

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

CA CERTIFICATE SERVICE LLC d/b/a
WA CERTIFICATE SERVICE, a Florida
limited liability company; JAMES L.
BEARD, individually; CORPORATE
COMPLIANCE SERVICE LLC, a Florida
limited liability company; DEAN G.
MARSHLACK, individually and as part of
the marital community comprised of DEAN
G. MARSHLACK and AMANDA M.
MARSHLACK; CENTURION GROUP
INVESTMENTS LLC, a Florida limited
liability company; CHAD M. DAVIS a/k/a
CHAD MERK, individually; MERK
ENTERPRISES, LLC, a Florida limited
liability company; JOSHUA T. STRAWN,
individually; ERRL HOLDINGS, LLC, a
Florida limited liability company,

Defendants.

NO. 22-2-03865-9 SEA

STATE OF WASHINGTON'S
MOTION FOR PRELIMINARY
INJUNCTION

I. INTRODUCTION AND RELIEF REQUESTED

For three years, Defendants have victimized thousands of Washington small business owners through a deceptive mail solicitation scheme that disseminates solicitations appearing to be bills sent by or on behalf of the Washington Secretary of State ("SOS") and demanding payment for a *non-mandatory* certificate that simply certifies the business is current and

1 authorized to conduct business in Washington. These optional certificates can be purchased directly
2 from the SOS for \$20; however, Defendants have duped almost 15,000 business owners into
3 purchasing this certificate for \$82.50, resulting in more than \$1.18 million in ill-gotten gains.

4 Defendants' lucrative and pervasive scam is part of a larger nationwide scheme that also
5 targets small business owners in seven other states. Defendants are persistent in their exploitation
6 of hard-working Washington small business owners: legal actions by three other states and scam
7 alerts, including one issued by the SOS, have done nothing to curb Defendants' deceptive conduct
8 in Washington. Indeed, conduct similar to Defendants'—impersonating the government and
9 mailing deceptive solicitations—has reached such epic proportions that the Federal Trade
10 Commission recently announced rulemaking to combat this "pernicious and prevalent problem."¹
11 Predictably, the Attorney General's Office and SOS have received scores of complaints about
12 Defendants' solicitations, and the Better Business Bureau has awarded CA Certificate Service an
13 "F" rating.

14 Defendants' conduct is widespread, egregious, ongoing, and in blatant violation of the
15 Consumer Protection Act ("CPA"), RCW 19.86.020. Multiple lawsuits, settlements, and scam
16 alerts have not deterred Defendants from continuing their scam. The State therefore requests that
17 this Court enter a preliminary injunction to prevent Defendants from further engaging in their
18 deceptive practices, which violate the CPA, and that have and continues to result in actual and
19 substantial injury to Washington business owners.

20 II. FACTUAL BACKGROUND

21 A. The Defendants

22 Defendant CA Certificate Service LLC d/b/a WA Certificate Service ("CACS"), is a
23 Florida limited liability company registered in Washington, effective March 21, 2019, with
24 Defendant James L. Beard ("Beard") identified as sole managing member. Aflatooni Decl., Ex. 1.

25 ¹ FTC Launches Rulemaking to Combat Sharp Spike in Impersonation Fraud, [https://www.ftc.gov/news-](https://www.ftc.gov/news-events/press-releases/2021/12/ftc-launches-rulemaking-combat-sharp-spike-impersonation-fraud)
26 [events/press-releases/2021/12/ftc-launches-rulemaking-combat-sharp-spike-impersonation-fraud](https://www.ftc.gov/news-events/press-releases/2021/12/ftc-launches-rulemaking-combat-sharp-spike-impersonation-fraud) (Dec. 16, 2021)
(last accessed Mar. 16, 2022).

1 Defendant Dean G. Marshlack (“Marshlack”) paid CACS’ \$200 registration fee, and communicated
2 with the Secretary of State (“SOS”) on how to apply for a “dba.” Aflatooni Decl., Exs. 2, 3.

3 On July 3, 2020, the SOS terminated CACS’ registration and was not re-registered until
4 October 8, 2020. Aflatooni Decl., Exs. 4, 5. Defendants did not register CACS’ trade name, “WA
5 Certificate Service,” until October 12, 2020. Aflatooni Decl., Ex. 6.

6 Defendants Beard, Marshlack, Chad M. Davis a/k/a Chad Merk (“Davis”), and Joshua T.
7 Strawn (“Strawn”), are CACS’ principals. Each are paid weekly distributions from CACS: Beard
8 receives 10 percent, and Marshlack, Davis or his company, Merk Enterprises, and Strawn, or his
9 company Errl Holdings, each generally receives 30 percent of these distributions, totaling more
10 than \$3.6 million. Aflatooni Decl., ¶ 2, Exs. 7, 46, 47.

11 Defendants Corporate Compliance Service LLC (“Corporate Compliance”), Centurion
12 Group Investments, LLC (“Centurion”), Merk Enterprises, LLC (“Merk Enterprises”), and Errl
13 Holdings, LLC (“Errl Holdings”) are Florida limited liability companies owned by Beard,
14 Marshlack, Davis, and Strawn, respectively. Aflatooni Decl., Exs. 8, 10-12.

15 **B. Defendants’ Deceptive Solicitations and Envelopes**

16 Since March 13, 2019, Defendants have mass mailed deceptive solicitations, mainly
17 targeting Washington small business owners, for the purchase of a **non-mandatory** Certificate
18 of Status. *See, e.g.*, Aflatooni Decl., ¶ 3, Ex. 21 (identifying “Notice Date” as “03/13/2019”);
19 Peters Decl., Exs. 2, 3 (SOS scam alert); Baker Decl., ¶ 3; Behrens Decl., ¶ 3; Bodas Decl., ¶ 3;
20 Emery Decl., ¶ 3; Funke Decl., ¶ 3; Hovde Decl., ¶ 3; Kirchner Decl., ¶ 3; Lathwell Decl., ¶ 3;
21 Lau Decl., ¶ 3; O’Sullivan Decl., ¶ 3; Taylor Decl., ¶ 3. Described by Davis as an “extremely
22 time sensitive” solicitation campaign, Defendants mail their solicitations either shortly after a
23 business owner registers with the SOS (“New Washington Business Owner Solicitation”), or
24 starting in April 2021, mailed on a weekly basis as part of Defendants’ “remarket” campaign
25 (“Remarket Solicitations”). Aflatooni Decl., ¶ 4, Exs. 9, 14, 15, 21-24 (2019-2021 New
26 Washington Business Owner Solicitations), 27 (Remarket Solicitation); *see also*, Allerton-Minnis

1 Decl., ¶ 4; Baker Decl., ¶¶ 4, 5; Behrens Decl., ¶ 4; Bodas Decl., ¶ 4; Emery Decl., ¶ 4; Funke
2 Decl., ¶ 4; Hovde Decl., ¶ 4; Kirchner Decl., ¶ 3; Lathwell Decl., ¶ 4, Atch. 1 (2022 New
3 Washington Business Owner Solicitation); Lau Decl., ¶ 4; O’Sullivan Decl., ¶ 4;
4 Taylor Decl., ¶ 4.

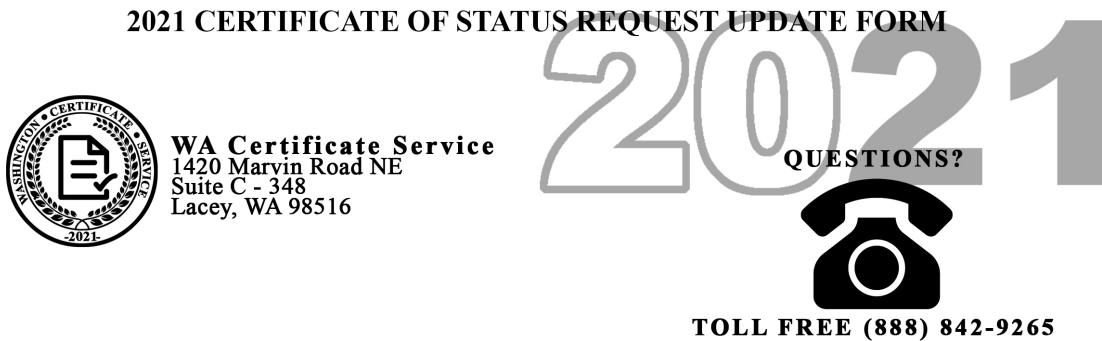
5 Defendants regularly obtain Washington business owners’ information by “scraping”
6 information made publicly available by the SOS (“Washington specific data”).
7 Aflatooni Decl., ¶ 3; Exs. 13, 16, 17. Defendants provide this information to their vendor several
8 times per week, who prepares the solicitations and envelopes for mailing, generally the same
9 day the Washington specific data is received. Aflatooni Decl., ¶ 4, Ex. 14.²

10 From March 2019 through early-February 2022, Defendants mass mailed 195,041
11 deceptive solicitations. Aflatooni Decl. ¶¶ 4, 12, Ex. 42. At least 14,743 Washington business
12 owners were deceived into sending Defendants payment, paying more than \$1.18 million after
13 deducting chargebacks and refunds. Aflatooni Decl. ¶ 13-15, Exs. 43-45; *see also*,
14 Aflatooni Decl., Ex. 18 (payments in response to solicitations); Baker Decl. ¶ 6 (stop payment
15 fees incurred); Lau Decl. ¶ 8 (requesting stop payment); Hovde Decl. ¶¶ 6, 7 (demanding refund).

16 Defendants’ New Washington Business Owner Solicitations mailed between 2019 and
17 2022 contain similar language and formatting; the Remarket Solicitations vary slightly.
18 Aflatooni Decl., ¶ 5, 6, 17, Exs. 22-24, 27; Lathwell Decl., ¶ 4, Atch. 1. Defendants’ solicitations
19 include a sole, inconspicuous disclaimer located in small print in the middle stating, “This is not
20 a government agency,” but it is insufficient to cure the deceptive net impression that the
21 solicitation is a bill or invoice from or on behalf of a governmental agency of which payment is
22 required. Aflatooni Decl., Exs. 22-24, 27; *see also*, Allerton-Minnis Decl. ¶¶ 4-7, Atch. 1; Baker
23 Decl., ¶¶ 4, 5, Atch. 1; Behrens Decl., ¶¶ 4, 5; Bodas Decl., ¶¶ 4, 6, Atch. 1; Emery Decl., ¶ 4, Atch.
24 1; Funke Decl., ¶ 4; Hovde Decl., ¶¶ 4, 5, Atch. 1; Kirchner Decl., ¶¶ 4, 5, Atch. 1; Lathwell Decl.,

25 ² Defendants provide their vendor with the form solicitations and envelopes. *See, e.g.*, Aflatooni Decl.,
26 Ex. 19. Prior to each mailing, Defendants approve the solicitations’ form and content, and submit payment, billed
to Corporate Compliance. *See, e.g.*, Aflatooni Decl., Exs. 9, 20.

¶¶ 4, 5, Atch. 1; Lau Decl., ¶¶ 4-7, Atch. 1; O’Sullivan Decl., ¶¶ 4-7; Taylor Decl., ¶¶ 4-6, Atch. 1. For example, the solicitations contain official-sounding and authoritative language and images such as, “CERTIFICATE OF STATUS REQUEST FORM,” “IMPORTANT! FOLLOW INSTRUCTIONS EXACTLY WHEN COMPLETING THIS FORM. PLEASE PRINT CLEARLY,” and the “Washington Certificate Service” seal. Aflatooni Decl., Exs. 22-24, 27. The solicitations create a false sense of urgency that a response is required by a certain date and that purchase is necessary, stating “PLEASE RESPOND BY” and providing an artificial deadline, and “You have one step left in order to attain your elective Washington Certificate of Status.” Aflatooni Decl., Exs. 22-24, 27. The Remarket Solicitation identifies the year in large numbers that mimic official federal documents:



Aflatooni Decl., Ex. 27.

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1 The form and content of the envelopes also contribute to creating this deceptive net impression.
2 *See, e.g.,* O’Sullivan Decl., ¶ 6; Taylor Decl., ¶ 5. For example, Defendants designed their
3 envelopes to mimic a federal mailer and create a false sense of urgency that a response
4 is required:



13 Aflatooni Decl., Ex. 28. *See also,* Aflatooni Decl. ¶ 7, Exs. 29-31. Defendants’ solicitations and
14 envelopes also identify local return addresses, which are mailboxes paid by Beard and/or
15 Marshlack, including through Centurion, to create the deceptive net impression that CACS is or
16 affiliated with a Washington governmental agency. *See, e.g.,* Aflatooni Decl., ¶¶ 8, 9, Exs. 18,
17 22-25, 27, 31-34. Defendants have been forced to use several mailboxes because the mailbox
18 providers repeatedly shut down Defendants’ mailboxes based on complaints and/or determining
19 CACS is a scam. Aflatooni Decl., Exs. 35-37.

20 If a Washington business owner is deceived into sending Defendants money, Defendants
21 purchase a “Certificate of Existence” (aka Certificate of Status) from the SOS for \$20, which is
22 sent to the business owner. *See, e.g.,* Hovde Decl. ¶ 8, Atch. 2. These certificates have been
23 purchased by Marshlack and his company, Centurion. Aflatooni Decl., Ex. 25.

1 **C. Complaints to Washington State Agencies and Scam Alerts and Legal Actions**
2 **Against CACS**

3 Soon after Defendants mailed their first solicitations, the SOS and Attorney General's
4 Office ("AGO") began receiving complaints; the AGO has received 89 complaints. Aflatooni
5 Decl. ¶¶ 10, 11; *see also*, Allerton-Minnis Decl. ¶ 9, Atch. 2; Baker Decl. ¶ 8, Atch. 2; Behrens
6 Decl. ¶ 6, Atch. 1; Bodas Decl. ¶ 7, Atch. 2; Emery Decl. ¶ 5, Atch. 2; Funke Decl. ¶ 7, Atch. 1;
7 Hovde Decl. ¶ 9, Atch. 3; Kirchner Decl. ¶ 6, Atch. 2; Lathwell Decl., ¶ 6, Atch. 3; Lau Decl., ¶
8 9, Atch. 2; O'Sullivan Decl. ¶ 8, Atch. 1; Taylor Decl. ¶ 9, Atch. 2. Almost immediately after
9 receiving complaints, the SOS issued a scam alert. Peters Decl., Exs. 2, 3. The SOS characterized
10 Defendants' solicitations as "misleading," rejecting the suggestion that business owners must
11 order a Certificate of Status to complete their business registration process, and that if a business
12 owner needs to order this certificate, it can be purchased from the SOS for \$20, not the
13 "invoiced" \$82.50. *Id.* Unsurprisingly, the Better Business Bureau has also awarded CACS with
14 an "F" rating. Peters Decl., Ex. 1.

15 In addition to Washington, Defendants mass mailed their solicitations to business owners
16 in Georgia, Michigan, Minnesota, Nevada, Ohio, Utah, and Virginia. *See, e.g.*, Aflatooni Decl.,
17 Ex. 38. The Michigan Attorney General, the Utah Department of Commerce, and the Virginia
18 Attorney General have sued CACS regarding Defendants' deceptive solicitations. Aflatooni
19 Decl., ¶ 18, Exs. 39-41. Georgia and Ohio have issued scam alerts. Peters Decl., Exs. 4, 5.

20 **D. State Actions and Scam Alerts Against the Individual Defendants' Other Businesses**

21 For almost a decade, the individual defendants have operated illegitimate businesses
22 mailing deceptive postcards or solicitations, similar to the CACS solicitations. The individual
23 defendants persist in their scams despite alerts and legal actions taken by multiple states,
24 including allegations that their postcards or solicitations appear as a bill or invoice sent by or on
25 behalf of a governmental agency. These businesses include: (1) **Business Filing Services Inc.**
26 Aflatooni Decl., Ex. 48 (owned by Strawn); Peters Decl., Ex. 6 (North Carolina scam alert); (2)

1 **Division of Corporate Services Inc.** Aflatooni Decl., Ex. 49 (owned by Davis and Strawn);
2 Peters Decl., Exs. 7-9 (Michigan Attorney General lawsuit and scam alerts); (3) **Annual**
3 **Business Services, LLC aka Business Compliance Division, Inc.** Aflatooni Decl., Exs. 50, 51
4 (owned by Davis and Strawn); Peters Decl., Exs. 9-15 (legal actions by three states and scam
5 alerts in four states); (4) **United Business Services, LLC.** Aflatooni Decl., Ex. 52 (owned by
6 Beard); Peters Decl., Ex. 16 (Nebraska Attorney General lawsuit); (5) **Centurion Filing**
7 **Services, LLC.** Aflatooni Decl., ¶ 16, Ex. 53 (owned by Marshlack); Peters Decl., Exs. 17-27,
8 33, 34 (legal action by three states, cease and desist letter, and scam alerts in nine states);
9 (6) **FL Certificate Services LLC.** Aflatooni Decl., Ex. 54 (Davis approves the content and form
10 of the solicitations and envelopes); Peters Decl., Exs. 9, 28-32 (Pennsylvania Attorney General
11 lawsuit and scam alerts in five states); and (7) **Labor Poster Compliance, LLC.** State of
12 Washington lawsuit, including against Beard and Davis.³

13 **III. ISSUE PRESENTED**

14 Whether Defendants should be preliminarily enjoined from mailing solicitations to
15 Washington consumers, including business owners that create the deceptive net impression that
16 the solicitation is sent by or on behalf of a governmental agency or a bill or invoice that must be
17 paid.

18 **IV. EVIDENCE RELIED UPON**

19 The State relies upon the declarations, with accompanying exhibits, of Shidon B. Aflatooni,
20 Eric M. Peters, Morgan Aiden Allerton-Minnis, Tracy Baker, Rachael Behrens, Devadatta Bodas,
21 Isaac Emery, Rhiannon D. Funke, Sherrie Hovde, Larry Kirchner, Ben Lathwell, Gregory Scottie
22 Lau, Rory O’Sullivan, and Robert Taylor, and the documents and pleadings filed in this case.

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³ *State v. Labor Poster Compliance, LLC, et al.*, No. 22-2-03867-5 SEA (King Cnty. Sup. Ct. Mar. 17, 2022).

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V. ARGUMENT

A. Standards for Preliminary Injunction

A trial court has broad discretion to fashion injunctive relief to fit the particular circumstances of the case. *Rupert v. Gunter*, 31 Wn. App. 27, 30, 640 P.2d 36 (1982). To obtain a preliminary injunction, the State need not prove the merits of its case; rather, it must demonstrate a likelihood of success on the merits. *Tyler Pipe Indus., Inc. v. State, Dep't of Revenue*, 96 Wn.2d 785, 793 (1982). A party seeking a preliminary injunction must show (1) a clear legal or equitable right, (2) a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of have or will result in actual and substantial injury. *Rabon v. City of Seattle*, 135 Wn.2d 278, 284 (1998). “[S]ince injunctions are within the equitable powers of the court, these criteria must be examined in light of equity, including the balancing of the relative interests of the parties and the interests of the public, if appropriate.” *Id.* Injunctions directed to a corporation also run against the corporation’s officers, agents, employees, and servants. *Kitsap Cty. v. Kev, Inc.*, 106 Wn.2d 135, 142 (1986); CR 65(d).

Consistent with our legislature’s directive that courts liberally construe the CPA, in this action, the Court should apply the standard for preliminary injunctions sought by the Federal Trade Commission (“FTC”). RCW 19.86.920 (courts construing CPA should be guided by federal equivalents). The FTC may obtain a preliminary injunction where “weighing the equities and considering the Commission’s likelihood of ultimate success, such action would be in the public interest.” 15 U.S.C. § 53(b). Because of its mission to protect consumers, the FTC has a “lighter burden . . . than that imposed on private litigants by the traditional equity standard.” *F.T.C. v. Warner Commc’ns Inc.*, 742 F.2d 1156, 1159 (9th Cir. 1984). “[A] court must 1) determine the likelihood that the Commission will ultimately succeed on the merits and 2) balance the equities.” *Id.* at 1160. In balancing the equities, the public interest receives greater weight than private interests. *F.T.C. v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989). Because the public interest is implicated, the Court’s equitable powers “assume

1 an even broader and more flexible character than when only a private controversy is at stake.”
2 *F.T.C. v. Gem Merch. Corp.*, 87 F.3d 466, 469 (11th Cir. 1996); *compare Rabon*, 135 Wn.2d at
3 284 (private party must show a well-grounded fear of immediate invasion of a clear right which
4 will result in actual and substantial injury).

5 King County courts routinely grant injunctive relief requested by the State to stop
6 practices in violation of the CPA where consumer harm is threatened. *See, e.g., Aflatooni Decl.*,
7 Exs. 55-63.

8 **B. Standards for a State-Advanced CPA Claim**

9 The Washington CPA bars businesses from engaging in unfair and/or deceptive acts or
10 practices. RCW 19.86.020. The Attorney General may bring actions to enjoin unfair or deceptive
11 acts and practices, RCW 19.86.080(1), acting for the benefit of the public. *Lightfoot v.*
12 *MacDonald*, 86 Wn.2d 331, 334 (1976). The CPA “shall be liberally construed [so] that its
13 beneficial purposes may be served.” RCW 19.86.920. As courts have repeatedly noted, the
14 liberal construction directive ensures the protection of the public. *See, e.g., State v. Ralph*
15 *Williams’ N.W. Chrysler Plymouth, Inc.*, 82 Wn.2d 265, 274 (1973); *Panag v. Farmers Ins. Co.*
16 *of Wash.*, 166 Wn.2d 27, 37 (2009).

17 When bringing a CPA claim, the State must prove: (1) an unfair or deceptive act or
18 practice, (2) in trade or commerce, (3) that affects the public interest. *State v. Kaiser*,
19 161 Wn. App. 705, 719 (2011); *State v. Mandatory Poster Agency*, 199 Wn. App. 506, 518,
20 398 P.3d 1271 (2017), *review denied*, 189 Wn.2d 1021, 404 P.3d 496 (2017). Unlike private
21 plaintiffs, the State “is not required to prove causation or injury.” *Kaiser*, 161 Wn. App. at 719.

22 An act or practice is deceptive if it has the capacity to deceive a substantial portion of the
23 public. *See Hangman Ridge Training Stable, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 785
24 (1986). “In evaluating the tendency of language to deceive, the [Court] should look not to the
25 most sophisticated readers but rather to the least.” *Panag*, 166 Wn.2d at 50 (internal quotation
26 marks omitted). The State need not prove actual deception, just the *capacity* to deceive. *Id.*

1 Accurate, truthful communication can be deceptive if the “net impression” it conveys is
2 deceptive. *Id.*

3 As recognized by Washington and federal courts, disclaimers “do not always
4 cure the potential for deception.” *State v. LA Investors, LLC*, 2 Wn. App. 2d 524, 544,
5 410 P.3d 1183 (2018), *review denied*, 190 Wn.2d 1023, 418 P.3d 796 (2018) (quoting
6 *Mandatory Poster Agency*, 199 Wn. App. at 523). “Disclaimers are inadequate unless they are
7 ‘sufficiently prominent and unambiguous to change the apparent meaning of the claims and to
8 leave an accurate impression.’” *Id.*, (quoting *Removatron Int’l Corp. v. Fed. Trade. Comm’n*,
9 884 F.2d 1489, 1497 (1st Cir. 1989)). “Anything less is only likely to cause confusion by creating
10 contradictory double meanings.” *Id.* (quoting *Removatron*, 884 F.2d at 1497).

11 **C. The State is Likely to Succeed on the Merits of its Claim**

12 The State is likely to succeed on the merits of its CPA claim because the Court of Appeals
13 has previously upheld trial court orders in two similar cases. In *Mandatory Poster Agency*, the
14 Court of Appeals affirmed a trial court order finding Mandatory Poster Agency d/b/a Corporate
15 Records Service (CRS) violated the CPA by mass mailing more than 79,000 deceptive
16 solicitations to small businesses related to “Annual Minutes Requirement Statement” that created
17 the deceptive net impression the solicitation was a bill from a governmental agency. *Mandatory*
18 *Poster*, 199 Wn. App. at 512-513. The Court found that the “undisputed format, images, and
19 content” of the CRS envelopes and solicitations “mimic[ed] government-related forms and
20 create[d] the net impression that the recipient is obligated to return the form and pay \$125 to
21 CRS.” *Id.* at 523. CRS’ two disclaimers did not “cure the potential for deception.” *Id.* at
22 523-524.

23 In *LA Investors*, the Court of Appeals affirmed a trial court order finding LA Investors,
24 LLC d/b/a Local Records Office (LRO) violated the CPA by mass mailing 256,998 solicitations
25 demanding payment for a copy of a property deed to Washington property owners who recently
26 purchased or refinanced a home. *LA Investors*, 2 Wn. App. 2d at 528. The Court found that the

1 formatting and language of LRO's solicitations created the deceptive net impression that it was
2 a bill sent by a governmental agency. *Id.* at 530, 540-543. LRO's *four* disclaimers were
3 insufficient to cure the solicitations' "capacity for deception." *Id.* at 543-544.

4 Similar to *Mandatory Poster* and *LA Investors*, Defendants' solicitations create the
5 deceptive net impression that they are a bill sent by or on behalf of a governmental agency,
6 including (1) containing personalized business owner information, such as business name,
7 address, UBI number, entity type, and date of registration; (2) featuring the official-sounding
8 name "WA Certificate Service" and official-looking seal, and identifying a local return address;
9 (3) directing "IMPORTANT! FOLLOW INSTRUCTIONS EXACTLY WHEN COMPLETING
10 THIS FORM. PLEASE PRINT CLEARLY;" (4) containing a specified but artificial deadline,
11 directed as "PLEASE RESPOND BY;" (5) Identifying a "Key Code," a "Notice Date," and
12 placement of barcodes; (6) authoritative language that purchase is necessary to complete the
13 registration process; (7) A "Certificate of Status Fee" of \$82.50, followed by four required steps
14 in the return form; and (8) the year identified in the Remarket Solicitation mimics official
15 documents. Aflatooni Decl., ¶ 3, Exs. 13 21-24, 27; Lathwell Decl., ¶ 4, Atch. 1; *see also*,
16 *Mandatory Poster*, 199 Wn. App. at 515, 522; *LA Investors*, 2 Wn. App. 2d at 530, 540-543.
17 Additionally, the envelopes and timing of Defendants' solicitations—mailed shortly after
18 business registration—contribute to this deceptive net impression. Aflatooni Decl., ¶ 7,
19 Exs 28-31; Allerton-Minnis Decl., ¶ 7; Bodas Decl., ¶ 5; Funke Decl. ¶ 6; Hovde Decl. ¶ 5;
20 Lau Decl., ¶ 6; O'Sullivan Decl., ¶ 6; Taylor Decl., ¶ 5; *see also*, *Mandatory Poster*,
21 199 Wn. App. at 522.

22 Defendants' inconspicuous disclaimer is inadequate to cure this deceptive net
23 impression. *See Mandatory Poster*, 199 Wn. App. at 515-516, 523-524; *LA Investors*,
24 2 Wn. App. 2d at 543-544. And, Defendants' response rate of 7.5 percent—nearly *four to six*
25 *times* higher than the expected response rate of similar solicitations—also attests to the
26 inadequacy of Defendants' disclaimer. *See LA Investors*, 2 Wn. App. 2d at 530, 532-533

1 (discussing State’s expert’s opinion that LRO’s 3.9 percent response rate “was two to three times
2 the expected rate of average response for comparable mailers.”). Indeed, some Washington
3 business owners believed the solicitation was from the SOS, while other business owners’
4 deception was not dispelled until contacting the SOS. Aflatooni Decl., Ex. 18 (identifying the
5 SOS as payee); Bodas Decl., ¶ 5; Hovde Decl., ¶ 6; Taylor Decl., ¶¶ 5-8.

6 The State is also likely to succeed on the merits of its claim because Defendants’ conduct
7 has been subject to legal actions, scam alerts, and numerous complaints. Section II.C., *supra*;
8 *see also LA Investors*, 2 Wn. App. 2d at 530, 532 (noting the numerous complaints received by
9 the AGO and scam alerts, and other states’ enforcement actions and settlements relating to the
10 same or similar deceptive conduct). Defendants’ solicitations reached, and has the capacity to
11 deceive, a substantial portion of the public because almost 15,000 Washington business owners
12 have responded to the solicitations, paying Defendants more than \$1.18 million. Aflatooni Decl.
13 ¶ 13-15, Ex. 43-45; *see also, Mandatory Poster*, 199 Wn. App. at 524 (same conclusion based
14 on return of 2,901 paid responses).

15 **D. Defendants’ Solicitations Violate the CPA and the State Has a Well-Founded Fear**
16 **that Defendants Will Continue to Violate the CPA**

17 Defendants’ solicitations violate the CPA because the format, images, and content of the
18 solicitations create the deceptive net impression that the solicitations are from or on behalf of a
19 governmental agency and a bill that must be paid. Sections II.C. and IV.C., *supra*. Defendants
20 are undeterred by local and national scam alerts, complaints to state agencies, state actions, and
21 closure of their mailboxes. Sections II.B. and C., *supra*. Defendants even mail solicitations when
22 they have no authority to conduct business in Washington, and use a non-existent trade name.
23 Aflatooni Decl., ¶¶ 12, Exs. 1, 3-6, 21-23, 42. Likewise, past and current businesses operated by
24 Defendants since 2013 show they engage in similar deceptive conduct and are resolute in their
25 massive, nationwide efforts to scam consumers and business owners. Section II.D., *supra*.
26 Defendants will not stop sending their deceptive solicitations to Washington business owners,

1 unless they are forced to cease their unlawful conduct. *See* Aflatooni Decl., Exs. 39-41 (state
2 agencies obtaining injunctive relief against CACS).

3 **E. Defendants' Conduct Has and Will Continue to Result in Actual and Substantial**
4 **Injury**

5 Defendants have mass mailed over 195,000 solicitations to Washington business owners,
6 and have obtained more than \$1.18 million from nearly 15,000 business owners. Section II.B.,
7 *supra*. Defendants continue to mass mail their deceptive solicitations to Washington business
8 owners. *See, e.g.*, Lathwell Decl., ¶ 4, Atch. 1. Business owners will continue to suffer actual
9 and substantial harm from Defendants' solicitations, including purchasing a ***non-mandatory***
10 certificate. Sections II.B. and C., *supra*.

11 Additionally, Defendants' deceptive solicitations sow governmental confusion and
12 distrust, and victimize the SOS by creating the deceptive net impression the solicitation is sent
13 by that agency, and that (1) the SOS endorses the deceptive solicitations and/or (2) upon learning
14 the solicitation is a scam, the business owner may perceive future legitimate communications
15 from the SOS as junk. Sections II.B. and C., *supra*; *see also National Taxpayers Union v. U.S.*
16 *Social Security Administration*, No. 07-3381, 302 Fed. Appx. 115, 118 (3d Cir. 2008), *cert.*
17 *denied*, 558 U.S. 816 (2009) (upholding federal statute that prohibits uses of the phrase "social
18 security" to "protect seniors and other beneficiaries from fraud, and to ensure that when the
19 [Social Security Administration] sends legitimate mail to beneficiaries, the recipients will open
20 it and not perceive it as "junk mail.""). Absent a preliminary injunction, Defendants will
21 continue to violate the CPA, resulting in actual and substantial injury to Washington business
22 owners, and the SOS.

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DATED this 18th day of March, 2022.

s/ Shidon B. Aflatooni
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I certify that this memorandum contains 4,109 words, in compliance with the Local Civil Rules or extension allowed by Court.