

**Case No. 25-1448**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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HADASSAH SHELLENBERGER, an individual,

Plaintiff–Appellant,

v.

AIG WARRANTYGUARD, INC, a Delaware limited liability company,

Defendants–Appellees.

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On Appeal From  
United States District Court for the Western District of Washington  
Honorable James L. Robart  
Case No. 2:24-cv-00657-JLR

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***AMICUS CURIAE* BRIEF OF NORTHWEST CONSUMER LAW CENTER,  
NATIONAL ASSOCIATION OF CONSUMER ADVOCATES, AND  
NATIONAL CONSUMER LAW CENTER  
SUPPORTING APPELLANT AND REVERSAL**

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Samuel R. Leonard  
LEONARD LAW, PLLC  
sam@seattledebtdefense.com  
9030 35<sup>th</sup> Ave SW, Suite 100  
Seattle, Washington 98126  
Telephone: (206) 486-1176

*Attorney for Amici*

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## **CORPORATE DISCLOSURE STATEMENT**

Amicus Curiae Northwest Consumer Law Center is a 501(c)(3) non-profit corporation with no affiliation to any other corporation.

Amicus Curiae National Association of Consumer Advocates is a 501(c)(3) non-profit corporation with no affiliation to any other corporation.

Amicus Curiae National Consumer Law Center is a 501(c)(3) non-profit corporation with no affiliation to any other corporation.

## **I. INTRODUCTION**

On May 15, 2025, the Consumer Financial Protection Bureau (CFPB) rescinded a rule that allowed states to enforce significant portions of the Consumer Financial Protection Act (CFPA), increasing the burden on state legislatures to regulate unfair and deceptive business practices occurring within their jurisdiction. 90 Fed. Reg. 20,565 (May 15, 2025). In Washington State, it is uncertain whether this change will have significant effect, as Washington has strong consumer protections that are not dependent on federal interpretations of what constitutes an “unfair” or “deceptive” act or practice in trade or commerce.

The Washington Consumer Protection Act, Chapter 19.86 RCW (WCPA) and state jurisprudence provide Washingtonians with protections against unfair and deceptive practices in trade or commerce that are broader than those provided under federal law. Washington appellate court interpretations of the WCPA control in determining the breadth and reach of the WCPA, not federal interpretations of what constitutes unfair and deceptive



under federal laws such as the CFPA, or the Fair Trade Commission Act (FTCA), which the WCPA was modeled after. Washington's Supreme Court has repeated, time and time again, what constitutes "unfair" or "deceptive" under the WCPA is determined through a gradual process of inclusion and exclusion conducted by Washington courts. Where Washington's legislature and Washington courts have not determined whether a particular practice is "unfair" or "deceptive," federal interpretations are guiding, but are not controlling.

Relying on federal district court decisions and viewing the WCPA too narrowly, the district court here misconstrued and misapplied the WCPA when dismissing Plaintiff's claims. First, the district court erred in deciding that the AIG Warrantyguard, Inc. (AIG) advertisements were not deceptive, when the only benefits advertised to the Plaintiff were not available to her. Second, the district court erred when it found that a disclosure that limitations and exclusions apply cures an otherwise deceptive and misleading advertisement.

## **II. INTEREST OF AMICI**

### **A. Northwest Consumer Law Center**

Northwest Consumer Law Center (NWCLC) is a statewide nonprofit law firm serving low- and moderate-income Washington consumers. NWCLC is the only nonprofit organization in Washington State that focuses solely on consumer legal issues. Since opening its doors in 2013, NWCLC has represented hundreds of Washington consumers injured by unfair and deceptive business practices.

The WCPA allows NWCLC to assist clients who cannot otherwise afford the costs of legal services in obtaining relief from unfair business practices that have caused them injury. Thus, court decisions that broadly limit what practices constitute unfair or deceptive under the WCPA put at risk NWCLC's ability to provide access to justice to the low-income communities it serves. As such, decisions such as the district court's here directly impact the ability of NWCLC to achieve its core mission: access to justice for all consumers.

NWCLC supports the reversal of the district court's decision dismissing Plaintiff's WCPA claims on the basis that Defendants' advertisements were not deceptive at this early stage of litigation.

**B. National Association of Consumer Advocates**

Amicus National Association of Consumer Advocates (NACA) is a nonprofit association of more than 1,600 attorneys and consumer advocates committed to representing consumers' interests. NACA's members are private and public sector attorneys, legal services attorneys, law professors, and law students whose primary focus is the protection and representation of consumers. They have represented hundreds of thousands of consumers in small-damages actions and consumer class actions. As a national organization fully committed to promoting justice for consumers, with an emphasis on those of modest means or those who are otherwise especially vulnerable, NACA's members have also long advocated to ensure that

consumers have remedy and means of redress of injuries caused by unfair practices.

NACA has an interest in this case because it seeks to ensure that, with the uncertainty of the future of federal consumer protections, state protections remain strong. The Supreme Court “has ‘long recognized the role of the States as laboratories for devising solutions to difficult legal problems.’” *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 817, 135 S. Ct. 2652, 2673 (2015) (quoting *Oregon v. Ice*, 555 U.S. 160, 171, 129 S. Ct. 711, 172 L. Ed. 2d 517 (2009)). The issue of unfair and deceptive business practices is one of those difficult legal problems that we now, more than ever, look to the states to devise legal solutions to resolve. The WCPA has long provided strong legal protections against unfair and deceptive business practices and the efficacy and breadth of the WCPA will be diminished if the district court’s decision is not reversed

NACA supports the reversal of the district court’s decision dismissing Plaintiff’s WCPA claims.

### **C. National Consumer Law Center**

Since 1969, the nonprofit National Consumer Law Center (NCLC) has worked for consumer justice and economic security for low income and other disadvantaged people in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. NCLC publishes a 21-volume Consumer Credit and Sales Legal Practice Series, including Unfair and Deceptive Actions and Practices (11th ed. 2025), and has particular expertise concerning state consumer protection laws. NCLC has conducted numerous trainings on consumer protection laws in more than 20 states and testifies regularly before Congress, federal agencies, and state legislative bodies on consumer protection topics. NCLC frequently appears as amicus curiae in consumer law cases throughout the country.

NACA supports the reversal of the district court's decision dismissing Plaintiff's WCPA claims as it would weaken consumer protections in Washington State.

### **III. ISSUE TO BE ADDRESSED BY AMICI**

The issue to be addressed by amici is whether the Defendants' advertisements are deceptive under the WCPA.<sup>1</sup>

### **IV. STATEMENT OF THE CASE**

As relevant here, Plaintiff purchased a KitchenAid dishwasher. ER-042. After her purchase of the dishwasher, she received numerous advertisements for a service plan from defendant AIG. *Id.* One of the advertisements mailed to her promised her a service plan that provided four benefits, which were marketed in bullet points:

#### **KitchenAid Service Plan Benefits\***

**No Service Fee:** No out-of-pocket expenses on

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<sup>1</sup> Amici do not take a position on whether Plaintiff's other claims should have been dismissed or whether Plaintiff can establish the other elements of her WCPA claim. Amici also note that the district court did not analyze separately whether Defendants' advertising practices were unfair, despite the Amended Complaint's assertion that they were. Amici do not take a position on whether the Defendants' advertising practices are unfair but ask the Court to clarify in any opinion that the first element of a WCPA claim can be predicated on an "unfair" practice that is not deceptive, and this appeal does not present the opportunity to address unfairness because it was not addressed by the parties in their briefing below.

covered repairs and replacements.

**Customer Satisfaction:** U.S. Based customer care center.

**Valuable Protection:** 100% parts and labor for covered repairs, where applicable.

**Service by KitchenAid:** Only authorized technicians.

ER-82 (This advertisement, which is attached to the Amended Complaint as Exhibit 5, is hereinafter referred to as “the Advertisement”). Three quarters of the way down the same page of the Advertisement, written in a much smaller font, was an asterisk. *Id.* It was followed by a disclaimer that the service plan is offered by AIG, and KitchenAid is not affiliated with AIG or any of its affiliates. *Id.* Sandwiched between those two disclaimers was another disclaimer that “limitations and exclusions apply” and the web address to the terms and conditions of the service plan:

\*KitchenAid Service Plans are offered, sold and issued by AIG WarrantyGuard, Inc.... an affiliate of American International Group, Inc. (AIG). Limitations and exclusions apply. See the complete terms and conditions at [serviceplans.kitchenaid.com/details](http://serviceplans.kitchenaid.com/details). KitchenAid is

not affiliated with AIG or any of its affiliates.  
KitchenAid trademarks used with permission.

*Id.* Below is a screenshot of a portion of the Advertisement:



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Plaintiff purchased the service plan. ER-044, ¶ 50. The seal on her dishwasher failed during the service plan period. ER-045-46, ¶¶ 59. She filed a claim to have her dishwasher repaired and discovered that there were no “authorized technicians” available in her area. Therefore, she could not obtain the repairs her dishwasher needed. ER-046-47, ¶¶ 59-64. She continued to use the dishwasher. Five months later the dishwasher suffered another malfunction, this time rendering it inoperable, and Plaintiff filed another claim. ER-047, ¶ 66. AIG refused to repair or replace the dishwasher. Instead, AIG paid Plaintiff a portion of the purchase price of the dishwasher. ER-047-48, ¶¶ 66-68. The amount paid on her claim by AIG was determined by a depreciation schedule. ER-096. Plaintiff had to buy a replacement for the dishwasher that had malfunctioned and could not be repaired under the service plan, because there were no eligible service companies that serviced the area where she lived. ER-047-48, ¶¶ 63-68.

Plaintiff filed the instant lawsuit alleging, *inter alia*, that

the advertisements she received were deceptive in violation of the WCPA, because the service plan did not provide her with the repair benefits advertised. There were two motions to dismiss, and the district court ultimately dismissed Plaintiff's WCPA claims with prejudice. ER-017-023, 111-117. The district court found that the advertisements were not deceptive as a matter of law because of the disclaimer in the Advertisement and the included web address to the terms and conditions. Citing to only United States District Court of Washington opinions, the district court opined:

The case law... overwhelmingly supports Defendants' position that a consumer cannot plead deception under the CPA based on "surprise" contract terms that were fully and sufficiently disclosed to her, but that she failed to read before signing on the dotted line.

*Hadassah Shellenberger v. AIG WarrantyGuard, Inc.*, No. C24-0657JLR, 2024 U.S. Dist. LEXIS 163759, at \*21 (W.D. Wash. Sep. 11, 2024). No Washington state court case was cited for this proposition.

## **V. ARGUMENT**

The trial court erred in dismissing Plaintiff's WCPA claim alleging the Advertisement was deceptive. It incorrectly reasoned that the "limitations and exclusion apply" disclosure and the web address to the terms and conditions in the Advertisement cured AIG's misleading assertions in the Advertisement. Washington precedent holds that true statements can be "deceptive" under the WCPA, and disclaimers must be sufficiently clear such that the least sophisticated consumer would not be deceived into believing they would receive a benefit that was, in actuality, not available to them. Reading the facts and all reasonable inferences in a light most favorable to Plaintiff, there were no qualified repair persons in Plaintiffs' region that could perform the covered repairs when AIG advertised the service plan. Thus, the service that AIG advertised to Plaintiff was not actually available to her, and she was in-fact being offered a different service that was not disclosed in the Advertisement.

**A. The WCPA is a broad remedial statute that must be liberally construed so that its beneficial purpose may be served.**

The WCPA is a broad remedial statute that must be liberally construed to ensure that its beneficial purpose may be served. RCW 19.86.920; *Hangman Ridge Training Stables v. Safeco Title Ins. Co.*, 105 Wash.2d 778, 784-85, 719 P.2d 531 (1986). The WCPA declares illegal, “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” RCW 19.86.020. To prevail on a claim under the WCPA, a private plaintiff must establish five elements: (1) an unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to the plaintiff’s business or property; and (5) causation. *Hangman Ridge*, 105 Wash.2d at 784-85. To establish the first element “[a] plaintiff need not show that the act in question was intended to deceive, but that the alleged act had the capacity to deceive a substantial portion of the public. *Id.* (citations omitted).

“The purpose of the capacity-to-deceive test is to deter deceptive conduct before injury occurs.” *Id.*

The first element of a WCPA claim can be established by showing that an act is either “deceptive” or “unfair.” *Klem v. Washington Mut. Bank*, 176 Wash.2d 771, 786-87, 295 P.3d 1179 (2013). “[B]ecause the act does not define ‘unfair’ or ‘deceptive,’ [Washington’s Supreme Court] has allowed the definitions to evolve through a ‘gradual process of judicial inclusion and exclusion.’” *Id.* at 786 (quoting *Saunders v. Lloyd’s of London*, 113 Wash.2d 330, 344, 779 P.2d 249 (1989) (quoting *State v. Reader’s Digest Ass’n*, 81 Wash.2d 259, 275, 501 P.2d 290 (1972), *modified in Hangman Ridge*, 105 Wash.2d at 786, 719 P.2d 531)).

**B. The WCPA provides broader consumer protection than available under federal law, and federal precedent must give way to Washington appellate court decisions when interpreting the WCPA.**

Washington’s legislature commands, the WCPA “shall be liberally construed that its beneficial purposes

may be served.” RCW 19.86.920. “[T]he purpose of this [WCPA] is to complement the body of federal law governing restraints of trade, unfair competition and unfair, deceptive, and fraudulent acts or practices in order to protect the public and foster fair and honest competition.” *Id.* Washington’s legislature also commands that “the courts be guided by final decisions of the federal courts and final orders of the federal trade commission interpreting the various federal statutes dealing with the same or similar matters.” *Id.*

Washington’s Supreme Court has determined that “[b]y 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.” *Greenberg v. Amazon.com, Inc.*, 553 P.3d 626, 638 (Wash. 2024) (quoting *Panag v. Farmers Ins.*

*Co. of Wash.*, 166 Wash.2d 27, 49, 204 P.3d 885 (2009) (citation omitted) (citing RCW 19.86.020)).

Allowing “the definitions [of unfair and deceptive] to evolve through a ‘gradual process of judicial inclusion and exclusion’” allows courts flexibility to address unfair or deceptive practices that change over time. *Klem*, 176 Wash.2d at 785 (quoting *Saunders v. Lloyd's of London*, 113 Wash.2d 330, 344, 779 P.2d 249 (1989) (quoting *State v. Reader's Digest Ass'n*, 81 Wash.2d 259, 275, 501 P.2d 290 (1972), modified in *Hangman Ridge*, 105 Wash.2d at 786))). “Given that there is ‘no limit to human inventiveness,’ courts, as well as legislatures, must be able to determine whether an act or practice is unfair or deceptive to fulfill the protective purposes of the CPA.” *Klem*, 176 Wash.2d at 785 (quoting *Panag*, 166 Wash.2d at 48).

What constitutes unfair or deceptive under the WCPA is broader than what constitutes unfair or deceptive



under federal law. *Greenberg*, 553 P.3d at 639. In *Greenberg*, Washington’s Supreme Court was asked whether the “substantial injury” test in 15 U.S.C. § 45(n) is determinative of what is “unfair” under the WCPA, as it is under the FTCA. The Court answered no. The Court explained that the “substantial injury” test for determining whether conduct is “unfair” is “[o]ne of [m]any [w]ays an [a]ct or [p]ractice [u]nregulated by [s]tatute [c]an [b]e ‘[u]nfair’” under the WCPA. *Id.* The recent court decision cemented that the WCPA provides broader consumer protections than those provided under federal law.

Washington, not federal, jurisprudence determines what constitutes unfair and deceptive under the WCPA. *Greenberg*, 553 P.3d at 639 (“Although we have been guided by federal interpretations, Washington has developed its own jurisprudence regarding application of Washington’s CPA.”) (quoting *Klem*, 176 Wash.2d at 787) (internal quotations omitted). “Federal court

decisions are guiding, but not binding, authority” in interpretation of what constitutes unfair and deceptive under the WCPA. *Panag*, 166 Wash.2d at 47. Thus, it is Washington jurisprudence that is incorporated in the WCPA, not federal decisions.

When interpreting the WCPA, federal courts must follow the decisions of Washington’s Supreme Court. *Soltani v. W. & S. Life Ins. Co.*, 258 F.3d 1038, 1045-46 (9th Cir. 2001). District courts are required to give great deference to Washington appellate courts when interpreting the WCPA in the absence of a controlling Washington Supreme Court decision. *Id.*; *Sec. Pac. Nat’l Bank v. Kirkland (In re Kirkland)*, 915 F.2d 1236, 1239 (9th Cir. 1990). In sum, following controlling Washington Supreme Court precedent, district courts are required to interpret the protections provided under the WCPA liberally and more broadly than those protections provided under federal law.

**C. The Advertisement fits the definition of deceptive under Washington and federal law.**

“Whether a particular act or practice is ‘unfair or deceptive’ is a question of law.” *Panag*, 166 Wash.2d at 47 (quoting *Leingang v. Pierce County Med. Bureau, Inc.*, 131 Wash.2d 133, 150, 930 P.2d 288 (1997)). Intent to deceive, actual deception and dishonesty are not required to establish an act or practice is deceptive:

To prove that an act or practice is deceptive, neither intent nor actual deception is required. The question is whether the conduct has “the *capacity* to deceive a substantial portion of the public.” *Hangman Ridge*, 105 Wn.2d at 785. Even accurate information may be deceptive “‘if there is a representation, omission or practice that is likely to mislead.’” *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 50, 204 P.3d 885 (2009) (quoting *Sw. Sunsites, Inc. v. Fed. Trade Comm’n*, 785 F.2d 1431, 1435 (9th Cir. 1986)). Misrepresentation of the material terms of a transaction or the failure to disclose material terms violates the CPA. *State v. Ralph Williams’ Nw. Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 305-09, 553 P.2d 423 (1976).

*Bain v. Metro. Mortg. Grp., Inc.*, 175 Wash. 2d 83, 115-16, 285 P.3d 34 (2012) (quoting *State v. Kaiser*, 161 Wash. App. 705,

719, 254 P.3d 850 (2011) (emphasis and citations in the original)). “Whether a deceptive act has the capacity to deceive a substantial portion of the public is a question of fact.” *S. Sound RV Park, LLC v. Cascade Props. PH LLC*, 21 Wash. App. 2d 311, 319, 504 P.3d 885 (2022).

“A communication can be accurate and truthful, yet still be deceptive if the “net impression’ it conveys’ is deceptive.” *State v. LA Inv'rs, LLC*, 2 Wash. App. 2d 524, 540, 410 P.3d 1183 (2018), *review denied* 19 Wash.2d 1023 (quoting *Panag*, 166 Wash.2d at 50 (quoting *Fed. Trade Comm'n v. Cyberspace.com LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006))); *see also Kaiser*, 161 Wash. App. at 719 (“Even accurate information may be deceptive ‘if there is a representation, omission or practice that is likely to mislead.’”) (quoting *Panag*, 166 Wash.2d at 50 (quoting *Sw. Sunsites, Inc.*, 785 F.2d at 435)). The WCPA requires “fair and honest dealing,” including the disclosure of material information in a sales transaction. *Deegan v. Windermere Real Estate/Center-Isle, Inc.*, 197 Wash. App. 875,

884-85, 391 P.3d 582, 587 (2017) (citing 25 David K. DeWolf, Keller W. Allen & Darlene Barrier Caruso, Washington Practice: Contract Law and Practice § 18:310.00, at 629 (3d ed. 2014); *and Testo v. Russ Dunmire Oldsmobile, Inc.*, 16 Wash. App. 39, 51, 554 P.2d 349 (1976)).

Reading the facts in a light most favorable to Plaintiff, the advertisement was deceptive as a matter of law because the repair service was not available where Plaintiff lived, and the disclaimer was insufficient correct the possible misconception. A reasonable inference from the facts alleged is that there was no repair service available in the area where Plaintiff lived at the time she purchased the plan. ER-046-47. Given Defendants scheduled service visits, it can also be reasonably inferred that Defendants knew there were no qualified servicers where Plaintiff lived. *Id.* Because there were no repair services available where Plaintiff lived, the following three of the four advertised benefits were not available to the Plaintiff and of no value to her: (1) “**No Service Fee:** No out-of-pocket expenses on

covered repairs and replacements”; (2) “**Valuable Protection:** 100% parts and labor for covered repairs, where applicable,” and (3) “**Service by KitchenAid:** Only authorized technicians.”

The district court’s reasoning that the inclusion of these benefits in the advertisement was not misleading, because there were disclaimers, is logically flawed and conflicts both Washington precedent and related federal case law. First, there are only disclaimers in two of the three bullets that detailed service benefits that Plaintiff could not realize because of where she lived. ER-082. The “**No Service Fee**” benefit bullet includes a conditional statement that it applies to “covered repairs and replacements,” and the “**Valuable Protection**” benefit bullet includes the conditional language that it applies to “covered repairs, where applicable.” But the advertised “**Service by KitchenAid**” benefit bullet that promises an “authorized technician” will perform all repairs contains no conditional language or disclaimer. This is critical to analyzing whether the Advertisement was deceptive. The reason that these three repair

benefits were unavailable to Plaintiff was there were no “authorized technicians” in Plaintiff’s geographic area. The Advertisement misleadingly implied an “authorized technician” was at Plaintiff’s disposal. There was nothing in the bullet points of the Advertisement, or anywhere on the face of the Advertisement, that indicated that the repair services offered to Plaintiff were not available because of where she lived. There was also no disclaimer that certain benefits may not be available in certain geographic regions. The omission of such critical information on the face of the Advertisement makes it deceptive. *See Testo*, 16 Wash. App. at 51 (“A buyer and seller do not deal from equal bargaining positions when the latter has within his knowledge a material fact which, if communicated to the buyer, will render the goods unacceptable or, at least, substantially less desirable. Failure to reveal a fact which the seller is in good faith bound to disclose may generally be classified as an unfair or deceptive act due to its inherent capacity to deceive ....”).

The disclaimer that “limitation and exclusions apply” in

small font three quarters of the page down the Advertisement does not cure its capacity to deceive. “Washington and federal courts have recognized that disclosures or disclaimers ‘do not always cure the potential for deception.’” *LA Inv'rs, LLC*, 2 Wash. App. 2d at 544 (quoting *State v. Mandatory Poster Agency, Inc.*, 199 Wash. App. 506, 523, 398 P.3d 1271 (2017) *review denied* 189 Wash. 2d 1021 (2017); *Panag*, 166 Wash.2d at 50; *Cyberspace.com*, 453 F.3d at 1200). “Disclaimers are inadequate unless they are ‘sufficiently prominent and unambiguous to change the apparent meaning of the claims and to leave an accurate impression.’” *LA Inv'rs, LLC*, 2 Wash. App. 2d at 540 (quoting *Removatron Int'l Corp. v. Fed. Trade Comm'n*, 884 F.2d 1489, 1497 (1st Cir. 1989)); *see also Mandatory Poster Agency, Inc.*, 199 Wash. App. at 523-24.

Washington jurisprudence specifically holds that the inclusion of a disclaimer in small font just above a detachable payment coupon does not, as a matter of law, render an otherwise deceptive communication undeceptive. *See LA Inv'rs, LLC*, 2



Wash. App. 2d at 540. When determining whether a disclaimer limits a communication's "capacity to deceive," courts consider the format and placement of the disclaimers and the net impression left by the communication. *Mandatory Poster Agency, Inc.*, 199 Wash. App. at 523-24.

Here, the disclaimer and web address of the terms and conditions of the service plan were sandwiched between two other disclaimers just above a detachable payment coupon in the smallest typeface font used on the Advertisement. The disclaimer was surrounded by text urging the Plaintiff to act quickly because "Time is Limited to Protect Your Product" and "Offer Expires: 1/25/2023." Similar to the disclaimers in *LA Inv'rs*, and *Mandatory Poster*, Defendant's disclaimer was overshadowed by other text in the advertisement and was insufficient to leave the reader with an accurate impression of what was being communicated. *See LA Inv'rs*, 2 Wash. App. 2d at 544 (finding disclosures embedded in the body of the mailer that were in all caps but a small type were overshadowed by larger type urging a

prompt response before a pending deadline); *Mandatory Poster Agency*, 199 Wash App. at 523-24 (finding all caps disclosure one-third of the page down did not cure the otherwise deceptive communication considering the format and placement). Because the district court's ruling contradicts both binding Washington precedent and persuasive decision of federal courts cited in *LA Inv'rs* and *Mandatory Poster Agency*, the district court's finding that the advertisement was not deceptive must be reversed.

**D. The cases relied upon by the district court are not persuasive.**

Lastly, the cases relied upon by the district court are not persuasive. The district court relies on a string of decisions out of the Western District of Washington for the proposition that Plaintiff cannot argue that the Advertisement deceived her because she failed to review the terms and conditions at the web address included in the Advertisement. *See Shellenberger*, 2024 U.S. Dist. LEXIS 163759, at \*21 (“The case law...overwhelmingly supports Defendants’ position that a consumer cannot plead deception under the CPA based on

‘surprise’ contract terms that were fully and sufficiently disclosed to her, but that she failed to read before signing on the dotted line.”) (citing *In re Amazon Serv. Fee Litig.*, No. C22-0743TL, 2024 U.S. Dist. LEXIS 127117, 2024 WL 3460939, at \*8-9 (W.D. Wash. July 18, 2024); *Storey v. Amazon.Com Servs. LLC*, No. C23-1529KKR, 2024 U.S. Dist. LEXIS 101945, 2024 WL 2882270, at \*6 (W.D. Wash. July 7, 2024); *Haywood v. Amazon.com, Inc.*, No. C22-1094JHC, 2023 U.S. Dist. LEXIS 124609, 2023 WL 4585362, at \*7 (W.D. Wash. July 18, 2023); *Lowden v. T-Mobile USA, Inc.*, No. C05-1482MJP, 2009 U.S. Dist. LEXIS 21759, 2009 WL 537787, at \*3 (W.D. Wash. Feb. 18, 2009); *Smale v. Cellco P'ship*, 547 F. Supp. 2d 1181, 1189 (W.D. Wash. 2008); *Cole v. Keystone RV Co.*, No. C18-5182TSZ, 2021 U.S. Dist. LEXIS 137153, 2021 WL 3111452, at \*4-5 (W.D. Wash. July 22, 2021). Regarding the sufficiency of the disclosures, the district court relied on a single federal case for the proposition that the disclosures in the advertisement were sufficient, and the court did not address the Washington cases

directly on point that are cited herein. *See id* at \*19-21 (citing *Freeman v. Time, Inc.*, 68 F.3d 285, 289-90 (9th Cir. 1995)<sup>2</sup>; *see also Hadassah Shellenberger v. AIG Warrantyguard, Inc.*, No. C24-0657JLR, 2025 U.S. Dist. LEXIS 43169, at \*11-16 (W.D. Wash. Feb. 3, 2025).

None of the federal cases cited by the district court deal with the issue of whether a disclaimer in an mailed advertisement that provides a web address to the terms and conditions and disclaimer that limitations apply in small font buried three-quarters of the way down the page between other disclaimers regarding separate issues is sufficient to change the net impression of the advertisement. Under the controlling Washington jurisprudence that is discussed herein, and

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<sup>2</sup> In addition to citing *Freeman*, the district court distinguished *Amazon.com Servs. LLC v. Paradigm Clinical Rsch. Inst., Inc.*, No. C21-0753JNW, 2024 U.S. Dist. LEXIS 58282, 2024 WL 1345197, at \*1-2, \*7 (W.D. Wash. Mar. 29, 2024); *Keithly v. Intelius Inc.*, 764 F. Supp. 2d 1257, 1267-69 (W.D. Wash. 2011); *REX - Real Estate Exch. Inc. v. Zillow Inc.*, No. C21-0312TSZ, 2021 U.S. Dist. LEXIS 108155, 2021 WL 2352043, at \*7 (W.D. Wash. June 9, 2021).

persuasive analogous decisions of federal courts of appeal cited by Washington courts, the Advertisement is deceptive.

## **VI. CONCLUSION**

For the foregoing reasons, Amici respectfully request the Court reverse the district court's finding that Plaintiff cannot establish Defendants' advertisement was deceptive.

RESPECTFULLY SUBMITTED AND DATED this  
22nd day of May, 2025.

LEONARD LAW, PLLC

By: /s/Sam Leonard  
Samuel R. Leonard, WSBA #46498  
sam@seattledbtdefense.com  
9030 35<sup>TH</sup> Ave SW, Suite 100  
Seattle, Washington 98126  
Telephone: 206-486-1176

*Attorney for Amici*

**CERTIFICATE OF COMPLIANCE  
WITH TYPE-VOLUME LIMITATION,  
TYPEFACE REQUIREMENTS, AND  
TYPE STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,524 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 14-point Times New Roman.

DATED this 22nd day of May, 2025.

By: /s/Sam Leonard  
Samuel R. Leonard, WSBA #46498  
sam@seattledbtdefense.com  
9030 35<sup>TH</sup> Ave SW, Suite 100  
Seattle, Washington 98126  
Telephone: 206-486-1176

*Attorney for Amici*

### **CERTIFICATE OF SERVICE**

I, Sam Leonard, certify that on May 22, 2025, I electronically filed the document entitled *AMICUS CURIAE BRIEF OF NORTHWEST CONSUMER LAW CENTER, NATIONAL ASSOCIATION OF CONSUMER ADVOCATES, AND NATIONAL CONSUMER LAW CENTER SUPPORTING APPELLANT AND REVERSAL* with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF System.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED this 22nd day of May, 2025.

By: /s/Sam Leonard  
Samuel R. Leonard, WSBA #46498  
sam@seattledbtdefense.com  
9030 35<sup>TH</sup> Ave SW, Suite 100  
Seattle, Washington 98126  
Telephone: 206-486-1176

*Attorney for Amici*