis does not turn on the residency

of the parties”). Further, none of the cited cases limits the claims of out-of-state plaintiffs based on whether there was an “out-of-state harm.” See *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill.2d 100, 296 Ill. Dec. 448, 835 N.E.2d 801, 853-54 (2005) (finding that “[t]he place of injury or deception is only one of the circumstances” to consider in determining whether “the circumstances relating to the transaction occur primarily and substantially within the state” and that “each case must be decided on its own facts”); *Cooper v. Samsung Elecs. Am., Inc.*, 374 F. App’x 250, 254 (3d Cir. 2010) (finding that Arizona consumer could not bring claim under New Jersey consumer protection statute because “[t]he transaction in question bears no relationship to New Jersey other than the location of Samsung’s headquarters” and Arizona was “the state in which the television was marketed, purchased, and used”); *Goshen*, 774 N.E.2d at 1196 (noting that out-of-state plaintiffs may bring claims based on “deceptive acts leading to transactions within the state”); *W. Dermatology Consultants, P.C. v. VitalWorks, Inc.*, 146 Conn. App. 169, 78 A.3d 167, 188 (2013) (finding out of state plaintiff could not bring claims under Connecticut consumer protection statute where “Connecticut only served as the corporate headquarters at the time of the execution of the contract”

and the “actions taken in the pursuit of trade or commerce occur[ed] wholly outside the state”). State Farm’s reliance on these cases is misplaced.

Simply put, both legislative intent and choice-of-law principles establish that a non-Washington plaintiff may bring a CPA claim against a Washington defendant. Defendants’ assertion that courts must apply the law of the consumer’s forum state is meritless and should be rejected. Thus, this Court should answer the first question in the affirmative.

B. A non-Washington plaintiff may sue a non-Washington defendant who violates the CPA through a Washington agent

Under general principles of agency law, a principal is bound by actions taken by an agent who acts within the scope of the agent’s authority. *See, e.g., Petersen v. Pac. Am. Fisheries*, 108 Wn. 63, 68, 183 P. 79 (1919) (“A principal is not only bound by the acts of his agent, general or special, within the authority which he has given him, but he is also bound by his agent’s acts within the apparent authority ...”); *Blake Sand & Gravel, Inc. v. Saxon*, 98 Wn. App. 218, 223, 989 P.2d 1178 (1999) (“When an agent has actual authority to act on behalf of the principal, the agent’s exercise of the authority binds the principal.”). “Any act or omission of an agent within the scope of ... authority is the act or

omission of the principal.” David K. DeWolf & Keller W. Allen, 16 Wash. Prac., Tort Law And Prac. § 4:23 (4th ed. 2014). State Farm offers no reason why this general principle should be disregarded in the context of the CPA. Likewise, State Farm offers no examples of Washington law being read to exclude a principal from liability for the acts of its agent where the agent violates Washington law.

The plain language of Washington’s jurisdictional statutes suggests that the legislature contemplated that actions under the CPA may be brought against a nonresident defendant whose conduct has an impact on Washington. “Personal service of any process in an action under [the CPA] may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which has had the impact in this state which this chapter reprehends.” RCW 19.86.160. “Such persons shall be deemed to have thereby submitted themselves to the jurisdiction of the courts of this state” *Id.* Courts have interpreted this provision to mean that personal jurisdiction under the CPA is coextensive with the limitations of due process. *See, e.g., State v. AU Optronics Corp.*, 180 Wn. App. 903, 914, 328 P.3d 919 (2014); *Oytan v. David-Oytan*, 171 Wn. App. 781, 798, 288 P.3d 57 (2012). Because the acts of an agent are

the acts of the principal, State Farm can be said to have “engaged in conduct in violation of [the CPA] which has had an impact in [Washington].”

Further, a central purpose of the CPA is to regulate business conduct to “protect the public and foster fair and honest competition” in Washington. RCW 19.86.920. The CPA, therefore, seeks not only to protect consumers who have been harmed by an agent’s actions on behalf of a principal, but also to prevent Washington businesses from acting unscrupulously. “To this end [the CPA] shall be liberally construed that its beneficial purposes may be served.” *Id.* “By broadly prohibiting ‘unfair or deceptive acts or practices in the conduct of any trade or commerce,’ ... the legislature intended to provide sufficient flexibility to reach unfair or deceptive conduct that inventively evades regulation. The deceptive use of traditional debt collection methods to induce someone to remand payment of an alleged debt is precisely the kind of ‘inventive’ unfair and deceptive activity the CPA was intended to reach.” *Panag*, 166 Wn.2d at 49.

Here, State Farm “inventively” attempts to avoid liability in Washington by hiring a Washington agent to utilize unscrupulous

practices to collect alleged debts on behalf of State Farm. State Farm then claims that the CPA does not apply to it as an out-of-state principal, despite having chosen to hire a Washington agent to perform its dirty work.

This Court recently addressed a similar issue in *FutureSelect* in the securities fraud context. *FutureSelect* involved a Redmond-based financial company that invested nearly \$200 million in Tremont's Rye Funds ("Tremont"), which pooled and fed money into Bernie Madoff's ill-fated fraudulent securities investment scheme. *FutureSelect*, 180 Wn.2d at 959. After its investment was lost, FutureSelect sued Tremont, its parent companies, and its auditors. *Id.*, 180 Wn.2d at 960. The trial court granted defendants' motions to dismiss in full. The Court of Appeals affirmed in part and reversed in part, finding that the Court had jurisdiction over the non-Washington principals and that Washington law applied to the state securities act claims, negligent misrepresentation claims, and agency claims. *Id.*, 180 Wn.2d at 962.

In affirming the Court of Appeals, this Court noted that the equities favored application of Washington law:

Our law explicitly protects investors from fraud and misrepresentations made by

sellers of securities. See RCW 21.20.010. Not allowing Washington courts to enforce our statutes and regulations against nonresident companies that solicit, offer, and sell securities in this state would undermine the efficacy of this regulatory regime and create a perverse incentive for principals to insulate themselves from liability by operating exclusively through agents.

FutureSelect, 180 Wn.2d at 966. In this case, the equities favor enforcing the CPA against an out-of-state defendant that engages in unfair and deceptive conduct in Washington through a Washington agent. The second certified question should be answered in the affirmative.

C. The application of Washington law comports with due process

State Farm's argument that application of Washington law to Ms. Thornell's claim would violate the United States Constitution is unavailing because it rests on State Farm's mischaracterization of Ms. Thornell's claims as unconnected to Washington. When considering whether a forum state's application of its own law exceeds federal constitutional limitations, the United States Supreme Court has "long accepted" that "a set of facts giving rise to a lawsuit or a particular issue within a lawsuit, may justify, in constitutional terms, application of the law of more than one jurisdiction." *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 307-08 (1981). The federal due process clause and full faith and

credit clause place “modest restrictions on the application of forum law.” *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 818 (1985). These restrictions require “that for a State’s substantive law to be selected in a constitutionally permissible manner, that State must have significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair.” *Id.* (quoting *Allstate*, 449 U.S. at 312–313). The expectation of the parties is an important element in consideration of fairness in this context. *Id.* at 822.

The constitutional test set forth in *Shutts* is satisfied. Ms. Thornell has sued a Washington debt collection company, Seattle Service, and its principal, State Farm, based on deceptive letters that Seattle Service designed, printed, and mailed from Washington. Those letters demanded that Ms. Thornell mail payment to Defendants at a Washington address. This is a significant aggregation of contacts that create Washington state interests in this action as required by *Shutts*. State Farm simply ignores these contacts and urges the Court to consider only that Ms. Thornell received and read the letters in Texas. State Farm’s analysis is neither required by the Constitution, nor correct. *See Kelley*, 251 F.R.D. AT 550

(W.D. Wash. 2008) (finding that it was constitutional to apply the CPA to a nationwide class action challenging a marketing campaign created in Washington by a Washington company, even though consumers made purchases in other states). The aggregation of contacts with Washington present here is entirely dissimilar from the facts in *Shutts*, where the United States Supreme Court rejected application of Kansas law to a dispute over mineral leases on land located in eleven other states. 472 U.S. at 819–21.

State Farm also suggests that application of Washington law would be arbitrary because the residence of its agent, Seattle Service, in Washington is a matter of happenstance. SF Br. at 33 (arguing that class members “happened to receive a letter from [Seattle Service]”); *id.* at 35 (stating that State Farm “sent the claim out to a service provider (which happened to be in Washington)”). State Farm chose to hire a debt collector located in Washington to send letters from Washington and demand payment in Washington. There is nothing arbitrary or fundamentally unfair about requiring insurance and debt collection businesses operating in Washington to comply with Washington’s Consumer Protection Act. Neither Seattle Service, nor State Farm could

be surprised. *See Allstate*, 449 U.S. at 315–18 (holding application of Minnesota law to claims under an insurance policy issued in Wisconsin arising from an accident that occurred in Wisconsin did not violate the Constitution and explaining that the insurer was licensed to do business in Minnesota and must have known it might be sued in Minnesota and subject to Minnesota law); *Kelley*, 251 F.R.D. at 550 (“Although the injury to Plaintiffs and the potential class members may have occurred outside of Washington, application of Washington law is not arbitrary, unfair, or unforeseeable.”).

State Farm attempts to avoid the outcome of the applicable rule of law set forth in *Shutts* by pointing to cases decided outside of the choice of law context. For example, in *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573 (1986), the Court held that a New York regulation of the liquor industry violated the Commerce Clause. State Farm, however, has not claimed that application of Washington law to Ms. Thornell’s claim would violate the Commerce Clause. State Farm also relies on cases applying the irrelevant rule that the imposition of “grossly excessive” punitive damages violates due process. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003); *BMW of N.*

Am., Inc. v. Gore, 517 U.S. 559 (1996). *Shutts* provides the test for determining whether application of Washington law in this case offends the Constitution—and under *Shutts* it does not.

Finally, State Farm invites the Court to determine that the Washington CPA cannot be applied here because Ms. Thornell seeks to represent a nationwide class. This argument is premature and should be rejected. The question before the Court is whether the CPA can be applied to Ms. Thornell's claims—whether the case may be certified as a class action is not before the Court. Moreover, State Farm's reliance on *In re Bridgestone/Firestone, Inc.*, 288 F.3d 1012 (7th Cir. 2002) is misplaced. In *Bridgestone*, the forum state, Indiana, was “a *lex loci delecti* state: in all but exceptional cases it applies the law of the place where the harm occurred.” *Id.* at 1016. The Seventh Circuit explained that under Indiana's choice of law rules, the federal district court was required to apply the law of the state of each consumer, making the proposed class action unmanageable. *Id.* at 1016–18. Unlike Indiana, Washington has “rejected the *lex loci delecti* choice-of-law rule” and “adopted the most significant relationship rule for contracts and tort choice-of-law problems.” *Spider Staging*, 87 Wn.2d at 580; *see also Kelley*, 251 F.R.D.

at 550–551 (rejecting constitutional challenge and finding under Washington choice of law principles that the CPA applied to nationwide class claims).

Moreover, under Washington choice-of-law rules, Washington law presumptively applies unless there is a material conflict between Washington law and the law of the other state connected to the controversy. *See Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 100–102, & n.3, 864 P.2d 937 (1994) (Washington is “presumptive local law” absent “conflict of purpose,” and burden of demonstrating conflict is on proponent of foreign law.). This is because “there can be no injury in applying [forum] law if it is not in conflict with that of any other jurisdiction.” *Shutts*, 472 U.S. at 816.

No conflict exists here. The Illinois Consumer Fraud Act (“ICFA”), provides a private right of action for plaintiffs that establish: (1) a deceptive act or practice by the defendant, (2) the defendant’s intent that the plaintiff rely on the deception, (3) the occurrence of the deception in the course of conduct involving trade or commerce, and (4) actual damage to the plaintiff (5) proximately caused by the deception.” *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill.2d 100, 180, 296 Ill. Dec. 448, 835

N.E.2d 801 (2005). As with the CPA, “[t]he terms ‘trade’ and ‘commerce’ ... shall include any trade or commerce directly or indirectly affecting the people of this State.” 815 ILCS 505/1(f).

Like the CPA, the ICFA provides that it is to be “liberally construed” to effect its purposes. *People ex rel. Daley v. Datacom Sys. Corp.*, 146 Ill.2d 1, 29–31, 165 Ill. Dec. 655, 585 N.E.2d 51 (1991). The ICFA protects not only consumers, but borrowers and businessmen as well. *Id.* The Illinois Supreme Court has held that the ICFA applies to debt collection practices such as those at issue here. *Id.* Because no conflict exists between Illinois and Washington law, Washington law presumptively applies.

Application of Washington law to Ms. Thornell’s claims does not exceed the Constitutional boundaries set by the due process clause, the full faith and credit clause of the Constitution or conflict-of-law principles. Ms. Thornell’s claims arise out of Defendants’ actions in the State of Washington, so application of Washington law is neither arbitrary nor unfair.

VI. CONCLUSION

To ensure that businesses are precluded from enlisting collection agencies to unfairly and deceptively pursue unliquidated subrogation interests on the insurance companies' behalf, this Court should conclude that (1) a non-Washington plaintiff may sue a Washington defendant under the CPA; and (2) a non-Washington plaintiff may sue a non-Washington business where that business engages in unfair or deceptive practices in Washington through an agent. Ms. Thornell also respectfully requests an award of attorneys' fees pursuant to RCW 19.86.020, in an amount to be determined upon filing of an affidavit of fees and expenses. *See* RAP 18.1.

RESPECTFULLY SUBMITTED AND DATED this 5th day of
May, 2015.

TERRELL MARSHALL DAUDT
& WILLIE PLLC



By: _____
Beth E. Terrell, WSBA #26759
Email: bterrell@tmdwlaw.com
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
Telephone: (206) 816-6603
Facsimile: (206) 350-3528

Michael L. Murphy, WSBA #37481
Email: mmurphy@baileyglasser.com
James L. Kauffman
Email: jkauffman@baileyglasser.com
BAILEY GLASSER LLP
910 17th Street, NW, Suite 800
Washington, DC 20006
Telephone: (202) 463-2101
Facsimile: (202) 463-2103

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that on May 5, 2015, I caused a true and correct copy of the foregoing to be served on the following via the means indicated:

Jeffrey I. Hasson, WSBA#23741
Email: hasson@dhlaw.biz
DAVENPORT & HASSON, LLP
12707 NE Halsey Street
Portland, Oregon 97230
Telephone: (503) 255-5352
Facsimile: (503) 255-6124

U.S. Mail, postage prepaid
 Hand Delivered via Messenger Service
 Overnight Courier
 Facsimile
 Electronic Service

Attorneys for Defendant Seattle Service Bureau, Inc

Joseph D Hampton, WSBA #15297
Email: jhampton@bpmlaw.com
Daniel L Syhre, WSBA #34158
Email: dsyhre@bpmlaw.com
BETTS PATTERSON
& MINES, P.S.
701 Pike Street, Suite 1400
Seattle, Washington 98101-3927
Telephone: (206) 292-9988
Facsimile: (206) 343-7053

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Attorneys for Defendant State Farm Mutual Automobile Insurance Co.

Thomas J. Frederick
Email: tfrederick@winston.com
Neil M. Murphy
Email: nmurphy@winston.com
WINSTON & STRAWN LLP
35 West Wacker Drive
Chicago, Illinois 60601
Telephone: (312) 558-5600
Facsimile: (312) 558-5700

- U.S. Mail, postage prepaid
- Hand Delivered via
Messenger Service
- Overnight Courier
- Facsimile
- Electronic Service

Attorneys for Defendant State Farm Mutual Automobile Insurance Co.

I certify under penalty of perjury under the laws of the State of
Washington that the foregoing is true and correct. DATED this 5th day of
May, 2015.

TERRELL MARSHALL DAUDT
& WILLIE PLLC



By: _____

Beth E. Terrell, WSBA #26759
Email: bterrell@tmdwlaw.com
Jennifer Rust Murray, WSBA #36983
Email: jmurray@tmdwlaw.com
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
Telephone: (206) 816-6603
Facsimile: (206) 350-3528

Attorneys for Plaintiff

OFFICE RECEPTIONIST, CLERK

To: Bradford Kinsey
Cc: hasson@dhlaw.biz; jhampton@bpmlaw.com; dsyhre@bpmlaw.com; tfrederick@winston.com; nmurphy@winston.com; mmurphy@baileyglasser.com; jkauffman@baileyglasser.com; Beth Terrell; Jennifer Murray
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Subject: No. 91393-5 Sandra Thornell v. Seattle Serv. Bureau, Inc. et al.: Plaintiff's Responsive Brief

Greetings,

Attached for filing with the Court is Plaintiff's Responsive Brief in the above-referenced matter.

Thank you for your attention.

Bradford Kinsey
Legal Secretary
TERRELL MARSHALL DAUDT & WILLIE PLLC
936 N. 34th Street, Suite 300
Seattle, Washington 98103-8869
Telephone: (206) 816-6603
Facsimile: (206) 350-3528