JAMS ARBITRATION
Case No. 34541

CHARLY DARNELL,
Claimant,
vs.

AUTOSAVVY, LLC,
Respondents.

FINAL AWARD

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Principal Place of Arbitration: Denver, Colorado

Date of Final Award: June 2, 2025

THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the parties' arbitration agreement as described below, makes the following findings of fact, conclusions of law, and issues this Final Award as follows:

I. INTRODUCTION AND PROCEDURAL STATEMENT

Claimant Charly Darnell[1] brought this arbitration proceeding against Respondent AutoSavvy, LLC relating to an automobile purchase/sale transaction that occurred on March 21, 2020. The automobile at issue was a 2019 Dodge Durango, VIN 1C4SDJCT7KC692302 (the "Vehicle").

Claimant filed her Demand for Arbitration with accompanying Complaint and Jury Demand (collectively, "Demand") with JAMS Denver on or around November 15, 2023. The Demand asserted the following claims against Respondent: Fraudulent Misrepresentation; Violation of the Colorado Consumer Protection Act; and Breach of Implied Warranty of Merchantability. Respondent served an Answer on or around December 8, 2023.

Claimant's Demand was accompanied by a Retail Installment Sale Contract with Arbitration (Dealer – Simple Interest) (Exhibit R-2, hereinafter "RISC") between Claimant and Respondent. The RISC contains the following arbitration provisions:

[1] Claimant formerly used other names including Richard Darnell, Chad Darnell, Chad Wonder and Rebecca Darnell. *See* Claimant's Pre-Hearing Brief, n. 3. Those names appear on the exhibits and filings in the proceeding. The case caption was modified on February 26, 2025 to reflect Claimant's current name. *See* Procedural Order No. 4. Respondent was formerly known as AutoSource, and that name appears in some exhibits and filings in the proceeding.

ARBITRATION

You or we may elect to resolve any claim, dispute or controversy arising under or relating to this contract or the vehicle purchase agreement by binding arbitration. Any dispute resolution provisions in the purchase agreement, however, control any claim under or relating to that agreement. A "claim" includes without limitation contract claims and tort claims. "Claim" also includes constitutional, statutory, common law, regulatory and equitable claims. "Claim" includes any claims regarding the contract's validity, enforceability or scope.

A single neutral arbitrator appointed under the applicable rules of the Arbitration Organization you select ("the Rules") shall conduct the arbitration. You may select the American Arbitration Association (adr.org), JAMS (jamsadr.org), or, with our approval, another arbitration organization. Contact the Arbitration organization you choose to initiate the arbitration process.

The arbitrator shall conduct the arbitration hearing in the federal judicial district in which you live. The arbitrator shall apply governing substantive law and statutes of limitation in making an award. If the arbitration organization's rules conflict with this arbitration clause, this arbitration clause controls. If the Rules do not specify how fees must be allocated, we will pay the filing, arbitrator, and other administration fees up to $5,000. We will pay more if the law says we must. The arbitrator may reimburse in whole or in part amounts we pay if the arbitrator finds that any of your claims is frivolous under applicable law. You and we will each pay our own attorney, expert and other fees, unless the arbitrator awards such fees under applicable law. Unless prohibited by law, if a party unsuccessfully challenges the arbitrator's award or fails to comply with it, the other party may recover the costs, including reasonable attorneys' fees, of defending or enforcing the award.

You and we agree that the Federal Arbitration Act, and not any state or local arbitration law or judicial arbitration rule, controls this arbitration clause.

IF YOU OR WE ELECT ARBITRATION, THE FOLLOWING APPLY:

YOU AND WE UNCONDITIONALLY WAIVE THE RIGHT TO LITIGATE CLAIMS IN COURT.

YOU AND WE WAIVE THE RIGHT TO A JURY TRIAL.

YOU AND WE WAIVE THE RIGHT TO PARTICIPATE AS A MEMBER OF A CLASS IN ANY CLASS ACTION, INCLUDING CLASS ARBITRATION.

YOU AND WE WAIVE THE RIGHT TO CONSOLIDATE YOUR ARBITRATION WITH OTHERS.

We do not waive our right to compel arbitration by engaging in self-help remedies, such as repossession. You and we retain the right to seek remedies in small claims court for claims within that court's jurisdiction, so long as such action is not transferred, removed or appealed to a different court. We do not waive our right to compel arbitration by filing a replevin action or a small claims action. This arbitration provision survives any termination, payoff or transfer of this contract.

The Arbitrator was selected as the single neutral arbitrator pursuant to these provisions. Claimant and Respondent agreed thereunder that either party "may elect to resolve any claim, dispute or controversy arising under or relating to [the RISC] or the [V]ehicle purchase agreement by binding arbitration." *Id.*

The parties agreed to application of the JAMS Streamlined Arbitration Rules & Procedures (JSARP) to govern this proceeding. *See* Procedural Order No. 1, Status Conference Report and Scheduling Order, at 1. Case management conferences took place April 22, 2024, September 19, 2024, January 24, 2025 and February 4, 2025. Procedural orders were issued April 22, 2024, September 19, 2024, January 24, 2025, and February 26, 2025. The parties submitted pre-hearing briefs on February 5, 2025.

The Evidentiary Hearing. The evidentiary hearing was originally scheduled for November 12 and 13, 2024 but was rescheduled at the parties' joint request. It ultimately was completed on February 12 and 13, 2025. Per the parties' agreement, the hearing took place in person at the JAMS Denver offices, 410 17th Street, Suite 2440, Denver, Colorado 80202, with some witnesses appearing by Zoom. The hearing was not transcribed. Each side presented opening and closing arguments.

Each side offered documentary evidence. The following exhibits were offered:

Claimant's' Exhibits C-1 through C-35.

Respondent's Exhibits R-1 through R-51.

Respondent objected to Claimant's Exhibits C-15, C-16, C-17, C-18, C-23, C-28, C-32, C-34, and C-35 as not being timely disclosed. With the exception of Exhibit C-32,[2] the Arbitrator did not consider these exhibits in making this Award. All other exhibits were considered to the extent the Arbitrator deemed them material to the resolution of the claims asserted.

Claimant called the following witnesses, each of whom was also examined and/or cross-examined by Respondent: Claimant Charly Darnell; Dan Nelson, Director, Christopher's Dodge RAM Collision Center; Christian Vasquez, Respondent's Regional Director; Robert Hill, Respondent's Sales Manager; and Sims Kroger, Respondent's Fixed Operations (Service) Manager. Respondent called the following witnesses, each of whom was cross-examined by Claimant: Antonio Garcia Campos, the Vehicle's current owner; and Walid Francis, Respondent's Purchasing Regional Manager. At the conclusion of this testimony, the parties confirmed their presentation of evidence was complete.

On January 10, 2025, Respondent filed a Motion for Spoliation Sanctions seeking an award of sanctions –principally termination of this proceeding— on the grounds that: (i) Claimant improperly abandoned the Vehicle at Christopher's Dodge RAM Collision Center; (ii) the Vehicle was thereafter sold at auction to Mr. Campos and his wife; and (iii) Respondent was therefore deprived of the opportunity to inspect the Vehicle such that it could adequately defend Claimant's claims. The Arbitrator denied the motion without prejudice, directing that Respondent could present at the hearing evidence and argument relating to the asserted spoliation and, if it chose to do so, renew its request for sanctions at the time of the hearing. See Procedural Order No. 3. On February 11, 2025, Respondent filed a Renewed Motion for Sanctions; Claimant responded to the renewed motion on February 21, 2025.

II. FACTUAL FINDINGS

The following and those discussed in Section III are the findings of material fact on which this Award is based. These findings derive from the testimony and exhibits received at the hearing, the Arbitrator's assessment of the credibility of each witness's testimony (or portions thereof), and the Arbitrator otherwise giving the evidence such weight as she deemed appropriate. *See* JSARP 17(d).

1. In December 2019, Respondent purchased the Vehicle from Accent Auto Sales, a Texas entity, for $26,500. Exhibit C-24. The Bill of Sale reflected that the Vehicle had a salvage title, had been involved in a collision, and had replaced parts and/or repairs to multiple areas. *Id.*

2. On March 21, 2020, Claimant purchased the Vehicle from Respondent's Colorado Springs location for a total of $38,143.16 ($33,799 sales price, $1,379.16 in fees and taxes, and

[2] Exhibit 32 is a publicly available promotional YouTube video created by and/or for Respondent. This video was equally available to Respondent, and Respondent arguably should have produced it voluntarily pursuant to JSARP 13(a).

$2,965 for "First Mile" warranty coverage). Exhibit C-2/R-1 (Retail Purchase Agreement). At the time of purchase, the Vehicle had been driven less than 3,200 miles. *Id.*

3. Claimant had previously purchased cars from Respondent. She works as a magician and wanted the Vehicle for general use and to transport equipment and other materials for her job. Claimant understood from her discussions with Respondent's representatives and the previous purchases that the Vehicle had a "branded" title[3] and thus had a lower sales price than would have been available for a like vehicle with a clean title.

4. Claimant paid $4,000 down for the Vehicle and financed the remainder of the purchase price with Respondent. *Id.* Claimant testified she paid off the Vehicle loan in the fall of 2021.[4]

5. Claimant recalls that, in connection with the purchase, Respondent's sales representative orally assured her that while the Vehicle had prior damage, it had been restored to "factory" or like-new status with OEM (Original Equipment Manufacturer) parts. In purchasing the Vehicle, Claimant also relied on Respondent's representations, including in its website advertisements, that all the branded title cars it sells undergo a 150+ point inspection following restoration to ensure safety and reliability.

6. The Retail Purchase Agreement provided that it "and any [other] documents which are part of this transaction or incorporated herein comprise the entire agreement affecting this Retail Purchase Agreement and no other agreement or understanding of any nature concerning the same has been made or entered into, or will be recognized." C-2/R-1 at 1. It also stated in bold text that Respondent was selling the Vehicle to Claimant "AS-IS" and that Respondent "expressly disclaim[ed] all warranties, express or implied, including any implied warranties of merchantability and fitness for a particular purpose, unless the box beside 'Used Vehicle Limited Warranty Applies' is marked below or we enter into a service contract with you at the time of, or within 90 days of, the date of this transaction." *Id.* The "Used Vehicle Limited Warranty Applies" box was not checked, but Claimant did purchase a service contract in the transaction.[5] *Id.*

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[3] A branded title vehicle is one that "has experienced an insurance incident resulting in a total loss." Exhibit C-30 at 000144.

[4] Claimant did not introduce documents establishing the payoff or when it occurred; Respondent did not challenge that Claimant paid the Vehicle off and that, as of the Hearing dates, no longer owed Respondent any amounts under the RISC.

[5] Mr. Hill, Respondent's Sales Manager, testified that the "First Mile" coverage purchased by Claimant in connection with the transaction is an "extended service contract" that lasts for a particular period and typically covers electronic and mechanical failures. The RISC is explicit that "FIRST MILE" is a service contract. R-2 at 2.

7. In addition to the RISC and Retail Purchase Agreement, Respondent provided, and Claimant signed, various documents in connection with the Vehicle purchase.

8. For example, Claimant was given and signed a used car "BUYERS GUIDE" required by Colorado law. Exhibit C-7/R-4. That document specified that the Vehicle was not being sold AS-IS but rather with a limited dealer warranty for 3 months or 3,000 miles. *Id.* at 1.

9. Claimant was also given and signed both a "Branded Title Disclosure Statement" and a "Damage Disclosure" form. Exhibits C-3/R-7 and C-8/R-5.

10. The Branded Title Disclosure Statement stated that the Vehicle was "Rebuilt from Salvage" with prior collision and "UNIBODY/FRAME" damage. Exhibit C-3/R-7.

11. The Damage Disclosure document disclosed the following regarding the Vehicle's prior sustained damage:

This vehicle has sustained material damage at one time from one incident as follows:

FBC,RBC,RBP,T,PQP,

The damage **WAS / WAS NOT** (circle one) repaired and I understand that I accept this vehicle "AS-IS" unless otherwise noted on the We Owe or Buyer's Order.

If the material damage was previously repaired, the cost was:

$ N/A

03-21-2020

Date Authorized Dealership Signature

I acknowledge receipt of this disclosure form on:

Date: 03/21/2020

Purchaser's Signature:

Co-Purchaser's Signature:

Exhibit C-8/R-5. Respondent did not disclose with the Damage Disclosure document what the referenced acronyms meant.[6] Claimant testified she asked Respondent's representative(s) about the damage reflected on this disclosure and the response was "that this was all superficial, because [Claimant] would not have purchased the car if otherwise."

12. Colorado law requires that prior to selling a car with a salvage title, the seller must disclose to the buyer in writing all "known Material Particulars." 1 CCR 205-1, Reg. 44-20-122(3)(h).B. Material Particulars include information that the vehicle "has sustained damage, whether repaired or not repaired of the following types: a. Frame or unibody damage of any grade or type; … c. Accident or collision damage." *Id*. at Reg. 44-20-121(3)(h).D.2. Material

[6] Mr. Hill testified the acronyms stand for the following: FBC – Front Bumper Cover; RBC – Rear Bumper Cover; RBP – Rear Body Panel; T – Tailgate; PQP – Passenger Quarter Panel.

Particulars also include information that the vehicle "had been altered in such a way that a reasonable person would consider unusual or extraordinary." *Id*. at Reg. 44-20-121(3)(h).D.7.

13. Claimant drove the Vehicle without incident from the March 2020 purchase until March 2022, when she was rear-ended while stopped at a traffic light. She thereafter had the Vehicle towed to Christopher's Dodge RAM Collision Center ("Christopher's"), where Mr. Nelson and his staff ultimately inspected it in May 2022.

14. Christopher's inspection, documented in Exhibits C-11 and C-12, resulted in determinations that the Vehicle was "a structural total loss due to poor prior repairs on a salvage rebuilt vehicle" and that Christopher's was unable and/or unwilling to attempt further repairs. Exhibit C-11 at 004. These determinations resulted from, among other things:

- rear bumper sensors connected with plastic zip-ties, including at improper depths/angles, potentially interfering with the safety features of the sensor and Vehicle as a whole;

- bumper and other components held together with drywall and/or deck screws, self-tapping screws, bondo and other household repair items;

- missing bolts and uneven, shoddy welding of repaired structures.

- improper drill holes (including bent and pulled holes) and use of drywall screws in the Vehicle's unibody frame to force alignment of structures. Per Mr. Nelson, these non-factory holes impacted the safety of the Vehicle such that it would not perform as designed if involved in an accident; and

- no safety foam re-installed between the bumper cover and underlying steel reinforcement following the original collision, resulting in compromised safety performance in the event of a second or subsequent collision(s).

Nelson testimony; Exhibit C-11 at 018-022; Exhibit C-12.

15. Mr. Nelson testified that none of these defects could have been caused by the March 2002 rear-end collision, but, rather, all were the result of prior faulty repairs. He also testified that a number of these defects would have been evident if the rear bumper had been pulled off to assess the extent of the prior damage to the Vehicle and adequacy of the subsequent original repairs.

16. There was no evidence that repairs were performed on the Vehicle between the date Claimant purchased it and Christopher's inspection. And the faulty repairs were all in or immediately underneath the areas identified as being repaired/replaced prior to the purchase on Exhibit C-8/R-5. Thus, the Arbitrator finds the faulty repairs discovered by Christopher's/Mr. Nelson were present in in March 2020 when Respondent sold the Vehicle to Claimant.

17. After learning from Christopher's of the faulty repairs, Claimant visited some of Respondent's Colorado retail locations and questioned various salespeople and a manager (Joey)

about Respondent's practices regarding repairs to salvage title cars prior to sale. See Exhibit C-14. Among other things, Respondent's representatives told Claimant that:

- vehicles are repaired to the manufacturer's specifications prior to being offered for sale to Respondent's customers;
- Respondent's "rebuilder" or "builder" partners are trained specifically on particular automobile makes and models and use only OEM parts or appropriate automotive parts from vehicles (i.e., not items used for household or like repairs);
- prior to sale, Respondent and third parties thoroughly inspect each vehicle to ensure that repairs (including repairs to structural components such as the frame/unibody) were properly done to conform to factory specifications; and
- Respondent stands behind the repairs if a customer later discovers they were faulty.

Id.[7]

18. In August 2022, Claimant provided Respondent with photos of the faulty repairs that Christopher's and she had taken and then had a call with Mr. Koger, Respondent's Fixed Operations Manager, to discuss the Vehicle. Exhibit R-45. During that call, Claimant offered to bring the Vehicle to Respondent so Respondent could repair the original damage "properly" such that Claimant could then deliver it to the at-fault party's insurer to complete the repairs necessitated by the 2022 rear-end collision. *Id.*

19. Mr. Koger rejected Claimant's offer and confirmed Respondent would not take further action with respect to the Vehicle as the Vehicle was a "used car" Claimant had purchased two years earlier. Exhibit R-45. Koger acknowledged during the call that, in connection with the prior repairs, Respondent had "essentially [] missed … a structural piece," i.e., the safety foam that should have been re-installed between the rear bumper and underlying structural components. *Id.* However, he reiterated Respondent would not fix that or anything else on the Vehicle. *Id.* Without having taken steps to have the car inspected (and relying solely on photos supplied by Claimant), Koger also represented to Claimant that "everything else [on the Vehicle other than the missing foam] is safe." *Id*.

20. In follow-up communications with Respondent's counsel, Claimant asked Respondent to remedy the situation by: (i) replacing the Vehicle with a substantially similar vehicle of similar mileage; (ii) repairing the Vehicle (if further discussion gave her confidence the Vehicle could be repaired in light of what she learned from Christopher's); or (iii) buying the Vehicle back from her for its original purchase price. Exhibit R-23. Respondent did not agree to

[7] During these visits, Claimant posed as a potential customer and videotaped her discussions with Respondent's representatives without their knowledge. Colorado is a one-party consent state; therefore, this was not unlawful. See, e.g., C.R.S. § 18-9-303.

any of Claimant's requests or send staff to Christopher's to assess the Vehicle for these or any other potential remedies.

21. Although Mr. Koger had advised Claimant during the August 2022 call that the Vehicle with its prior repairs was safe, it discontinued its rebuilder relationship with Accent Auto Sales.

22. Claimant received approximately $5,000 from the insurer of the at-fault party in the March 2022 collision.[8] She received no compensation from Respondent or further compensation from any source relating to the Vehicle.

23. The Vehicle remained at Christopher's from May 2022 to April 2024 when Mr. Nelson considered Claimant to have abandoned it and had the Vehicle sent to auction.[9]

24. Mr. Campos ultimately purchased the Vehicle from a salvage yard in the summer of 2024. Mr. Campos regularly repairs cars and repaired the Vehicle to his satisfaction for his current personal use. He testified the prior repairs on the Vehicle were poorly done. He also testified in response to Respondent's questioning that it would not be difficult to pull the rear bumper off of the Vehicle to show the underlying structure and repairs and that he would have been willing to do this had Respondent asked.

25. Christopher's never prepared a cost estimate for repairs to the Vehicle attributable to the prior faulty repairs, nor did Claimant introduce expert testimony or other evidence as to the cost to repair the Vehicle to represented condition or the actual value of the Vehicle as sold to Claimant.[10]

26. Claimant suffered emotional stresses resulting from her purchase of the Vehicle and the facts set forth above. These included stress regarding her financial situation caused by the situation, loss of sleep, time devoted in ongoing therapy sessions discussing the Vehicle and impact of the above facts, and nightmares about the rear-end collision and how it could have been worse in light of the Vehicle's compromised safety. Claimant's stress increased following

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[8] This was the cost of repair the insurer attributed to the damage that was caused in the 2022 accident. The insurer refused to pay or reimburse for any damage associated with the prior faulty repairs.

[9] The Arbitrator could not conclude from the testimony of Claimant and Mr. Nelson or from other evidence that either Claimant or Christopher's was at fault for the ultimate auctioning of the Vehicle. The determination of fault on that issue is not necessary for the rendering of this Award.

[10] Claimant cited Exhibit C-11 as establishing the cost of repair of the Vehicle and associated diminution in value at $22,784. Claimant's Pre-Hearing Brief at 17-18. However, as her counsel acknowledged at the hearing, that amount represented the storage fees Christopher's calculated for keeping the Vehicle on its premises between the March 2022 accident and its removal in April 2024 for sale at auction. See Exhibit C-11 at 004.

her call with Mr. Koger in August 2022 in which Respondent told her the Vehicle was safe and refused to address the prior repairs. Claimant also acknowledged she has other material emotional stressors in her life not caused by Respondent or the Vehicle.

27. Respondent has multiple retail locations and regularly advertises and promotes that it is the largest seller of branded vehicles in the United States and even in the world. See Exhibits C-27, C-29 (at 000116), C-32, C-14 (oral statements of Respondent's sales representatives). It also regularly advertises to consumers that:

- "branded title vehicle[s] require[] a specialized approach to inspection [that] only a highly trained Inspector can do … properly";
- "[e]ach and every AutoSavvy car, truck, minivan or SUV is put through a detailed 151 point inspection by a trained professional who knows exactly what to inspect on a branded title vehicle….";
- Respondent "hand-select[s]" vehicles that have been involved in a collision and has them "professionally repaired by Authorized AutoSavvy Rebuilders" with "[a]ll damaged parts [being] replaced with new parts….."
- following the repair, a comprehensive 151-point inspection occurs "to make certain the vehicle has been fully reconditioned….";
- Respondent's inspection is conducted by a team of "highly trained, certified vehicle inspectors" who put every vehicle through a rigorous assessment that "takes [the inspector] from one end of [the] car to the other," "go[ing] in[ch] by inch from top to bottom, inside and out, mechanical and cosmetic….."; and
- Respondent has a "full disclosure process" on each vehicle, "shows customers the parts that were replaced," and "more importantly because of [its] process, [Respondent] know[s] how the vehicle was repaired… ."

Exhibit C-29 at 000117; Exhibit C-30 at 000147; Exhibit C-31 at 000158, 156.

III. DETERMINATION OF CLAIMANT'S CLAIMS FOR RELIEF

The parties' arbitration agreement requires the Arbitrator to "apply governing substantive law and statutes of limitation in making an award." RISC at 4. Claimant bears the burden of proving each of her claims by a preponderance of the evidence. Respondent bears the burden of proving any affirmative defense by the same standard. Proof by a preponderance of the evidence requires only that the evidence must "preponderate over, or outweigh, evidence to the contrary." *Mile High Cab, Inc. v. Colo. Pub. Utils. Comm'n,* 302 P.3d 241, 246 (Colo. 2013). The widely accepted formula for expressing this burden of persuasion is more probable than not." *Id.*, citing *Page v. Clark,* 592 P.2d 792, 800 (Colo. 1979).

A. COLORADO CONSUMER PROTECTION ACT

Claimant asserts Respondent violated the Colorado Consumer Protection Act by representing in marketing materials and verbal communications to Claimant that the Vehicle, while previously in a collision and sold with a salvage title, had been rebuilt to new or near-new standards using OEM (original equipment manufacturer) parts, and had undergone a rigorous 150+ point inspection in ensure it met safety and other represented standards. *See, e.g.,* Demand ¶¶ 7-11, 23-27.

To establish a claim under the CCPA, a private citizen must prove five elements: (1) the defendant engaged in an unfair or deceptive trade practice; (2) the deceptive trade practice occurred in the course of the defendant's business; (3) the deceptive trade practice significantly impacted the public as actual or potential customers of the defendant's business; (4) the plaintiff suffered an injury to a legally protected interest; and (5) the deceptive trade practice caused the plaintiff's injury. *Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc.,* 62 P.3d 142, 146–47 (Colo. 2003). "The CCPA was enacted to regulate commercial activities and practices which, 'because of their nature, may prove injurious, offensive, or dangerous to the public. …. The CCPA deters and punishes businesses which commit deceptive practices in their dealings with the public by providing prompt, economical, and readily available remedies against consumer fraud." *Id*. at 146 (citations omitted)

C.R.S. § 6-1-105(1) identifies 70-plus practices that constitute deceptive trade practices under Colorado law. C.R.S. § 6-1-105(1)(a)-(hhhh). Among the practices set forth in the statute are: (i) knowingly or recklessly making a false representation as to the characteristics of goods sold (§ 6-1-105(1)(e)); (ii) representing that goods are of a "particular standard, quality or grade" if the person knows or should know they are of another (§ 6-1-105(1)(g)); and (iii) failing to disclose material information concerning goods information known at the time of sale if the failure to disclose was intended to induce the consumer to enter into the transaction (§ 6-1-105(1)(u)).

The Arbitrator concludes Claimant has established the first two elements of her CCPA claim against Respondent.

In the course of its business, Respondent represented to Claimant in advertisements and oral statements[11] by its sales staff that: (i) while the Vehicle had prior damage, it and the other automobiles Respondent sells had been restored to factory or like-new status with OEM or other proper automotive parts; (ii) the Vehicle had undergone a rigorous 150+ point inspection to ensure safety and reliability notwithstanding its prior damage and repairs; and (iii) (in response to Claimant's questions about the acronyms on Respondent's written disclosure), the prior damage to the Vehicle was all superficial. See Findings of Fact ("FF") ## 5, 11. In addition, while Respondent knew (and indicated on Exhibit C-3/R-7) that the Vehicle had unibody/frame

[11] The CCPA does not require a representation to be in writing to be actionable. While the statute contains no formal definition of the terms "representation" or "represents," its definition of "advertisement" specifically indicates that oral publications and solicitations can support a CCPA claim. C.R.S. § 6-1-102(1).

damage, its Damage Disclosure document (C-8/R-5) did not disclose that damage (which was significant as established by Mr. Nelson's examination and photos of the Vehicle), nor did Respondent disclose the absence of the rear safety foam. Respondent also did not disclose that the prior repairs (e.g., using zip-ties and drywall and deck screws, drilling non-factory holes in the unibody, and failing to reinstall required safety foam) involved alterations to the Vehicle that a reasonable person would consider unusual or extraordinary. All of these items were "Material Particulars" under the applicable regulations that were required to be and should have been disclosed. Finally, Respondent's use on the Damage Disclosure form of acronyms that referred (if translated) only to various exterior panels and the Vehicle's tailgate was inherently misleading as it reinforced Claimant's incorrect understanding that the prior damage was only superficial. That document should have disclosed all areas of the Vehicle that had sustained prior damage, including the unibody and protective foam.[12]

Respondent asserted at the hearing that it would have been expensive and time-consuming for Respondent to have inspected the Vehicle in a manner that would have disclosed the prior defective repairs and that conducting this type of inspection would require Respondent to increase the sales price of its vehicles ultimately charged to customers. With respect to this Vehicle, it would not have been time-consuming or unduly expensive for Respondent to have discovered that the prior repairs were done in a wholly inappropriate manner that compromised the Vehicle's safety. Had Respondent's internal inspection process included removing the back bumper (which Mr. Campos testified was not difficult), Respondent immediately would have seen that the safety foam was missing as well as some if not many of the other substandard prior repairs. In any event, it was deceptive for Respondent to represent that its prior repairs were to like-new status as verified by a comprehensive post-repair inspection when neither of those representations was accurate.

The Arbitrator also concludes Claimant has established the third element of her CCPA claim, *i.e.*, the deceptive trade practice significantly impacted the public as actual or potential customers of Respondent's business.

The public impact element of a CCPA claim is a factual question to be resolved by the trier of fact. *See One Creative Place, LLC v. Jet Ctr. Partners, LLC*, 259 P.3d 1287, 1288 (Colo. App. 2011). The Colorado Supreme Court has outlined relevant considerations in determining whether an asserted deceptive practice significantly impacts the public as consumers in the context of a CCPA claim. *Id., citing Martinez v. Lewis,* 969 P.2d 213, 922 (Colo. 1998). These include the "number of consumers directly affected by the challenged practice, the relative sophistication and bargaining power of the consumers affected by the challenged practice, and evidence that the challenged practice previously has impacted other consumers or has significant

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[12] Statements in the Vehicle purchase documents disclaiming oral representations and Respondent's other written disclaimers or disclosures are not sufficient to insulate from liability for these false representations. *See, e.g., May Dept. Stores Co. v. State ex rel. Woodard,* 863 P.2d 967, 979-980 (Colo. 1993) (recognizing that "an advertiser should not be permitted to …make false advertising claims by asserting it has disclosed [or disclaimed] its method for deception.")

potential to do so in the future." *Id.; Rhino Linings,* 62 P.3d at 149. No single factor is determinative. *One Creative Place*, 259 P.3d at 1290. "'[N]nor is it necessary that all be present.'" *Shekarchian v. Maxx Auto Recovery, Inc.*, 487 P.3d 1026, 1034 (Colo. App. 2019), quoting *Rush v. Blackburn*, 190 Wash.App. 945, 361 P.3d 217, 228 (2015) (citations omitted). Rather, "the factors 'represent indicia of an effect on public interest from which a trier of fact could reasonably find public interest impact.'" *Id.*

With respect to the first consideration, there was no evidence of the actual number of consumers directly affected by the practices Claimant challenges, nor would it be possible in any event for Claimant to prove this number. However, Respondent exclusively sells branded title cars which by their nature are vehicles that have been declared by an insurer as a "total loss" due to a collision, hail damage or the like. E.g., Exhibit C-30. Its marketing materials reflect that Respondent is the largest seller of branded title vehicles in the United States and has sold upwards of 50,000 such previously compromised vehicles. *Id.*; Exhibit C-30 at 000153. Thus, false or misleading representations regarding prior damage and repairs to vehicles (the challenged deception involved here) could affect or potentially affect tens of thousands of consumers. Widespread advertisements directed to the consumer market such as were used here can satisfy the significant public impact requirement of a claim for violation the CCPA. *Hall v. Walter*, 969 P.2d 224, 235 (Colo. 1998).

With respect to the second consideration, ordinary consumers such as Claimant and other car purchasers are substantially less sophisticated than car dealers such as Respondent with respect to the practices challenged here and have little bargaining power as compared to the dealers. This is particularly true where, as occurred here, material adverse information regarding the goods sold is known (or knowable) to the seller but unavailable to the purchaser.

As to the third public impact consideration, there was no evidence that the practices challenged here have previously impacted other specific consumers. However, Respondent exclusively sells branded title vehicles, most if not all of which have been subject to significant prior damage and then sold to consumers when repairs are completed. And exhibits introduced by Claimant establish that Respondent widely and publicly advertises its vehicles as well as the asserted quality of its rebuilders, their repairs, and its post-repair internal inspection processes. Should Respondent continue to make false or reckless statements about its previously damaged and repaired vehicles as occurred in this case, there is no question future consumers would be impacted.

The Arbitrator also concludes Claimant has established the fourth and fifth elements of her CCPA claim as Respondent's deceptive trade practices in violation of the CCPA caused Claimant damages in the form of financial losses relating to the Vehicle and non-economic damages.

Under the CCPA's private cause of action provisions:

> (2) [A]ny person who, in a private civil action, is found to have engaged in or caused another to engage in any deceptive trade practice listed in this article 1 is liable in an amount equal to the sum of:

(a) The greater of:

(I) The amount of actual damages sustained, including prejudgment interest of either eight percent per year or at the rate provided in section 13-21-101, whichever is greater, from the date the claim under this article 1 accrued; or

(II) Five hundred dollars; or

(III) Three times the amount of actual damages sustained, if it is established by clear and convincing evidence that such person engaged in bad faith conduct; plus

(b) In the case of any successful action to enforce said liability, the costs of the action together with reasonable attorney fees as determined by the court.

(2.3) As used in subsection (2) of this section, "bad faith conduct" means fraudulent, willful, knowing, or intentional conduct that causes injury.

C.R.S. § 6-1-113(2), (2.3).

In connection with her CCPA claim, Claimant shall be awarded the amount of economic damages sustained as set forth below, including prejudgment interest of either eight percent per year or at the rate provided in section 13-21-101, whichever is greater, from the date her CCPA claim accrued. C.R.S. § 6-1-113(2)(a)(I). Claimant also is entitled to and will be awarded noneconomic damages. *See, e.g., Dodds v. Frontier Chevrolet Sales & Service, Inc*., 676 P.2d 1237, 1238 (Colo. App. 1983) (an award under the CCPA can include emotional distress damages); *Gorsich v. Double B Trading Co*., 893 P.2d 1357, 1363 (Colo. App. 1994), citing *Keohane v. Stewart,* 882 P.2d 1293 (Colo. 1994) and *Ervin v. Amoco Oil Co.,* 885 P.2d 246 (Colo. App.1994) ("'Actual damages' include non-economic damages as well as economic damages.").

The Arbitrator also finds that Claimant has established by clear and convincing evidence that Respondent engaged in bad faith in connection with Claimant's CCPA claim and therefore treble damages are available here. This determination is not reached lightly. Respondent represented to Claimant and promoted to the consumer public that: (i) the Vehicle (and all other vehicles it sells) had been restored prior to sale to factory or like new condition with appropriate automotive parts, and (ii) Respondent's comprehensive inspection process ensures that is the case. See, e.g., FF ## 5, 17, 27. Respondent's written Damage Disclosure form required to be provided to Claimant under Colorado law reflected only superficial damage to the Vehicle's external panels and tailgate and contained no notice to Claimant of the known damage to the unibody, of the extent or substandard nature of the repairs to the Vehicle as shown in Exhibits C-11 and C-12, or that the Vehicle was entirely missing the safety foam between the rear bumper and structural components that protects the automobile and its occupants in the event of a

collision. See, e.g., FF ## 11-12 Finally, despite Respondent's assurances that it stands behind its Vehicles and repair/inspection processes –and despite its knowledge and admission to Claimant that its prior shoddy repairs implicated the Vehicle's safety— Respondent refused to take any steps to remedy these failures when Claimant brought them to Respondent's attention. See, e.g., 19-20. Accordingly, Claimant is entitled to three times her actual damages sustained under C.R.S. § 6-1-113(2)(A)(3).

In reaching this determination, the Arbitrator recognizes the shoddy repairs were performed by Accent Auto Sales rather than by Respondent's own employees. However, Respondent's promotional materials and statements make clear that Respondent controls all aspects of the vehicle selection and repair process and that Accent and its other "Rebuilders" are Respondent's agents in all respects material to its vehicle sales and Claimant's claims in this proceeding:

> With so many thousands of cars receiving the "branded title" status every day, the AutoSavvy Certified Buyers are trained to seek out the vehicles with less damage, the cream of the crop.
>
> Those hand-selected vehicles are then professionally repaired by Authorized AutoSavvy Rebuilders. All damaged parts are replaced with new parts and the vehicle is road tested on an aggressive Drive Cycle.[13] Once the vehicle successfully completes the road test our Certified Inspectors conduct a comprehensive 151-point inspection to make certain the vehicle is fully reconditioned and ready for a new owner.

See Exhibit C-30.

Pursuant to C.R.S § 6-1-113(2)(b), Claimant also will be awarded her costs of this action together with reasonable attorney fees.

B. FRAUDULENT MISREPRESENTATION

To recover on a fraud claim, Claimant must establish: (i) Respondent made a false representation of a material fact; (ii) at the time the representation was made, Respondent either knew the representation was false or was aware that it did not know whether the representation was true or false; (iii) Respondent made the representation with the intent that Claimant rely on it; (iv) Claimant in fact relied on the representation and her reliance was justified; and (v) Claimant's reliance caused her damages or losses. *See, e.g., Bristol Bay Productions, LLC v. Lampack*, 312 P.3d 1155, 1160 (Colo. 2013); CJI-Civ. 4th 19:1. Claimant has established her fraud claim for the same reasons she has established a violation of the CCPA.

C. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

In Colorado, a breach of implied warranty of merchantability claim requires a claimant to

[13] Mr. Koger and Mr. Francis both testified that in the "aggressive Drive Cycle" test, the Vehicle is driven only two miles.

show: (1) the respondent was the seller of the good at issue; (2) claimant was reasonably expected to use good; (3) the respondent was a merchant with respect to the good at issue; (4) the good was not of merchantable quality at the time of sale; (5) the respondent's breach caused the claimant damages; and (6) the claimant notified the respondent of the alleged breach of warranty within a reasonable period of time of discovering the breach. *See* Colorado Pattern Jury Instructions, § 14:10; C.R.S. § 4-2-314(2); *Bangert Bros. Const. Co. v. Kiewit W. Co.*, 310 F.3d 1278, 1292 (10th Cir. 2002).

Colorado's Uniform Commercial Code provides that "[u]nless the circumstances indicate otherwise, all implied warranties are excluded by expressions like 'as is,' 'with all faults,' or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty." C.R.S. § 4-2-316(3)(a). Disclaimers of implied warranties of merchantability are enforceable if the disclaimer expressly refers to "merchantability" and is sufficiently conspicuous. C.R.S. § 4-2-316(2). The Retail Purchase Agreement (Exhibit C-2/R-1) contains a box near the top of the first page with a "WARRANTY STATEMENT" in large-font, upper case letters. The first two lines in that statement indicate in bold font: "We are selling this Vehicle to you AS-IS. We expressly disclaim all warranties, express and implied, including any implied warranties of merchantability and fitness for a particular purpose." Claimant testified that she reviewed the documents she signed. For the purposes of this proceeding and claims pled, the Arbitrator finds these statements were sufficient to disclaim the implied warranty of merchantability and declines to find in Claimant's favor on this claim.[14]

D. CLAIMANT'S RECOVERABLE DAMAGES

Claimant has the burden of proving her damages. While a claimant need not prove damages with mathematical certainty, the fact finder must be provided a reasonable basis for calculating them in accordance with the relevant measure. *City of Westminster v. Centric-Jones Constructors*, 100 P.3d 472, 277 (Colo. App. 2003).

The evidence was clear that Claimant would not have purchased the Vehicle had Respondent disclosed to her the extent of the prior damage, the nature of the repairs completed by its authorized rebuilder, or the "Material Particulars" required to be disclosed under Colorado law. The Arbitrator thus finds that Claimant has suffered actual economic damages in the full amount of the Vehicle purchase price paid to Respondent, **$38,143.16**. Based on the evidence present, the Arbitrator finds the Clamant has suffered noneconomic damages in the amount of **$50,000.00**.

IV. DETERMINATION OF RESPONDENT'S RENEWED MOTION FOR SANCTIONS

Respondent's Renewed Motion for Sanctions is denied. The Arbitrator could not conclude based on the evidence presented that Claimant was at fault for Christopher's decision to declare the Vehicle abandoned and have it sold at auction. FF #23, n.9. More importantly,

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[14] This proceeding did not involve any claim under the federal Magnuson-Moss Warranty Act. Under that Act, it is possible that Respondent's disclaimer was rendered ineffective, but the Arbitrator does not address that issue as the federal statute was not pled.

Respondent was not denied the opportunity to inspect the Vehicle before April 2024, when Mr. Nelson had it removed from the Christopher's premises.

Claimant filed a civil action relating to the Vehicle purchase in October 2023 and filed this arbitration proceeding in November 2023. Respondent answered Claimant's Demand in December 2023, several months before the Vehicle was removed from Christopher's. Respondent could have made arrangements with Claimant's counsel to inspect the Vehicle as soon as it became aware of legal proceedings relating to the Vehicle.

Of even greater relevance, in her August 2022 telephone call with Respondent's manager Sims Koger, Claimant explicitly asked Respondent to repair the Vehicle properly and offered at that time to bring the Vehicle to Respondent for that purpose. FF #18. In follow-up communications with Respondent's counsel soon thereafter, Claimant formally requested that Respondent replace the Vehicle with a substantially similar vehicle of similar mileage, take steps to appropriately repair the Vehicle given the damage discovered by Christopher's, or buy the Vehicle back from her for the original purchase price. FF #20. Respondent declined all these requests, each of which would have afforded Respondent the opportunity to inspect the Vehicle. FF ##18-20. Claimant made and Respondent declined these specific requests more than a year and a half before the Vehicle was removed from Christopher's and sold at auction.

V. PREJUDGMENT INTEREST, ATTORNEY FEES AND COSTS

Pursuant to the Partial Final Award dated March 21, 2025, Claimant submitted argument and related statements regarding the accrual and calculation of prejudgment interest, argument and declarations in support for her request for an attorney fee award, and supporting data regarding her request for an award of costs. Respondent submitted an opposition objecting in part to the attorney fee and costs requests.

A. PREJUDGMENT INTEREST

Claimant seeks prejudgment interest at the rate of 9% interest on the actual damages awarded, $88,143.16. Claimant acknowledges that under Colorado law she is not entitled to prejudgment interest on the treble damages awarded under the CCPA. *See* Claimant' Statement on Prejudgment Interest at 2. She requests prejudgment interest from the action's accrual date, which she asserts to be May 20, 2022, when she discovered the Vehicle's true condition and hence Respondent's unlawful conduct, asking the Arbitrator to award prejudgment interest in the total amount of $24,545.42. *Id.* at 2-3.

Respondent argues that any prejudgment interest accruing prior to Claimant's filing of her original lawsuit should be reduced because: (i) Claimant drove the Vehicle for two years prior to discovering the prior improper repairs; (ii) she received an insurance payment of $5,000 in connection with the March 2022 collision; and (iii) she did not substantiate her emotional distress damages which Respondent asserts are excluded by the parties' retail purchase agreement. *See* Opposition at 13.

Claimant's driving of the Vehicle for two years prior to discovering the improper repairs and her receipt of the $5,000 insurance payment[15] are not relevant to the calculation of prejudgment interest. Claimant does not seek prejudgment interest for the two-year period prior to her discovery of the Vehicle's true condition, and the insurance payment does not bear on the calculation of prejudgment interest. If relevant to any issue, that would be the calculation of damages, but the Arbitrator did not find that it was appropriate to deduct the insurance payment from Claimant's economic damage award. The Arbitrator disagrees with Respondent's assertion that Claimant did not substantiate the noneconomic damage award and that noneconomic damages are barred by the contractual disclaimers. As addressed above, Claimant's testimony established significant emotional distress arising from Respondent's deceptive practices and contractual disclaimers are ineffective as the Claimant has established liability under the CCPA.

Although the Arbitrator does not agree with Respondent's arguments, she does agree with courts that have concluded that prejudgment interest is not appropriately awarded for noneconomic damages. *See, e.g., Valenzuela v. Coleman*, No. 18-CV-00329-CMA-STV, 2022 WL 2528330, at *11–12 (D. Colo. July 7, 2022) and cases cited therein.[16] The Arbitrator otherwise agrees with Claimant's method of determining prejudgment interest and therefore adjusts the calculation and table set forth at pages 2-3 of Claimant's submission to omit noneconomic damages and to extend the post-complaint interest to the date of this Final Award:

> B. Pre-Complaint Interest
>
> Claimant filed her Complaint on October 25, 2023. Exhibit C-1. There are 523 days between May 20, 2022 and October 25, 2023. Interest on $38,143.16 at 9% for one year equals $3,432.89, which converts to a daily rate of $9.41 per day. $9.41 per day x 523 days = $4,921.43. Interest of $4,921.43 added the economic damages judgment of $38,143.16 equals $<u>43,064.59</u>.
>
> C. Post-Complaint Interest
>
> Claimant filed her Complaint in the District of Boulder County, Colorado on October 25, 2023. Exhibit C-1. The date of this Final Award is June 2, 2025, which is 587 days after Claimant filed her Complaint.
>
> <u>Post-Complaint Interest, Year 1 (October 25, 2023 – October 24, 2024)</u>
>
> - Principal: $43,064.59
> - Rate: 9% compound interest
> - Calculation: $43,064.59 x 9% = $3,875.81
> - New Total: $43,064.59 + $3,875.81 = <u>$46,940.40</u>

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[15] As noted above, the insurance payment compensated Claimant for damage to the Vehicle caused solely by the March 2022 collision and not the prior faulty repairs.

[16] Having reviewed the relevant case law, the Arbitrator amends that portion of the Partial Final Award indicating prejudgment interest is awardable on the noneconomic damage award.

Post-Complaint Interest, Partial Year (October 25, 2024 – June 2, 2025, 221 days):

- Principal: $46,940.40 (compounded from previous year)
- Rate: 9% compound interest (prorated at $11.57/day)
- Calculation: $11.57 x 221 days = $2,556.97
- New total: $46,940.40 + $2,556.97 = $48,497.37

Accordingly, Claimant's economic damage award, together with prejudgment interest as of the date of this Final Award, equals $48,497.37. The total amount of the prejudgment interest award is **$10,354.21**.

B. ATTORNEY FEE AWARD

A court makes an initial estimate of a reasonable attorney fee by calculating the lodestar amount. *Payan v. Nash Finch Co.*, 310 P.3d 212, 217 (Colo. App. 2012), citing *Tallitsch v. Child Support Servs., Inc.*, 926 P.2d 143, 147 (Colo. App. 1996). "The loadstar amount represents the number of hours reasonably expended on the case, multiplied by a reasonable hourly rate. The … calculation of the loadstar amount carries with it a strong presumption of reasonableness." *Id.* Hours that were not "reasonably expended" are to be excluded from the initial lodestar calculation; these include deductions for overstaffing and for hours that are "'excessive, redundant, or otherwise unnecessary.'" *Payan*, 926 P.3d at 218, citing and quoting *Hensley v. Eckerhart,* 461 U.S. 424, 434 (1983). Where a claimant has brought multiple claims but prevails on only some of them, it is inappropriate to reduce a fee award for work done on the unsuccessful claims if both the successful and unsuccessful claims involve a "common core of facts" or are based on "related legal theories." *Id.* at 434-435; *Payan*, 926 P.23d at 219.

Claimant seeks an attorney fee award of $37,616.50 comprised of 105.2 hours of attorney time (13.5 hours for Mr. Osborne at $500 per hour, 10.7 hours for Mr. Crowley at $375 per hour, and 81 hours for Mr. Wallace at $300 per hour) and 24.8 hours of paralegal time at $150 per hour for Mr. Nobel (3.6 hours) and $95 per hour for Ms. Ferrera (21.2 hours). *See* Claimant's Motion for Attorney Fees and Costs.

The Arbitrator has reviewed the motion, the accompanying declarations, and the underlying billing detail. She concludes that all of this time was reasonably expended in pursuing Claimant's claims and that each of the hourly billing rates is reasonable. The Arbitrator does not find that there was overstaffing or that any of time or amounts sought were excessive, redundant or otherwise unnecessary. Accordingly, Claimant is entitled to an attorney fee award of the total amount sought, **$37,616.50**.

C. COSTS AWARD

Claimant seeks recovery of costs and expenses in the amount of $1,521.33. *Id.* at 3. All of these amounts were reasonably incurred in this matter. Accordingly, Claimant is entitled to cost award of the total amount sought, **$1,521.33**.

VI. FINAL AWARD

Claimant has established by a preponderance of the evidence her claims against Respondent for violation of the Colorado Consumer Protection Act and for fraud.

Claimant is awarded economic damages against Respondent in the total amount of **$38,143.16**.

Claimant is awarded prejudgment interest on the economic damage award pursuant to C.R.S. 13-21-101(1) in the amount of **$10,354.21.**

Claimant is awarded non-economic damages against Respondent in the amount of **$50,000.00**.

Claimant is awarded trebling of her actual damages under C.R.S. § 6-1-113(2)(A)(3) for a total damage award of **$264,429.48** (38,143.16 + 50,000.00) x 3).

Claimant is awarded of reasonable attorney fees in the amount of **$37,616.50** pursuant to C.R.S. § 6-1-113(2)(b).

Claimant awarded costs and expenses of this action in the amount of **$1,521.33** pursuant to C.R.S. § 6-1-113(2)(b).

THE TOTAL AMOUNT OF THIS FINAL AWARD IS: **$313,921.52**.[17]

DATED: June 2, 2025

Kathleen E. Craigmile, Arbitrator

[17] The total Final Award equals the trebled actual damage award ($264,429.48), plus prejudgment interest on the economic damage award ($10,354.21), plus the attorney fee award ($37,616.50), plus the costs and expenses award ($1,521.33).