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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUDITH COLE, a single person; et al.,

Plaintiffs-Appellants,

v.

KEYSTONE RV COMPANY, FKA  
Keystone RV Company LLC,

Defendant-Appellee.

No. 21-35701

D.C. No. 3:18-cv-05182-TSZ

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
Thomas S. Zilly, District Judge, Presiding

Argued and Submitted August 10, 2022  
Seattle, Washington

Before: BERZON, CHRISTEN, and FORREST, Circuit Judges.

Plaintiffs Judith Cole, Louise Michael, and David Johnson appeal the district court's order granting summary judgment to defendant Keystone RV Company on plaintiffs' Washington Consumer Protection Act ("CPA") claims and the court's

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

denial of class certification pursuant to Federal Rule of Civil Procedure 23. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm. Because the parties are familiar with the facts of this case, we need not recite them here.

We review de novo a district court's decision granting summary judgment. *Chemehuevi Indian Tribe v. Newsom*, 919 F.3d 1148, 1150–51 (9th Cir. 2019). Plaintiffs' claims arise under Washington law.

**1. CPA Claims.** To prevail in a private CPA claim under Washington law, the plaintiff must prove: “(1) an unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) affecting the public interest; (4) injury to a person's business or property; and (5) causation.” *Panag v. Farmers Ins. Co. of Wash.*, 204 P.3d 885, 889 (Wash. 2009). “Deception exists ‘if there is a representation, omission or practice that is likely to mislead’ a reasonable consumer.” *Id.* at 895 (quoting *Sw. Sunsites, Inc. v. Fed. Trade Comm’n*, 785 F.2d 1431, 1435 (9th Cir. 1986)). An omission constitutes a deceptive practice if a seller fails to disclose facts “adversely affecting the property” and the facts “are known to the seller but not easily discoverable by the buyer.” *Griffith v. Centex Real Est. Corp.*, 969 P.2d 486, 492 (Wash. Ct. App. 1998). If “the relevant operative facts are undisputed, whether that act or practice is ‘unfair or deceptive’ is a question of law.” *Young v. Toyota Motor Sales, U.S.A.*, 472 P.3d 990, 994 (Wash. 2020).

Plaintiffs rely on the theory that defendant engaged in an unfair or deceptive act or practice because the Owner's Manual available on defendant's website did not adequately describe the health hazards associated with using Keystone RVs. The Washington Court of Appeals recently addressed similar arguments in *Axon v. Freedom R.V., Inc.*, No. 38068-III, 2022 WL 1316283 (Wash. Ct. App. May 3, 2022). There, the court rejected two Keystone RV purchasers' Washington CPA arguments that the Keystone RV Owner's Manual—the same Owner's Manual that is at issue in this case—is deceptive by minimizing the risks of full-time residential use. *Id.* The court reasoned:

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

*Id.* at \*6.

We agree with the Washington Court of Appeals in *Axon* that the Owner's Manual and website provide consumers with sufficient information addressing the hazards of mold, formaldehyde, and prolonged occupancy. Regarding formaldehyde, the Owner's Manual explains what it is, how it is released, where it

may be located in an RV, and potential reactions it may cause in certain individuals. As for mold and prolonged occupancy, the Owner's Manual uses a bright yellow caution sign and informs consumers that, although RVs are not designed for prolonged occupancy, the various risks of such use can be mitigated. In short, plaintiffs' theory premised on the sufficiency of the warnings contained in the Owner's Manual does not satisfy the CPA's first element.

We do not opine on omission-based CPA theories separate from the content of the Owner's Manual that plaintiffs advanced for the first time during oral argument on appeal. Nor do we decide whether Washington courts would consider information "easily discoverable" by a reasonable consumer for purposes of the CPA where the information is published online in an Owner's Manual. Plaintiffs did not raise these issues below or on appeal; rather, their CPA arguments in their opposition to summary judgment and motion for reconsideration focused on the adequacy of the warnings contained in the Owner's Manual, and their briefing on appeal did not challenge the district court's conclusion that "because the facts . . .

were posted on a public website, they were easily discoverable.” Thus, we affirm the district court’s grant of summary judgment on plaintiffs’ CPA claims.<sup>1</sup>

**2. ADPA Claims.** Next, citing *In re Bryce*, 491 B.R. 157, 184–85 (Bankr. W.D. Wash. 2013), plaintiffs argue that their allegations under the Washington Auto Dealer Practices Act (“ADPA”), which the district court dismissed as time barred, sufficiently establish a per se violation of the CPA. Violations of the ADPA are deemed to affect the public interest and constitute a violation of the CPA. Wash. Rev. Code § 46.70.310. This argument nonetheless fails because a claim under the ADPA requires showing the defendant affirmatively made a “statement or representation with regard to the sale, lease, or financing of a vehicle which is false, deceptive, or misleading.” Wash. Rev. Code § 46.70.180(1). Plaintiffs’ ADPA claims fail because they were premised on the same allegations underlying plaintiffs’ CPA claims. As we have explained, those allegations did not establish that Keystone made any affirmative statements that were false, deceptive, or misleading.

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<sup>1</sup> To the extent that plaintiffs challenge the district court’s denial of their motion to reconsider the summary judgment order, that argument fails for the same reasons. *See Do Sung Uhm v. Humana, Inc.*, 620 F.3d 1134, 1140 (9th Cir. 2010) (reviewing the denial of a motion for reconsideration for abuse of discretion).

**3. Class Certification.** Because we hold that summary judgment was properly granted, there can be no class action, so we need not decide the issues on appeal related to the district court's orders denying class certification and granting defendant's Rule 702 motion. *See Hodgers-Durgin v. de la Vina*, 199 F.3d 1037, 1045 (9th Cir. 1999).

**4. Discovery Rulings.** Plaintiffs also argue that the district court abused its discretion by partially denying their motions to compel and motion for reconsideration. We see no abuse of discretion in these discovery rulings. *See United States v. Cohen*, 510 F.3d 1114, 1123 (9th Cir. 2007); *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002).

**AFFIRMED.**