

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.

STATE OF WASHINGTON,

Plaintiff,

v.

LABOR POSTER COMPLIANCE, LLC, a
Wyoming limited liability company; JAMES
L. BEARD, individually; CHAD M. DAVIS
a/k/a CHAD MERK, individually; JOSHUA
T. STRAWN, individually; and SEAN D.
WILSON, individually,

Defendants.

NO. 22-2-03865-9 SEA

ORDER GRANTING STATE'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT AGAINST
CA CERTIFICATE SERVICE LLC,
JAMES L. BEARD, DEAN G.
MARSHLACK, CHAD M. DAVIS,
and JOSHUA T. STRAWN

1 THIS MATTER came before the Court on the State's Motion for Partial Summary
2 Judgment against CA Certificate Service LLC d/b/a WA Certificate Service, James L. Beard, Dean
3 G. Marshlack, Chad M. Davis, and Joshua T. Strawn (collectively, "Defendants"). The Court
4 considered the following material:

- 5 A. State of Washington's Motion for Partial Summary Judgment ("Motion");
- 6 B. Declaration of Shidon B. Aflatooni and the attached exhibits;
- 7 C. Declaration of Eric M. Peters and the attached exhibits;
- 8 D. Declaration of Anton Forbes and the attached exhibits;
- 9 E. Declaration of Morgan Aiden Allerton-Minnis and the attached exhibits;
- 10 F. Declaration of Tracy Baker and the attached exhibits;
- 11 G. Declaration of Rachael Behrens and the attached exhibits;
- 12 H. Declaration of Devadatta Bodas and the attached exhibits;
- 13 I. Declaration of Isaac Emery and the attached exhibits;
- 14 J. Declaration of Donna Frerichs and the attached exhibits;
- 15 K. Declaration of Rhiannon D. Funke and the attached exhibits;
- 16 L. Declaration of Sherrie Hovde and the attached exhibits;
- 17 M. Declaration of Larry Kirchner and the attached exhibits;
- 18 N. Declaration of Ben Lathwell and the attached exhibits;
- 19 O. Declaration of Gregory Scottie Lau and the attached exhibits;
- 20 P. Declaration of Rory O'Sullivan and the attached exhibits;
- 21 Q. Declaration of Claire Spain-Remy and the attached exhibits;
- 22 R. Declaration of Denis Sullivan and the attached exhibits;
- 23 S. Declaration of Robert Taylor and the attached exhibits;
- 24 T. Defendants' response and attached exhibits, if any;
- 25 U. State's reply, if any.

1 The Court, being familiar with the records and files herein, and being otherwise fully
2 advised, having found there exist no issues of material fact, hereby enters the following Findings of
3 Fact, Conclusions of Law, and Order.

4 **I. FINDINGS OF FACT**

5 1. Plaintiff is the State of Washington.

6 2. Defendant CA Certificate Service LLC d/b/a WA Certificate Service ("CACS") is
7 a Florida limited liability company whose principal place of business is at 4326 26th Ave. N.,
8 St. Petersburg, FL 33713. CACS is currently registered to conduct business in Washington.

9 3. Defendants James L. Beard ("Beard"), Dean G. Marshlack ("Marshlack"), Chad M.
10 Davis a/k/a Chad Merk ("Davis"), and Joshua T. Strawn ("Strawn") are individuals residing in
11 Florida and owned CACS.

12 4. Defendants mass mailed solicitations, mainly to Washington small business owners,
13 for the purchase of a non-mandatory Certificate of Status, at a cost of \$82.50.

14 5. Defendants mailed their solicitations either (1) shortly after a business owner
15 registered with the SOS ("New Washington Business Owner Solicitation"), or (2) as weekly
16 solicitations to prior respondents as part of its "remarket" campaign ("Remarket Solicitations").

17 6. Washington business owners are not required to purchase a Certificate of Status to
18 operate a business in Washington, nor is a Washington business owner ever required to purchase a
19 Certificate from Defendants.

20 7. Davis, Strawn, and Marshlack conceived of and implemented the idea to form
21 CACS.

22 8. Beard is the identified owner on all official documents, including state registrations
23 and settlements.

24 9. All four owners—Beard, Marshlack, Davis, and Strawn—approved the
25 solicitations, including for mailing to Washington business owners.

10. The Washington Attorney General's Office has received 92 complaints regarding CACS; each complaint was forwarded to CACS for a response as it was received.

11. The SOS issued scam alerts regarding CACS in 2019 and 2022.

12. Georgia and Ohio also issued scam alerts against CACS.

13. CACS's owners were aware of the scam alerts issued by Washington and Ohio.

14. On October 31, 2019, the BBB serving West Florida mailed CACS a letter in response to complaints made by business owners to the BBB.

15. In May 2020, Wanderers' Mail Service shut down CACS's Seattle mailbox after receiving "MANY complaints about" CACS.

16. Between 2019 and 2021, the Michigan Attorney General, Utah Department of Commerce, and Virginia Attorney General sued CACS targeting similar solicitations and envelopes mailed to business owners in those states; in 2022, Georgia Attorney General settled its investigation into CACS through an Assurance of Voluntary Compliance (“AVC”).

17. Prior to and during the time Defendants mailed the CACS solicitations into Washington, Davis, Strawn, Beard, and Marshlack were engaged in similar mail solicitation schemes, which were subject to regulatory actions, from 2015 through 2022.

II. CONCLUSIONS OF LAW

1. The Court has jurisdiction over Defendants and the subject matter at issue in this case.

2. Venue is proper in King County pursuant to RCW 4.12.020 and 4.12.025, and Court Rule 82 because the cause of action arose, in part, in King County and Defendants transacted business in King County.

3. Summary judgment is proper where no issue of material fact exists and the moving party is entitled to judgment as a matter of law. CR 56(c); *Western Telepage, Inc. v. City of Tacoma*, 140 Wn.2d 599, 607, 998 P.2d 884 (2000).

1 4. The Court of Appeals has twice affirmed the entry of summary judgment in
2 similar actions brought by the State against companies and their owners involved in the mailing
3 of solicitations similar to Defendants' solicitations. *State v. Mandatory Poster Agency*, 199 Wn.
4 App. 506, 398 P.3d 1271 (2017), *rev. denied*, 189 Wn.2d 1021, 404 P.3d 496 (2017); *State v. LA*
5 *Investors, LLC*, 2 Wn. App. 2d 524, 410 P.3d 1183 (2018), *rev. denied*, 190 Wn.2d 1023, 418
6 P.3d 796 (2018).

7 5. There is no dispute of material fact that the CACS solicitations are deceptive and
8 violate the CPA, that Beard, Davis, Strawn, and Marshlack are personally liable, and that the
9 State is entitled to civil penalties, restitution, including prejudgment interest, injunctive relief,
10 and its fees and costs.

11 6. The CPA broadly prohibits "unfair or deceptive acts or practices in the conduct
12 of any trade or commerce." RCW 19.86.020.

13 7. To prevail under the CPA, the State must prove: (1) an unfair or deceptive act or
14 practice, (2) in trade or commerce, (3) that affects the public interest. *State v. Kaiser*,
15 161 Wn. App. 705, 719, 254 P.3d 850 (2011); *Mandatory Poster Agency*, 199 Wn. App. at 518.
16 The State is not required to prove causation, injury, intent to deceive, or actual deception. *LA*
17 *Investors, LLC*, 2 Wn. App. at 538; *Mandatory Poster Agency*, 199 Wn. App. at 518; *Kaiser*,
18 161 Wn. App. at 719.

19 **A. Unfair or Deceptive Act or Practice**

20 8. Whether a particular act or practice is "unfair or deceptive" is a question of law.
21 *Panag*, 166 Wn.2d at 47. An act or practice is deceptive if it has the capacity to deceive a
22 substantial portion of the public. *See Hangman Ridge Training Stable, Inc. v. Safeco Title Ins.*
23 *Co.*, 105 Wn.2d 778, 785 (1986). "A communication can be accurate and truthful, yet still be
24 deceptive if the 'net impression it conveys' is deceptive." *LA Investors*, 2 Wn. App.2d at 524
25 (quoting *Panag*, 166 Wn.2d at 50).

1 9. In relevant part this case is indistinguishable from *LA Investors* and *Mandatory*
2 *Poster Agency*. There, the trial courts were affirmed in holding as a matter of law that the
3 defendant-solicitors sent out mailers that created a “net impression” to the reasonable consumer
4 that the mailers mimicked a government bill, despite disclaimers, and therefore had the capacity
5 to deceive reasonable consumers in violation of the CPA. *LA Investors*, 2 Wn. App.2d at 542-
6 545; *Mandatory Poster Agency*, 199 Wn. App. at 523-525.

7 10. In *Mandatory Poster*, the defendant-solicitor (CRS) mailed 79,354 solicitations
8 to Washington consumers, in an envelope with a “a stylized eagle symbol” that also contained
9 the language “IMPORTANT” in bold above “Annual Minutes Requirement Statement,” “TIME
10 SENSITIVE,” and “If addressed name is incorrect, please forward document to an authorized
11 employee representative Immediately,” and featured a notation “THIS IS NOT A
12 GOVERNMENT DOCUMENT” located just below the return address. 199 Wn. App. at 515.
13 “Inside the envelope was a form entitled ‘ANNUAL MINUTES RECORDS FORM,’ addressed
14 to the recipient’s business, which contained a key code, bar code, response date, and the
15 recipient’s date of incorporation.” *Id.* The first instruction on the form stated: “IMPORTANT!
16 FOLLOW INSTRUCTIONS EXACTLY WHEN COMPLETING THIS FORM. PLEASE
17 PRINT,” along with selected citations to the Washington Business Corporations Act near the top
18 of the page. *Id.* The form also had a disclaimer, surrounded by other text and located one-third
19 of the way down from the top, which read: “CORPORATE RECORDS SERVICE IS NOT A
20 GOVERNMENT AGENCY AND DOES NOT HAVE OR CONTRACT WITH ANY
21 GOVERNMENT AGENCY TO PROVIDE THIS SERVICE.” *Id.* at 515-516. On the second
22 page, the instructions directed recipients to review the accuracy of the corporate name and
23 address, and to then complete seven steps to fill out the form, along with an admonishment that
24 “[m]aintaining records is important to the existence of all corporations.” *Id.* In response to the
25 mailing, 2,901 Washington consumers out of the 79,354 solicitations sent out returned a
26 completed form with the \$125 fee. *Id.* at 516.

1 11. On these undisputed facts, *Mandatory Poster Agency* concluded there was a CPA
2 violation:

3 The mass mailings are likely to mislead a reasonable consumer because the
4 undisputed format, images, and content do mimic government-related forms
5 and create the net impression that the recipient is obligated to return the form
6 and pay \$125 to CRS. CRS contends its solicitations were not deceptive because
7 they accurately stated Washington corporate law requirements. . . . Consumers
8 are likely misled by the net impression that CRS is associated with the
9 government and that consumers are required to return the completed form with
10 a fee.”

11 199 Wn. App. at 523. *Mandatory Poster Agency* also rejected the defense of the document as
12 non-deceptive premised on the claim that the mailer contained accurate information and
13 disclaimers:

14 Here, the disclaimer “THIS IS NOT A GOVERNMENT DOCUMENT” is just
15 underneath the return address on the envelope and is overshadowed by a large
16 all caps and bold “IMPORTANT” notation on the face of the envelope just
17 above “Annual Minutes Requirement Statement.” The all-caps disclaimer in the
18 instructions, that CRS is not a government agency and does not have a contract
19 with a government agency is one-third down the page surrounded by unrelated
20 instructions. Considering the format and placement, the disclaimers do not cure
21 the potential for deception.

22 *Id.* at 523-524.

23 12. In *LA Investors*, defendant-solicitor, under the name “Local County Records,”
24 sent out to Washingtonian who had recently purchased or refinanced homes 256,998 mailers
25 over a 4-year period, which contained an offer to sell a copy of the property deed for a fee \$89.00.
26 2 Wn. App.2d at 528. The mailer touted its product as “the only document that identifies [you]
as the property owner of [your home] by a recently recorded transferred title on the property,”
and featured a “property profile” that provided “property address, owner's name, comparable
values, and legal description or parcel identification number, property history, neighborhood
demographics, public and private schools report.” *Id.* (alteration in original). The mailer featured
on the first page a disclaimer, and beneath a disclaimer, a detachable coupon that indicated a
“PROPERTY ID NO.,” a reference to the \$89 “SERVICE FEE,” a “PLEASE RESPOND BY”
date, and “CHECK NO.” *Id.* at 529-530. The disclaimer read:

1 Local Records Office is not affiliated with any State or the United States or the
2 County Records. Local Records Office is an analysis and retrieval firm that uses
3 multiple resources that provide supporting values, deeds, and evidence that is
used to execute a property reports [sic] and deliver a requested deed.

4 Local Records Office is not affiliated with the county in which your deed is
5 filed in, nor affiliated with any government agencies. This offer serves as a
soliciting for services and not to be interpreted as bill due.

6 *Id.* at 529. The envelope featured a similar disclaimer that read: “This service to obtain a copy
7 of your deed or other record of title is not associated with any governmental agency. You can
8 obtain a copy of your deed or other record of title from the county recorder in the county where
9 your property is located.” *Id.* at 528.

10 13. Like *Mandatory Poster Agency*, *LA Investors* also found a CPA violation as a
11 matter of law on summary judgment, on these undisputed facts, “because [t]he mailer could have
12 been reasonably mistaken for a bill.” 2 Wn. App.2d at 542. The appellate court also rejected any
13 curative effect in the disclaimers: “Here, the disclaimer ‘THIS IS NOT A GOVERNMENT
14 DOCUMENT’ on the mailing envelope was overshadowed by a boxed and bolded ‘WARNING’
15 notation regarding mail fraud. . . . It was also overshadowed by the language ‘IMPORTANT
16 PROPERTY INFORMATION’ and ‘RESPOND PROMPTLY’ located next to it, near the center
17 of the envelope.” *Id.* at 544. The appellate court similarly rejected the effectiveness of the
18 disclaimer in the mailer itself. *Id.*

19 14. Here, during the period of March 2019 to March 2022, Defendants identified
20 Washington business owners based on their public registration with the Secretary of State
21 (“SOS”) and mailed out over 200,000 solicitations to them in mailings that resembled in several
22 ways government correspondence. First, the name “WA Certificate Service” inherently evoked
23 the State of Washington. Similar to the instruction in *Mandatory Poster Agency*, the Request
24 form also stated: “Congratulations on registering your business with the State of Washington.
25 Your Articles have been filed with the Secretary of State and are complete. You have one step
26

1 left in order to attain your elective Washington Certificate of Status.” This sentence connotes a
2 confirmation from the Secretary of State that one’s Articles are “complete,” and that it is the
3 State that suggests that a business owner can request, as “one step left,” a Washington Certificate
4 of Status. Like the “stylized eagle symbol” and bar code on the correspondence in *Mandatory*
5 *Poster*, the Request form had an additional veneer of officialdom because it featured a seal;
6 references to the business owner’s registration with the Secretary’s Office and related
7 information; a “Key Code”; and two barcodes that were not functional until March 21, 2022 and
8 were included “just for show” according to one Defendant. The Remarket Solicitation featured
9 the added officious detail of including the year in partially shaded numerals that match what
10 appears on federal income tax returns. And also like *Mandatory Poster*, CACS correspondence
11 arrived in envelopes that stated in bold in large font: “IMPORTANT – OPEN
12 IMMEDIATELY,” then right below “Certificate of Status Request Form” and just lower in small
13 bold font: “BUSINESS MAIL – TIME SENSITIVE”.

14 15. Also like both *LA Investors* and *Mandatory Poster Agency*, the Request form was
15 couched in language in bold suggesting urgency and the importance of following exact
16 instructions: “FOLLOW INSTRUCTIONS EXACTLY WHEN COMPLETING THIS FORM.”
17 The Request form solicited personal information, such as email and phone number, which
18 otherwise was not required or necessary for an ordinary business owner to obtain a Certificate
19 of Status from the Secretary’s Office. The Request impressed upon business owners that they
20 should act with urgency because the “Washington Certificate of Status is issued by the Secretary
21 of State and may be required for loans, to renew business licenses, or for tax or other business
22 purposes.” As conceded by defense counsel at oral argument, Defendants provided no evidence
23 in opposition to summary judgment to substantiate the claim in the mailer that a Certificate of
24 Status might in fact be required when applying for loan or renewing a business license.
25 Defendants also conceded the Certificates themselves were never required by the Secretary of
26 State. From these concessions the Court concludes that this empty assertion on the Request form

1 served only to deceive a recipient that a Certificate of Status might indirectly be necessary or
2 required for a business when in fact it wasn't.

3 16. Defendants' reliance on disclaimers fares no better here than in *LA Investors* and
4 *Mandatory Poster Agency*. In those cases, the disclaimers there were relatively more prominent
5 and elaborate, based on position on the page and font size, than CSAS's mailers; yet even there
6 the disclaimers were still held inadequate. Here, CSAS's occasional use of permissive rather
7 than mandatory language does not cure the overall net impression that the mailer instructs the
8 recipient on how to obtain the Certificate of Status to "complete" one's business registration or
9 otherwise to do business in Washington.

10 17. The Court finds that CSAS's mailers—of 256,988 responded to the mailer—had
11 the capacity to deceive a substantial portion of the public. *See LA Investors*, 2 Wn. App.2d at
12 530 (finding 9,695 out of 256,988 responded to the mailer was substantial portion of public
13 impacted); *Mandatory Poster Agency*, 199 Wn. App. at 516 (finding substantial portion of public
14 impacted where 2,901 responses were sent back out of 79,354 solicitations).

15 18. The New Business Owner Solicitations violate the CPA because they create the
16 deceptive net impression that they are a mandatory bill or invoice sent by or on behalf of a
17 government agency.

18 19. The Remarket Solicitations violate the CPA because they create the deceptive net
19 impression that they are a mandatory bill or invoice sent by or on behalf of a government agency.

20 **B. Trade or Commerce**

21 20. The CPA broadly defines "trade" and "commerce" to include "the sale of assets
22 or services, and any commerce directly or indirectly affecting the people of the state of
23 Washington." RCW 19.86.010(2).

24 21. Defendants are engaged in trade or commerce within the meaning of
25 RCW 19.86.020 because they solicited the sale of, and sold, a service—non-mandatory
26 certificates—to Washington business owners.

1 **C. Affecting the Public Interest**

2 22. In determining whether unfair or deceptive conduct affects the public interest,
3 and where the acts complained of involve “essentially a consumer transaction,” five factors are
4 relevant: (1) Were the alleged acts committed in the course of defendant’s business; (2) Are the
5 acts part of a pattern or generalized course of conduct; (3) Were repeated acts committed prior
6 to the act involving plaintiff?; (4) Is there a real and substantial potential for repetition of
7 defendant’s conduct after the act involving plaintiff; and (5) If the act complained of involved a
8 single transaction, were many consumers affected or likely to be affected by it? *Stephens v. Omni*
9 *Ins. Co.*, 138 Wn. App. 151, 177, 159 P.3d 10, 24 (2007), *aff’d sub nom. Panag*, 166 Wn.2d 27,
10 204 P.3d 885 (2009) (quoting *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*,
11 105 Wn.2d 778, 790, 719 P.2d 531, 538 (1986)). No one factor is dispositive; nor is it necessary
12 that all be present. *Id.*

13 23. Defendants’ conduct affects the public interest within the meaning of
14 RCW 19.86.020 because: (1) the deceptive CACS solicitations were created, approved, and
15 disseminated into Washington in the course of Defendants’ business; (2) the CACS solicitations
16 were part of a generalized course of conduct to solicit and obtain payment from Washington
17 business owners; and (3) Defendants mailed their solicitations to over 200,000 small businesses
18 across Washington and more than 15,000 small business owners were confused or deceived by
19 Defendants’ solicitations. *See LA Investors*, 2 Wn. App.2d at 539.

20 **D. Personal Liability**

21 24. Liability is not limited to corporations and other business entities, but also
22 encompasses “natural persons,” RCW 19.86.010(1), and the Attorney General may bring suit
23 against “any person” to enforce the CPA, RCW 19.86.080.

24 25. Individuals, including corporate officers, are personally liable for conduct that
25 violates the CPA if they “participate[d] in” or “with knowledge approve[d] of” the practice that
26

1 violates the CPA. *See, e.g., State v. Ralph Williams' N.W. Chrysler Plymouth, Inc.*, 87 Wn.2d
2 298, 322, 553 P.2d 423 (1976).

3 26. Defendants did not contest that they could be found personally liable under these
4 undisputed facts. Beard, Davis, Strawn, and Marshlack are each personally liable for CACS's
5 CPA violations because they all participated in or with knowledge approved of the wrongful
6 conduct.

7 **E. Civil Penalties**

8 27. The CPA mandates that "[e]very person who violates RCW 19.86.020 shall
9 forfeit and pay a civil penalty of not more than \$7,500 for each violation." RCW 19.86.140.

10 28. Penalties are imposed for "each violation," rather than for each consumer
11 subjected to violations of the CPA. *See Ralph Williams N.W. Chrysler Plymouth, Inc.*, 87 Wn.2d
12 at 317. *See also LA Investors*, 2 Wn. App. at 547 (civil penalty for every deceptive solicitation
13 *mailed*, regardless of whether a consumer responded to or otherwise read the solicitation).

14 29. In determining the amount of each penalty, the Court may consider the following
15 five, non-exclusive factors: (1) whether defendants acted in good faith, (2) injury to the public,
16 (3) defendant's ability to pay, (4) desire to eliminate any benefits derived by the defendants from
17 the violation at issue, and (5) necessity of vindicating the authority of the law enforcement
18 agency. *LA Investors*, 2 Wn. App. 2d at 546 (citing *United States v. Reader's Digest Association,*
19 *Inc.*, 662 F.2d 955, 967 (3rd Cir. 1981)).

20 30. Here, several of these factors weigh in favor of a substantial penalty.

21 31. Defendants acted in bad faith. Defendants' conduct is part of a pattern or practice
22 of similar conduct, carried out for years, by the owners of CACS. The owners persisted in this
23 conduct despite knowing from other regulatory action, from scam alerts issued by Washington
24 and other states, and from receipt of numerous consumer complaints, that their solicitations were
25 stirring up confusion and concerns about scams and were ultimately unlawful, and that they were
26 harming small business owners. Indeed, CACS's entire business model was based upon

1 | deceiving small business owners and extracting as much money in unnecessary or inflated fees
2 | from the unwary and deceived until they were caught.

3 | 32. Defendants' long-standing, willful disregard of the law, and commitment to
4 | operating scam businesses that victimize small business owners also implicates several other
5 | factors, including injury to the public, eliminating benefits derived from their unlawful activity,
6 | and vindicating the authority of law enforcement.

7 | 33. The Court is also mindful that the penalties imposed should be sufficiently large
8 | to deter future violations. *See State v. Living Essentials, LLC*, 8 Wn. App. 2d 1, 36, 436 P.3d 857
9 | (2019) (affirming trial court's imposition of penalties under RCW 19.86.140 on basis that
10 | "penalties should be large enough to deter future violations and to ensure that defendants do not
11 | profit from the deceptive advertising.").

12 | 34. In their written opposition to summary judgment, Defendants focused only on
13 | liability under the CPA, but did not respond to Plaintiff's claim for civil penalties. At oral
14 | argument, the Court queried the defense whether, assuming the Court found liability, Defendants
15 | contested the sum of civil penalties Plaintiff was seeking. The defense counsel indicated that
16 | Defendants did not contest the figure. The Court followed up, confirming with defense counsel
17 | whether Defendants agreed with the manner in which Plaintiff proposed that the Court exercise
18 | its discretion in reaching the amount of civil penalties requested, and again the defense indicated
19 | it did not oppose Plaintiff's position.

20 | 35. Taking into account these factors, and Defendants' non-opposition, the Court will
21 | impose a penalty of \$100 per violation for each New Business Owner Solicitation distributed by
22 | Defendants, and \$150 per violation for each Remarket Solicitation.

23 | 36. Between March 13, 2019 and March 25, 2022, Defendants mass mailed 206,312
24 | solicitations to Washington small business owners: 200,130 New Business Owner Solicitations,
25 | and 6,182 Remarket Solicitations. The Court, therefore, orders a civil penalty of \$100 for each
26 |

1 New Business Owner Solicitation, totaling \$20,013,000 (200,130 x \$100) and \$150 for each
2 Remarket Solicitation, totaling \$927,300 (6,182 x \$150).

3 37. The total civil penalties of \$20,940,300 is ordered against CACS, Beard, Davis,
4 Strawn, and Marshlack.

5 **F. Restitution and Prejudgment Interest**

6 38. The CPA provides that “[t]he court may make such additional orders or
7 judgments as may be necessary to restore to any person in interest any moneys ... which may
8 have been acquired by means of any act herein prohibited or declared to be unlawful.” RCW
9 19.86.080(2).

10 39. The Court’s broad, equitable power to direct restitution exists to make consumers
11 whole. *See e.g., Mandatory Poster Agency*, 199 Wn. App. at 517; *LA Investors*, 2 Wn. App. 2d
12 at 536.

13 40. “An award of prejudgment interest is appropriate where a party retains funds
14 rightly belonging to another party and thereby denies the party the use value of the money.”
15 *Arzola v. Name Intelligence, Inc.*, 188 Wn. App. 588, 595, 355 P.3d 286 (2015). “A prevailing
16 party is entitled to prejudgment interest, provided the damages are liquidated.” *Id.*

17 41. The amount CACS obtained from business owners is readily ascertainable and
18 liquidated. At least 15,437 Washington business owners mailed payments to Defendants in
19 response to the CACS solicitations, for a net payment amount of \$1,237,799 (total payments
20 reduced by unprocessed payments and refunds). Prejudgment interest in the amount of 12% per
21 annum from the date of purchase through the date of judgment is, therefore, appropriate. *See*
22 *Pub. Util. Dist. No. 2 of Pac. Cnty. v. Comcast of Washington IV, Inc.*, 184 Wn. App. 24, 81,
23 336 P.3d 65, 94 (2014).

24 42. The Court, therefore, orders Defendants:

- 25 a. Within ten (10) days of this Order to provide the State with all necessary
26 information that identifies: (1) each Washington business owner who sent

1 payment and of which CACS processed and did not refund, (2) the amount
2 each Washington business owner paid, (3) the date of payment, and (4)
3 Washington business owner contact information.

- 4 b. Within thirty (30) days of receipt of the information identified in Section
5 II.F, para. 32.a, the State shall submit briefing that identifies: (1) the total
6 restitution owed to Washington business owners, including calculation of
7 prejudgment interest, (2) and a proposed method for distributing and
8 administering restitution payments. Such briefing may include a request
9 that: (1) Defendants place the amounts specified above in a trust account
10 to be used by a third party claims administrator as part of locating and
11 paying refunds to Washington business owners, and (2) that any and all
12 fees associated with (a) contracting with a third party claims
13 administrator, and/or (b) locating and refunding consumers, shall be the
14 sole responsibility of Defendants. The Court shall determine the method
15 to administer the restitution payments without oral argument unless
16 requested of the parties by the Court.

17 **G. Injunctive Relief**

18 43. The CPA empowers the Attorney General to bring an action “against any person
19 to restrain and prevent the doing of any act herein prohibited or declared to be unlawful.”
20 19.86.080(1).

21 44. An injunction is inappropriate only when “it is *absolutely clear* that behavior will
22 not reoccur.” *Braam ex rel. Braam v. State*, 150 Wn.2d 689, 709, 81 P.3d 851, 862 (2003) citing
23 *Ralph Williams’ N.W. Chrysler Plymouth, Inc.*, 87 Wn.2d at 312.

24 45. Defendants have repeatedly shown that regulatory actions, scam alerts, and
25 complaints do not stop their deceptive conduct, and only stopped mailing unlawful solicitations
26 into Washington after being sued by the State in this action.

1 46. A permanent injunction against Defendants is therefore appropriate.

2 47. The Court orders that CACS, Beard, Davis, Strawn, and Marshlack and their
3 officers, agents, representatives, employees, and other persons in active concert or participation
4 with them are hereby permanently RESTRAINED and ENJOINED from engaging in the
5 following conduct in Washington:

- 6 a. Mailing solicitations that create the deceptive net impression that they are
7 a bill or invoice a consumer must pay;
- 8 b. Mailing solicitations that create the deceptive net impression that they
9 originated from a governmental entity or a person or entity working on
10 behalf of the government;
- 11 c. Using business names or registered aliases (including DBAs) that create
12 the deceptive net impression that the business is affiliated with a
13 governmental entity;
- 14 d. Using envelopes that create the deceptive net impression that the contents
15 of the envelope originate from a governmental entity or contain a bill or
16 invoice a consumer must pay; and
- 17 e. Engaging in any other unfair or deceptive act or practice in violation of
18 RCW 19.86.

19 **H. Attorneys' Fees and Costs**

20 48. In a CPA action, the prevailing party may "recover the costs of said action
21 including a reasonable attorney's fee." RCW 19.86.080.

22 49. The Court finds that the State is the prevailing party in this matter and Defendants
23 shall pay the State's reasonable costs and fees incurred. The State shall submit its costs and fees
24 to the Court upon this Court's approval of the restitution amount after the briefing referenced in
25 Section II.F, para. 42.b. The State shall note a motion in connection with its request for fees, and
26

1 any response and reply shall be submitted pursuant LCR 7(b)(4). The Court will determine the
2 award of reasonable costs and attorneys' fees without oral argument unless it notifies the parties.
3

4 IT IS SO ORDERED.

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6 DATED this 31st day of October, 2022.

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THE HONORABLE DAVID WHEDBEE

King County Superior Court
Judicial Electronic Signature Page

Case Number: 22-2-03865-9
Case Title: STATE OF WASHINGTON VS CA CERTIFICATE SERVICE DBA
ET AL
Document Title: ORDER RE ON PARTIAL SUMMARY JUDGMENT

Signed By: David Whedbee
Date: October 31, 2022



Judge: David Whedbee

This document is signed in accordance with the provisions in GR 30.

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