

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DREW MITCHEM,

Plaintiff,

v.

NATIONAL RAILROAD PASSENGER  
CORPORATION d/b/a AMTRAK,

Defendant.

CASE NO. C18-5366 BHS

ORDER GRANTING IN PART  
AND DENYING IN PART  
DEFENDANT’S MOTION FOR  
SUMMARY JUDGMENT

DONNELL LINTON,

Plaintiff,

v.

NATIONAL RAILROAD PASSENGER  
CORPORATION d/b/a AMTRAK,

Defendant

CASE NO. C18-5564 BHS

LAURA VAUGHNS and ALBERT J.  
VAUGHNS, individually and as Joint  
Guardians to AG, JR, ZL, LS and FJ,  
their minor children; and ZOE MARIE  
TOWNSEND VAUGHNS,

Plaintiffs,

v.

NATIONAL RAILROAD PASSENGER  
CORPORATION d/b/a AMTRAK,

Defendant

CASE NO. C18-5823 BHS

1 This matter comes before the Court on Defendant National Railroad Passenger  
2 Corporation d/b/a Amtrak's ("Amtrak") motion for summary judgment on punitive  
3 damages and the Washington Consumer Protection Act ("CPA") claims. Dkt. 39. The  
4 Court has considered the pleadings filed in support of and in opposition to the motion and  
5 the remainder of the file and hereby grants the motion in part and denies it in part for the  
6 reasons stated herein.

### 7 I. PROCEDURAL AND FACTUAL BACKGROUND

8 On May 8, 2018, Plaintiff Drew Mitchem ("Mitchem") filed a complaint against  
9 Amtrak asserting a claim for negligence and a claim for violation of the CPA and seeking  
10 actual and punitive damages. Dkt. 1.

11 On July 17, 2018, Plaintiff Donnell Linton ("Linton") filed a complaint against  
12 Amtrak asserting a claim for negligence and a claim for violation of the CPA and seeking  
13 actual and punitive damages. C18-5564BHS, Dkt. 1.

14 On October 11, 2018, Plaintiffs Laura Vaughns and Albert J. Vaughns,  
15 individually and as guardians of A.G., J.C., Z.L., L.S., and B.J., and Zoe Marie  
16 Townsend Vaughns ("Vaughns") filed a complaint against Amtrak asserting a claim for  
17 negligence and a claim for violation of the CPA and seeking actual and punitive  
18 damages. C18-5823BHS, Dkt. 1.

19 On June 10, 2019, the Court granted Mitchem, Linton, and the Vaughns'  
20 ("Plaintiffs") unopposed motion to consolidate these cases. Dkt. 30.

21 On August 9, 2019, the Court granted Amtrak's motion for summary judgment on  
22 punitive damages in a related case, *Wilmotte v. Nat'l R.R. Passenger Corp.*, C18-

1 0086BHS, 2019 WL 3767133 (W.D. Wash. Aug. 9, 2019), and granted in part and denied  
2 in part Amtrak's motion for summary judgment on a CPA claim in another related case,  
3 *Harris v. Nat'l R.R. Passenger Corp.*, C18-134BHS, 2019 WL 3767140 (W.D. Wash.  
4 Aug. 9, 2019). On October 1, 2019, the Court granted in part and denied in part  
5 Amtrak's motion for summary judgment on punitive damages and a CPA claim in  
6 another related case. *Garza v. Nat'l R.R. Passenger Corp.*, C18-5106 BHS, 2019 WL  
7 4849489 (W.D. Wash. Oct. 1, 2019). On October 17, 2019, the Court granted Amtrak's  
8 motion for summary judgment on punitive damages in another related case. *Goetz v.*  
9 *Nat'l R.R. Passenger Corp.*, C18-93 BHS, 2019 WL 5266842 (W.D. Wash. Oct. 17,  
10 2019).

11 On October 30, 2019, Amtrak filed the instant motion for summary judgment on  
12 punitive damages and Plaintiffs' CPA claims. Dkt. 39.

13 On November 7, 2019, the Court granted in part and denied in part Amtrak's  
14 motion for summary judgment on punitive damages and a CPA claim in another related  
15 case. *Jones v. Nat'l R.R. Passenger Corp.*, C18-5062 BHS, 2019 WL 5802069 (W.D.  
16 Wash. Nov. 7, 2019).

17 On November 18, 2019, Plaintiffs responded to Amtrak's motion. Dkt. 45. On  
18 November 22, 2019, Amtrak replied. Dkt. 47.

19 On December 20, 2019, Amtrak filed a notice that all claims in the Mitchem case  
20 were settled. Dkt. 52.

## II. DISCUSSION

### A. Summary Judgment Standard

Summary judgment is proper only if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an essential element of a claim in the case on which the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must present specific, significant probative evidence, not simply “some metaphysical doubt”). *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987).

The determination of the existence of a material fact is often a close question. The Court must consider the substantive evidentiary burden that the nonmoving party must meet at trial—e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual issues of controversy in favor of the nonmoving party only when the facts specifically

1 attested by that party contradict facts specifically attested by the moving party. The  
2 nonmoving party may not merely state that it will discredit the moving party's evidence  
3 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*  
4 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,  
5 nonspecific statements in affidavits are not sufficient, and missing facts will not be  
6 presumed. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888–89 (1990).

7 **B. Punitive Damages**

8 In this case, the majority of the Plaintiffs' argument have been thoroughly  
9 considered and rejected by the Court. Plaintiffs, however, raise two new arguments that  
10 the Court will address. First, Plaintiffs contend that the Court must submit a particular  
11 question of fact to the jury. It is undisputed that, in a choice of law analysis, the Court  
12 must weigh five different categories of contacts within the disputed forums, one of which  
13 is "the place where the conduct causing the injury occurred." *Singh v. Edwards*  
14 *Lifesciences Corp.*, 151 Wn. App. 137, 143 (2009) (citing *Johnson v. Spider Staging*  
15 *Corp.*, 87 Wn.2d 577, 581 (1976)). Plaintiffs argue that causation is a question of fact for  
16 the jury and that the Court should submit to the jury whether Amtrak's conduct in  
17 Delaware or Washington caused Plaintiffs' injury. Dkt. 45 at 5–6. Plaintiffs fail to cite  
18 any authority for this proposition other than the general rules regarding summary  
19 judgment. Based on the case citations for the *Restatement (Second) of Conflict of Laws* §  
20 145 (1971), which sets forth the general test of contacts within the forum, it appears that  
21 almost every jurisdiction in the nation has adopted this test in one form or another.  
22 Plaintiffs have failed to cite, and the Court unaware of, any authority for the proposition

1 that the weighing of contacts under the causation category of contacts should be  
2 submitted to the jury. In the absence of such authority, the Court rejects Plaintiffs'  
3 invitation to turn what appears to be an issue of law into an issue of fact for the jury.

4 Second, Plaintiffs argue that the Court should apply Delaware law to the specific  
5 issue of the conduct of Amtrak's Delaware employees. While Washington authorities do  
6 state that the choice of law analysis should be determined as to the issue at hand,  
7 Plaintiffs fail to cite any authority for the proposition that the conduct of Amtrak's  
8 Washington employees is subject to the law of Washington and the conduct of Amtrak's  
9 Delaware employees is subject to the law of Delaware on the same claim for the same  
10 injury. This is a novel question that may ultimately be resolved by a higher court. At this  
11 point, however, Plaintiffs fail to persuade the Court to proceed under a dual jurisdiction  
12 theory of recovery. Therefore, the Court rejects Plaintiffs' arguments and grants  
13 Defendants' motion for the reasons set forth in the Court's prior orders and the reasons  
14 set forth herein.

### 15 **C. CPA**

16 Amtrak moves for summary judgment on Plaintiffs' CPA claims arguing that (1)  
17 the claims are preempted, (2) Plaintiffs fail to establish the elements of a CPA claim, and  
18 (3) Plaintiffs lack standing to seek injunctive relief. Dkt. 39 at 23–31. Regarding  
19 preemption and the elements of the claim, the Court denies Amtrak's motion for the  
20 reasons set forth in similar orders. *See, e.g., Garza*, 2019 WL 4849489, at \*3–8.

21 Regarding standing, Plaintiffs fail to submit evidence to meet their burden in  
22 opposition to summary judgment. While Plaintiff cite authorities for the proposition that

1 “a previously deceived plaintiff may have standing to seek injunctive relief,” *Davidson v.*  
2 *Kimberly-Clark Corp.*, 889 F.3d 956, 970 (9th Cir. 2018), *cert. denied*, 139 S. Ct. 640  
3 (2018), Plaintiffs’ only evidence in support of their position is a declaration by Mitchem,  
4 Dkt. 46 at 260. This evidence is now irrelevant because the parties have settled  
5 Mitchem’s claims. Dkt. 52. Turning to the other Plaintiffs, they have failed to submit  
6 any evidence of an imminent or actual threat of future harm in purchasing tickets from  
7 Amtrak. *See Davidson*, 889 F.3d at 971 (“we hold that Davidson adequately alleged that  
8 she faces an imminent or actual threat of future harm due to Kimberly–Clark’s false  
9 advertising.”). Therefore, the Court grants Amtrak’s motion on the issue of injunctive  
10 relief under the CPA.

11 **III. ORDER**

12 Therefore, it is hereby **ORDERED** that Amtrak’s motion for summary judgment  
13 on punitive damages and the CPA claims, Dkt. 39, is **GRANTED in part** and **DENIED**  
14 **in part** as stated herein.

15 Dated this 8th day of January, 2020.

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BENJAMIN H. SETTLE  
United States District Judge